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

+ **BAIL APPLN. 2294/2018 & CrI.M.B.No.1556/2018**

VISHAL CHAWLA

..... Petitioner

Represented by: Mr.Kapil Sibal and Mr.Hariharan,
Sr.Advocates with Mr.Pramod Kumar
Dubey, Mr.Mirinal Bharti, Mr.Aditya
Pujari, Mr.Syed Arham Masub,
Mr.Ramaditya Tiwari and Mr.Prince
Tiwari, Advocates

versus

STATE

..... Respondent

Represented by: Ms.Richa Kapoor, ASC for the State
with Insp.Manoj Verma, Insp.Seema
and W/SI Preeti Bala

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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03.10.2018

1. FIR No.308/2017 under Section 376 IPC was registered at PS New Friends Colony on a written complaint given by the complainant wherein she alleged that the petitioner was introduced to their family by business associates and thereafter the complainant, her husband and son came to Delhi where they had number of meetings with the petitioner. It is stated that her husband arranged a gift to impress the petitioner. They invited the petitioner to Hotel Surya for dinner on 27th September, 2017 where they discussed the plans for the new venture. On the evening of 28th September, 2017, the petitioner who was earlier to go to Gurgaon made a phone call and invited complainant's family to his house to which the complainant replied

that her husband and son had already left to another place and not available so he invited the complainant. The driver of the petitioner came to pick up the complainant who reached the house of the petitioner.

2. In the FIR, it is alleged that at the residence of the petitioner, after taking drinks the complainant felt dizzy and the petitioner persuaded her to go to the bed room where he pushed her on the bed, removed her clothes and forcefully raped her. After she gained little consciousness, she insisted to go back to the hotel room whereafter the petitioner's driver dropped her in the car at the hotel lobby and with the help of hotel staff she reached her room where her husband was present. She narrated the incident to her husband who made a call to the police.

3. Thus PCR call was made on 29th September, 2017 at 2:45 AM. On the police reaching the spot, a written complaint with the contents as noted above was handed over, on which a rukka was sent at 4:20 AM and the complainant/prosecutrix was immediately taken for her medical examination to AIIMS where at 4:51 AM on 29th September, 2017 itself her medical examination was conducted and her vaginal smears etc. were taken and seized along with her clothes. The complainant/prosecutrix was thereafter taken to the house of the petitioner and at her instance, the site plan was prepared. The complainant/prosecutrix also pointed towards the bed sheet and her supplementary statement under Section 161 Cr.P.C. was recorded.

4. On the same day, statement of the prosecutrix was recorded under Section 164 Cr.P.C. wherein she stated as under:-

“..... yesterday my husband's friend invited him on which my husband and son went to Grand Hotel. Vishal was chatting with me on WhatsApp. I told him that my husband had gone with a friend and I am alone and I asked him that

if you are free then come to hotel and we will drink and have some food. He said that he cannot come in a public place as he is not comfortable then come to my house, I said OK. He asked "What would you eat cook is not at home". I said I am full. He sent his driver to hotel to take me and he also came along with the driver. I got ready and went downstairs. I came to his house in his car. The servant was there at his house when I visited but drinks were being served by only servant. We had 3-4 drinks. It started feeling heave and dizzy. Vishal said let me take you and show my house. He showed me entire house and when we reached bedroom he locked the room. He held me tightly, bite me on my neck, pushed me on bed and pushed me here and there. I was going down, feeling dizzy and weak and unable to understand what to do. When I regain some conscious I saw that he was lying on the bed and my clothes were a bit disturbed. He said that if you want, you can sleep here, I said no he dropped me along with his driver. I was not able to walk properly when I was going to lift area, someone helped me to hold my purse. I went upstairs with that guy and could not identify my room number. That hotel guy brought key and helped me inside my room. I fell on the floor. My husband was already in room. My husband was calling me but I was not in senses so I did not pick his calls. I saw my husband and felt like crying. I told my husband everything. He called duty manager and my husband called police and got the case registered."

5. Learned Additional Standing Counsel for the State submits that since on the same day written complaint was received and the statement under Section 164 Cr.P.C. was recorded before the learned Metropolitan Magistrate wherein the prosecutrix did not level any allegations of rape rather stated that she felt dizzy and weak and unable to understand what to do and when she regained consciousness, she was lying on the bed with her clothes disturbed revealing offence punishable under Section 354 IPC, the

petitioner was not immediately arrested. The petitioner was made to join the investigation and permitted to go after investigation. However the petitioner pointed out the bed room and the bed sheet which was seized.

