

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

+ **BAIL APPLN.2768/2019**

Date of Decision : 04.12.2019

IN THE MATTER OF:

ANIL @ BUNTY

..... Petitioner

Through : Mr.Jai Ram Garg, Advocate.

versus

STATE

..... Respondent

**Through : Ms.Radhika Kolluru, APP for the
State with SI Nishu Sangwan,
PS South Rohini**

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. The present bail application has been filed by the applicant seeking regular bail in case FIR No.99/2018 under Sections 376D/506 IPC, 6 POCSO Act and 66E/67 (A) Information Technology Act registered at PS South Rohini. Status report is on record.

2. Learned counsel for the applicant submits that the applicant has been falsely implicated; no incriminating material has been recovered from the his possession; the mobile phone was recovered from the co-accused Himanshu who has already been discharged. It is further submitted that at the time of medical examination, the mother of the prosecutrix has refused the internal examination of the prosecutrix. It has come in the testimony of the mother of the prosecutrix that leggings (payjama) of the prosecutrix was handed over after 4/5 days of the lodging of the FIR. The applicant is in judicial custody since 16.04.2018. Lastly, it was submitted that the chowkidar had not been made a witness.

3. Per contra, learned APP for the State has vehemently opposed the bail application. She submits that the present case was registered on 15.04.2018 on an information given by the mother of the child victim. It was stated by the mother that the child victim is about 13 years of age and is mentally challenged. On 15.04.2018, after returning from work, she came to know through her brother-in-law that a video of the child victim was in circulation in the village. The aforesaid fact was confirmed by her son who showed her the video in which the applicant was seen committing offence with the child victim. It is stated that an IQ assessment test of the child witness was done at Dr.RML hospital, Delhi where the doctor opined as “Test Finding and clinical observations are indicative of Mild Deficit in intellectual and socio Adaptive Functioning (IQ = 66, SQ=55).” It is further submitted that mobile phone of the brother of the child victim was seized in which the applicant is seen committing the mean offence with the child victim. As per DNA analysis report, it has been opined that “DNA profiling (STR analysis) performed on the exhibits (1) (pajama), (2) (Blood of victim) & exhibit (4) (blood of accused) are sufficient to conclude that male DNA profile generated from the source of exhibits “1” (pajama) is similar to the male DNA profile generated from the source of exhibit “4” (blood of accused).” FSL report with respect to the video files recovered from the phone of the brother of the child victim as well as co-accused Himanshu have been placed on record. It is submitted that seven witnesses out of a total 25 witnesses have already been examined.

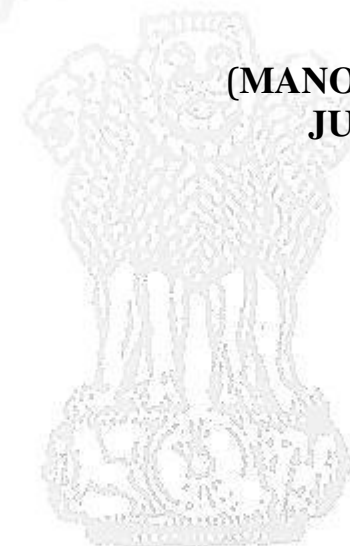
4. I have heard the learned counsel for the parties and have examined the file. The child victim has been assessed having Mild Deficits in intellectual and socio Adaptive Functioning. The child victim appeared and had supported the prosecution case. The applicant had committed

penetrative sexual assault upon the child victim, who was about 13 years of age. The child victim has been examined; she has identified the applicant and also supported the prosecution case against him. Corroborative evidence in terms of the recovered video as well as the positive DNA report also point out to the guilt of the applicant.

5. In the facts and circumstances of the case, I do not find it to be a fit case to grant bail to the applicant. The bail application is dismissed.

(MANOJ KUMAR OHRI)
JUDGE

December 04, 2019/sa



सत्यमेव जयते