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

+ **BAIL APPLN. 2014/2016**

TARA CHAND

..... Petitioner

Through: Mr.Rakesh Kumar Khanna, Sr. Adv.
with Mr.Pramod Kumr & Mr.Subhsh
Chechi, Advs.

versus

THE STATE

..... Respondent

Through: Ms.Kusum Dhalla, APP for State
along with ASI Saroj Bala, P.S. Amar
Colony in person.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

% **26.10.2016**

This is a petition under Section 439 Cr.PC for grant of bail moved by the petitioner.

Learned Senior counsel appearing on behalf of the petitioner has submitted that the petitioner is an innocent person and the allegations levelled upon him in the FIR No.1246/2015 under Sections 376/328 IPC Police Station Amar Colony, New Delhi are false. Learned counsel for the petitioner has further submitted that the petitioner is in JC since 5th December, 2015. Learned counsel for the petitioner has further submitted that the victim has already been examined and has not identified the present petitioner. Counsel for the petitioner has further submitted that no purpose would be served if he is further kept in JC and prays that the petitioner be released on bail.

On the other hand, learned APP for the State vehemently opposed the bail application and filed the status report.

It is admitted case between the parties that the statement of the victim is being recorded on 21st March, 2016 and has not supported the prosecution version pertaining to the identification of the petitioner/accused. The relevant portions of the testimony of victim dated 21st March, 2016 is reproduced herein below:

“I cannot say if the accused present in the Court today is the same Tantrik who did wrong with me. He also had some of his hairs white.....

Court observation: She says that the accused present in the Court does not appear to be the same person who did wrong with me. She also says that since long time has elapsed she cannot identify that person.....

It is wrong to suggest that Guruji was in the police station and I identified him and thereafter, I signed his arrest memo Ex.PW1/F. I signed the arrest memo at the instance of the police. It is incorrect to suggest that accused present in the Court is the same Guruji who was arrested by the police and I after identifying the accused signed on the arrest memo Ex.PW1/F. It is wrong to suggest that it is the accused who was Guruji and used to visit my house along with Sukhram and one more person and committed rape upon me.”

Since the petitioner/accused is in JC and the statement of the victim has already been recorded and the victim has not identified the accused which makes the ground for entitlement to enlarge him on bail, I admit the petitioner/accused on bail on furnishing bail bonds in the sum of Rs.25,000/- with one surety of like amount on the following terms and conditions:

1. That petitioner/accused shall not leave the Country without prior permission of the Court.

2. He shall not temper with the prosecution evidence.

The bail application is disposed of accordingly. . However, this order will not affect the merits of the case.

Copy of the order be given *dasti*.

I.S.MEHTA, J

OCTOBER 26, 2016/vp