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

+ CRL.M.C. 3719/2016 & Crl.M.A. No. 15559/2016

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..... Petitioner

Through: Mr. Zoheb Hussain and Mr. Akshay
Saxena, Advocates

versus

STATE & ANR. (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. Mukesh Kumar, APP with SI
Shanti, PS Jamia Nagar
Mr. M. Hasibuddin, Adv for R-2 a/w
R-2 in person

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

08.12.2016

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The petitioner has preferred the present petition under Section 439(2) Cr PC to seek the cancellation of interim bail granted to respondent no.2 by the Court of Sh. Sunil Chaudhary, learned ASJ-I, South-East Distt, Saket Court, Delhi vide order dated 03.05.2016. Respondent No.2 is the accused in FIR No.1632/2015 under Section 376/506 IPC read with Section 6 of POCSO Act registered at PS Jamia Nagar.

The allegations against the accused is that he is the step-father of the prosecutrix i.e. mother of the prosecutrix married respondent No.2/ accused. The prosecutrix alleged that she was raped by the accused from the time when she was ten years of age and she did not inform of the same to her mother on account of threats of dire consequences issued by the accused.

The prosecutrix became pregnant when she was 16 years of age and that is when the mother of the prosecutrix learnt of the offence which was being committed by the accused upon her minor daughter.

The pregnancy of the prosecutrix was terminated. However, the sample of foetus was retained. It is informed that the sample has been sent to FSL for conduct of requisite DNA tests so as to determine whether or not the accused was responsible for the conception of the aborted foetus.

The accused was granted bail by the impugned order dated 03.05.2016 on the premise that the FSL result is pending and no useful purpose would be served in keeping him in further custody. The accused had undertaken not to misuse the liberty of bail; to appear before the Court on every date, and; not to tamper with the evidence.

The submission of learned counsel for the petitioner is that the statement of the prosecutrix was recorded under Section 164 Cr PC, wherein she has supported the allegations against the accused. He points out that the statutory presumption of guilt incorporated in Section 29 of POCSO Act was completely omitted from being considered by the learned ASJ while granting bail to the accused. He has relied upon the judgment of the Supreme Court in ***State of Bihar v. Rajballav Prasad @ Rajballav Pd. Yadav @ Rajballabh Yadav*** in CrI Appeal No.1141/2016 decided on 24.11.2016 in support of his aforesaid submission. In this case, the Supreme Court cancelled the bail granted to the accused since the High Court while granting bail to the accused had omitted to take into account the statutory presumption provided in Section 29 of POCSO Act.

The accused was granted an opportunity to file his counter affidavit which has been filed. The accused denies that he is the stepfather of the

prosecutrix. He denied the marriage with the mother of the prosecutrix. However, at the same time he has admitted that the mother of the prosecutrix and her children including the prosecutrix were residing with him in the same premises.

Learned counsel for the accused has submitted that the report of the FSL is awaited and till the same is received, there is no justification in cancelling the bail granted to the accused.

At this stage, I may observe that according to the petitioner, the accused has been threatening the petitioner and has approached the petitioner with the proposal that he is willing to marry the prosecutrix. In this regard, a complaint has been given by the mother of the prosecutrix to the SHO, PS Jamia Nagar on 21.11.2016. It appears that hardly any investigation has been done in the said complaint by the I.O.

Having heard learned counsel for the petitioner, perused the order dated 03.05.2016 passed by the learned ASJ, the decision of the Supreme Court in ***Rajballav Prasad*** (supra) and heard counsel for the accused and the State, I am of the view that the accused should not have been granted bail in such a serious case as the present. No doubt, the report of the FSL is awaited. However, one cannot lose sight of the fact that the prosecutrix is a minor. The fact that she became pregnant is also a part of the record. Prima facie, her statement recorded under Section 164 Cr PC would have to be relied upon at this stage as a minor is not expected to implicate a wrong person. It is for this reason that the statutory presumption under Section 29 of POCSO Act appears to have been incorporated.

The chances of the accused also seeking to influence the prosecutrix and her mother cannot be ruled out in view of the fact that the mother of the

prosecutrix claims to have married the accused, which marriage is denied by him. As noticed above, even the accused does not deny the fact that he, the mother of the prosecutrix and the prosecutrix were living under the same roof at the relevant time.

Accordingly, the order dated 03.05.2016 passed by granting bail to the accused is set aside and the bail stands cancelled. The accused is directed to be taken into custody right away.

Order dasti under the signatures of the Court Master.

VIPIN SANGHI, J

DECEMBER 08, 2016

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