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

% Judgment delivered on: 23.07.2018

+ CRL.REV.P. 185/2017

HASIM KHAN @ ASIM ALI KHAN Petitioner

versus

STATE (GOVT OF NCT OF DELHI) Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Lokesh Kumar Mishra with
Mr. Himanshu Sharma,
Advocates.

For the Respondent: Ms. Neelam Sharma, APP for the
State.
ASI Yashpal Singh, PS New Ashok
Nagar.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

23.07.2018

SANJEEV SACHDEVA, J. (ORAL)

CRL.REV.P. 185/2017 & Crl.M.A.4259/2017 (stay)

1. The petitioner impugns order-on-charge dated 15.12.2016 in FIR No.426/2005, Police Station New Ashok Nagar, whereby, the Trial Court has held that sufficient material is available on record which raises grave suspicion against the petitioner that he has committed an offence under Sections 328/376(2)G/34 IPC and held that a case for framing of charge under the said sections is made out against the petitioner.

2. The FIR was registered in the year 2005. Though in the FIR the prosecutrix names the petitioner, however, in a statement under Sections 161 and 164 Cr.P.C., the prosecutrix states that she knows the petitioner, however, the petitioner was not the one who committed the subject offence and has categorically denied the involvement of the petitioner in the subject offence and has stated that two unknown persons had committed an offence on her.

3. Charge sheet, which was filed in the year 2014, notices the fact that the complainant in her statement had categorically stated that she knew the petitioner but denied the involvement of the petitioner in the subject offence and stated that two unknown persons had committed the offence on her and was filed without arrest. Even the FSL report has stated that group test for the human semen detected on exhibits – 1.2 & 6(B) has been found to be inconclusive.

4. The trial court has by the impugned order framed charges against the petitioner.

5. The trial court has clearly erred in not noticing that there is nothing to connect the petitioner with the subject offence. Neither has the prosecutrix supported the case of the prosecution to implicate the petitioner nor does the FSL report implicate the petitioner. On the other hand, the prosecutrix in her statement under Sections 161 and 164 Cr.P.C. has categorically stated that she knows the petitioner but states that there is no involvement of the petitioner in the subject

offence.

6. Keeping in view of the fact that the prosecutrix has denied the involvement of the petitioner in the subject offence and the FSL report is also inconclusive, I am of the view that no case is made out giving rise to suspicion leave alone grave suspicion against the petitioner of the subject offence.

7. In view of the above, the impugned order-on-charge dated 15.12.2016 and the order framing charge, against the petitioner, on 02.03.2017 is set aside. The petitioner is discharged.

8. The petition is allowed in the above terms.

9. Order *Dasti* under signatures of the Court Master.

JULY 23, 2018
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SANJEEV SACHDEVA, J