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

+ **BAIL APPLN. 2652/2019**

BADAL

..... Petitioner

Through Ms Vagisha Kochhar, Advocate.

versus

STATE

..... Respondent

Through Ms Meenakshi Chauhan, APP for State.
SI Rajeshwar, P.S. Palam Village.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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14.11.2019

CRL.M.A. 38683/2019

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

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3. The petitioner has filed the present petition, *inter alia*, seeking bail in connection with FIR No. 117/2019 under Section 8 of The Protection of Children from Sexual Offences Act, 2012; Section 354 of the IPC and Section 66 of the Information Technology Act, 2000 registered with PS Palam Village.
4. The said FIR was registered on 13.03.2019 at the instance of the prosecutrix (a minor aged 16 years). The FIR relates to an incident that had occurred sometime between April, 2018 and May, 2018. The exact date of

the incident had not been reported by the prosecutrix in the said FIR.

5. The prosecutrix had stated that on the date of the incident, she along with her cousin (Ms. M) and three of her friends – Lucky, Badal (the appellant) and one Atul – planned to visit a lounge (1011 Lounge). The petitioner was picked up by Lucky whereas the appellant and Atul were already present at the said lounge. The FIR indicates that the said lounge was a *Hooka* Lounge. After some time, the prosecutrix along with Lucky and the appellant decided to visit a club in the District Centre, Janak Puri. At that stage, the prosecutrix's cousin (M) and their friend Atul went back home. It is stated that this was sometime in the afternoon.

6. The prosecutrix had alleged that she along with Lucky and the appellant reached the Club situated in District Centre, Janakpuri, however, the person standing at the entry gate (referred to as Bouncer) had demanded an Identity Card to establish that the prosecutrix was above eighteen years of age. At the material time, the prosecutrix was only fifteen years of age and therefore, did not have the requisite Identity Card. Nonetheless, she gained entry into the club at the instance of her friend (Ms S), who was also present at the said club, on payment of ₹200/- which was paid by her. She had alleged that she met some more friends inside the said club, who then forced her to have a few drinks. She also alleged that she was given a cold drink, which was laced with intoxicants. She stated that as she consumed liquor for the first time, this resulted in her getting intoxicated (described as a hangover). She states that she kept on dancing with her friends and this was not liked by her friend Lucky, who became jealous.

7. It is relevant to note that according to the prosecutrix, she had gained entry into the Club situated at the District Centre, Janakpuri at the instance

of her friend (Ms S) and not the appellant or the co accused (Lucky). She had also consumed alcohol at the instance of her friends (other than the appellant and Lucky). Perusal of the said FIR indicates that the petitioner was friendly with Lucky. It also appears from the facts that she had stopped talking to Lucky on becoming aware that he was in a relationship with her cousin.

8. According to the prosecutrix, they were evicted from the District Centre, Janakpuri since the bouncers had found the prosecutrix in an inebriated condition. She alleges that since she was in an inebriated condition, she was persuaded not to go home and to freshen up. It is for the same reason that the prosecutrix, the appellant and Lucky went to MSK Hotel. She alleges that after bringing her into a room, Lucky had left the said hotel to procure something to eat. She stated that she went into the washroom to take a shower, however, could not operate the same. At this stage, she invited the appellant to help her to operate the same. The appellant, apparently, turned on the shower. It is alleged that at this stage, he made an indecent gesture by insisting that he also take shower with her. The prosecutrix objected to the same and the appellant exited the washroom. She also alleged that after she had showered, the appellant had tried to kiss her forcibly but she had pushed him away and reprimanded him. He had then apologised on being threatened by the prosecutrix that she would inform Lucky about his misbehaviour.

9. The prosecutrix had alleged that Lucky had come back to the hotel room with a bottle of rum. She states that on the insistence of the appellant, she was forced to drink a little more alcohol mixed with a cold drink. She states that, thereafter, she started feeling intoxicated and dizzy. She laid

down on the bed. She alleged that at this stage, Lucky started kissing her and also removed her clothing; he kissed her breast and tried to have sex with her. She was not in a condition to resist him but nonetheless she resisted and thereafter, she started crying. She states that Lucky placated her and assured her that he would not do anything.

10. She states that thereafter, they left the hotel room and went shopping to purchase a top, so as to act as an excuse to her mother. She was then dropped by Lucky near her residence.

11. It is seen that the principal allegations are against Lucky.

12. The prosecutrix alleges that thereafter, she became aware from her friends that an MMS had been prepared and Lucky had shown the same to various persons. This had prompted the prosecutrix to file the said FIR.

13. It is also stated in one of her statements (although not in the FIR) that the said MMS was prepared by the appellant using Lucky's phone.

14. It is stated that a charge sheet has been filed and charges are yet to be framed.

15. Ms Chauhan, learned APP has opposed the present application on the ground that the charges levelled against the appellant are serious and he resides in the same locality. She submitted that if the appellant is released on bail, it would prejudice the trial as the statement of the prosecutrix is yet to be recorded.

16. Undoubtedly, the allegations against the petitioner are serious, however, there are certain facts which are required to be noted. The FIR in this case was lodged after several months of the incident. The principal allegation made in the initial stage are against Lucky, the co-accused. He had initiated sex with her, taking advantage of her inebriated condition.

17. It is also relevant to mention that the appellant was only nineteen years of age at the material time. The appellant has already been in custody since 02.04.2019.

18. In the given circumstances of this case and considering that the investigation is already over, this Court considers it apposite to grant bail to the appellant on his furnishing a personal bond in the sum of ₹25,000/- with two sureties of the equivalent to the satisfaction of the concerned trial court. This is also subject to further condition that the petitioner shall not reside or visit the locality in which the prosecutrix resides. Since her residence is stated to be in the same locality as that of the petitioner, he would make arrangements for his residence at another locality prior to his release. In order to avoid any incidental contact with the prosecutrix, the appellant shall shift his residence to any area other than South/South West, Delhi. The appellant shall not try and contact the prosecutrix or any of the witnesses either directly or indirectly. He shall ensure that his contact details are provided to the trial court and he is reachable at all times.

19. The application is allowed in the aforesaid terms.

20. Order *dasti* under the signature of Court Master.

VIBHU BAKHRU, J

NOVEMBER 14, 2019

pkv