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

+ **BAIL APPLN. 2995/2019**

NIRANJAN SINGH Petitioner
Through **Mr. V. K. Jain, Adv.**

versus

GOVT OF NCT OF DELHI Respondent
Through **Mr.Amit Chadha, APP for State.**
SI Prateek Sharma, PS Jaitpur.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

% 13.02.2020

The present petition is filed under section 439 Cr.P.C. for grant of bail in pursuance to FIR No.647/2018 registered at Police Station Jaitpur for the offences punishable under section 376/506 IPC now SC No.12/2019 pending before learned ASJ , South East District, Saket Courts, New Delhi.

As per the allegations made in the complaint which culminated into FIR, the prosecutrix and petitioner met during '*Parikarma*' at Goverdhanji, Mathura and he took her mobile number. He was calling her on regular intervals. He told her that his '*jija*' (brother in law) is a College Principal and can get her a job. On 20.10.2018, petitioner called her and asked her to come to '*Khadda Colony*', Delhi. On the morning of 21.10.2018, she spoke to him and petitioner told her address of the said colony. She reached by tempo and called him, following which he met her at the location of a '*ganda nala*' (drain) and took her to a house.

It is further alleged that petitioner had promised prosecutrix that he would help her in getting a job. He had also asked her to provide her Aadhar Card so that he could arrange her 10th class passing certificate.

However, petitioner stuffed her mouth and threw her on a bed. He used force and assaulted her. He removed all her clothes and committed raped on her. When she told him that she would tell everyone about the incident, the petitioner threatened to kill her after which she quietly came out of the house. Prosecutrix borrowed mobile phone from a passersby on the road to call the PCR on number 100.

It is not in dispute that the prosecutrix was medically examined on the same day, i.e. 21.10.2018 at AIIMS and the report indicated no external injury marks.

Counsel for the petitioner submits that since there were no injury marks, the theory of forced rape stands defeated. Petitioner was arrested by the police from the place of alleged incidence on same day at around 3.30PM and was taken to police station. Since then, he is in judicial custody.

Learned counsel further submits that FIR was registered on 21.10.2018 and petitioner was shown arrested, however, as per DD entry no.34A of even date, she called on number 100 from mobile number 9891259944. This was never investigated, which gains significance since the call to PCR (100) is Toll free and prosecutrix theory of her mobile having no balance and hence could not use her mobile to call on number 100 also stands defeated. The incident is alleged to have taken place at 14:30 hours and DD entry of PCR call at PS Jaitpur is at 14:50 hours. Hence, the events which happened in these 29 minutes are not explained.

It is also submitted that prosecutrix was trying to hand over her Aadhar Card to petitioner to get 10th class pass certificate. Petitioner stuffed prosecutrix's mouth and pushed and assaulted her and removed her clothes. However, there is no injury mark either on the body or on the private parts of the prosecutrix. Moreover, even if it is presumed that sexual intercourse had taken place, it was consensual and she herself approached the petitioner to get her 10th class passing certificate.

Fact remains that immediately after alleged incident, she called PCR through mobile mentioned above of a passersby and thereafter petitioner was arrested from the spot itself.

Moreover, semen found on the underwear (Ex.17a) is similar with DNA profile generated from the source of Ex.18 which is blood sample of accused herein. Thus, it is established that there was sexual assault on the prosecutrix.

In view of above, I am not inclined to grant bail, the same is dismissed.

SURESH KUMAR KAIT, J

FEBRUARY 13, 2020
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