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

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Judgment delivered on: 02.02.2018

+ BAIL APPLN. 2340/2017

AMARJEET PANDEY

..... Petitioner

versus

STATE OF NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner :

Ms Sonika Tyagi.

For the Respondent :

Mr Akshai Malik, Addl. PP for the State.

SI Sandeep Singh, PS I.P.Estate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

02.02.2018

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner seeks regular bail in case FIR No.10/2017 under Sections 377/506 IPC read with Section 6 POCSO Act, 2012. The petitioner is in judicial custody since 16.01.2017.

2. The petitioner was taken in custody, consequent to an FIR registered on 15.01.2017, on the complaint of one Ram Manohar Sharma, who had alleged that he was a resident of the Ashram of one Swami Santosh Anand and in that Ashram, there was also a male

child of six years of age.

3. The FIR alleges that on 14.01.2017, the complainant found the child crying and on enquiry, the child confided in him that the petitioner and other co-accused had done unnatural sex with him a day prior and many times prior to that.

4. Based on the FIR, the petitioner was taken in custody. On 16.01.2017, the statement of the child was recorded under Section 164 of the Code of Criminal Procedure (Cr.P.C) before the Magistrate, wherein the child reiterated the averments in the FIR.

5. The child was thereafter sent to a Child Care Home under the Child Welfare Committee (CWC).

6. Learned counsel for the petitioner points out that the social worker of the Child Welfare Committee (CWC) made a report to the Police on 11.04.2017, wherein the social worker had reported that when the child was produced for counselling, the child had contradicted his earlier statement made under Section 164 Cr.P.C. and had averred that in fact the Swamy of the Ashram, i.e. Swami Santosh Anand had sexually assaulted him several times in the Ashram and had threatened the child not to utter a single word otherwise he would be killed and his hands would be broken. The social worker had thereafter reported that the accused were innocent and had requested appropriate action to be taken against the said Swami Santosh Anand.

7. The social worker of the Child Welfare Committee thereafter in the report stated that the child was further interviewed by the social worker, wherein the child reiterated the assault by Swami Santosh Anand and re-affirmed that the petitioner was incorrectly named solely on the threat being extended by Swami Santosh Anand.

8. Thereafter, the child was produced before the Court and another statement under Section 164 Cr.P.C. was recorded on 09.06.2017. In the said statement before the Court, the child once again reiterated that he was assaulted by Swami Santosh Anand, who had threatened the child and had directed the child to name the petitioner and the co-accused, else the child would be killed. The child has further re-affirmed that the accused were named solely on account of fear and the threat extended by Swami Santosh Anand.

9. Swami Santosh Anand has subsequently been arrested.

10. The Trial Court also, while considering the Bail Application of Swami Santosh Anand *alias* Kavitender Singh *alias* Santosh Kumar, has noted that the statement of the victim recorded on 09.06.2017 is to be treated as a voluntary statement, as the said statement was recorded when the child was living in a Child Care Home under the orders of the Child Welfare Committee (CWC) and during which period his counselling was being done.

11. Keeping in view the facts and circumstances, as noticed above,

I am of the view that the petitioner should be enlarged on bail.

12. Accordingly, the petition is allowed. The petitioner is directed to be released on bail on furnishing a bail bond in the sum of Rs.25,000/- with the surety of the like amount to the satisfaction of the Trial Court.

13. The petitioner shall not do anything, which shall prejudice either the trial or the prosecution witnesses and the petitioner shall, not make any attempt to contact the child or his family members.

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

SANJEEV SACHDEVA, J

February 02, 2018

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