6. Aggrieved by the inactions of the investigating agency and for transfer of the investigation and speedy and fair investigation, the prosecutrix had filed a writ petition before this Court being W.P.(Crl.) No.348/2018 wherein vide order dated 17th May, 2018, this Court noting the contentions of learned counsel for the prosecutrix that despite the charge sheet and supplementary charge sheet having been filed without considering vital issues and the bed sheet and clothes being not seized on the pointing out of the prosecutrix but seized at the instance of the petitioner and as to why the CCTV footage was not collected on 28th September, 2017 but on 29th September, 2017, this Court directed the DCP concerned to file a detailed status report. Pursuant to the detailed status report filed and hearing learned counsel for the parties, this Court dismissed the writ petition with the following order:-

“1. By this petition the petitioner seeks transfer of investigation and also speedy and fair investigation.

2. On 17th May, 2018 learned counsel for the petitioner submitted before this Court that the investigation was though completed and besides charge sheet a supplementary charge sheet was also filed, however, the investigation was conducted in a haphazard manner. He stated that despite there being no relevance of the passport and visa of the three year old son of the prosecutrix, the same has been taken on record. Further scene of crime was not identified by the prosecutrix and the bed sheet and other clothes were not seized immediately after the incident.

3. Pursuant to the order of this Court, a detailed status report has been filed by the DCP, South-East. As per the

status report on 29th September, 2017 at 2.45 AM an information was received which was recorded vide DD No. 4-A at PS New Friends Colony. The information noted that one lady has been molested in Surya Hotel, who is drunk. Immediately, the concerned woman sub-inspector along with the staff reached the spot and on the written complaint of the prosecutrix, who described their business association with the accused and the circumstances in which he allegedly committed rape on her, FIR No.308/2017 under Section 376 IPC was registered at PS New Friends Colony on 29th September, 2017 at 4.30 AM itself for the incident that took place on the night intervening 28/29th, September, 2017. Thereafter, statements of the prosecutrix were recorded under Sections 161 and 164 Cr.P.C. on the same day itself.

4. In view of the fact that in her statement recorded under Section 164 Cr.P.C. prosecutrix stated about teeth bite mark, which fact was also mentioned in the MLC, her supplementary statement was also recorded. Documents, that is, the photocopies of the passport of the prosecutrix, her husband and her son were seized from the reception of the hotel. Contention of learned counsel for the petitioner that copy of the passport of the prosecutrix's son has wrongly been placed on record is unwarranted. The said documents have been placed on record to show that the prosecutrix and her family members were staying in the hotel Surya. The site plan was prepared at the instance of the prosecutrix and she also identified the bed sheet, which was also seized along with the clothes of the accused and other documents.

5. Statements of the driver and security guard of the accused were also recorded and CCTV footage of the incident dated 29th September, 2017 was also seized. Further the FIR was registered on the written complaint of the prosecutrix thus ruling out any manipulation therein. Charge sheet and supplementary charge sheet having

already been filed this Court finds no ground to transfer the investigation wherein primarily all steps required to be taken in the investigation have taken place.

6. Learned Additional Standing Counsel for the State submits that the report of FSL is awaited and that as and when received, the same will be filed before the learned Trial Court.

7. Petition is dismissed.”

7. After the writ petition was dismissed by this Court, FSL Report was received which showed no semen or male DNA in the samples taken. Further supplementary charge sheet was filed without arrest of the petitioner. The petitioner was granted anticipatory till the time the petitioner appears before the Court concerned and to seek regular bail thereon. Thus, on committal when the petitioner appeared before the learned Additional Sessions Judge, the learned Additional Sessions Judge did not grant bail and sent the petitioner to custody. Hence, the present petition seeking bail.

8. Since the various issues raised by the prosecutrix have been considered at length by this Court in W.P.(CrI.) No.348/2018 and nothing amiss was found in the investigation and whether the offence in the present case relates to one punishable under Section 376 IPC or Section 354 IPC will be seen on the prosecutrix being examined before the learned Trial Court who is the sole witness to the said incident and there is no apprehension expressed by the State that the petitioner is likely to flee from justice, this Court deems it fit to grant bail to the petitioner. It is, therefore, directed that the petitioner be released on bail on his furnishing a personal bond in the sum of ₹1 lakh with one surety bond of the like amount to the satisfaction of the learned Trial Court further subject to the condition that the

petitioner will not leave the country without prior permission of the Court concerned and in case of change of residential address, the same will be intimated to the Court concerned by way of an affidavit.

9. Petition and application are disposed of.

10. Order dasti.

MUKTA GUPTA, J.

OCTOBER 03, 2018

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