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

+ **BAIL APPLN. 2642/2019**

BHARAT @ DEV

..... Petitioner

Through Mr. Kishan Kumar Mishra, Mr.
Aditya Mishra, Mr. Prem Prakash and
Ms. Akansha Jain, Advs.

versus

STATE

..... Respondent

Through Mr. Hirein Sharma, APP for State.
SI Sanjeev kumar and SI Amit
Bhardwaj, PS Gazipur

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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18.10.2019

CRL.M.A. 38550/2019 (Exemption)

Allowed, subject to all just exceptions.

This application is, accordingly, disposed of.

BAIL APPLN. 2642/2019

Vide the present application, the petitioner/accused seeks bail in FIR No.340/2018 dated 31.07.2018 under Sections 365/366/370(A)/372/328/109/376/120B/34 IPC, Section 5 of Immoral Traffic (Prevention) Act & Sections 4/6/17 POSCO Act, at Police Station, Ghazipur, Delhi.

The case of the petitioner/accused is that he is in judicial custody since 21.08.2018.

The Petitioner/ Accused was not named in the FIR nor in statements

u/s 161 Cr.P.C and u/s 164 Cr.P.C. However, the name of the accused appeared suddenly during TIP Proceedings.

Learned counsel appearing on behalf of applicant submits that PW1: i.e. the victim in her cross examination stated that she was kidnapped while returning back from her school in Feb, 2018 at about 4/4:30 P.M. She was aged about 14 years at the time of kidnapping and was studying in Class 8. However, she does not remember the date when she was kidnapped.

Counsel for the petitioner further submits that as per the statement of PW1 recorded on 14.01.2019, she was abducted in the month of February, 2018. Thereafter, till the date of lodging of the FIR i.e. 21.08.201, six months have passed.

Moreover, there is material on record that any of her family member made missing report about her abduction till 21.08.2018.

The Victim while having her cross-examination dated 14.01.2019 admitted before Trial Court stated that "*I have seen accused Bharat for the first time. Accused Bharat never did wrong act with me. I did not state to Ld.MM in my statement EX.PWI/B that accused Bharat used to come at the house of Muslim couple with a girl as no such question was asked to me*".

He further submits that the applicant was not involved in any case of any nature previously and committed no sexual assault as stated in the cross examination by the prosecutrix.

Learned APP has opposed the present application by submitting that petitioner sold the prosecutrix for an amount of ₹20,000/- to muslim couple and thereafter to one Mr. Yadav. She has identified the applicant in the TIP proceedings, therefore, the application deserves to be dismissed.

The fact remains that in the FIR, statement recorded under Section

161 Cr.P.C and under Section 164 Cr.P. C., the prosecution has not made any allegations against the applicant.

In cross examination, she has deposed that applicant was seen first time in her TIP proceedings and she revealed the name of the petitioner for the first time in Court.

Keeping in view the above facts and without commenting on merit and demerits of the case, I am of the opinion that the petitioner/accused is entitled for bail.

That the appellant shall furnish a personal bond in the sum of ₹25,000/- with one surety in the like amount subject to the satisfaction of Trial Court.

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

Order dasti under the signatures of Court Master.

SURESH KUMAR KAIT, J

OCTOBER 18, 2019

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