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

+ **BAIL APPLN. 856/2017**

AJIT GULATI

.....Petitioner

Through: Mr. Ashwin Vaish and Mr. Vinod
Pandey, Advocates.

Versus

STATE

....Respondent

Through: Mr. Akshai Malik, APP for the State

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

% **30.08.2017**

1. By the present application filed under Section 439 of the Code of Criminal Procedure, the petitioner is seeking grant of bail in case FIR No. 869/2016 under Sections 307/325/376 of the Indian Penal Code (hereinafter referred to as 'IPC'), Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 75 of the Juvenile Justice Act, 2000 registered at Police Station – Rajouri Garden.
2. The case of the prosecution as per the FIR No.869/2016 is as under:

“Statement of Ms. Kajal Barla D/o Jakias Barla, R/o D-8C, Shivaji Enclave Rajouri Garden, Delhi, permanent address Narsinghpur Rendwa Kamdara Gumla Jharkhand-835234 age 17 Years, stated that I am residing at the above mentioned address with my village Aunty (Chachi) who is running the placement service in the name of Ram Charitra Service. My Aunty had employed me at house No.

W-26, IInd Floor, Rajouri Garden, Delhi. On 11.08.2016, Ajit Gulati had brought me in a room and tied my mouth with my scarf and released my clothes and had doing the wrong things with me. Aunty Shweta Gulati had seen me without clothes in the room and in anger she left the room. Thereafter, I wear my clothes and when I saw outside from the room the uncle and aunty fights together. Thereafter Aunty caught me and bring me to the roof of the house and pushed me so that I was fell down in the another roof and I did not know what happened thereafter, when I became conscious I found myself in the hospital. I was remained admit in the hospital till 06.09.2016. Thereafter, I was not well and I narrated the whole incident took place on 11.08.2016 to my aunty (Chachi) Vinita and she took me to the police station....”

3. Mr. Ashwin Vaish, learned counsel for the petitioner urged that the prosecutrix was major at the time of the alleged offence and the age in the ossification test estimated the prosecutrix to be between 17 and 19 years. In this context, learned counsel for the petitioner relied upon the judgment of *Alamelu And another vs. State represented by inspector of police : (2011) 2 SCC 385*.
4. Counsel further urged that there are material inconsistencies and contradictions in the testimony of the prosecutrix in as much as the testimony of the prosecutrix is contradictory to her complaint and her statement recorded under Section 164 of Cr.PC.
5. Learned counsel for the petitioner contended that there is no medical evidence to corroborate the allegations of the prosecutrix. It was contended that as per the medical examination there was no history of sexual assault and there was an old hymen tear which

may or may not be related to sexual assault. He further contended that as per the examination it was observed that hymen could get torn due to any strenuous exercise, heavy sport activity, running, jumping, cycling. To substantiate his arguments, learned counsel for the petitioner relied upon judgment of *Atendar yadav vs. State govt of NCT of Delhi : 2013 (4) JCC 2962*.

6. The petitioner further urged that the maid agency is involved in extorting money from people and the petitioner being the victim of the said extortion was falsely implicated in the present case. He further contended that on 12.08.2016 when the prosecutrix did not come to work, the petitioner's wife went upstairs to check her at about 9:15 am and spotted her lying unconscious on the ground at the floor below on the neighbor's roof. Counsel also contended that infact it was the petitioner who admitted the prosecutrix in the hospital which would not be the subsequent conduct of a person who would have pushed the girl as per the prosecution.
7. It was urged by the counsel that Shalu who was working for the neighbours on the ground floor had infact seen the alleged victim standing on the roof at about 8.00 am to 8:30 am in the morning of 12.08.2016. It is further contended by the counsel for the petitioner that he is entitled for bail on the ground of parity inasmuch as his wife whose alleged role was to push the prosecutrix from the terrace has already been released on bail.
8. Per contra, Mr. Akshai Malik, learned APP for the State objected to the grant of bail to the petitioner and contended that there are serious and grave allegations against the petitioner. He further

urged that the prosecutrix testimony had been consistent throughout to show the factum of rape and pushing the prosecutrix from the terrace. He also contended that the prosecutrix had suffered serious injuries and the doctor had opined that the prosecutrix had slurring of speech, walked with difficulty and Subdural Hematoma and Hymen torn.

9. I have heard learned counsel for the parties and have perused the material available on record.
10. In the present case the prosecutrix in her statements recorded at different stages has alleged to have been raped by the petitioner. Also, in the supplementary statement under Section 161 Cr.PC which got recorded on 24.02.2017 she stated that both uncle and aunty took her to the terrace and threw her from the terrace. After the alleged incident dated 12.08.2016, the medical examination conducted on the prosecutrix showed that she was semi conscious and later was not fit enough to give her statement until 11.11.2016 when she went with her Aunt to the Police Station and got her statement recorded under Section 161 of CrPC.
11. Undoubtedly, certain factors should be taken note of by the court concerned for granting bail to the accused such as the nature of the offence, injuries sustained and the probability of the accused persons absconding after grant of bail and interfering with the evidence.
12. In the instant case, the prosecutrix is yet to be examined in Court and the charges leveled against the petitioner are grave and serious in nature.

13. As far as entitlement of the petitioner to be released on bail on the ground of parity is concerned, as the offence charged against the petitioner includes rape under Section 376 IPC having a minimum punishment of not less than seven years but which may be extended to imprisonment for life and shall also be liable to fine, it is a heinous crime against the society and therefore in the interest of justice, there is no merit in the contentions raised by learned counsel for the petitioner and the application, being devoid of any merit, is hereby dismissed.
14. Before parting with this order, this Court would like to place it on record by way of abundant caution that whatever has been stated in this order has been said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact arising for decision in the case which shall naturally have to be done by the Trial court.
15. Accordingly, the present petition is dismissed.

SANGITA DHINGRA SEHGAL,J.

AUGUST 30, 2017

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