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

+ **BAIL APPLN. 1242/2017**

SATENDAR @ CHOTUPetitioner

Through: Mr. J. P. Singh, Advocate.

Versus

THE STATE (GOVT. OF NCT OF DELHI)Respondent

Through : Mr Akshai Malik, APP for the State.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

06.09.2017

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1. By way of the present petition filed under Section 439 of Cr.PC., the petitioner seeks grant of regular bail in FIR No.38/2017 under Sections 363/342/323/377/34 of the Indian Penal Code, 1860 (hereinafter referred as "IPC") and Section 6 of The Protection of Children from Sexual Offenses Act, 2012 (hereinafter referred as "POCSO Act") registered at Police Station Shahbad Dairy, New Delhi. The petitioner is in judicial custody since 25.04.2017
2. It is the case of prosecution as stated in the F.I.R. that on 20/01/2017 at about 4:00 p.m. while Master Tushar, aged 17 years, was with his friends namely Bhavya and Shubham, a Swift car and a Honda City stopped at the gate of the park. Accused Veeru and Arvind came out of the Honda city and forcibly made Tushar sit in the car. Accused

Sachin Sapra and Danish emerged from the Swift car and did the same with his friend Shubham. Thereafter, they were taken in the fields near the Japanese Park and were beaten, after which they were again dumped in the car and taken to the isolated fields behind Ryan Public School, Sector 25 Rohini, Delhi where accused were joined by some other friends who came on Motorcycles and Scooties. The victims were thereafter beaten up with sticks and slippers, stripped off their clothes and subjected to unnatural sex. The entire incident was recorded on a device.

3. Mr J. P. Singh, the learned counsel for the petitioner contended that the petitioner has been falsely implicated by the complainant in this case in collusion with the investigating agency as on an earlier occasion FIR No. 08/2017 under Sections 323/341/506/34 IPC, Police Station South Rohini had been registered against the complainant of the present case and one of his associated goons by the real brother of the petitioner namely Arvind. He further stated that the factum of his false implication is proved as at the time of alleged incident, the petitioner was at Barakhamba Road and Connaught Place, New Delhi for his work. Learned counsel further contended that on 20/01/2017 a DD No. 62-B has been recorded regarding snatching of a scooty near Ryan Public School, Sector 25, Rohini, New Delhi against which no case has been registered till date. Moreover, in the D.D. 62-B nothing about the commission of an act as alleged by the prosecution has been recorded. However, the present FIR-38/17 which was registered after

two days with allegations as mentioned in FIR clearly shows that the FIR was an afterthought and a concocted story made by the complainant in collusion with the police officials. He further contended that the petitioner has clean antecedents and he has never been involved in any criminal acts.

4. Per Contra, Mr Akshai Malik, APP for the state vehemently contended that the petitioner is not liable to be granted regular bail as he has been actively involved in the commission of the crime. It is further contended that the accused Satender and his brother Arvind committed another offense for which an FIR No. 66/17 under Sections 307/304 IPC was registered at Police Station South Rohini. Brother of petitioner is yet to be arrested in both these cases. He further contended that since the accused lives in the same vicinity, where the victim resides, there is a possibility to threaten/influence the witnesses and tamper with the evidence.
5. I have heard the learned counsel for the parties at length and perused the material on record.
6. Investigation reveals that the petitioner played an active role in the commission of the offence. From the statement of the victim recorded under Section 161 Cr.PC, it falls that the accused persons took the victims to Sector-5, Rohini, Delhi where the appellant was already present. Thereafter, they took the victims behind Ryaan Public School, Sector-5, Rohini, Delhi and subjected them to unnatural sex. Victims also stated that for two days, they did not disclose the fact

about their having unnatural sex with them out of shame and fear of the accused who had threatened that the video would be made viral. The MLC reports highlight physical assault on both the victims. The burnt residues of the cloths were found at the location and the same were taken into custody. The FSL report is still awaited. According to the counsel for the petitioner, the petitioner was not present at the place of incident nor involved in the commission of the offence as he was present at Barakhamba Road, Connaught Place, New Delhi at the relevant time. The plea taken by the petitioner does not find any support from material available on record. The petitioner has been named in the FIR and a specific role has been assigned to him. It needs to be added as pointed out by the prosecution, after the commission of the present offence, another FIR No. 66/2017 has been registered against the petitioner and his real brother wherein allegations of attempt to murder have been leveled against them.

7. In ***Kalyan Chandra Sarkar vs. Rajesh Ranjan*** reported in (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.”

8. This principle was further reiterated in *State of U.P. VS Amarmani Tripathi* reported in (2005) 8 SCC21, wherein the Apex Court held as under:

“It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail (see *Prahlad Singh Bhati vs. NCT, Delhi 2001* (4)

SCC 280 and Gurcharan Singh vs. State (Delhi Administration) AIR 1978 SC 179).

- (i) While a vague allegation that accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. ”

9. Keeping in view the principle laid by the Apex Court, the nature of the offences and also the fact that the petitioner and complainant reside in vicinity, thus there is a possibility that the petitioner may threaten or influence the witness and may tamper with the evidence and taking into consideration the specific role attributed to the petitioner/accused, this court does not deem it fit to grant bail to the petitioner.
10. Accordingly, the present application filed by the petitioner is dismissed.
11. 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.
12. Application stands disposed of.

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 6, 2017

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