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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1586/2017 CRL.M.(BAIL) 2101/2017**
ASHOK KUMAR Petitioner
Through Mr. Nitesh Kumar Singh, Ms. Neha,
Advs.
versus

STATE OF NCT OF DELHI Respondent
Through Mr. Panna Lal Sharma, APP for State

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **30.11.2017**

It has been submitted on behalf of appellant that the body of his brother had been handed over on 25.11.2017 and not on 23.11.2017 as was submitted in the status report dated 26.11.2017. It has been submitted on behalf of the appellant that he has not been able to attend the cremation ceremony of his brother and that he may be allowed to attend the Kriya ceremony, which is to be performed on 08.12.2017. It has further been prayed on behalf of the appellant that the appellant be allowed to be released on bail for a period of one week in relation thereto.

Learned APP for the State submits that in view of the gravity of the allegations levelled against the appellant and the deposition of the minor child before the Rohini Court, recorded on 11.10.2017, the appellant may be allowed to attend the ceremony of his brother on 08.12.2017 in custody.

Learned counsel for the petitioner seeks to make submissions on merits on the application submitting *inter alia* to the effect that the statement

of the victim in the FIR, the statement under Section 164 Criminal Procedure Code, 1973 and the testimony of the minor child recorded in the Court are grossly variant. It has also been submitted on behalf of the appellant that the MLC does not indicate any injuries sustained by the child in relation to the allegations levelled against the applicant of sexual molestation of the minor child. It has been submitted on behalf of the appellant that the averments made against the appellant are false and fabricated and in view of the dispute between the parties a Kalandra under Sections 107/150 Criminal Procedure Code, 1973 was also registered at PS Mangolpuri and the minor child had not been going to the school for a month which itself shows the falsity of the averments made in the Kalandara and that the minor child had not attended the school as also stated by her in her testimony in the Court.

Learned APP for the State opposes the prayer for grant of the bail and places reliance on the statement made by the minor child dated 11.10.2017 during the course of the proceedings in FIR No. 97/17 submits that there was a similar statement made by the child under Section 164 Criminal Procedure Code, 1973.

Without any observation on the merits or demerits of the case and on the perusal of the averments made in the statement under Section 164 Criminal Procedure Code, 1973 of the minor child and also the deposition of the minor child and the FIR and the observations of the learned Trial Court at the time of recording of the statement under Section 164 Criminal Procedure Code, 1973 in relation to the sexual harassment by the petitioner against the minor child, earlier aged 9 years and now aged 10 years and the

factum that the learned Trial Court even did not consider it appropriate to administer oath to child below the age of 12 years which could not have been administered in terms of the Oaths Act in the circumstances there is no ground for grant of bail on merits. However, in the interest of justice, it is considered appropriate to allow the applicant to be taken in custody to attend the Kriya ceremony of his brother on 08.12.2017.

At this stage, learned counsel for the petitioner seeks to withdraw the petition which cannot now be permitted in view of the observations here-in-above. In view thereof, the BAIL APPLN. 1586/2017 and CRL.M.(BAIL) 2101/2017 are both dismissed.

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

ANU MALHOTRA, J

NOVEMBER 30, 2017/MK