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

+ BAIL APPLN. 2465/2015

MUKESH KUMAR SANGWAN Petitioner

Through Mr. Shivam Chowdhry, Advocate

versus

STATE (NCT of Delhi) Respondent

Through Ms. Neelam Sharma, APP for the State.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% **12.02.2016**

By this application, petitioner seeks regular bail in case FIR No. 383/2014 under Section 328/376 IPC and 6 of POCSO Act registered at Police Station Palam Village.

The FIR in the instant case was registered on the basis of a complaint made by the prosecutrix regarding commission of rape on her by the accused continuously for a period of one year on the threat that her nude pictures have been taken.

Counsel for the petitioner submits that the mother of the prosecutrix has also lodged a complaint against the petitioner in which he has been acquitted. Prosecutrix as well as her mother have already been examined. There are material improvements in their testimony. The trial is going to take long time. Petitioner is in custody since 22.08.2014. As such he be released on bail.

The application is opposed by the learned Additional Public Prosecutor for the State on the ground that the allegations are serious in nature. Prosecutrix was minor on the date of commission of offence. From the mobile phone of the petitioner, nude photographs of the prosecutrix have been recovered. Two memory card and mobile phone have been sent to FSL but the report has not been yet received. The petitioner was earlier indulging in commission of rape with the mother of the prosecutrix and thereafter, with the prosecutrix as such he is not entitled to be released on bail.

Needless to say the allegations are very serious in nature. The submission that there are material improvements in the testimony of the prosecutrix is not required to be gone into at this stage as that will tantamount to adjudicating the merits of the case which is not warranted at this juncture. What is the effect of acquittal of the accused in the case registered on the basis of complaint made by mother of the prosecutrix will also be required to be seen at final stage. As per the prosecution version from the mobile phone of the accused several nude photographs of the prosecutrix were recovered which has been placed on trial court record. Further, the memory card and mobile phone have been sent to FSL report has not yet been received.

As regards the submission that the petitioner is in custody since 22.08.2014, same is not fortified by the record. As per the nominal roll the appellant remained as under trial from 22.08.2015 to 07.01.2016 and then from 05.06.2015 to 17.01.2016, in between he remained on interim bail. Even otherwise, mere long incarceration in jail is not a sufficient ground to release an accused on bail as held in *State of U.P vs. Amarmani Tripathi* (2005) 8 SCC 21, *Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu & Anr.* (2004) 7 SCC 528 and *Rajesh Ranjan Yadav vs. CBI* (2007) 1 SCC 70.

Keeping in view the seriousness of the allegations, I do not deem it appropriate at this juncture to release the petitioner on bail, however, it is impressed upon the learned Additional Sessions Judge to expedite the disposal of the case.

Application stands disposed of accordingly.

Trial court record be sent back immediately through special messenger.

SUNITA GUPTA, J

FEBRUARY 12, 2016

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