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

+ **BAIL APPLN. 2704/2019**

DHARM DASS

..... Petitioner

Through: Mr. Suyash Sinha, Advocate

versus

STATE

..... Respondent

Through: Mr. Amit Chadha, APP with SI
Nitesh Sharma, P.S. Fatehpur Beri.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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30.01.2020

Present application is preferred under Section 439 of the Code of Criminal Procedure seeking regular bail in FIR No. 205/2017 dated 05.05.2017 registered at Police Station Fatehpur Beri under Section 363 of Indian Penal Code and thereafter added Sections 366/328/376 and Section 6 of POCSO Act.

As stated in the present petition that the prosecutrix in her statement recorded under Section 164 Cr.P.C. on 12.05.2017 has categorically stated that she herself insisted petitioner to accompany her on a vacation and petitioner never committed any wrong act with her during the entire trip. She further deposed that she had sought her mother's permission to go on the said trip. Accordingly, subsequent to a thorough investigation a closure report was previously filed against the present petitioner.

Learned counsel for petitioner submits that, it was only after a period

of 1 year and 2 months prosecutrix took a completely contrary stand from her previous statement and levelled false allegations against petitioner in her second statement recorded under Section 164 Cr.P.C. on 10.07.2018.

He further submits that, there is absolutely no medical or ocular evidence against petitioner besides the second statement of prosecutrix recorded under Section 164 Cr.P.C. which is clearly concocted and introduced as an afterthought by the prosecutrix under the influence of her parents.

Learned APP appearing for the State has opposed the present application and submits that on 05.05.2017 father of the prosecutrix lodged the complaint in Police Station Fatehpur Beri that his daughter, prosecutrix herein, had left for school in the morning and has not returned back. He further alleged that he suspects that the present petitioner had taken her somewhere. Based on said complaint FIR No. 205/2017 was registered against petitioner under Section 363 IPC. However, on 11.05.2017, prosecutrix and her father came to Police Station Fatehpur Beri and informed the Investigating Officer that prosecutrix had gone out of station with petitioner out of her own free will and no untoward incident occurred with her during the entire period that she was with petitioner. On 12.05.2017 the statement of prosecutrix was recorded under Section 164 Cr.P.C. wherein she categorically stated that it was she herself who insisted petitioner on numerous occasions to take her on a vacation and only then petitioner accompanied her to Dehradun, Mussorie, Saharanpur and Haridwar. She further clarified that her mother had asked her to go with petitioner and no untoward incident ever happened with her during the entire trip.

The prosecutrix was also sent to AIIMS for getting her medical examination conducted. However, prosecutrix refused to get her internal examination conducted and gave such refusal in writing over her MLC.

Learned APP has fairly conceded that in the absence of any incriminating material against the petitioner and after thorough investigation a closure report was filed in the present case. Thereafter, second statement of prosecutrix was recorded under Section 164 Cr.P.C. on 10.07.2018 whereby it is stated that earlier statement of the prosecutrix was out of pressure from her parents and in the second statement she made allegation of rape against petitioner.

In view of the facts and circumstances recorded above, however, without commenting on merits of the case, and in view of the fact that charge is yet to be framed and the trial shall take sufficient time and the petitioner is in jail since 04.11.2018, I hereby grant bail to the petitioner. Accordingly, he shall be released on bail on his furnishing personal bond in the sum of ₹25,000/- with two sureties of the like amount to the satisfaction of the Trial Court.

The application is allowed and disposed of.

Order *dasti* under the signatures of Court Master.

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

SURESH KUMAR KAIT, J

JANUARY 30, 2020

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