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

+ **BAIL APPLN. 3227/2019 & CRL.M.(BAIL) 2279/2019**

DANISH & ORS.

..... Petitioners

Through: Ms. Ashima Mandla, Adv. with Ms.
Aditi Gupta, Adv.

versus

STATE

..... Respondent

Through: Ms. Meenakshi Dahiya, APP for State
with SI Vijay Kumar, PS Sadar
Bazar.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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16.01.2020

The prosecutrix is present in terms of practice directions dated 24.09.2019 bearing No.67/Rules/DHC of this Court.

The FIR in the instant case bearing No.191/2019, PS Sadar Bazar is one registered under Sections 376/354/506 of the Indian Penal Code, 1860 and Sections 4/12 of the POCSO Act, 2012. It is sought to be submitted on behalf of the applicants that the FIR has been lodged with much delay with allegations levelled therein in relation to the alleged commission of the offence between the years 2008 to 2014.

It has *inter alia* been sought to be submitted on behalf of the applicants that the allegations in relation to the alleged commission of the offence punishable under Section 376 of the Indian Penal Code, 1860, against the applicant nos.1 & 2 during the period of the alleged commission of the offences would not fall within the parameters of

the present prescription qua the offence punishable under Section 376 of the Indian Penal Code, 1860. It has further been submitted on behalf of the applicants that the present FIR is an aftermath to another FIR bearing No.180/2019 registered on 17.09.2019 lodged on the complaint of one Ms. Swaleha seeking action under Section 4 of the Muslim Women (Protection of Rights of Marriage) Ordinance, 2018 against her spouse who had given her triple talaq and in as much as the applicants herein are real brothers of the said complainant Ms. Swaleha and that the accused arrayed in the FIR No.180/2019 i.e. the erstwhile spouse of Ms. Swaleha is now the present spouse of the complainant of the instant case, all allegations levelled against the applicants are false and fabricated. It has further been submitted on behalf of the applicants that the applicants have all duly joined the investigation of the case and are no longer required for any further incarceration.

On behalf of the State, the prayers have been vehemently opposed submitting to the effect that the averments made in the FIR are corroborated through the statement under Section 164 of the Cr.PC, 1973 of the prosecutrix and that the allegations levelled against the applicants are grave.

Without any observations on the merits or demerits of the case, taking into account also the proceedings dated 27.12.2019 and the categorical explanation put forth through the statement under Section 164 of the Cr.PC, 1973 of the prosecutrix as well as averments in the FIR which indicate that she had been prevented from making her complaint by her grand-mother explains prima facie the delay in the

registration of the FIR in relation to the gross commission of offences of mental depravity against a minor child.

In the circumstances, there is no ground for grant of bail to the applicant nos.1 & 2 Mr. Danish and Mr. Shoaib whatsoever and their prayers are thus declined.

As regards the applicant no.3 Mr. Misbahuddin, on a perusal of the averments made in the FIR as well as the statement under Section 164 of the Cr.PC, 1973 of the prosecutrix and the status report submitted by the State dated 13.01.2020 under signatures of the SHO, PS Sadar Bazar wherein it has categorically been stated to the effect that the prosecutrix herein had allegedly narrated the entire incident to her elder maternal uncle i.e. the applicant no.3 herein but he did nothing or rather on the contrary threatened her with it having been reported by the I.O. in reply to a specific Court query now, that there are no previous adverse antecedents against the applicant no.3, in view thereof, the applicant no.3 Mr. Misbahuddin is allowed to be released on bail on filing a bail bond of Rs.50,000/- with one surety of the like amount to the satisfaction of the learned trial Court with directions that he shall not leave the country and shall not tamper with the evidence.

The bail application is disposed of.

Copy of the order be given Dasti under the signatures of the Court Master, as prayed.

ANU MALHOTRA, J

JANUARY 16, 2020

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