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

+ **BAIL APPLN. 983/2019**

AJIT SINGH GULATI

..... Petitioner

Through Mr.Rakesh Malhotra, Adv. with
Mr.Bharat Malhotra & mr.Siddhant
Rai Sethi, Advs.

versus

STATE

..... Respondent

Through Mr.Panna Lal Sharma, APP for State.
SI Babita PS Rajouri Garden.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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23.08.2019

Vide the present application, the petitioner seeks bail in pursuance to FIR No.869/2016 dated 11.11.2016 registered at police station Rajouri Garden for the offence punishable under sections 376 and section 3(w)(i) and 3 (2)(v) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989.

Learned counsel appearing on behalf of the petitioner submits that initially a case was registered against the petitioner under POCSO Act in addition to the sections mentioned above. Thereafter, charges under POCSO Act have been quashed by this court vide order dated 08.08.2018 in CrI.Rev.P.195/2018.

He further submits that the petitioner and his wife were made accused. The wife of the petitioner was released on anticipatory bail by this court on

15.05.2017 in Bail Appln.No.340/2017.

Counsel for the petitioner further submits that the petitioner was taken into custody on 15.03.2017 and he continued in the judicial custody till he was released on interim bail for 10 days vide order dated 10.06.2019 which was extended time to time and finally on 20.07.2019, the petitioner surrendered before the concerned jail and since then, he is in jail.

Counsel for the petitioner submits that the petitioner is in judicial custody from about 2 years for the alleged incident occurred on 12.08.2016 but the FIR was registered on 11.11.2016. Thus, there is delay in lodging the FIR.

To strengthen his argument on the issue of delay in lodging of FIR, counsel for the petitioner has relied upon the case of *State of Andhra Pradesh vs. M. Madhusudhan Rao* arising out of *SLP(Crl.) No.3426/2007* and the Hon'ble Supreme Court has held that delay in lodging the FIR, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. Further observed that a delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of coloured version, exaggerated account of the incident or a concocted story as a result of deliberations and consultations also creeps in, casting a serious doubt on its veracity. Therefore, it is essential that the delay in lodging the report should be satisfactorily explained.

Learned counsel further submits that the prosecutrix had given different statements under section 161 and 164 of Cr.P.C. In one statement under section 161 Cr.P.C, the prosecutrix claimed that both petitioner and petitioner's wife took prosecutrix to the terrace and threw from there and while doing so, petitioner held legs and petitioner's wife held the shoulders.

However, in the statement under section 164 Cr.P.C., the prosecutrix was not aware of the name of the petitioner. And also, stated that petitioner committed rape, thereafter, wife of the petitioner came after an hour and pushed her from the terrace.

On the other hand, learned APP for State submits that wife of the petitioner has been released on anticipatory bail on the ground that allegations against the wife of the petitioner were that she threw the prosecutrix from terrace whereas allegation against the petitioner is that he committed rape upon the prosecutrix. Thus, the present application may be dismissed.

Without commenting upon the merit of the case, undisputed facts are that the petitioner was arrested on 15.03.2017 and remained in the judicial custody till 10.06.2019 when 10 days interim protection was granted and the same was extended for 5 days vide order dated 28.06.2019 and thereafter two weeks time was granted vide order dated 04.07.2019. Finally, the petitioner surrendered before the concerned jail on 20.07.2019 and since then he is in judicial custody.

Keeping in view the period the petitioner remained in judicial custody and the fact that the trial will take substantial time, therefore, this court is inclined to grant bail to the petitioner.

Accordingly, the petitioner shall be released on bail on his furnishing bond in the sum of ₹25,000/- with one surety of the like amount to the satisfaction of the Trial Court till the trial is completed.

The petitioner shall not involve himself in any other case and in the event of any report against him, this Court would consider the desirability of cancelling the suspension of sentence. The petitioner shall also ensure his

presence at the time of hearing of the petition. The petitioner shall not influenced any witness in any manner.

The application stands disposed of.

Order *dasti*.

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

SURESH KUMAR KAIT, J

AUGUST 23, 2019

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