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

+ **BAIL APPLN. 2389/2015**

BASANT MISHRA

..... Petitioner

Represented by: Mr. D.K. Pandey, Adv.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Represented by: Mr. Ashok Kumar Garg, APP.
Mr. Anshum Goswami, Adv.
for complainant.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

09.03.2017

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CrI.M.A. 3996/2017

Notice.

Learned APP for the State accepts notice.

For the reasons stated in the application, the bail application is restored to its original position and is taken for hearing.

Application is disposed of.

Bail Appln. No.2389/2015

1. The petitioner seeks anticipatory bail in case FIR No.643/2015 under Section 376 IPC and 4 of Protection of Children from Sexual Offences Act (in short 'POCSO Act') registered at PS Fatehpur Beri .
2. Learned counsel for the petitioner submits that the above noted FIR was registered as a counterblast to the complaint filed by the petitioner against the prosecutrix after she committed theft of jewellery articles and clothes of the petitioner in connivance with one Shailash Kumar.

3. The allegations of the prosecutrix in the above noted FIR are that her mother was working as domestic help in the house of the petitioner for the last 10 years and she had engaged the prosecutrix to look after the children of the sister of the petitioner, who was residing in the same house as that of the petitioner along with their parents. On 20th August, 2015, the prosecutrix left the job from the house of the petitioner whereafter on 31st August, 2015 the petitioner along with his sister came to the house of the prosecutrix and alleged that she has committed theft of jewellery articles. The prosecutrix further alleged that the petitioner forcibly made physical relation with her about one month back and threatened her not to disclose with anyone but the prosecutrix told about the incident to her mother.

4. No doubt, in the statement under Section 164 Cr.P.C. the prosecutrix further improved the version stating that after her employment in the second month, the petitioner started teasing her while he was teaching her. On one day, the petitioner told her that she would be punished since she committed a mistake in Maths. The petitioner had made forcibly physical relation with her and threatened her with dire consequences. She further alleged that petitioner had also relations with her elder sister and thereafter after some days again the petitioner had relations with her. When the prosecutrix demanded the salary from the sister of the petitioner, she refused and went away to Mumbai. Her mother left the job of the petitioner on 5th August, 2015 and she left the job on 20th August, 2015. On 21st August, 2015 when she was bringing back her stuff, the staff did not permit her to take the same. While getting her clothes, by mistake one legging of the sister of the petitioner was also brought by her.

5. Since the case of the petitioner was that the above noted FIR was

registered as a counter blast to the theft case though in the FIR itself, the prosecutrix admits that she inadvertently brought one legging of sister of the petitioner, it is revealed that from mobile no.9891444613 a call was received at the PCR at 10:04 hours regarding theft in the house which was recorded vide DD No.19A on 31st August, 2015. On SI Vikas Rana visiting the spot, it was found that the caller had kept his clothes in some other floor and no theft was committed. Hence DD entry was filed. Thus, there was no FIR registered on the complaint of the petitioner though he visited the house of the prosecutrix along with his sister.

6. Considering the allegations of the prosecutrix in the FIR, this Court finds no case made out for grant of anticipatory bail to the petitioner.

7. Petition is dismissed.

MUKTA GUPTA, J.

MARCH 09, 2017
‘v mittal’