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

+ **BAIL APPLN. 2079/2017**

GULAM NABI

..... Petitioner

Through: Mr.Ashish Dixit & Mr.Rishabh
Tripathi, Advocates

versus

STATE

..... Respondent

Through: Ms.Kusum Dhalla, APP for the State
with SI Dharmendra Kumar
PS Mandir Marg

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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17.10.2017

CRL.M.A.16974/2017

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

BAIL APPLN. 2079/2017

1. By way of this application filed under Section 439 Cr.P.C., the petitioner is seeking regular bail in case FIR No. 198/2016, under Section 377/506 IPC and Section 6 of POCSO Act, registered at PS Mandir Marg, Delhi.

2. Notice. Ms.Kusum Dhalla, APP for the State accepts notice and furnishes the status report. Copy of the same has been given to the learned counsel for the petitioner.

3. Learned counsel for the petitioner has submitted that most of the public witnesses have been examined and there are material contradictions as well as improvements in their version thereby raising a question mark on their credibility. It is further submitted by learned counsel for the petitioner that the petitioner is in custody for last more than one year and the public witnesses now left to be examined are not material witnesses. There is absolutely no evidence against the petitioner, hence he may be admitted to bail.

4. Perusal of the FIR shows that the victim in this case is a 10 year old boy who was a student of 4th standard. In the FIR he has specifically stated that Gulam Nabi, who was residing in his neighbourhood, and addressed by him as 'Chota Mama' took him to a park on the pretext of taking him to a market. In the park, the petitioner took him behind some trees and forced him to remove his pant. Thereafter, he tried to put his male organ in the passage through which he passes latrine. Only when he started having pain and cried he was left by the petitioner and was threatened to be beaten if he disclosed about it to any other person.

5. Second incident as reported in the above noted FIR took place about 7-8 days prior to *Baqried* when he was present at about 8.00 p.m. at the house of his aunt (khala Ms.Jeenat), who was also residing in the neighbourhood. When the child victim went to take bath at her house, the petitioner also came to the child victim saying that he would also take bath with him and again the petitioner made him remove his pant and repeated the same act as happened in the park. He also pressed his organ used for passing urine. The child victim also explained the manner in which he was sexually abused by the petitioner and threatened not to disclose the incident

to anyone.

6. The copy of the MLC of the child victim has also been placed on record along with this petition as Annexure B. In the MLC prepared on 18th September, 2016 at about 2.00 p.m., the doctor while recording history of bleeding has opined as under:-

*“Mild Tenderness in hypogastrium
P/R: No evidence of semen/seminal fluid
Anal fissure @ 6’o clock position”*

7. The MLC shows that the child was subjected to sexual abuse. The submissions made on behalf of the petitioner that there are material improvements and contradictions in the testimony of the public witnesses/child victim and the effect of delay in reporting the first incident, has to be considered by the learned trial Court at appropriate stage. The improvements or contradictions, if any, cannot be made a ground to seek regular bail in a heinous crime wherein a child of about 10 years has been allegedly sexually abused repeatedly by the petitioner.

8. Taking into consideration the nature and gravity of the offence, I do not find it to be a fit case to release him on regular bail.

9. The application is dismissed.

PRATIBHA RANI, J.

OCTOBER 17, 2017

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