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

+ **BAIL APPLN. 2535/2017**

MOHD ALAM

..... Petitioner

Through: Mr.Vikas Pahwa, Senior Advocate
instructed by Mr.Rauf Rahim,
Mr.Karan Khanuja, Ms.Kanika
Sondhi and Mr.Tushar Agarwal,
Advocates.

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Ms.Rajni Gupta, APP for the State
with SI Suruchi, PS Lajpat Nagar.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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11.12.2017

CRL.M.A. Nos.20316, 20317 & 20318 of 2017

1. Exemption allowed, subject to all just exceptions.
2. The applications are disposed of.

BAIL APPLN.2535/2017

1. By way of this application filed under Section 439 Cr.P.C. read with Section 482 Cr.P.C. the petitioner is seeking bail in FIR No.269/2017, under Section 376 IPC & Section 6 of POCSO Act, 2012.
2. Notice. Learned APP as above accepts notice on behalf of the State and files the status report.
3. Learned counsel for the petitioner submits that charge-sheet in the instance case has been filed.
4. Learned counsel for the petitioner submits that a cross case (FIR No.349/2017 under Section 384/34 IPC), has already been filed by the wife

of the petitioner against the parents of the alleged child victim and others and the matter is under investigation with DIU/South East Distt.

5. The petitioner was granted interim bail for a period of three months on 15th September, 2017 vide following orders:

'BAIL APPLN. 1756/2017

1. *By way of this application filed under Section 439 read with Section 482 Cr.P.C., the petitioner is seeking bail in case FIR No. 0269/2017 under Section 376 IPC and Section 6 of POCSO Act, registered at PS Lajpat Nagar, Delhi.*

2. *Mr.Vikas Pahwa, learned senior counsel for the petitioner submits that the photograph of the shop being run by the petitioner at the relevant time, shows that it has full glass frontage.*

3. *Mr.Vikas Pahwa, learned senior counsel further submits that after registration of this FIR No.0269/2017 under Section 376 IPC and Section 6 of POCSO Act, PS Lajpat Nagar, even the said shop has been vacated by the petitioner and there is no chance of even contacting the victim or her family.*

4. *Learned senior counsel for the petitioner has also drawn the attention of this Court to the statement of the victim recorded under Section 164 Cr.P.C. wherein she has stated that the petitioner had touched her vagina, hand and on belly and frightened her as bhoot (ghost). The attention of this Court has also been drawn on the photographs wherein the father of the victim and his friend are visible and the money has been accepted by the father through his friend Mustafa @ Vicky and cheques were also received. For this extortion by the victim's family FIR No.0349 dated 3rd August, 2017 has been registered on the directions of the learned MM issued in exercise of power under Section 156(3) Cr.P.C. and status report has also been filed by the SHO, PS Lajpat Nagar which is placed at page number 98 & 99 of this petition.*

5. *Mr.Vikas Pahwa, learned senior counsel further submits that while the chargesheet against the petitioner has already been filed on 19th July, 2017, investigation in case FIR No.0349/2017, registered on the complaint of the wife of the*

petitioner, is still going on. Learned senior counsel for the petitioner prays that he is not pressing for regular bail at this stage and the petitioner may be released on interim bail for a reasonable time so that in the meanwhile correct facts may emerge and may be considered by the Court at an appropriate stage.

6. The case FIR No.0269/2017 was registered on 10th June, 2017 at 21:30 hrs. on the complaint made by Ibtissam Farfari wife of Yasir Altaf Gosain, resident of E-57, F.F. Lajpat Nagar-II, New Delhi-110024. In her report she stated that she resides at the above address along with her four year old daughter. On the day of the incident i.e. 10th June, 2017, her daughter was playing near the stairs and entered the cloth shop being run by the petitioner Mohd.Alam. The petitioner Mohd.Alam caught her daughter and inserted his finger in her private part. On hearing the scream of her daughter she entered the shop and found her daughter crying and her daughter informed her about the act done by the 'uncle' (petitioner). When the statement of child victim was recorded under Section 164 Cr.P.C., she stated about the 'uncle', who was running a cloth shop, that he touched her hand, abdomen and also pointed towards her vagina that he also touched there. The MLC of the child has also been annexed with the bail application and learned senior counsel for the petitioner submits that it records redness and hymen intact.

7. Learned counsel for the complainant is also present in the Court and submits that the money, if any, received by the husband of the complainant has nothing to do with this case as he had divorced the complainant in the year 2015. Attention of the learned counsel for the complainant has been drawn to the FIR No.0269/2017, under Section 376 IPC and Section 6 POCSO Act, PS Lajpat Nagar wherein the complainant has stated herself to be the wife of Yasir Altaf Gosain.

*8. Taking into consideration the entire facts and circumstances and the submission made by learned senior counsel appearing on behalf of the appellant, **the petitioner is granted interim bail for a period of three months from the date of release** on his furnishing a personal bond in the sum of*

₹1,00,000/- (Rupees One Lakh) with one surety of the like amount to the satisfaction of the learned Trial Court/link Court, subject to the following conditions:

(i) He shall not leave the country without the permission of the learned Trial Court.

(i) He shall not try to influence or contact the witnesses in any manner.

9. The bail application is allowed in the above terms.

10. Copy of this order be sent to the Jail Superintendent for information.

11. Copy of the order be also given dasti to the learned counsel for the petitioner under the signature of the Private Secretary.'

6. In the status report it is mentioned that charge-sheet has already been filed against the petitioner. It has also been mentioned that during the tenure of the interim bail nothing adverse has been reported against the petitioner.

7. Status report also records that a case FIR No.349/2017 under Section 384/34 IPC, filed by the wife of the petitioner is under investigation wherein the FIR was registered on the directions of the learned MM, Saket Court in exercise of his powers under Section 156(3) Cr.P.C.

8. Taking into consideration, the entire facts and circumstances, the petitioner is admitted to bail on his furnishing a personal bond in the sum of ₹1,00,000/- (Rupees One Lakh) with one surety of the like amount to the satisfaction of the learned Trial Court/link Court, on the same terms and conditions imposed on him vide order dated 15th September, 2017.

9. The application is disposed of.

Order dasti.

PRATIBHA RANI, J.

DECEMBER 11, 2017/ 'hkaur'