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

+ BAIL APPLN. 759/2017

MOHD LAL

.....Petitioner

Through: Mr. Rajat Srivastava, Advocate.

versus

STATE (NCT OF DELHI)

....Respondent

Through: Ms. Aashaa Tiwari, Addl.PP for
State with SI Sunita, P.S. Darya Ganj.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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14.07.2017

1. By the present application filed under Section 439 of Cr. P.C., the applicant is seeking grant of bail in FIR No. 336/2016 under Sections 376/506 of the IPC and Section 6 of the POCSO Act registered at Police Station Darya Ganj, Delhi. The applicant is stated to be in judicial custody since 03.09.2016.

2. As per the case of the prosecutrix, she is a student in class VII and the applicant was her neighbor and she used to refer to him as 'Mama'. It is stated that the applicant forcibly established physical relations on many occasions with the prosecutrix and threatened her not to reveal it to anybody or else he would kill her and her family. The mother of the prosecutrix avoided reporting the matter to the police due to social stigma. But soon thereafter, she found that she was pregnant with the child of the applicant and then reported the case at Police Station, Darya Ganj on 02.09.2016. The

prosecutrix was taken to the hospital where her medical examination revealed "old hymen tear", after which, he was arrested.

3. Order dated 03.04.2017 has also been perused, whereby, the Trial Court dismissed the application for grant of bail to the applicant.

4. The learned counsel for the applicant contended that all the allegations made by the prosecutrix stand rebutted by the FSL report dated 25.01.2017, which proves that the applicant is not the biological father of the child of the prosecutrix and therefore, no case is made out against the accused/applicant.

5. Refuting the contentions of the applicant, Ms. Aashaa Tiwari, learned APP appearing for the State submitted that prosecutrix made specific allegations against the applicant, which are very serious and grave in nature. She added that in such cases, statement of the victim alone is sufficient, without any corroboration, to hold a person responsible for rape and hence, the present bail application cannot be allowed. She, however, did not dispute the FSL report.

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

7. Undoubtedly, the FSL report dated 25.01.2017 cannot be lost sight of, whereby, certain allegations leveled against the applicant stand negated holding that the applicant is not the biological father of the child of the prosecutrix. The relevant portion of the said FSL report is as under:-

"Conclusion

DNA STR analysis were performed on exhibits '1p' (Blood sample of victim), '4' (Blood sample of accused) and 'A' (Blood sample of baby of victim) is sufficient to conclude that exhibit '1p' (Blood sample

of victim) is biological mother of exhibit 'A' (Blood sample of baby of victim). However exhibit '4' (Blood sample of accused) is not biological father of exhibit 'A' (Blood sample of baby of victim)."

8. In *Nandlal Wasudeo Badwaik vs. Lata Nandlal Badwaik and Anr.*, reported as (2014) 2 SCC 576, it has been held by the Hon'ble Supreme Court that a DNA test report is said to be scientifically accurate. The Apex Court held as under:-

"13.It has been recognized by this Court in the case of Kamti Devi (supra) that the result of a genuine DNA test is scientifically accurate. It is nobody's case that the result of the DNA test is not genuine and, therefore, we have to proceed on an assumption that the result of the DNA test is accurate....."

9. Relying on the above, I am of the view that the FSL report lends conclusive proof as to the paternity of the child of the prosecutrix and that there is no co-relation between the applicant and the child of the prosecutrix. Furthermore, statement of the prosecutrix has already been recorded and the chargesheet has also been filed. Hence, further incarceration of the applicant would serve no purpose.

10. Taking into consideration the aforesaid observations and the facts and circumstances of the present case, the petitioner is granted bail subject to the following conditions:-

- i) That the petitioner shall furnish his personal bond in the sum of **Rs.25,000/-** with one surety of the like amount subject to the satisfaction of the Arresting Officer/SHO concerned; and

- ii) that the petitioner shall cooperate with the investigation and make himself available for interrogation by the police officer as and when required.

11. The petition stands disposed of.

12. Copy of the order be given dasti under the signatures of the Court Master.

SANGITA DHINGRA SEHGAL, J

JULY 14, 2017

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