

2# \$~

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

+ **BAIL APPLN. 1993/2016**

VINAY

..... Petitioner

Represented by: Mr. Lokesh Kumar Mishra and
Mr. Sameer Ojha, Advocates.

versus

STATE GOVT OF NCT DELHI

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP
for the State with SI Pinki
Rana, PS New Ashok Nagar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

16.01.2017

%

1. By the present petition, the petitioner seeks bail in case FIR No. 5/2006 under Sections 363/376/109/34 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') registered at PS New Ashok Nagar, Delhi.

2. Learned counsel for the petitioner contends that though after the prosecutrix was recovered the petitioner was named in the statement made before the Counsellor however, in her statement under Section 164 Cr.P.C. the prosecutrix stated that the main accused Milan along with one Virender Kumar Bhagat committed offence of rape. The petitioner had been repeatedly saying that though the case of the prosecution is that the offence of rape took place in Kolkata, the petitioner never visited Kolkata at the relevant period and was on duty in Delhi. He further claims parity with

BAIL APPLN. 1993/2016

Page 1 of 3

Virender Kumar Bhagat who has already been granted bail by this Court.

3. FIR No.5/2016 under Section 363 IPC was registered at PS New Ashok Nagar on 2nd January, 2016 on the complaint of the father of the prosecutrix who alleged that his daughter aged 14 years had been kidnapped by one person namely Milan. On 18th April, 2016 the complainant came along with his daughter to the Police Station whereafter she was medically examined. In the MLC the prosecutrix stated that she went away with a guy namely Milan on 5th January, 2016 from home, did not inform anyone and was found by police near Howrah, Kolkata on 16th April, 2016. According to the observations she did not remember anything about her stay. The victim was found to be not mentally stable however, gave the history of physical and sexual abuse by the accused.

4. Application was moved for recording of the statement of the prosecutrix before the learned Metropolitan Magistrate on 19th April, 2016 however, the Court observed that the prosecutrix needed proper counselling and thus she was referred to the counsellor. During her counselling session the petitioner was named as a co-accused with the main accused Milan. Thereafter application for recording of statement under Section 164 Cr.P.C. was filed and on 21st April, 2016, when the statement was recorded the prosecutrix stated that Milan and Virender Kumar Bhagat raped her.

5. When the present petition came up before the Court, the petitioner agitated that he had been repeatedly saying that he had no role to play and was not in Kolkata which is the case of the prosecution that she stayed in Kolkata with Milan and the petitioner /Virender Kumar Bhagat raped her. A detailed status report has been filed. From the investigation conducted on

the basis of the call detail records of the petitioner it is revealed that from 1st January, 2016 to 31st May, 2016 the petitioner was in the territory of Govt. of NCT of Delhi, or the neighbouring areas like Gurgaon, Noida Ghaziabad etc. Only on one day his presence was found at Madhya Pradesh. Thus this Court prima facie finds some merit in the contention of the petitioner that he was not present at Kolkata and was in Delhi at the relevant time. The main accused Milan has till date not been arrested by the prosecution.

6. Considering the facts and circumstances of the case, this Court finds it to be fit a case to grant bail to the petitioner. It is, therefore, directed that the petitioner be released on bail on his furnishing a personal bond in the sum of ₹25,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court, further subject to the condition that he will not leave the country without prior permission of the learned Trial Court and in case of change of address, the same will be duly intimated to the learned Trial Court by way of an affidavit.

7. Petition is disposed of.

8. Order dasti.

MUKTA GUPTA, J.

JANUARY 16, 2017

‘vn’

BAIL APPLN. 1993/2016

Page 3 of 3