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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 1526/2019

AFROZ

..... Petitioner

Through Mr. Rajiv Khosla, Ms. Apurva Khosla
and Mr. Sunil Singh, Advs.

versus

STATE

..... Respondent

Through Ms. Kusum Dhalla, APP for State
with SI Ajay Singh, PS Pahar Ganj.

+ ✓ BAIL APPLN. 1530/2019

JAKIR @ KALWA

..... Petitioner

Through Mr. Rajiv Khosla, Ms. Apurva Khosla
and Mr. Sunil Singh, Advs.

versus

STATE

..... Respondent

Through Ms. Kusum Dhalla, APP for State
with SI Ajay Singh, PS Pahar Ganj.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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02.07.2019

CrI.M.A.12612/2019 (Exemption) in BAIL APPLN. 1526/2019

CrI.M. A.12616/2019 (Exemption) in BAIL APPLN. 1530/2019

1. Allowed, subject to all just exceptions.
2. Applications stand disposed of.

BAIL APPLN. 1526/2019 & BAIL APPLN. 1530/2019

1. The Bail Application 1526/2019 has been filed on behalf of Afroz under Section 439 Cr.PC seeking regular bail in FIR No.75/2019, registered

BAIL APPLN. 1526/2019 & connected matter

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under Sections 376D/506 IPC and Section 6 of POCSO Act, Police Station Paharganj, while the Bail Application 1530/2019 has been filed on behalf of Jakir @ Kalwa seeking anticipatory bail in the same FIR.

2. Since arguments in both the bail applications have been heard together, they are being disposed of by a common order.

3. Mr. Rajiv Khosla, learned counsel for the petitioners while arguing for Afroz submits that Afroz is in custody since 25.03.2019; he has been falsely implicated in the present case; he and the prosecutrix were not known to each other. He reiterates that at no point of time Afroz ever met the prosecutrix. He further submits that as per the allegations made in the FIR, the prosecutrix stated that the first incident of rape occurred in September, 2018 and thereafter on 28.02.2019, however, the FIR was registered only on 16.03.2019, the FIR is silent about the time as well as details or the place where the alleged incident took place; as per the call details record (CDR) filed along with the charge-sheet, the location of Afroz and the prosecutrix are at different places on 28.02.2019; the prosecutrix has refused her internal medical examination and the prosecutrix could not identify the hotel in Paharganj. He further submits that along with the charge-sheet, the police had filed three unsigned letters recovered from the bag of the prosecutrix, out of which two letters neither mention about the first incident of Paharganj nor do they mention the name of Jakir @ Kalwa. He also submits that there are contradictions in the various statements of the prosecutrix. It has also been argued that on 27/28.02.2019, Afroz was on leave attending the walima ceremony, which fact stands verified.

4. Per contra, Ms.Kusum Dhalla, learned APP for the State has vehemently opposed the bail application. She has invited the attention of the Court to the order dated 03.06.2019 passed by the Coordinate Bench of this Court wherein the earlier bail application filed on behalf of Afroz was withdrawn on account of the fact that the charge-sheet has been filed and the matter was fixed before the Trial Court on 27.07.2019 for consideration on the point of charge. On merits, she has stated that even in all the three aforementioned letters as well as in the statements recorded during the investigation, the prosecutrix has consistently stated about the incident of rape committed upon her by Afroz. The prosecutrix also mentioned the name of Jakir @ Kalwa in one of the letters and in her statements recorded during the investigation.

5. I have gone through the bail application as well as the case file produced by the IO.

6. As per the status report, the prosecutrix's date of birth has been verified from the school records, as per which her date of birth is 15.09.2001. She was a minor, aged about 17 years and a student of 10th class when the first incident of rape took place in September, 2018. As per the FIR as well as statement of the prosecutrix recorded under Section 164 Cr.PC, when the prosecutrix initially met Afroz, he provided her with his phone number. In September, 2018, Afroz called the prosecutrix and took her to a hotel in Paharganj where he committed rape upon the prosecutrix against her will. Thereafter, on 28.02.2019, she was called by Afroz to Noida, Sector-62 where after drinking the water given by him, she fell unconscious and when she regained her

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consciousness, she found herself in a room without any clothes on her body. She was told by Afroz and Jakir @ Kalwa that both of them have made physical relations with her and also showed her video in which she was shown without any clothes. Both the petitioners committed rape upon her and also gave her life threats. In all of her statements, the prosecutrix is consistent about the incident of rape committed upon her by Afroz. In one of the letters as well as in the statement recorded during the course of investigation, she is consistent about the role of Jakir @ Kalwa.

7. The whole premise of the argument advanced by the learned counsel for the petitioner was that Afroz was never known to the prosecutrix. He has reiterated during his submissions that Afroz never met the prosecutrix. However, as per the status report, during the investigation the CDR details were collected and analysed, which show that eight calls were made by the prosecutrix from her phone to the petitioner's phone from 05.02.2019 to 09.02.2019. These calls were not made in one day but were rather of various durations and spread over a period of five days, thus raising an inference, although *prima facie*, that the petitioner was known to the prosecutrix.

8. So far as Jakir @ Kalwa is concerned, although there are no calls exchanged between the prosecutrix and him, however, the prosecutrix has consistently taken his name along with Afroz in regard to second incident of rape. Jakir @ Kalwa has not joined the investigation till date and when the first charge-sheet filed, it was mentioned that since Jakir is not traceable, supplementary charge-sheet against him, will be filed later.

9. In the totality of the facts and circumstances of the case and especially

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in view of the fact that the prosecutrix, a minor, is yet to be examined in the Court, this Court is not inclined to entertain the present bail applications, at this stage, and the same are accordingly dismissed.

10. Needless to say that the above conclusions are based only on the prima facie view of the matter and the same be not treated as an expression of opinion on the merits of the case.



MANOJ KUMAR OHRI, J

JULY 02, 2019
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