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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 760/2018 & CRL.M.(BAIL) 571/2018**

VIJAY GULATI

..... Petitioner

Through: Ms. Geeta Luthra, Sr. Adv. with Ms.
Sangeeta Bharti, Mr. Krishanu
Adhikary, Advs.

versus

STATE

..... Respondent

Through: Mr. Ashish Dutta, APP for State.
Mr. Alok Bhachawat, Adv. for
complainant .

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

01.05.2018

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In terms of directions dated 09.04.2018, the copy of the statement under Section 164 Cr.PC, 1973 of the prosecutrix not yet placed on record, be placed on record by the State. The same has however been perused on a perusal on the case diaries of the case.

The submissions have been made on behalf of either side.

It has been submitted on behalf of the applicant that the applicant has been falsely implicated in the instant case and that allegations, if any, by the prosecutrix relate to her spouse qua whom she has *inter alia* contended that he was a homosexual and that she has thus lodged false allegations even against her brother-in-law and father-in-law, with it having submitted that the brother-in-law has been granted anticipatory bail already. Qua the allegations in the FIR and the statement under Section 164 Cr.PC, 1973 of

the prosecutrix, it has been submitted on behalf of the applicant that the same have necessarily to be gauged with caution. There are allegations levelled therein against the applicant of having raped the prosecutrix on the date 05.02.2018 and it has been stated therein that the prosecutrix was called upon to make tea by the applicant for the applicant and also for the mother-in-law in the evening hours of 05.02.2018, thereafter, the applicant gave her some prashad and after that she felt heavy in her head when she had taken that prashad and after that she had gone to her room and had laid down there and as per her statement under Section 164 Cr.PC, 1973 had become a little bit unconscious and then suddenly she felt that there was something heavy on her and on looking she found that the applicant i.e. her father-in-law had taken off his clothes and was on her and had also taken off one portion of her lowers and had also put his private part into her as the consequence of which, she got scared and pushed him and he fell down and thereafter ran away from the room and she put back her clothes totally and came out of the room and found the door of the house open and did not find her parents-in-law in the house and that her (i.e. the prosecutrix) daughter was watching T.V. on a loud volume and she i.e. the prosecutrix informed her spouse in the night about the incident but he did nothing and that thereafter her spouse told her not to inform her father about it and that they would separate and thereafter on 13.02.2018 they separated to Noida but there she did not find the behaviour of her spouse appropriate towards herself and her daughter and that on 18.02.2018, the applicant, her father-in-law came there and she heard the conversation between the applicant and her spouse and that she heard the applicant saying that he would finish the prosecutrix that day and

thereafter she along with her daughter went to her parent's house and informed her parents of the incident, as a consequence of which her father-in-law was called and on 19.02.2018 her father-in-law came and folded his hands and apologized to her and told her not to tell this to anyone as this was a question of his reputation and thereafter the applicant never came and thereafter whenever she spoke to her spouse about the matter, he said that his father could not have done such a thing and he had gone out (it has been submitted on behalf of the applicant that he had gone to Malaysia) and it has further been submitted through the Section 164 statement of the prosecutrix that her spouse stated that when her father-in-law came back, all aspects would be got cleared and that some action would be taken and that on 27.03.2018 the applicant, her father-in-law had a meeting with the relatives when she told everything, as a consequence of which, the applicant was very angry and twisted her hands, abused her and misbehaved with her and threatened her.

Vide proceedings dated 09.04.2018, the status report of the State was called for as also the CDR of the family member of the applicant. In view of the submissions that have been made through the application and submissions made that the incident was not possible with all family members being available, the CDR details of the applicant, of Manav, brother-in-law of the prosecutrix, Manish, husband of the prosecutrix, Neeraj, brother-in-law of the prosecutrix, Smt. Santosh, mother-in-law of the prosecutrix and of the prosecutrix herself have been put forth. It has been sought to be submitted on behalf of the applicant that the CDR details would indicate that the family members were available in the house in the evening

hours and even the CDR of the prosecutrix would show that there have been regular constant normal conversations that were being carried on by her from 1830 hours to 2030 hours even with conversation taking place from 1530 hours to 1613 hours, 1616 hours to 1657 hours, 1657 hours to 1903 hours, 1937 hours to 1938 hours, 1938 hours to 2127 hours, 2127 hours to 2136 hours, 2136 hours to 2141 hours, 2141 hours to 2145 hours, 2145 hours to 2155 hours and 2155 hours to 2350 hours and that there was thus no scope for any such incident as alleged by the prosecutrix. A submission has also been on behalf of the applicant that the wife of the applicant was available in the house as per the CDR details.

On behalf of the applicant it has been contended that the FIR has been lodged with much delay and has been lodged on 28.03.2018 in relation to an incident dated 05.02.2018 and a catena of the verdicts have been relied upon on behalf of the applicant to contend that the same itself brings forth the falsity of allegations levelled against the applicant with reliance *inter alia* being placed on the verdict of this Court in ***Vijay Bhushan Sharma Vs. State in Bail Appln. 2068/2016*** verdict dated 30.11.2016. Reliance is also placed on the verdict of this Court in ***Jagdish Nautiyal Vs. State in Bail Appln. No. 1317/2012*** and on the verdict of the Apex Court in ***Rajesh Patel Vs. State of Jharkhand*** and also on the verdict of this Court in ***Ramesh Thakur Vs. State*** to contend that in similar circumstances where the FIR has been lodged with much delay the same has been quashed. It has further been submitted on behalf of the applicant that the applicant is willing to join the investigation and ready to abide by the terms imposed.

On behalf of the State and the complainant, the application is

vehemently opposed submitting *inter alia* to the effect that the averments made in the FIR and in the statement under Section 164 Cr.PC, 1973 are categorical. The State has also submitted that the CDR details on the record that has been submitted bring forth that there was ample scope and ample time for the commission of the offence as alleged by the prosecutrix and that the prosecutrix had been separated from the applicant on 13.02.2018 whereafter the FIR could be lodged only on 27.03.2018 in relation to which her submission is categorical through her statement under Section 164 Cr.PC, 1973.

Without any observations on the merits or demerits of the case, undoubtedly in the instant case though the FIR appears to have been lodged in relation to an incident dated 05.02.2018 on 27.03.2018. The factum that the prosecutrix after 05.02.2018 after having allegedly informed her spouse of the incident had separated on 13.02.2018 from her in-laws' home, whereafter according to the statement under Section 164 Cr.PC, 1973 of the prosecutrix and the FIR itself, it was on 13.02.2018 when she found the behaviour of her spouse not appropriate and also on 18.02.2018 she had heard her father-in-law/the applicant talking to her spouse that he would finish her and whereafter she went to her parental home and informed her parents about this incident and that on 19.02.2018 her father-in-law apologized to her and on talking with her spouse about the matter, her spouse kept on saying that some action would be taken when his father came back and a meeting was held with the relatives and she narrated the whole incident whereafter her father-in-law abused her and threatened her. Taking the statement of the prosecutrix recorded in the FIR and her statement under

Section 164 Cr.PC, 1973 as observed hereinabove, without any observations on the merits or demerits of the case, there is nothing in the statement made by the prosecutrix to indicate that she has at any stage retracted from the version that she sought to put forth through the FIR or through the statement under Section 164 Cr.PC, 1973 and thus the mere delay in lodging of the FIR is per se not sufficient to negate her statement at this stage, taking the said statements into account and the gravity of the allegations levelled against the applicant, there is no ground for grant of bail.

The application is disposed of.

Copy of the order be given Dasti under the signatures of the Court Master, as prayed.

ANU MALHOTRA, J

MAY 01, 2018

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