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

Judgement reserved on : 13th September, 2017
Judgement pronounced on : 12th October, 2017

+ BAIL APPLN. 806/2017

VIPIN

.....Petitioner

Through: Mr. Sachin Puri, Senior Advocate with
Mr. Varun Tyagi, Mr. Bharat Gupta and
Ms. Tamanna, Advocates.

Versus

STATE

.....Respondent

Through: Ms. Anita Abraham, APP for the State
with SI Arvind Kumar, Police Station
Sabzi Mandi, Delhi.

+ BAIL APPLN. 1459/2017

MANOJ @ TINKY

.....Petitioner

Through: Mr. Abhay Kumar with Mr. Surender
Gupta, Advocates.

Versus

STATE

.....Respondent

Through: Ms. Anita Abraham, APP for the State
with SI Arvind Kumar, P.S. Sabzi Mandi,
Delhi

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By this common order, I shall dispose of the petitions filed under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), whereby the petitioners seek **grant of Regular Bail** in FIR No. 167/2015 under Section 376D of the

Indian Penal Code, 1860 (hereinafter referred to as 'IPC') registered at Police Station Sabzi Mandi, New Delhi.

2. The case of the prosecution is that on 29.03.2015 at about 12:00 a.m., accused Vipin, a friend of the complainant, called her at his Dhaba and when she reached, she found that accused Vipin and co-accused/Maonj@Tinky were having liquor in their Accent Car No. DL 5CB 5691. The complainant alleged that both accused persons made her consume beer and while she was under the influence of beer, they made her sit in the car and took her to Rajpura Gur Mandi; that they made her drink whisky fraudulently and while she was intoxicated, the accused persons committed rape on her; that when she regained consciousness, a scuffle took place between her and the accused persons during which her bangles fell in their car; that thereafter accused persons fled away as she raised alarm; that then she went to the house of accused Maonj@Tinky and enquired about the accused persons but did not find them there; that thereafter she returned to her house and slept; that in the evening of 30.05.2015, she went to the dhaba of accused Vipin and made a PCR call whereafter both the accused persons were subsequently arrested.
3. Mr. Sachin Puri, learned Senior Counsel for the petitioner/Vipin contended that the subject FIR is nothing but a tool manufactured by the prosecutrix to implicate the accused persons in a false case in order to extort money from them; that the prosecutrix is habitual of filing false complaints as there is another FIR No. 192/2014 under Section 376G IPC registered at P.S. Ranjit Nagar, Delhi on

her complaint wherein the allegation are identical to those made in the subject FIR; that to disprove the version of the prosecutrix, a CD containing the conversations between prosecutrix and the mother of the accused, wherein the prosecutrix was demanding money, has been placed on record; that the said CD was found genuine upon FSL examination; that, anticipatory bail was granted to both the accused persons by the Trial Court vide order dated. 23.11.2016; that the conduct of the prosecutrix of not approaching the police soon after the incident does not inspire confidence and moreover her visiting to Tihar Jail to meet petitioner/Vipin on three occasions i.e. 28.05.2015, 10.09.2015 and 17.09.2015 for settling the case subject to fulfillment of her demands, casts serious doubt on genuineness of her allegations; that there are several contradictions in the statements of the prosecutrix at different places and before different authorities with respect to the fact that whether she was conscious or not, how much alcohol she consumed, her address, how she raised the alarm, how she managed to escape etc.; that neither blood stains nor semen stains could be detected on any of the articles from the vehicle; that there is no injury on the person of the prosecutrix and incase this incident did take place she was a consenting party; that the petitioner/Vipin lost his father due to societal ostracization and presently his mother is suffering from various old age ailments without anyone to look after her; that the prosecution has no private witnesses which negates the possibility of tampering with the evidence; that the petitioner/Vipin is ready to give surety for

securing his presence before the Trial Court and thus, should be granted bail.

