

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1971 of 2025

Applicant :- Nischal Chandak

Opposite Party :- State of U.P.

Counsel for Applicant :- Balbir Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

1. Heard Mr. Vinay Saran, learned Senior Advocate, assisted by Mr. Balbir Singh, learned counsel for the applicant and learned Additional Government Advocate representing the State.

2. The instant bail application under Section 483 of B.N.S.S. has been filed on behalf of the applicant with a prayer to release him on bail in Case Crime No. 226 of 2024, under Section 64 of the *Bharatiya Nyaya Sanhita, 2023*, Police Station Sector-126, District Gautam Budh Nagar, during the pendency of trial.

3. Brief facts of the case which are required to be stated are that the victim got a first information report lodged on 23.09.2024 with regard to an incident which is alleged to have taken place on 21.09.2024 for the alleged offence under Section 64 of the *Bharatiya Nyaya Sanhita, 2023*. The extract of the F.I.R. is quoted herein below:-

"नकल तहरीर हिन्दी वादी.....सेवा मे श्रीमान थाना प्रभारी महोदय थाना सै. 126 नोएडा कमि० गौतमबुद्ध नगर महोदय, निवेदन है की मैं से. 126 नोयडा में पीजी में रहती हूँ और अमिटी युनिवर्सिटी में MA की पढाई कर रही हूँ। दिनांक 21/9/2024 को मैं अपनी महिला दोस्त क्रित्या राय, कनिका व मेबा के साथ दिल्ली घूमने गई थी दिल्ली में घूमने के बाद रात में हमने द रिकार्ड रूम नाम के बार रेस्टोरेंट में जाने का प्रोग्राम बनाया रात करीब 10 बजे मैं अपनी महिला दोस्त के साथ द रिकार्ड रूम बार रेस्टोरेंट हाँज खास दिल्ली पहुच गई थी तभी वहाँ मेरी तीनों महिला दोस्त के 3 पुरुष दोस्त अभिमन्यू खारे नामग्याल सिंगे भूटीया व एक अन्य जिसका मैं नाम नहीं जानती उसी बार में आ गए थे। थोड़ी देर बाद इनका जानकार/मित्र निश्चल चन्दक आ गया था मैंने अपनी महिला दोस्त

के साथ शराब पी ली थी जिस से मुझे काफी नशा हो गया था। इसी दौरान निश्चल चन्दक मुझसे लगातार नजदीकी बढ़ा रहा था। इस बार मैं हम लोग रात्री 3 बजे तक रहे। निश्चल चन्दक मुझे अपने साथ बार बार चलने के लिए कह रहा था। उसके काफी कहने पर मैं उसके घर पहुंचकर आराम करने के उद्देश्य से चलने के लिए तैयार हो गयी थी। निश्चल चन्दक ने कैब बुलाई और मैं उसी रेस्टोरेंट हॉज खास दिल्ली से टैक्सी में सवार हो कर उसके साथ चली गई मेरे अधिक नशे में होने के कारण रासते मे मुझे गलत तरीके से छूता रहा उसने मुझे अपने नोएडा के घर में चलने के लिए कहा था परंतु वह अपने किसी रिश्तेदार के फ्लैट 17/2 ESSEL TOWER SEC 29 गुरुग्राम हरियाणा ले गया जहाँ उसने फ्लैट के एक कमरे में ले जा कर मेरे मर्जी के खिलाफ मेरे साथ दो बार रेप किया मैंने अपने अन्य मित्रों को अपनी लोकेशन भेजी सुबह मदद के लिए श्रिष मिश्रा गुरुग्राम हरियाणा फ्लैट पर आए जिनहैं मैंने अपने साथ हुए गलत काम की सारी बात बताई श्रिष मिश्रा के दोस्त ने काफी देर निश्चल चन्दक से मेरे साथ गलत काम की बात की , पहले उसने अपनी गलती नहीं मानी लेकिन बाद में मानने लगा। मैं सूचना देने आई हूँ मेरा मेडिकल परीक्षण कराकर निश्चल चन्दक के खिलाफ रिपोर्ट दर्ज करने की कृपा करे।"

4. Main substratum of argument of learned counsel for the applicant is that it is an admitted case of the victim that she is major girl and she resides in PG Hostel. She on her own volition along with her girl friends and their male friends went to 'The Record Room Bar Restaurant', where she drank alcohol together, due to which she became very intoxicated. She along with her associates stayed in the bar till 3 O'clock. Since she needed support, therefore, she herself agreed to go to the house of the applicant and take rest. The allegation of the victim that applicant instead of his house took her to his relative's flat and raped her twice is false and against the evidence on record. On the strength of said facts, it is argued that considering the facts of the case as disclosed by the victim, it is not a case of rape but may be a case of consensual relationship between the parties concerned. Lastly, it is submitted by learned counsel for the applicant that there is no chance of the applicant of fleeing away from the judicial process or tampering with the prosecution evidence. The applicant is languishing in jail since 11.12.2024 having no criminal history to his credit and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the early

disposal of the case.

5. Per contra, learned Additional Government Advocate for the State opposed the prayer for bail of the applicant in the light of first information report but could not dispute the above factual aspect of the matter as argued on behalf of the applicant.

6. Having heard learned counsel for the parties and examined the matter in its entirety, I find that it is not in dispute that victim and applicant both are major. Victim is student of M.A., hence she was competent enough to understand the morality and significance of her act as disclosed by her in the F.I.R. This Court is of the view that even if the allegation of the victim is accepted as true, then it can also be concluded that she herself invited trouble and was also responsible for the same. Similar stand has been taken by the victim in her statement. In her medical examination, her hymen was found torn but doctor did not give any opinion about the sexual assault.

7. Considering the facts and circumstances of the case as well as keeping in view the nature of the offence, evidence, complicity of the accused and submissions of the learned counsel for the parties, I am of the view that the applicant has made out a fit case for bail. Hence, the bail application is hereby **allowed**.

8. Let the applicant-**Nischal Chandak**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:

(i) That the applicant shall cooperate with the expeditious disposal of the trial and shall regularly attend the court unless inevitable.

(ii) That the applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence.

(iii) That after his release, the applicant shall not involve in any criminal activity.

(iv) The identity, status and residential proof of sureties will be verified by court concerned before the release of the applicant on bail.

9. In case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail of the applicant.

10. It is made clear that the observations contained in the instant order are confined to the issue of bail only and shall not affect the merit of the trial.

Order Date :- 11.3.2025

Kashifa