

\$~5

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

+ BAIL APPLN. 2065/2016
SALMAN

..... Petitioner

Through: Mr.S.K.Dureja, Advocate.

versus

STATE (GOVT OF NCT OF DELHI) & ANR

..... Respondents

Through: Ms.Kusum Dhalla, APP for State with
W/SI Savita, PS Mundka, Delhi.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

ORDER
21.10.2016

%

This is an application under Section 439 Cr.P.C. filed on behalf of the petitioner seeking grant of bail in case FIR No.433/2014, under Sections 363/376/34 IPC, registered at Police Station Mundka, Delhi.

Learned counsel for the petitioner has submitted that the petitioner is an innocent person and the allegations as alleged in the FIR are false and baseless. Counsel further submits that the petitioner is a major and is a law-abiding citizen and the victim/complainant too was a major on the date of the alleged incident. Counsel further submits that the petitioner is in judicial custody since 16.08.2016. He further submits that without admitting the alleged act on the part of the petitioner, it can be gathered from the surrounding circumstances that the allegation, if at all is there, it is the

result of consent on the part of the complainant/victim. Counsel further submits that no fruitful purpose would be served if the petitioner is kept in judicial custody for further period.

Status report has been filed by the State. Learned APP for the State, on the other hand, vehemently opposes the grant of bail to the petitioner on the ground that the petitioner is involved in kidnapping and committing the rape on the person of the victim. Learned APP has drawn the attention of this Court to the status report and the statement of the victim recorded under Section 164 Cr.P.C. and submits that the petitioner was absconding and not joining the investigation. Learned APP along with Investigating Officer W/Sub Inspector Savita present in the Court submits that the incident of commission of offence under Section 376 IPC has been committed at Paharganj, Delhi and the place of incident is yet to be ascertained. The Investigating Officer points out that at the time of the alleged offence, the victim was of 18 years age and a minor.

I have heard learned counsel for the parties and have given my thoughtful consideration to the arguments advanced by them.

It is the case of the petitioner that the victim, if at all any incident has taken place, both are minor. It is an evident fact that both the parties remained first in Jaipur and they have then travelled from Delhi to Jaipur and there is no allegation of commission of rape on the person of the victim at Jaipur. The allegation of rape on the person of the victim is of at Delhi and the place of the incident is yet to be ascertained by the Police and the petitioner has already joined the investigation and now in judicial custody since 16.08.2016.

The plea of the petitioner that if at all anything went wrong in Delhi

,i.e., commission of offence under Section 376 IPC, that was due to the consent on the part of the complainant, thus entitling the petitioner for grant of bail.

Looking into the facts and circumstances of the case, I admit the petitioner on bail, on his furnishing bail bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the concerned Trial Court with the direction that he shall not leave the country without the prior permission of the Court concerned and shall not tamper with the prosecution evidence. The petitioner is further directed not to contact the victim/complainant or her family members in any manner whatsoever either telephonically or by email/Face book/whats app etc. and shall not visit the house of the victim or her family members at any point of time.

Application stands disposed of accordingly.

Copy of the order be given *dasti*.

I.S.MEHTA, J

OCTOBER 21, 2016

'dc'