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

+ **BAIL APPLN. 944/2017**

ANURAG CHAUDHARY

..... Petitioner

Through: Mr.M.P.Sinha, Mr.Yatharth Sinha,
Ms.Mumtaj, Mr.Siddhant Srivastava
& Mr.Yogesh Chauhan, Advocates

versus

STATE

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP for the
State with ASI Kiran Sethi

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **04.08.2017**

1. The petitioner is seeking bail in case FIR No.370/2016, under Sections 376/354A/354B/506/509 IPC & Section 6 POCSO Act.
2. Learned counsel for the Petitioner Mr.M.P.Sinha has submitted that the petitioner himself got registered FIR No.0336/2016, under Sections 323/341/506 IPC, PS Ranjit Nagar on 30th July, 2016 and this FIR is nothing but counter blast to the above noted case.
3. Mr.M.P.Sinha, learned counsel for the petitioner has also submitted that the complainant in this case is closely related to the petitioner being his cousin. The complainant is daughter of his maternal uncle. Learned counsel for the petitioner has also read the contents of the FIR No.370/2016 against the petitioner to highlight that initially no allegation rape was made against

him. The FIR was registered only under Sections 354A/354B/506/509 IPC. It was only at the stage of making statement under Section 164 Cr.P.C. that allegations of rape have been made against him.

4. Mr.M.P.Sinha, learned counsel for the petitioner has contended that this case is the outcome of family feud which fact is also clear from the FIR No.0336/2016 lodged by the petitioner himself that he was called by his maternal uncle Hira Lal (father of the prosecutrix in FIR No.370/2016) to discuss and resolve the issues.

5. Learned counsel for the petitioner has submitted that at the time of lodging the FIR the prosecutrix was major, aged about 19 years, hence, provisions of POCSO Act have no applicability to the present case.

6. Learned APP for the State submitted that as per the statement of the complainant she was being sexual assaulted by her own cousin i.e. petitioner for the past many years. She was only 12-13 years of age at that time. Her MLC records that hymen was torn. In the MLC she has also mentioned that the petitioner herein used to administer i-pill to her to avoid pregnancy.

7. The contention of learned counsel for the petitioner that in FIR No.370/2016 under Section 376/354A/354B/506/509 IPC & Section 6 POCSO Act lodged by the complainant on 17th August, 2016 i.e. after the registration of the case FIR No.0336/2016 by the petitioner himself and there was no allegation of rape in the FIR is borne out from the record. But even at that time she mentioned that she was being threatened by the petitioner to put her indecent photographs on the net to defame her. She also stated that the petitioner in his mobile was having some of her objectionable photographs.

8. Learned APP for the State has informed that mobile of the petitioner has been sent to FSL. Merely because in FIR the complainant has not mentioned about she being repeatedly raped for the past many years, which she stated at the time of making statement which was recorded by the learned Magistrate under Section 164 Cr.P.C. in itself is not a ground for bail.

9. Delay in lodging the FIR or the effect of lodging the FIR after the petitioner himself lodged FIR 0336/2016 against the father of the complainant and other persons needs to be considered at appropriate stage.

10. The petitioner has been charged under Sections 354/509/376/506 IPC & Section 6/10/12 POCSO Act as at the time of the alleged commission of offence of rape she was minor.

11. Considering the nature of the allegations against the petitioner which have been made before the learned Magistrate as well as before the doctor who medically examined her, I do not find it to be a fit case to enlarge the petitioner on bail at this stage.

12. The application is rejected.

PRATIBHA RANI, J.

AUGUST 04, 2017

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