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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 1884/2015 & CrI.M.A. 16985/2016**

LAXMI GUPTA & ORS

..... Petitioner

Represented by: **Mr. Sachin Dev Sharma, Adv.**

versus

STATE OF DELHI

..... Respondent

Represented by: **Ms. Rajni Gupta, APP.
Mr. Javed Khan, Adv. for
complainant.**

+ **BAIL APPLN. 2627/2015 & CrI.M.A. 16986/2015**

ASHISH SHARMA

..... Petitioner

Represented by: **Mr. Sachin Dev Sharma, Adv.**

versus

STATE OF DELHI

..... Respondent

Represented by: **Ms. Rajni Gupta, APP.
Mr. Javed Khan, Adv. for
complainant.**

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

15.11.2016

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1. By Bail Application No.1884/2015 Laxmi Gupta, Devendra Gupta & Naresh Gupta and by Bail Application No. 2627/2015 Ashish Sharma seek **BAIL APPLNs. 1884/2015 & 2627/2015**

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anticipatory bail in case FIR No.329/2015 under Sections 376-D IPC and Section 6 of Protection of Children from Sexual Offence Act (in short POCSO Act).

2. Learned counsel for the petitioner states that by lodging a false case the petitioners have been implicated in the above-noted FIR. The complainant is habitual of lodging false complaints against various persons alleging sexual harassment and demanding money. For the incident dated 1st March, 2015 a complaint was lodged by the prosecutrix at PS Prasad Nagar, however there was no allegation of rape in the said complaint. Thus the allegation of rape are clearly an after-thought. Further the prosecutrix is related to the petitioners and the two families have strained relationships.

3. The prosecutrix has also filed applications being Crl.M.A. Nos. 16985/2016 and 16986/2016 seeking withdrawal of the interim protection in view of the subsequent conduct of the petitioners whereby a FIR has been lodged on the complaint of the prosecutrix since she was assaulted by the petitioners.

4. The facts leading to the registration of the above-noted FIR are that a PCR call was received on 4th March, 2015 at 10.20 PM at PS Vijay Vihar alleging an incident of rape with a minor girl. The prosecutrix was taken to the hospital wherein she was examined and gave history of sexual assault. The hymen was found to be not intact. Statement of the prosecutrix was recorded in which she alleged that she was raped by her cousin Ashish for the last two and a half months. On 2nd March, 2015 she was forcibly raped by Vicky i.e. Devender Gupta at her aunt Laxmi's house in the presence of her cousin Ashish, her aunt Laxmi and Naresh Gupta and a video of the

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incident was prepared.

5. Statement of the prosecutrix was recorded under Section 164 Cr.P.C. on 5th March, 2015 where she reiterated her version. The date of birth of the prosecutrix mentioned in the school record was revealed to be 25th October, 1998. Thus at the time of the alleged incident she was a minor. The prosecutrix had also given a complaint on 1st March, 2015 at PS Prasad Nagar. The investigating officer of PS Prasad Nagar found that on 2nd and 3rd March, 2015 a quarrel took place between Smt Usha Gupta, her cousin Sanjay Gupta and victim on one side and Smt. Laxmi Gupta, her family members and sons of Smt. Usha Gupta namely Sagar and Ashish on the other side on which finally a Kalandra was prepared under Section 107/150 Cr.P.C. In the Kalandra Laxmi Gupta stated that her sister Usha Gupta did not keep her children Ashish and Sagar with her due to which they were living with Laxmi Gupta. It is further alleged that Usha Gupta along with her cousin Sanjay Gupta and his daughter, the prosecutrix came to her house and pressurised her to take away her children with her but the children were not willing to accompany her mother.

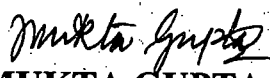
6. During the course of investigation telephones were seized and have been sent to CFSL, Hyderabad for analysis and opinion. From the vaginal swab of the prosecutrix the DNA generated did not relate to accused Ashish or Devender @ Vicky. Thus though there may be prima facie some substance in the contentions of the petitioner, however it is further revealed that on 22nd August, 2016 FIR No.522/2016 has been registered at PS Punjabi Bagh under Sections 308/341/506/34 IPC on the complaint of the prosecutrix wherein she stated that on 22nd August, 2016 at about 6.15 PM

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Ashish and Naresh Gupta came to her house and abused her where after Ashish attacked her with a hammer and both Ashish and Naresh Gupta started abusing her. MLC of the prosecutrix was prepared which revealed contused lacerated wound on the parieto occipital region of the prosecutrix. Further inter-se the parties there are number of cases registered.

7. Considering the facts and circumstances of the case and particularly the subsequent conduct of the petitioners I do not find it to be a fit case for grant of the anticipatory bail to the petitioners.

8. Petitions and applications are accordingly dismissed.


MUKTA GUPTA, J.

NOVEMBER 15, 2016

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