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

\+ BAIL APPLN. 610/2018

SHRI AFZAL@ ABJAL ..... Petitioner

Represented by: Mr.Shamsher Ali and Mr.Idrish Hasmi, Advocates

versus

STATE (NCT OF DELHI) ..... Respondent

Represented by: Ms.Meenakshi Chauhan, APP for the State with SI Seeta Ram, PS Sarita Vihar

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

O R D E R

% 09.05.2018

1. By this petition, the petitioner seeks bail in case FIR No.8/2016 under Sections 363/366/376-D IPC read with Section 6 of the Protection of Children from Sexual Offences Act (in short the POCSO Act) registered at PS Sarita Vihar.

2. FIR No.8/2016 was registered under Section 363 IPC when the mother of the complainant informed that her daughter 'S' aged 13 years had left the house on 3rd January, 2016 at 7:00 PM without informing anyone. She could not be traced. Her daughter used to visit her neighbour 'Sh' but the neighbour has already vacated the house a day prior. Thus she apprehended that her daughter had left the house with 'Sh'. On 9th January, 2016, mother of 'S' brought her daughter to the police station where 'S' did not give any statement nor underwent any medical examination. On 10th

January, 2016 the complainant along with her husband and daughter 'S' came to the police station wherein detailed statement of 'S' was recorded under Section 161 Cr.P.C.

3. Statement of 'S' was that 'Sh' used to treat her as a sister and would get her married to whomsoever 'S' wanted. One of her other friend also told her that if she accompanied 'Sh' she would be able to make her life. On the inducement of 'Sh' on 3rd December, 2015, she left the house without informing anyone. When she left the house she was accompanied by 'Sh' and her brother-in-law i.e. the petitioner herein. They reached Sector-37, Noida where husband of 'Sh' brought the utensils. She saw her uncle who runs an auto and her uncle also identified her. Her uncle tried to meet her but these people did not let her meet her uncle and she was pushed inside the bus. She was taken by a bus to Haldwani and when she wanted to go back to her home, the prosecutrix was not permitted to do that. At the house of 'Sh', she was made to work and whenever 'Sh' used to go out she would bolt the door so that 'S' could not go out. Husband and brother-in-law of 'Sh' were looking for a job. One day 'Sh' stated that prosecutrix would have to marry either her husband or brother-in-law to which she refused. When she tried to run 'Sh' did not permit her to run. It is further alleged that 'Sh' cut the palm of the prosecutrix by a blade whereafter husband of 'Sh' committed rape on her. The allegation against the petitioner is that while she was being raped, she called out the petitioner for help however he did not come to save her. After a few days, 'Sh' stated that since the prosecutrix tried to run away, so she be sent back and thus 'Sh' came back to drop her.

4. The prosecutrix has since been examined, the role assigned to the

petitioner is of kidnapping and when the offence of rape was being committed despite the prosecutrix calling out to him, he did not come for her help. 'Sh' was found to be a juvenile and is facing inquiry before Juvenile Justice Board. Husband of 'Sh' who allegedly committed rape is in judicial custody.

5. Considering the role assigned to the petitioner, the fact that the petitioner is now is custody for more than two years and statement of the prosecutrix has already been recorded before Court, this Court deems it fit to grant bail to the petitioner. It is, therefore, directed that petitioner be released on bail on his furnishing a personal bond in the sum of ₹25,000/- with one surety bond of the like amount subject to the satisfaction of the learned Trial Court further subject to the condition that in case of change of residential address, the same will be intimated to the Court concerned.

6. Petition is disposed of.

7. Order dasti.

MUKTA GUPTA, J.

MAY 09, 2018
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