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

+ **BAIL APPLN. 695/2017**

RAJU MISHRA

.....Petitioner

Through: Mr. M. P. Sinha and Ms. Mumtaj,
Advocates.

Versus

STATE DELHI ADMINISTRATION

.....Respondent

Through: Ms. Aashaa Tiwari, APP for the state.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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10.08.2017

1. By the present application filed under Section 439 of Cr. P.C., the petitioner seeks grant of Bail in FIR No. 1002/2015 under Sections 363/376D/506/354/328/34 of the IPC and Sections 4/6/8 of the POCSO Act registered at Police Station Uttam Nagar, Delhi. The petitioner/accused is stated to be in judicial custody since 09.09.2015.
2. As per the case of the prosecution the prosecutrix who is a minor girl alleged that the co-accused Nazim, was continuously forcing her to become friends with him which she kept declining. On 05.08.2015, the accused persons threatened the prosecutrix to throw acid on her and asked her to sit on their bike and thereafter took her to a room at Palam, New Delhi, where the accused persons namely Nazim and Aryan committed rape upon her and the accused persons namely Vicky and Raju/petitioner kissed her on the lips. Thereafter, she was left at a park in Dwarka at about 8 PM – 9 PM. On 07.08.2015, the prosecutrix, along with her father and aunt went to the police station and gave her statement and FIR under

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Sections 363/376D/506/354/328/34 of the IPC and Section 4 of the POCSO Act was registered.

3. Subsequently, she reiterated the same facts to the doctor while she was being medically examined and subsequently to Smt. Magdleen Marin, NGO, SWDWA. She also corroborated the allegations leveled in her complaint in a statement under Section 164 Cr.P.C. However, on 20.09.2015 during the counseling of the prosecutrix conducted by Smt. Magdleen Marin, she stated that the accused persons mainly Vicky, Aryan and Raju/petitioner embrangled and sexually assaulted her. The prosecutrix made specific allegations against the petitioner/Raju and thereafter Section 6/8 of the POCSO Act were also added.

4. Learned counsel for the petitioner contended that the petitioner is innocent and has been falsely implicated in the case as the prosecutrix was taken to the police station on 05.08.2015 but she did not give any statement to this effect. The prosecutrix gave her statement to the police only on 07.08.2015 which means that the present complaint is an afterthought. He added that no explanation has come forth from the prosecution regarding the delay in lodging the present complaint.

5. The counsel for the petitioner submitted that as per the statement of the prosecutrix, the petitioner had merely kissed her on the lips, whereas, the other accused persons had committed rape upon her. Therefore, no offence of rape is made out against him.

6. Per Contra, Ms. Aashaa Tiwari, the learned APP appearing for the State strongly opposed the bail application and contended that merely because the petitioner had kissed the prosecutrix and not raped her, does not absolve him of his liability from the offence of rape. Moreover,

specific allegations have been leveled against the petitioner and he has played a main role in the commission of the said offence. She further contended that the petitioner, if released on bail, may threaten the prosecutrix since they both reside in the same locality.

7. I have heard learned counsel for the parties and perused the material available on record.

8. On perusal of the record, it is evident that the prosecutrix has made serious and grave allegations against the petitioner that he had pressed her chest and fingered her at the time of commission of offence. The role of the petitioner in the commission of the offence has been mentioned in the complaint and it is corroborated by her statement given to the Doctor during her medical examination and her statement under Section 164 Cr.P.C.

9. As far as the contention of the petitioner that there was a delay in filing the complaint is concerned, it has been held in a catena of judgments that a mere delay in lodging a complaint in such like cases is not fatal as there is fear in the mind of the prosecutrix and the family involved. Merely because the complaint was lodged less promptly does not raise an inference that the complaint was false. There is unwillingness to go the police and file a complaint due to the society's attitude towards victims since it casts doubt and shame upon them rather than comforting and sympathizing with them.

10. Furthermore, the Status Report filed on behalf of the State confirms that the petitioner and the prosecutrix reside in the same locality and the trial is at its initial stage. Therefore, the possibility of the petitioner threatening the prosecutrix, who is a minor and tampering with the

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witnesses cannot be lost sight of.

11. Taking the aforesaid facts and circumstances of the case into consideration and the gravity of offence involved in the case, no grounds for granting bail to the petitioner are made out. Resultantly, the present bail application filed by the petitioner is dismissed.

12. Before parting with the above order, it is made clear that anything observed in the present bail application shall not have any bearing on the merits of the case during trial.


SANGITA DHINGRA SEHGAL, J

AUGUST 10, 2017
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