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

+ BAIL APPLN. 1933/2017

RAJKUMAR

..... Petitioner

Through: Mr.Anwesh Madhukar, Advocate
(DHCLSC)

versus

STATE

..... Respondent

Through: Ms.Kusum Dhalla, APP for the State

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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22.09.2017

CRL.M.A.15988/2017

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

BAIL APPLN. 1933/2017

1. By way of this application filed under Section 439 Cr.P.C. the petitioner is seeking regular bail in FIR No.247/2016, registered under Sections 376/313/506 IPC, at PS Paharganj in Sessions Case No.28949/2016.
2. Notice. Learned APP as above accepts notice on behalf of the State.
3. The above FIR was registered on the statement made by 'P' (name withheld to conceal her identity), the prosecutrix, aged about 21 years against her paternal uncle (*chacha*). In the said FIR she mentioned that on the day of Holi festival when she was alone at her house at about 5:00 PM, her uncle Rajkumar came to her house and committed rape on her. He also threatened to kill her in case she discloses the same to anyone. Due to fear

and shame she did not disclose about being raped to anyone. As she became pregnant, she informed the accused Rajkumar who advised her to go for abortion. He made her eat some tablet on 5th June, 2016 and on the same day she started bleeding. When she disclosed this to her mother during night time, immediately she was taken to Northern Railway Central Hospital, P.K. Road, Delhi. She also mentioned in the complaint that the clothes she was wearing on the day when she was raped by her uncle, were thrown by her as they had become dirty and that her life has been spoiled by her uncle Rajkumar.

4. Learned counsel for the petitioner Mr.Anwesh Madhukar, Advocate (DHCLSC) has submitted that the petitioner is innocent and there is no medical/forensic evidence to prove the version of the prosecutrix. She has stated before the Court that she was consenting party for the physical relation and no threat was given to her. As she has turned hostile, the accused may be released on bail who is sole bread earner of the family.

5. It is for the learned Trial Court to appreciate the testimony of the witnesses including the prosecutrix to arrive at the conclusion whether it is a case of rape or consensual physical relationship with her chacha, despite the fact that the complainant was just like daughter to the accused being his niece. Since in the FIR she has specifically mentioned about being raped by her Chacha and she got pregnant as well the abortion being induced by the accused by making her consume some tablet, I do not find it to be a fit case to enlarge the petitioner on bail.

6. The petition is dismissed.

PRATIBHA RANI, J.

SEPTEMBER 22, 2017/ 'hkaur'