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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2558/2016**

Date of Decision: February 02nd, 2017

RAJKUMAR Petitioner

Through Mr.Ashutosh Yadav, Adv.

versus

THE STATE (NCT) OF DELHI Respondent

Through Mr.M.S. Oberoi, APP for the State.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S. TEJI, J

1. The present application has been filed under Section 439 of the Code of Criminal Procedure by the petitioner/accused for the grant of regular bail in FIR No.236/2016, under Sections 376D/342 IPC and Section 4 of the POCSO Act, Police Station Anand Parbat.
2. The facts as emerge from the records, are that the prosecutrix, aged 17 years, had made a statement to the police that she was living at H.No.2087/6A, B-5, Gali No.21, Prem Nagar, Anand Parbat, Delhi along with her family on rental basis. On 07.05.2016 at about 05.00 p.m., when she was coming down from the roof, accused Jaswant, nephew of the landlord, picked the prosecutrix forcibly and took her to a room belonging to another tenant Rajkumar. When prosecutrix tried to run away, the door hit

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on her face. Accused Jaswant made the prosecutrix lay on the bed whereas accused Rajkumar bolted the door from outside. When prosecutrix raised alarm, accused Jaswant gagged her mouth. Accused Jaswant removed his pant and underwear and then broke the cloth string of the salwar of the prosecutrix. Accused Jaswant removed the salwar of the prosecutrix and committed rape upon her. In the evening when the mother of the prosecutrix came to the house, entire incident was narrated to her.

3. On the basis of statement of the prosecutrix, FIR of the instant case was registered. During the course of investigation, statement of the prosecutrix under Section 164 Cr.P.C. was recorded in which she reiterated the allegations made in the original complaint. Both the accused persons were arrested. After completion of investigation, charge sheet was filed in the Court.

4. Arguments advanced by the learned counsel for the petitioner as well as learned APP for the State were heard.

5. Argument advanced by the counsel for the petitioner is that there is delay of four days in registration of the FIR which creates doubt about the prosecution story. It is further submitted that the petitioner has been falsely implicated in the present case and he had no role to play in the same. The accused was not present at the spot at the time of alleged incident.

6. On the other hand, learned APP for the State opposed the bail application on the ground that the petitioner had played an active role in the commission of rape upon the prosecutrix. He had helped his co-accused Jaswant and stood as guard outside the room and even bolted the room from outside when the rape was committed. It is further submitted that the seriousness of the offence does not warrant the concession of bail to the petitioner.

7. Perusal of record shows that there are specific allegations against the petitioner/accused Rajkumar. The complainant has specifically stated that when she was taken to the room of the accused Rajkumar forcibly by accused Jaswant, at that time accused Rajkumar was standing outside his room. When prosecutrix tried to come out of that room, accused Rajkumar bolted the door from outside after which the rape was committed upon the prosecutrix. The present case is a case of gang rape in which specific role has been attributed to the petitioner/accused.

8. Even otherwise, it is apparent from the record that the rape was committed upon a minor girl and that was the reason for invoking the provision of POCSO Act in the instant case.

9. In view of the above mentioned facts and circumstances, seriousness of the offence and the fact that the trial is at the initial

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stage and there is apprehension of influencing the prosecution witnesses, this Court is not inclined to release the accused/petitioner on bail.

10. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

11. With aforesaid directions, the present bail application stands dismissed.


P.S. TEJI, J

FEBRUARY 02, 2017
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