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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 3536/2016

JALAL@ JALAL-UD-DIN

..... Petitioner

Through: Mr. Rajender Chhabra, Advocate

versus

STATE OF DELHI

..... Respondent

Through: Ms. Nandita Rao, Additional
Standing Counsel (Crl.) Mr. R.S.
Kundu, Additional Standing Counsel
(Crl) with Inspector Harish Kumar,
SHO, Sub-Inspector Ompal Singh,
Police Station Gokalpuri, Delhi

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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28.03.2017

The present petition filed under Article 226/227 of the Constitution of India is preferred by the petitioner in relation to the question arising out of a case registered vide FIR No.983/2014 under Section 354A of IPC and 12 of POCSO Act, Police Station Gokulpuri, Delhi.

The main prayer of the petitioner in the petition is as to whether the offence under Section 12 of POCSO Act is bailable or not.

Ms. Nandita Rao, Additional Standing Counsel (Crl.) has drawn attention of this court to the judgment passed by the coordinate Bench of this court in Bail Application No.1763/2016 titled as

Santosh Kumar Mandal vs. State, decided on 28.09.2016 in which the question involved in the present case has already been answered in paragraph 11 of the judgment.

This court has perused the aforesaid judgment and observes that before answering to the question, the coordinate bench of this court had also considered the judgment of the Supreme court in **Avinash Bhosale vs. Union of India and Anr** (2007) 14 SCC 325; **Bhupinder Singh & Ors vs. Jarnail Singh & Anr.**, (2006) 6 SCC 277; and the three judge bench of the Supreme Court in **Om Prakash and Anr vs. UOI & Anr**, (2011) 14 SCC 1; and ultimately recorded its conclusion in para 11 of the judgment, which is reproduced as under:-

“11. Thus, the decisions of Supreme Court in case of Rajeev Chaudhary and Avinash Bhosale (supra) have no application to the facts of the case as discussed in detail by three Judge Bench in Om Prakash (supra) holding that the offences under Section 9 of Central Excise Act 1944 and Section 135(1)(ii) of the Customs Act 1962 were non-cognizable and thus bailable offences. Considering the gravity of the offences and the special mechanism provided under POCSO Act to hold that the offences are bailable though cognizable and would fall in category 3 would be rendering an interpretation to the classification provided in second part of First Schedule of Cr.P.C contrary to the object of the special enactment. Thus offences punishable under POCSO Act

including Section 12 are cognizable and non-bailable offences.”

After having gone through the aforesaid judgment passed in ***Santosh Kumar Mandal (supra)***, this court concurs with the same, and for the sake of repetition held that the offences punishable under POCSO Act including Section 12 are cognizable and non-bailable offences.

The question is replied and the petition is disposed of accordingly.

P.S.TEJI, J

MARCH 28, 2017

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