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

+ **BAIL APPLN. 2868/2019**

SHAHJADA WASEEM

..... Petitioner

Through: Mr Kirti Uppal, Sr. Advocate with Mr
Sudeep Shrotriya, Ms Khyati Sharma,
Mr Govind Keshav, Mr Prakhar
Singh, Mr Aditya Awasthi and Mr
Aditya Raj, Advocates.

versus

STATE, NCT OF DELHI

..... Respondent

Through: Ms Kusum Dhalla, APP for State with
SI Ajay Singh, PS Paharganj.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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25.11.2019

CRL.M.A. 40474/2019

1. Allowed, subject to all just exceptions.

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2. The petitioner has filed the present petition, *inter alia*, seeking bail in connection with FIR No.0386/2016 under Sections 363/376D/328/120B/506 of the IPC read with Sections 6/8/17 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

3. The said FIR was registered at the instance of the prosecutrix. She had alleged that she had received a telephone call at about 3:00 AM on 03.11.2016 from one Kamran. He had called her outside her house. She had

stated that on his repeated insistence, she went out of her house and when she reached Himmatgarh crossing, some people had forcibly taken her to a hotel – Hotel King Castle, Paharganj. She named the said persons to be Rajesh, Vinit and Kamran. She had alleged that at the hotel they had mixed something in the cold drink offered to her that resulted in her losing her consciousness. She stated that she subsequently saw the petitioner, one Ahmed, Saad and Rehan and one more boy in the room. She stated that she was in a semi-conscious state and could not manage herself. She alleged that, thereafter, the petitioner took her on the bed and committed *galat kaam* (sexual assault). She also alleged that Rehan had touched her private parts and she had shouted. She alleged that, thereafter, Saad removed the blanket. She was nude and the other boy who was not known to her, made a video. She stated that, thereafter, nobody else was in the room except Saad and the petitioner. Subsequently, they had called Kamran and Ahmad, who took her out of hotel in a semi-conscious state. She stated that she woke up about 1:00 PM and found herself in the flat of Kamran. He subsequently dropped her home. She had narrated the incident to her mother who then took her to the police station.

4. It is alleged that the forensic evidence establishes the crime committed by the petitioner, as it is stated that the samples obtained from the body of the prosecutrix matches with the DNA in the samples drawn from the petitioner.

5. The prosecutrix was examined on 13.09.2019 and she did not identify the petitioner as the person who had committed the crime. The petitioner was again produced before the prosecutrix on 10.09.2018 and she did not

identify him.

6. At this stage, it is not necessary to examine the evidence in any further detail as the entire evidence is yet to be recorded.

7. The testimony of the prosecutrix has been recorded and her examination has been deferred only for awaiting the mobile phone.

8. It is stated that other witnesses that are required to be examined are, the medical witnesses, official witnesses and experts from FSL. The public witnesses and material witnesses have already been examined.

9. The petitioner has been in custody for over three years and it is obvious that the trial is likely to take some time.

10. Considering the above, this Court considers it apposite to allow the present application.

11. In view of the above, the petitioner is released on bail on furnishing a Bail Bond in the sum of ₹50,000/- with two sureties of an equivalent amount to the satisfaction of the trial court. The petitioner shall also report to the local police station, PS Paharganj on every 2nd and 4th Monday of the month at 10:30 AM. The petitioner shall not leave the National Capital Territory of Delhi and ensure that he is available to attend the hearings in the trial court.

12. The petition is disposed of.

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

VIBHU BAKHRU, J

NOVEMBER 25, 2019/ MK