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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN. 1876/2015
IRSHAD

..... Petitioner

Through: Mr M.K. Khanna, Adv.
versus

THE STATE NATIONAL CAPITAL TERRITORY OF DELHI

..... Respondent

Through: Ms Neelam Sharma, Additional Public
Prosecutor for the State alongwith Sub
Inspector Brahampal Singh Police Station
Malviya Nagar, New Delhi

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

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25.01.2016

This is application under Section 439 of Cr.PC moved by the petitioner for grant of regular bail in case FIR No. 179/2014 under Sections 363/376/34 IPC and Sections 4/17 of POCSO Act registered at Police Station Malviya Nagar, New Delhi.

It is submitted by counsel for the petitioner that as per prosecutrix herself, the petitioner was known to her since childhood being neighbour. The call detail records of the mobile phone of the petitioner / accused and the prosecutrix filed with the charge-sheet clearly established that prosecutrix and the petitioner were friendly with each other and used to interact on their respective mobiles at midnight. No statement has been given by prosecutrix to the doctor regarding the alleged sexual assault. The accused was arrested only on the ground that he alongwith his friend admitted the prosecutrix in a serious condition of bleeding in the hospital. The prosecutrix had already completed 18 years as such provisions of Section 4/17 of POCSO Act are not attracted. The petitioner is languishing in jail since 15.02.2014. Prosecutrix has already been examined. The petitioner is no longer required for the purposes of investigation. There is no chance of tampering with the evidence as such he be released on bail.

The application is opposed by learned Additional Public Prosecutor for the State on the ground that the allegations against the petitioner are serious in nature. Even if the prosecutrix and the petitioner were known to each other from before that does not give a

license to the petitioner to commit brutal act of committing rape. After the prosecutrix was subjected to rape by the petitioner, she was bleeding profusely, therefore, the petitioner alongwith his associate got her admitted in the hospital but immediately thereafter vanished from the hospital as recorded in the MLC. Even when she was taken to hospital by the petitioner, she had informed the doctor that she started bleeding after penetration that morning. As such there is no ground to release the petitioner on bail.

Needless to say, the allegations against the petitioner are grave and serious in nature. There is force in the submissions of learned Additional Public Prosecutor for the State that even if the petitioner and the prosecutrix were known to each other from before or used to talk on mobile, there is testimony of the prosecutrix that she was subjected to rape by the petitioner and it is not even the case of the petitioner that she was a consenting party. The question whether the provisions of POCSO Act are attracted in the instant case or is not required to be gone into at this stage.

Keeping in view the seriousness and gravity of the offence at this stage, the petitioner is not entitled to be released on bail. The application is accordingly dismissed. It is, however, clarified that nothing stated hereinabove shall tantamount an expression of opinion on merits of the case.

The application stands disposed of accordingly.

SUNITA GUPTA, J

JANUARY 25, 2016/*rd*