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

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Judgment delivered on: 05.03.2018

+ BAIL APPLN. 919/2017

KAMALUDDIN KHAN

..... Petitioner

Through

versus

STATE OF DELHI

..... Respondent

Through

Advocates who appeared in this case:

For the Petitioner : Mr. Kanhaiya Singhal with Ms. Prasanna and Mr. Nishant Bhardwaj, Advocates.

For the Respondents : Mr. Mukesh Kumar, APP for the State.
SI Surekha, PS Malviya Nagar.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

05.03.2018

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner seeks bail in case FIR No.423/2016 under Section 354/376/506/363 IPC and Sections 4 and 8 of POSCO Act, Police Station Malviya Nagar.

2. The allegations against the petitioner are that the petitioner, on 22.03.2016, called the complainant, aged 17 years, to his house. The complainant is alleged to have gone to the house of the accused at 1

pm and thereafter the accused is alleged to have taken the complainant to a hotel at Gurgaon and committed the offence of rape and thereafter brought her back to her house at 3 pm. It is alleged that the accused thereafter kept on threatening the complainant and had even taken her photographs in appropriate conditions and was using them to threaten her.

3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated and there is evidence against the petitioner except for her statement. He submits that the testimony of the prosecutrix is also unreliable as it is contradicted by scientific evidence. It is contended that the FSL report with regard to the clothes has come negative and, further, the CDR report does not establish that the petitioner was in Gurgaon between 1 to 3 pm. He submits that the location of the petitioner in Gurgaon has been shown to be between 9:56 am to 11:08 am whereas the incident is alleged to have happened between 1 pm to 3 pm.

4. Learned counsel for the petitioner further contends that no scientific evidence has come on record to show that there was any telephonic communication between the petitioner as well as the complainant. He further submits that the allegation that the petitioner had taken inappropriate pictures of the prosecutrix and was using the same to threaten her, has also not been substantiated by scientific evidence even though the telephone of the petitioner was seized by the Investigating officer as far back as in the year 2016. He further

submits that the prosecutrix has not identified the hotel/guest house where the offence is alleged to have taken place.

5. The petitioner has been in custody since 04.04.2016 and trial is likely to take substantial time.

6. After perusal of the record, without commenting upon the merits, I am of the view that the petitioner has made out a case for grant of bail. Accordingly, the petitioner is admitted to bail, subject to furnishing a bail bond in the sum of Rs. 25,000/- with a surety of the like amount to the satisfaction of the Trial Court. The petitioner shall not do anything which shall prejudice either the trial or the prosecution witnesses. The petitioner shall not make any attempt to contact either the complainant or her family members. The petitioner shall also not leave the country without the permission of the Trial Court.

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

SANJEEV SACHDEVA, J

March 05, 2018
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