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

+ **BAIL APPLN. 1036/2017**

Order reserved on 1st November, 2017
Order pronounced on 03rd November, 2017

RANJEET KUMAR @ JEETUPetitioner

Through: Mr. Rajesh Kumar, Advocate.

Versus

STATERespondent

Through: Mr. Amit Ahlawat, APP for the State with
SI. Subhash Chand, P.S. R.K. Puram.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By way of the present petition filed under Section 439 of the Code of Criminal Procedure (hereinafter referred "**Cr.PC.**"), the petitioner seeks **grant of Regular Bail** in FIR No. 443/2016 under Sections 363/341/354 of the Indian Penal Code, 1860 (hereinafter referred as "**IPC**") & 8 of the POCSO Act registered at Police Station R. K. Puram.
2. The case of the prosecution is that on 30.10.2016, Nagma complainant approached the police station, R.K. Puram and stated that she lives in R.K. Puram with her family and cousin sister. That at about 1 pm her cousin sister went to public toilet. That a girl named XXX came to her house and informed that a boy named Jeetu had taken her cousin

sister towards Nalah. She immediately rushed towards the Jhuggi nearby Nalah and saw that he had put one of his hands in the nicker (underwear) of my cousin sister. On seeing her, the petitioner ran away. She further stated that on being asked, the prosecutrix informed that the accused lured her with cloth, pencil and copy and was caressing her waist putting one hand in her nicker (underwear) and was having physical contact of her body with his body. On the complainant of the sister of the prosecutrix, FIR was registered and chargesheet was filed. Status report is on record.

3. Mr. Rajesh Kumar, learned counsel for the petitioner contended that the petitioner has been falsely implicated in the present case; that there are serious contradictions between the statement of the complainant (PW-1), the prosecutrix (PW-2) and child witness (PW-3) and hence the petitioner deserves to be released on Regular (Bail); that nothing incriminating has been recovered from the petitioner; that there is no chance of petitioner for absconding or tampering with the prosecution evidence.
4. Per Contra, Mr. Amit Ahlawat, APP for the State opposed the bail application and contended that the petitioner is not liable to be granted Regular bail as he has been involved in the commission of a serious offence which is heinous in nature; that the accused may evade the process of law, threaten the complainant and may also tamper with the evidences which is being collected during investigation as the petitioner resides in the same vicinity; that the statements of the

complainant (PW-1), the prosecutrix (PW-2) and child witness (PW-3) are trustworthy, consistent and also validates the case of the prosecution.

5. I have heard the learned counsel for the parties and perused the material on record.
6. In ***Kalyan Chandra Sarkar vs. Rajesh Ranjan, 2004 (7) SCC 528***, the Apex court has laid down the principles of granting or refusing bail and held as under:

"The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

a. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence

b. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

c. Prima facie satisfaction of the court in support of the charge.”

7. Perusal of the record transpires that the matter is at the evidence stage. The complainant (PW-1), the prosecutrix (PW-2) and child witness (PW-3) were consistent in their testimonies recorded at various stages. The statement of the prosecutrix recorded under Section 164 Cr. P.C as well as the statements recorded in examination-in-chief were found to be reliable, trustworthy and without and major inconsistencies also withstood the test of cross-examination. The statement of prosecutrix (PW-2) stands corroborated with the statement of the complainant (PW-1) and child witness (PW-3). The prosecutrix (PW-2) during her examination-in-chief deposed as under:-

“On 30.10.2016 at about 1 PM I went to toilet for attending call of nature, When I came outside the toilet after attending the call of nature, accused Jeetu who is residing in our neighbourhood met me and he induced me that he would give me clothes, pencil and copy etc. But I was not willing and then he threatened me to kill. He took me towards the nala and accused took me inside a Jhuggi situated near the nala. Accused put his hand in my undergarment and he hold my body tightly by holding

my waist. After some time my elder cousin sister came there. On seeing my elder sister accused ran away from there.”

8. The complainant (PW-1) during her examination-in-chief deposed as under:-

“On 30.10.2016 at about 1 PM my victim sister had gone to toilet/call of nature. After about 15 minutes one girl AXXXa came to me who is residing in our neighbourhood and told me that accused Jeetu who is resident of Ambedkar Basti was taking my victim cousin sister forcibly with him towards nala. As soon as I received the information I immediately went towards the nala and when I reached infornt of Jhuggi near the nala, I saw accused Jeetu present in the court today (correctly identified) was present inside the jhuggi and he had put his hand in the undergarment of my victim sister. As soon as accused saw me he ran away from there”

9. The child witness (PW-3) during her examination-in-chief deposed as under:-

“On 30.10.2016 I alongwith my friends were playing in the gali near the toilet in our locality. At about 1 PM I saw that accused Jeetu present in the court today (correctly identified) who is also resident of our basti,

was taking victim forcibly with him towards the nala and accused was threatening the victim. I had told this fact to the elder sister of the victim who had left the house for searching of the victim.’’

10. Though no medical examination of the prosecutrix was conducted as the complainant (PW-1) did not give consent for the examination of the prosecutrix (PW-2) but the prosecutrix specifically named the petitioner as the culprit to the Doctor who examined her. Moreover, the status report reveals that the petitioner is involved in another FIR No. 11/2016, dated 05.01.2016, under Sections 354/451 of the IPC and 8 POCSO Act registered at Police Station, R. K. Puram.
11. Keeping in view the principle laid by the Apex Court, aforementioned facts and circumstances, as well as taking into consideration the gravity of the offences alleged, this court does not deem it a fit case to grant bail to the petitioner.
12. Accordingly, the present petition is dismissed.
13. Before parting with the above order, it is made clear that observations made in the order shall have no impact on the merit of the case.

SANGITA DHINGRA SEHGAL, J

NOVEMBER 03 , 2017

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