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

+ **BAIL APPLN. 115/2020**

PAWAN KUMAR

..... Petitioner

Through **Mr.R.K.Tarun, Adv.**

versus

THE STATE

..... Respondent

Through **Mr.Amit Chadha, APP for State with
SI Satyender Gulia, PS Mehrauli**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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13.02.2020

The present petition has been filed under Section 439 Cr.P.C. in CC No. 2877/2019 arising out of FIR No. 675/2018, registered for offences punishable under Sections 354/354-D/507/509 IPC read with Sections 67/67-A of the Information Technology Act, 2000 at PS Mehrauli, Delhi.

The present petition has been filed on the ground that prosecutrix has already been examined by Trial Court and a bare perusal of examination-in-chief of prosecutrix, fails to connect petitioner with offence punishable under Section 354 IPC. All other sections invoked against petitioner are bailable offences. No CCTV footage has been obtained by Investigating Agency as place of alleged incident was at Saket Metro Station, which makes it clear that said provision has been added only for the purpose of adding a non-bailable offence in the FIR against petitioner.

Learned counsel for petitioner submits that Trial Court has failed to comply with mandatory provisions of Section 437 (6) Cr.P.C. as the first date fixed for the purpose of evidence was 21.08.2019, which was deferred several times and more specifically on 19.09.2019, 03.10.2019, 05.11.2019, 03.12.2019, 17.12.2019, 06.01.2020 and 03.02.2020. Hence, it is evident that evidence is not likely to be concluded in near future.

It is further submitted that there is nothing to connect petitioner with alleged offence as mobile number which was allegedly used towards sending of the alleged obscene messages to prosecutrix, was allotted to petitioner only on 25.03.2019, as per CAP details rendered by telecom Company, whereas alleged messages were sent to prosecutrix in month of September 2018, thereby showing that petitioner is not connected with alleged offence.

Further, with regard to offence under Section 67-A of IT Act, as there is nothing to show any dissemination whatsoever, of any morphed photograph of prosecutrix, to anybody from the phone of petitioner, which was allegedly seized by concerned police officials, thereby showing that petitioner is not connected with the alleged offence.

It is further submitted that photograph and obscene messages are also part of charge-sheet. No prudent person will send vulgar messages of her own sister to anyone but in present case, it is on record that petitioner sent vulgar messages about her sister to prosecutrix.

Moreover, the SIM which was recovered by Investigating Agency was purchased by petitioner on 25.3.2019, whereas messages are of year 2018.

However, without commenting upon merits of case, I am of the view

that the present case is fit for bail. Petitioner is in custody since 11.4.2019. Therefore, petitioner shall be released on bail on his furnishing a personal bond in sum of ₹15,000/- with one surety of the like amount to the satisfaction of the Trial Court.

Before parting with order, it is relevant to mention that nothing contained in this order shall be construed as an expression on the merits of case. Trial Court shall not get influenced by the observations made by this Court, while passing final orders in the trial.

The present bail application is allowed and disposed of.

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

Order *dasti* under the signatures of Court Master.

SURESH KUMAR KAIT, J

FEBRUARY 13, 2020/rk