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

+ BAIL APPLN. 2476/2016

SALMAN @ SHAMSHAD Petitioner
Through: Mr.S.K.Dureja, Adv.

versus

STATE & ANR. Respondents
Through: Ms.Kusum Dhalla, APP for State
W/Sub Inspector Sarita, PS-Mundka

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

ORDER
% 10.01.2017

This is an application under Section 439 Cr.P.C. filed on behalf of the petitioner seeking grant of regular bail in case FIR No.432/2014, under Sections 363/366/34 IPC & 4/17 POCSO Act, registered at Police Station-Mundka, Delhi.

Counsel for the petitioner has submitted that the petitioner is an innocent person and the allegations alleged against the present petitioner is false. He has further submitted that initially missing report was lodged and at a later stage statement of victims was recorded. As per the statement of the victims, the allegation qua against the present petitioner is that the petitioner has committed rape on the person of victim Sarita in a hotel at Paharganj. Learned counsel for the petitioner has further submitted that as per the story of the prosecution, the petitioner along with co-accused have kidnapped victim Sarita and minor prosecutrix Pooja, who is 16 years of age

and have been taken to Jaipur and sexual offence on the person of the victims was done at Delhi. He has further submitted that what prevented the petitioner to not commit rape at Jaipur where they stayed in a hotel for three days. He has further submitted that the version given by the prosecution is without legs. He has further submitted that if at all the story of the prosecution is taken as gospel truth then too the victim Sarita as per the prosecution is a major. He has further submitted that the case of the petitioner is distinct from main accused Kamal. He has further submitted that the petitioner is in judicial custody since 16th August, 2016 and is no longer required for further investigation in the present case. He has further submitted that trial is not likely to conclude in near future and the continued incarceration of the petitioner will not serve any purpose and prays that the petitioner be released on regular bail.

Learned APP for the State has vehemently opposed the bail application and submitted that the petitioner was declared proclaimed offender and he does not have a permanent address in Delhi. She has further submitted that the petitioner is facing trial under Section 376 IPC and his role is connected with the main accused Kamal. She has further submitted that the victim in her statement under Section 164 Cr.P.C. has stated that the petitioner and the accused extended threats to them and were kidnapped to Jaipur and thereafter brought back to Delhi at Paharganj where they succeeded in their desire to have sex on the persons of victims.

It is an admitted case of both the parties that the petitioner right now is in judicial custody since 16th August, 2016. It is also an admitted fact that there are two victims; viz. Sarita who is a major and minor prosecutrix Pooja, who is 16 years of age. Both the victims are alleged to be kidnapped

from Delhi to Jaipur and they stayed in Jaipur in a hotel for three days and thereafter they came back. It is stated that the co-accused stayed with minor prosecutrix Pooja, who is 16 years of age and the petitioner stayed with victim Sarita in a hotel. Admittedly, victim Sarita is a major. Had there been no consent on the part of victim Sarita, they could have lodged complaint either at Jaipur where they remained for three days or while coming back to Delhi where they stayed in a hotel at Paharganj.

Looking in the above facts and circumstances, since there seems to be consent on the part of victim Sarita and the petitioner is stated to be in judicial custody since 16th August, 2016 and no purpose would be served if the petitioner is kept in judicial custody as the trial is likely to take some time, consequently, the petitioner is granted bail on his furnishing a bail bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the concerned Court below with the condition that he should not influence the prosecution witnesses; he should not contact the victims or her family members in any manner whatsoever; he shall not tamper the prosecution evidence and he should not leave India without prior permission of the Court below.

The present bail application is disposed of accordingly. However, this order shall not affect the merit of the case.

Copy of the order be given *dasti*, as prayed.

I.S.MEHTA, J

JANUARY 10, 2017/radhika