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

+ **BAIL APPLN. 3204/2019**

AMIT NATH @ DAVID @ SHIBU Petitioner

Through: Mr. Vikas Padora, Adv.

versus

STATE

..... Respondent

Through: Mr. Panna Lal Sharma, APP for State
with SI Imran Khan, WSI Usha, both
from PS – Safdarjung Enclave
Mr. Girish Kumar Adv. for
complainant with complainant in
person

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

24.12.2019

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CRL. M.A. 43577/2019

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

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3. The present petition is filed under Section 439 Cr.P.C. on behalf of the accused to grant him bail in case FIR No. 46/2017 dated 03.02.2017 registered at Police Station – Safdarjung Enclave.
4. The present FIR has been lodged on the basis of a written complaint made by the father of the child-victim wherein stated that on 03.02.2017, he left the victim at her school at 7:30 AM. At about 12 noon, he received a call from the school that the child had left the school without informing. On

01.02.2017 also, the victim had left her home in the night at 4:00 AM without informing and had returned back at 6:00 PM in the evening, regarding which he had also lodged an FIR in Malviya Nagar Police Station. He informed the police that she was carrying gold, cash and debit card of his elder daughter with her. He also informed the authorities that one boy Amit Nath was encouraging and provoking her to do bad things.

5. On 23.02.2017 itself, father of child-victim, alongwith IO and other Police officials went to Nampally, Hyderabad. The child victim and the accused person were brought back to Delhi on 24.02.2017. Thereafter, the petitioner was arrested on 24.02.2017 and during interrogation, his disclosure was recorded on said date, thereafter, he was sent to judicial custody on 24.02.2017 itself.

6. The case of the petitioner is that the first statement of victim under Section 161 Cr.P.C. was recorded on 24.02.2017, wherein she stated that she became friends with accused person who was working as event manager for parties. She informed to police that Rs.4-5 lacs were stolen from her house during demonetization and her parents were doubting her for the theft and hence they were not treating her well. She further stated that on saying of petitioner, she ran away from her house on 01.02.2017, but returned in the evening due to lack of money. However, on 03.02.2017, she again left with accused person and went to Goa and Hyderabad. They were located at Hyderabad railway station by local police on 23.02.2017. Statement of victim was recorded at Safdarjung Hospital, however, she refused to undergo internal medical examination, so as to substantiate the allegation of sexual intercourse.

7. On 27.02.2017 the statement of child-victim was recorded u/s 164 Cr.P.C. before the Ld. Magistrate, Saket.

8. Learned counsel for the petitioner has pointed out that by the statement made by the child-victim u/s 164 Cr.P.C. before the Ld. Magistrate, did not support the case of prosecution and completely destroyed the same. She stated that on 01.02.2017 at about 2:00-3:00 AM in the night, she left her house and came back on evening of 02.02.2017 at about 4:00-5:00 PM. There were thefts on 2-3 occasions at her house during demonetization and Rs.4-5 lacs were also stolen. CCTV cameras were installed at her house and no one was seen coming inside, so the family members started doubting her. Her father used to pressurize her and that is why, she ran away from the house. She stated in very clear words that she gave her first statement to police in fear of her father and that is why she gave a false statement against the petitioner which was not true. She stated in clear words that her cousin brother, who is a lawyer, was also threatening her of sending her to remand home and there, he will get her and petitioner killed. The lawyer cousin brother of victim also pressurized her to falsely name petitioner as the thief, who committed theft at her house. Accordingly, she stated that due to all this torture, she again finally left her house on 03.02.2017. She also stated clearly that she went to Mehrauli to find petitioner but could not find him there. Thereafter, she went to Hauz Khas but he could not be found there. Later, she went to West Delhi, where she stayed in a hotel and from there, she left for Goa, thereafter, Hyderabad alongwith petitioner. When they were waiting for train at Hyderabad railway station, Police made enquiries from them and contacted her father. She

stated clearly that accused has never pressurized her nor ever beaten her. However, she stated that physical relationships between them were made with her consent.

9. Learned counsel submits that since the victim gave a very different version in her statement under Section 164 Cr.P.C., which was destructive for the prosecution case, however, the police under the pressure of her father and the lawyer cousin again recorded the statements of victim under Section 161 Cr.P.C. on 05.03.2017 and 13.05.2017 to support the case of prosecution.

10. Learned APP for the State, on the other hand, submits that the age of the victim was 16+ years and though, she stated in her statement that she herself left her home due to the atrocities committed upon her by her parents, consent of the victim, who is minor, cannot be taken into consideration. It was the duty of the petitioner not to take her along. Therefore, the petitioner may not be granted bail at this stage, when the case is pending for trial and only 6 witnesses have been examined and 14 witnesses are still left to be examined.

11. Fact remains that the victim has given her testimonies under threats, pressure and at the instance of her father and cousin brother, who is a lawyer and hence, the statements are clearly made in duress. She herself stated in the statements that during demonetisation, 4-5 lakhs were stolen from her house. The CCTV cameras were installed at the house and no one was seen coming inside. Therefore, the father and other family members doubted her for the same and due to their pressure, she ran away from her house. It is not that the victim left her house without consent of the parents first time,

however, it happened 2-3 times earlier also and the victim returned to the house. Finally, when she left the house, she met the petitioner, thereafter, they went to Goa and Hyderabad, where they were caught by the Police of Hyderabad (Telangana).

12. It is not in dispute that the petitioner is in judicial custody since 24.02.2017. Out of 20 witnesses, only 6 have been examined including the victim. Therefore, the trial will take substantial time.

13. Without commenting upon the merits of the case, I am of the view that the petitioner is entitled for bail. Therefore, the petitioner shall be released on bail on his furnishing personal bond in the sum of ₹20,000/- with two sureties of the like amount to the satisfaction of the Trial Court.

14. Before parting with the order, it is relevant to mention that nothing contained in this order shall be construed as an expression on the merits of the case. The Trial Court shall not get influenced by the observations made by this Court, while passing the final orders in the present case.

15. The present bail application is allowed and disposed of.

16. Copy of this order be transmitted to the Jail Superintendent and the Trial Court concerned for compliance.

17. Order *dasti* under the signatures of Court Master.

SURESH KUMAR KAIT, J

DECEMBER 24, 2019/PB