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

+ **BAIL APPLN. 663/2019**

AMIT SHAH

..... Petitioner

Through Mr.Randhir Kumar, Adv. with
Ms.Amrita Chatterjee, Mr.Deepak
Negi, Mr.Nazir Ahmed & Mr.Prince
Sharma, Advs.

versus

STATE

..... Respondent

Through Mr. Amit Chadha, APP for State.
SI Lokesh Singh PS S P Badli.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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14.02.2020

The present petition is filed under section 439 Cr.P.C. for seeking regular bail on behalf of petitioner in pursuance to FIR No.810/2018 registered at Police Station Samaipur Badli District Rohini, Delhi.

Counsel appearing on behalf of petitioner submits that initially said FIR was registered under section 363 IPC and thereafter further sections were added after recording of statement of prosecutrix, whereby victim has stated as under:

“..... when I was the student of class IX, I am taking tuition by a neighbour Amit and after three month he started to press my body from the different angle. He touched my private urinal part and fingered up. One day in the morning, Amit at 10 O clock called me at his house

and by forced he raped me. I opposed for this act but he raped me. This incident that is happened on 26.02.2016, after that he repeatedly called me there at his clinic and by forced repeatedly raped me. prior to this he teaching me then he fucked me. He, from that time started to rape me every day and threatened me. That in class IX examination I become failed and started to continue my study from open. I continued my tuition by Amit. I said to Amit, that I am going to narrate my mother for this your act and in reply he said "no one believe on your point and said, due to no longer interested to continue my study I am falsely alleging on Amit". He continued for this act raping me. that on 15.10.2018, he said offered me to come to sleep at my house in night with my mother because my mother feel better in talking with you. Thereafter, without information to my parents in the night I went there to sleep at house of Amit and slept with her mother. On that day Amit went somewhere. My mother for searching me came to the house of Amit, when my mother asked me about this, I replied, I came with my free will at house of Amit to sleep in his house and no one forced me for this condition. Therefore, I returned back to my house with my mother. That in the morning I said to my mother, the examination of my class will be conduct after four month and please spare me for study and when I prepared to go for tuition to the house of Amit, my mother opposed me and papa also opposed in hard slapped me. when that time I went on roof and sleep. That in the evening Amit talked with me on mobile by support of other student and called me at park. I went to the park. When I left from my house, I said to my parents that, I am going for second call of nature. That after carried out to the part I met with Amit in Park then he carried me to the clinic and locked me at that place. He locked me in clinic there for 2 days, then he taken me at rented house in Raja Vihar, there he locked me one day. He teach me about this condition said when anybody asked about your stay, you pleased to say him for beating of my parents, is a

reason to I came here, therefore I spend three days on foot path. My parents doubt on Amit and due to fear Amit said to my parents about his daughter, she is under our possession. My parents father and mother went to register a case. Someone from my jhuggi came to the Raja Vihar to bring me together then I returned back to my house. Because I living with Amit so I narrated falsely to our parents that I spend 3 days at foot path but my mummy papa known about me. Amit beaten me with support of bamboo stick for the reason about I do not expose truth to my parents.....”

It is not in dispute that regarding age of the prosecutrix, defence has different versions and the provisions of POCSO Act are based upon date of birth of elder sister who was born on 10.01.2001, however, parents of prosecutrix stated in the cross examination that her elder sister was 5-7 years elder than the prosecutrix.

It is also not in dispute that petitioner is in judicial custody since 20.10.2018.

However, without commenting upon the merits of the prosecution case, which is the subject matter of trial, I am of the view that petitioner is entitled for bail. Therefore, the petitioner shall be released on bail on his furnishing personal bond in the sum of ₹25,000/- with one surety of the like amount to the satisfaction of the Trial Court.

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. The Trial Court shall not get influenced by the observations made by this Court, while passing the 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 the Trial Court concerned for compliance.

Order *dasti* under the signatures of Court Master.

SURESH KUMAR KAIT, J

FEBRUARY 14, 2020
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