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

+ **BAIL APPLN. 1504/2017 & CrI.M 1428/2017**

UPENDRA KUMARPetitioner

Through: **Mr. Udayan Jain, Advocate.**

Versus

STATERespondent

Through: **Ms. Anita Abraham, APP for the State with
W/SI Chanchal from Police Station- Mayur
Vihar.**

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

18.08.2017

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1. By this present application filed under Section 438 of Cr. P.C., the petitioner is seeking grant of anticipatory bail in FIR No. 248/2017 under Section 376 of the IPC and Section 6 of the POCSO Act registered at Police Station Mayur Vihar Phase-I.
2. The brief facts of the case as per the FIR are that on 08.07.17 one of the accused Yogender Kumar took a minor victim aged 4 years to the terrace of his house and sexually assaulted her by removing her underwear and inserting a wooden stick in her private part. The petitioner who is the real brother of Yogender Kumar had abetted the above offence by witnessing it as well as concealing the facts.
3. Vide order dated 14.11.2017, the learned Additional Sessions Judge rejected the application of anticipatory bail observing that the present case is a serious matter and the appellant had absconded

and avoided his arrest and thereby no ground existed to grant him anticipatory bail application.

4. The learned counsel for the petitioner contended that the petitioner is not involved in the said offence and that he has been falsely implicated. His contention was based on the fact that the mother of the victim is on inimical terms with the petitioner's family. He further submitted that on the basis of averments of the alleged FIR, no offence under Section 376 IPC or Section 6 of POCSO is made out against the petitioner and that the minor victim had been tutored to falsely allege that the petitioner had come on the spot and left after witnessing the above offence. To substantiate his arguments, learned counsel relied upon the case of ***Gurbaksh Singh Vs State of Punjab*** reported in ***AIR 1980 SC 1632***.
5. Per Contra, the learned APP appearing for the State, strongly opposed the present bail application and argued that the allegations levelled in the present case are serious in nature. The prosecutrix had been physically abused by the main accused Yogendra Kumar. There are specific allegations against the petitioner that he witnessed as well as concealed the entire incident.
6. It was further submitted that the statements of the child victim recorded under Section 161 and Section 164 Cr.PC corroborated the facts of the FIR. Moreover it was revealed by her statements that all the facts were known to the petitioner/Accused and he had informed the entire incident to his sister Deepika however both of them had deliberately tried to conceal the facts as well as threaten

the victim thereby abetting the offence. Therefore Sections 17 and 21 of POCSO as well as Section 506 of IPC were also added.

7. Keeping in view the seriousness of the allegations and the role attributed to the petitioner, this Court is of the considered opinion that this is not a fit case to grant anticipatory bail to the petitioner. Application is accordingly dismissed. The pending interim bail application No. 1428 of 2017 also stands disposed of.
8. Before parting with the above order, it is made clear that anything observed in the present bail application shall not have any bearing on the merits of the case during trial. With the aforesaid directions, the present anticipatory bail application is disposed of.

(SANGITA DHINGRA SEHGAL)

AUGUST 18 , 2017
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