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

+ **BAIL APPLN. 366/2016**

RAM KANOJIYA

..... Petitioner

Represented by: Mr. Ajay Burman, Sr. Adv.
with Mr. Harsit Khurana, Mr.
Aahil Arora, Advs.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Represented by: Ms. Rajni Gupta, APP with
WSI Veena Kumari PS Roop
Nagar.
Mr. Vikram Singh Panwar, Mr.
Vikas Walia, Advs. for
complainant.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

02.08.2016

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By this petition, the petitioner seeks regular bail in case FIR No. 521/2015 under Sections 376/376(2)(n)/120B IPC and 4/6/8/9(G) POCSO Act registered at PS Roop Nagar.

Learned counsel for the petitioner submits that the petitioner is in custody since 22nd August, 2015. The FIR was lodged belatedly. Though the allegation in the FIR is that the petitioner committed rape on her, however as per the FSL report DNA of the child did not match with that of

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the petitioner. The petitioner has been falsely implicated in order to extort money. Father of the prosecutrix being under debt, not being able to repay the loan, conspired with his wife and family members and falsely implicated the petitioner to wipe off his loan by extorting the money from the petitioner. The prosecutrix has been examined on oath and now she is deliberately avoiding to appear for further cross-examination.

Learned APP for the State has taken me through the FIR, the status report and the supplementary statement of the prosecutrix recorded. The allegations of the prosecutrix in the FIR are that the petitioner who was a friend of her father and resided in the neighbourhood used to visit her house. It is alleged that around 8-9 months ago when her parents had gone outside and she returned back from the school, the petitioner came to her house and asked where her father was. When the prosecutrix informed that no one was at home, he caught hold of her and forcibly raped her. The petitioner was very scary and stated that if she told anyone about the incident he would kill her and harm her father who was suffering from severe depression. On 22nd August, 2015 the prosecutrix gave birth to a male child where after the above-noted FIR was got registered.

A perusal of the record would reveal that in the FIR which was lodged by her after a period of 8-9 months only after the male baby was delivered the prosecutrix only alleged that the petitioner committed rape on her once. However, after the charge-sheet was filed mother of the prosecutrix gave another complaint on 8th October, 2015. In the supplementary statement of the prosecutrix recorded thereafter on 14th October, 2015 and under Section 164 Cr.P.C. on 15th October, 2015 the prosecutrix alleged that the petitioner

came to her house after 15 days of the earlier incident accompanied by one more person and both of them committed rape on her. She also alleged that the petitioner raped her time and again.

As noted above the allegation in the FIR which was lodged after the delivery of the child, the only allegation was that the petitioner committed rape on her once and as per the report of the FSL, the DNA of the child did not match with that of the petitioner. This Court on 26th April, 2016 renotified the present Bail Application and directed the prosecutrix to appear before the Trial Court so that her statement is recorded on 17th May, 2016. On two dates, the examination of the prosecutrix was conducted i.e. on 17th May and 24th May, 2016 however thereafter she sought exemption from appearing.

Considering the above noted facts and the fact that the delay is on the account of prosecutrix for getting her cross-examination concluded, I deem it fit to grant bail to the petitioner. It is therefore directed that the petitioner be released on bail on his furnishing a personal bond in the sum of ₹25,000/- with two sureties of the like amount subject to the satisfaction of the learned Trial Court, further subject to the condition that he will not leave the country without the prior permission of the Court concerned.

Petition is disposed of. Order dasti.

MUKTA GUPTA, J.

AUGUST 02, 2016
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