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

+ BAIL APPLN. 2574/2016

DR PAWAN KUMAR

..... Petitioner

Through Mr.S.S. Kulshrestha, Sr.Adv. with
Mr.Ajeet Pandey, Adv.

versus

STATE, GOVT OF NCT OF DELHI

..... Respondent

Through Mr.Panna Lal Sharma, APP with
W/SI Sushma, PS Moti Nagar.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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21.12.2016

Arguments heard.

The present application has been filed under Section 439 Cr.P.C. for the grant of regular bail in FIR No.431/2016, under Sections 354-A/354-B/354/376(2)(e) IPC and Sections 6/10 of the POCSO Act, Police Station Moti Nagar.

The allegations levelled in the present case are that on 08.09.2016, the prosecutrix made a statement to the police that she was taking treatment for Tuberculosis from ESI hospital where she was being treated by the accused/petitioner for the past 10-11 months. On 08.09.2016, the prosecutrix came to the hospital along with her uncle (*Fufa*). The accused sent the uncle of the prosecutrix outside the hospital to bring gum for pasting her photograph. Thereafter, the accused initiated the check up of the prosecutrix in a room having

curtains. The accused started touching the breast of the prosecutrix. Despite objection being raised by the prosecutrix, the accused tried to remove her underwear. The prosecutrix raised an alarm and went out of the room. In the meantime, uncle of the prosecutrix also came there. The prosecutrix narrated the incident to her uncle.

On the basis of said statement of the prosecutrix, FIR of the instant case was registered.

Argument advanced by the learned Senior Counsel for the prosecutrix is that there are contradictions in the statement of the prosecutrix. It was submitted that PCR call was made with regard to misbehaviour by a doctor with a lady. Statement of the prosecutrix was recorded in the presence of Medical Superintendent of the hospital and relatives of the prosecutrix in which she stated her date of birth as 01.07.1999, whereas in her subsequent statement she stated her age to be 16 years and in her statement under Section 164 Cr.P.C., she stated her age to be 15 years. In the school leaving certificate, date of birth is mentioned as 04.05.2003. It was further argued that the prosecutrix is the sole witness of the incident and her testimony is full of contradictions. It was further submitted that there is ambiguity in the school record of the prosecutrix due to which there is a need to get her examined by the doctor after conducting an ossification test.

The State has filed the status report.

Learned APP for the State has argued that statement of the prosecutrix was recorded under Section 164 Cr.P.C. in which she reiterated the allegations against the accused. She also stated that on earlier occasions too, accused used to lower her underwear and

leggings upto thighs and pull her shirt upto the neck. On earlier occasions, accused used to stroke her breast and also insert his finger in the vagina of the prosecutrix. He also kissed her and laid upon her on previous occasion. Due to these allegations, penal sections 376 IPC and 6 of the POCSO Act were added. The accused was arrested and charge sheet was filed in the Court.

Perusal of record shows that the allegations levelled against the petitioner/accused are serious in nature. In her statement made to the police, the prosecutrix specifically stated that the accused touched her breast while sending her uncle out of the hospital on the pretext of bringing gum. In her statement recorded under Section 164 Cr.P.C., she further stated that on earlier occasions, accused used to touch her breast and also insert his finger in the vagina of the prosecutrix. As per the school record and the statements made by the prosecutrix, she is a minor.

The contentions raised by the learned Senior Counsel for the petitioner that there are contradictions in the statement of the prosecutrix regarding her age, is a matter of trial and any benefit of the same could be extended to the petitioner only after adducing evidence before the trial court. No comment on the merits of the case can be made at this stage as the trial is at the initial stage and the prosecution witnesses are yet to be examined.

In view of the seriousness of the allegations and the facts and circumstances mentioned above, this Court is of the considered opinion that no ground is made out to grant bail to the petitioner.

Before parting with the order, this court would like to place it

on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

Bail application is accordingly dismissed.

P.S.TEJI, J

DECEMBER 21, 2016
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