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

+ **BAIL APPLN. 160/2017**

NARESH KUMAR

..... Petitioner

Through: Mr.N.Hariharan, Sr. Adv. with
Mr.K.Kaushal, Mr.Rajiv Duggal and
Ms.Anu Baali, Adv.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP for State
W/SI Shakun, PS-Bhalswa Dairy
Mr.Manoj Ohri, Sr. Adv. with
Ms.Vagisha Kochar and Mr.Gaurav
Bhatia, Advs. for complainant.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

% **03.02.2017**

This is an application under Section 438 Cr.P.C. filed on behalf of the petitioner for grant of anticipatory bail to the petitioner in case FIR No.246/2016, under Sections 376/328 IPC, registered at Police Station-Bhalswa Dairy, Delhi.

Learned senior counsel for the petitioner has submitted that the petitioner is an innocent person having no nexus with the FIR No.246/2016, under Sections 376/328 IPC, registered at Police Station-Bhalswa Dairy, Delhi. Learned senior counsel further submits that the petitioner is apprehending his arrest in the above case. He further submits that the allegations alleged in the FIR is unbelievable. He submits that the prosecutrix claims that she had gone with the petitioner on a motorcycle which was driven by the petitioner and she was on the pillion and nobody was present. As per the prosecutrix, the petitioner took her to show a

property which was to be purchased. He further submits that as per the statement of prosecutrix, the petitioner took the prosecutrix to a room where he offered her a cold drink with intoxicating substance and she felt unconscious and when she regained consciousness she found herself naked. On inquiring, the petitioner told that he has raped her and he will provide her plot without making any payment. Learned senior counsel for the petitioner further submits that the story of the prosecution is not believable because there is a CCTV footage which shows that one Jitender was driving the motorcycle and the prosecutrix was on the pillion and the petitioner was sitting on another motorcycle on which he was a pillion rider and the motorcycle was driven by one Shri Bhagwan when they went to show the said house. Learned senior counsel for the petitioner further submits that the prosecutrix has not said anything about the other persons in her statement. He further submits that as per the statement of the prosecutrix under Section 164 Cr.P.C, the prosecutrix was taken from the office of the petitioner at 06:40 pm and came back to the office of the petitioner at 08:40 pm whereas the CCTV footage shows her leaving from the office of the petitioner at 06:55 pm and returning at 7:18 pm in the company of those three persons i.e. the petitioner, one Shri Bhagwan and one Jitender, with whom she had gone; which completely falsify the statement of prosecutrix. He further submits that the DD entry with regard to the incident is 9:15 pm and there is no explanation of delay of two hours. He submits that the addresses which were given by the prosecutrix is falsified by the prosecuting agency on verification. Learned senior counsel for the petitioner has further submitted that the MLC shows that when the prosecutrix was taken for medical examination, the prosecutrix refused to undergo basic pregnancy test and

testing blood samples. He further submits that the prosecutrix even went to the extent of beating the doctor who attended her. He further submits that Shri Bhagwan and Jitender, who accompanied the prosecutrix and the petitioner have stated that no such incident had taken place. He further submits that the complainant/prosecutrix has lodged the FIR with ulterior motive. He further submits that the petitioner has already joined investigation and is ready to join further investigation, if required, and prays that the petitioner be granted anticipatory bail.

Learned senior counsel appearing on behalf of complainant has vehemently opposed the anticipatory bail application and has submitted that the investigations are at the initial stage. He further submits that so far as the CCTV footage is concerned, the prosecutrix has not been confronted with it by the investigating agency till date. He further submits that the alleged witnesses Shri Bhagwan and Jitender are not material witnesses as they have not seen the alleged incident at the relevant point of time. He further submits that Shri Bhagwan and Jitender were not present at the relevant point of time, therefore, there was no occasion for the victim to narrate their role. He further submits that Shri Bhagwan and Jitender themselves say that they remained with the prosecutrix for about 35-40 minutes. He submits that the petitioner has called on the mobile of Shri Bhagwan at about 6:50 pm and 7:23 pm on that day which shows that Shri Bhagwan was not present when the incident had occurred. He further submits that so far as the witnesses Sapna and Neelam are concerned, the investigating agency has not shown those witnesses to the prosecutrix and they have not identified the prosecutrix till date. Learned senior counsel for the complainant further submits that so far as the allegation of Section 328 IPC is concerned, the

MLC makes it very clear and corroborative evidence. As per the MLC, smell of alcohol was coming from patient's breath which substantiates the claim of prosecutrix that something was added in her cold drink. Learned senior counsel for complainant further submits that the initial investigating officer conducted investigation in tainted and biased manner. He further submits that the prosecutrix was compelled to make several representation to the higher officials pertaining to this. He further submits that the petitioner is involved in seven more cases.

Learned APP for the State has vehemently opposed the anticipatory bail application and has submitted that statement of prosecutrix under Section 164 Cr.P.C has already been recorded and as per the statement, the prosecutrix supports the contents of the FIR.

In the instant petition, the FIR is registered on the basis of the statement of prosecutrix. The FIR registered is under Sections 376/328 IPC. The contents of the FIR indicates that sexual offence was committed on the person of the prosecutrix after application of intoxicating substance as a drink. After the registration of the FIR, the prosecutrix was taken for medical examination. As per the MLC, smell of alcohol was coming from patient's breath while she was examined by the doctor which corroborates the statement of the victim that something was added in her cold drink and thereafter was subjected to sexual assault. The contents of the FIR is based on the statement of the prosecutrix. The prosecutrix in her statement under Section 164 Cr.P.C has corroborated the contents of FIR. The contention of the learned senior counsel for the petitioner that story of the prosecution is not believable cannot be accepted at this stage as the investigation of the case is at initial stage and merit of the case and appreciation of evidence is

not appropriate at this stage. Moreover, the prosecutrix has shown no faith in the initial investigating officer as the investigating office did not even notice that the prosecutrix was under the influence of alcohol during the medical examination. Since the statement of the prosecutrix at this stage is corroborated with the MLC on the point of giving her intoxicant substance before subjecting her to the sexual offence on her person and the contents of the FIR is corroborated with statement of prosecutrix under Section 164 Cr.P.C, I do not find it a fit case to grant anticipatory bail to the petitioner. Consequently the present bail application is dismissed.

The present petition is disposed of accordingly.

I.S.MEHTA, J

FEBRUARY 03, 2017/radhika