4. Adopting the aforesaid contentions raised on behalf of the petitioner/Vipin, Mr. Abhay Kumar, learned counsel for the petitioner/Manoj @ Tinky further contended that the entire case of the prosecution is concocted as there is an unexplained delay of approximately 17 hours in lodging the complaint; that during her examination before the Metropolitan Magistrate the prosecutrix has totally diverted from her previous statements recorded with police official; that another FIR No. 77/2013 under Section 509 IPC at Police Station-Kingsway North-West Distt. Delhi and FIR No. 316/2014 under Section 354 IPC at Police Station-Kingsway North-West Distt. Delhi have been registered at the instance of the prosecutrix; that through CDR, it can be proved that the prosecutrix had telephonic conversations with her nearest relative immediately before and after she was subjected to alleged rape but she never disclosed it to the person she spoke to on the phone; that the petitioner/Manoj@Tinky has an aged mother who is in constant need of care and that he is the sole wage earner for the family; that there is no possibility of tampering with the evidence as out of 15 witnesses the prosecution has examined 9 witness including the prosecutrix and thus, should be granted bail.
5. Per Contra, Ms. Anita Abraham, APP for the State vehemently opposed the bail applications and submitted that the petitioners are not liable to be granted regular bail as they have been actively involved in the commission of a heinous offence where the

punishment is more than 20 years; that there is scientific evidence/material on record in the form of DNA against the petitioner/Vipin who in the company of the petitioner/Manoj @ Tinky have committed gang-rape on the prosecutrix; that in such cases, there is presumption which has to be drawn once sexual intercourse by the accused is proved and the prosecutrix states before the Court that she did not consent for the said intercourse; that in the said case, sexual evidence has been established by way of DNA evidence and the prosecutrix has stated that it was done against her will; that the petitioners may threaten/influence the witnesses and tamper with the evidence and might also violate the conditions of the bail and hence the present petitions are liable to be dismissed.

6. I have heard the learned counsel for the parties at length and perused the material on record.
7. At the outset, it is observed that the prosecutrix (PW-3) deposed that petitioner/Vipin called her and asked to come near dhaba; that she reached there by her scooty and petitioner/Manoj @ Tinky was also there in their car; that petitioner/Manoj@Tinky parked her scooty and asked her to accompany them in their car; that both petitioners were consuming liquor and drove towards Ghanta Ghar; that both the accused persons kept on consuming liquor (beer) and also made her drink the same; that they insisted her to consume liquor on which she became intoxicated and petitioner/Vipin raped on her and after a short while petitioner/Manoj @ Tinky raped on her; that the car started moving and she opened the window pane

and shouted for help but petitioner/Vipin pulled her hand inside the car and did not allow her to raise alarm; that when she regained consciousness, she found that petitioner/Vipin was on driver seat and petitioner/Manoj@Tinky was with her on rear seat of the car; that petitioner/Manoj@Tinky was trying to commit rape on her to which she resisted and she again became unconscious; that on regaining the consciousness, she had a quarrel with the petitioners and they requested not to make any complaint and when she insisted, they locked her in the car and fled away; that she came out of the car as the door was not properly locked; that she did not go to the police station and went to the house of Chacha of petitioner/Vipin and came to know that he was not at home; that she went to her house and woke up in the late evening; that at about 7:00-7:30 p.m. she made a PCR call and police took her to the police station.

8. Dr. Sonal Goyal, Medical Officer, NRC Department, District Hospital, Sheopur, MP proved the MLC Ex.PW2/A of the prosecutrix and deposed that she did not find any injury on her person at the time of examination neither was there complaint of any injury by her.
9. Furthermore, the FSL report suggests that neither blood stains nor semen stains could be detected from any of the articles which were lifted from the vehicle nor matched with the petitioners.
10. Keeping in view the facts and circumstances of the present case, I find the present case fit for grant bail to both the petitioners subject to the following conditions:-

- a) That the petitioners shall furnish a personal bond in the sum of Rs.25,000/- each with one surety of the like amount subject to the satisfaction of concerned Trial Court;
 - b) that the petitioners shall not leave the territorial jurisdiction of Delhi NCR without prior permission of the Court;
 - c) that petitioners shall not try to contact/influence the witnesses of the present case;
12. Before parting with the above order it is made clear that the observations made in the order shall have no impact on the merit of the case.
13. With above directions, the present petitions are disposed of.
14. Copy of this order be given dasti under the signatures of Court Master.

SANGITA DHINGRA SEHGAL, J

OCTOBER 12, 2017

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