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

+ **BAIL APPLN. 2689/2019**

HAMMAD NASEER

..... Petitioner

Through: Mr.Shakir Shabir, Adv. with
Mr.Tushar Gupta & Mr.Ibad
Mushtaq, Advs.

versus

STATE

..... Respondent

Through: Mr.Hirein Sharma, APP for State.
SI Narender Singh PS Jamia Nagar.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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23.10.2019

Crl. M.A. 39060/2019

Allowed, subject to all just exceptions.

Application is disposed of.

BAIL APPLN. 2689/2019

Vide the present application, the petitioner seeks bail in pursuance to FIR No.311/2017 registered at Police Station – Jamia Nagar, District South-East Delhi.

It is stated in the present petition that the prosecutrix lodged a false and frivolous complaint on 17.04.2017 against the applicant alleging harassment, which culminated into the FIR No.311/2017, based on unfounded and baseless allegations and the same was registered in aid and connivance of one Ms.Sonia for extorting money from the applicant by

implicating him into false and fabricated case. On 25.04.2017, the Statement of the prosecutrix u/s 164 Cr.P.C. was recorded before the Ld. MM (Mahila Court) Courts in which she changed the nature of her allegations and disclosed her age to be 18 years and further deposed that she knows the applicant from past five years and were friends. She further deposed that she has been subjected to sexual assault repeatedly over the last five years by the applicant. On 25.04.2017, Medical examination of the prosecutrix was conducted in AIIMS, New Delhi vide MLC No. 3602 of 2017, that was inconclusive in nature, as the prosecutrix disclosed that she was allegedly subjected to sexual encounter 3 months ago. On 28.04.2017, the Statement of the mother of the prosecutrix was recorded u/s 161 Cr.P.C. wherein she deposed that she was informed only on 18.04.2017 by her daughter, after intimating the police by dialling 100 number, that the applicant used to harass her.

Counsel for the petitioner submits that on 16.06.2017, notice u/s 91 Cr.P.C. was served to the mother of the prosecutrix to produce documents to establish the age of prosecutrix. The prosecutrix got married on 10.12.2017. On 03.05.2018, statement of the mother of the prosecutrix was again recorded u/s 161 wherein she deposed that her daughter is illiterate and she has not got made any documents establishing the age of her daughter and she cannot tell the exact age of her daughter.

He further submitted that the applicant moved an application before the learned Sessions Court to conduct the bone ossification/Age estimation test of the prosecutrix and the same was allowed vide order dated 16.05.2018 and in furtherance of the said order, prosecutrix was taken to Safdarjung Hospital on 23.05.2018 to conduct the bone-ossification test,

however, it was informed that the same cannot be conducted as the prosecutrix was five months pregnant from her marriage.

Learned APP appearing on behalf of the State has strongly opposed the present application and submitted that the prosecutrix was under the age of 18 years, thus, she is minor and therefore, her consent of sexual intercourse is immaterial. Initially, the petitioner avoided the arrest and pursuant to the directions passed by the learned Sessions Court, he was arrested on 05.04.2019 and since then, he is in judicial custody.

The fact remains that in the FIR, allegations against the petitioner were of harassment whereas she admitted in 164 Cr.P.C. that they are friends from the last 5 years and she at times visited the house of the applicant and had intercourse. However, from the date of the incident mentioned in the complaint, she stated that the petitioner caught her hand and she slapped him and thereafter informed the police.

Without commenting on the merits of the prosecution case, this Court is of the considered view that the present case is fit for bail.

Accordingly, he shall be released on bail on his furnishing a personal bond in the sum of Rs.15,000/- with one surety of the like amount to the satisfaction of the Trial Court.

The petitioner shall cooperate with the investigation and make himself available for interrogation by police officer, as and when required.

In case of default of aforementioned conditions, the State is at liberty to take appropriate recourse in accordance with law.

Before parting with the order, it is relevant to mention that nothing contained in this order shall be construed as an expression on the merits of the case.

Application stands disposed of.

Order *dasti* under signatures of the Court Master.

SURESH KUMAR KAIT, J

OCTOBER 23, 2019

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