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

+ BAIL APPL 750/2020

SHEHRAJ

..... Petitioner

Through: Mr. Lokesh Kumar Mishra, Advocate.

versus

STATE & ANR.

..... Respondents

Through: Dr. M.P. Singh, APP for State along
with IO SI Shivangi Katiyar
(M-7379861801), P.S. Jagatpuri,
Delhi.
Mr. Bajrang Vats, Advocate for the
complainant.

CORAM:

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
(VIA VIDEO CONFERENCING)**

ORDER

20.08.2020

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1. The present application has been filed on behalf of the petitioner seeking regular bail in FIR No.205/2019 registered under Sections 376-D/506/34 IPC and Sections 6/19 POCSO Act, at Police Station Jagatpuri, Delhi.
2. Learned Counsel for the petitioner submits that there is a huge delay of 7 years in lodging the FIR. He further submits that as per the allegations levelled in the FIR, the first incident occurred in the year 2012 when the present petitioner is stated to have committed rape upon her at the parental house of her step-mother, *Shaista* (co-accused). When she disclosed the said fact to her step-mother, who also happens to be the cousin of the present

petitioner, she was disbelieved. Again, one day when she was alone in the room, the petitioner along with his other brother, namely, *Shahbaz* committed rape upon her. The incidents were repeated upto 2015. In the year 2015, the father of the victim married the victim to the co-accused *Shahbaz* (brother of the petitioner). Learned Counsel submits that in her statement recorded under Section 164 Cr.P.C. and supplementary statement recorded under Section 161 Cr.P.C on 30.07.2019, the victim improved upon her case and stated for the first time that petitioner's father also committed rape upon her. He also submits that there is no corroboration of the allegations levelled by the victim since, at the time of her medical examination, she had refused her internal medical examination.

3. Learned counsel for the petitioner has placed reliance on the '*nikahnama*' wherein the age of the victim is shown as 21 years. Learned counsel for the petitioner has also referred to the GPA stated to be executed by the father of the petitioner in favour of the victim with respect to property bearing flat at third floor with roof/terrace, part of property bearing No.43, Gali No.10, situated at Brij Puri Extension, Parwana Road, Khajoori, Delhi-51. He has also referred to the complaint dated 20.06.2019 made by *Shaista* (co-accused) to the CAW Cell against her husband, i.e., father of the victim as well as the victim and other family members for the offence punishable under Section 498-A/406 IPC which was subsequently converted into a FIR. He, thus, submits that the present FIR which has been lodged after the filing of the aforesaid CAW Cell complaint is motivated and is filed only because of the above-mentioned property as well as the matrimonial dispute between the step-mother (co-accused) and father of the victim.

4. Learned counsel for the petitioner further submits that the co-accused,

namely, *Shahbaz*, who is similarly placed has already been released on regular bail by a Co-ordinate Bench of this Court vide order dated 27.02.2020 passed in Bail Application No.3043/2019. It is also submitted that the other co-accused, namely, *Shaista* has also been released on regular bail by the Trial Court. Lastly, it is submitted that the petitioner is in custody since 29.07.2019 and prays that the petitioner may also be granted regular bail in the present case.

5. Dr. M.P. Singh, learned APP for the State, duly assisted by Mr. Bajrang Vats, learned counsel for the complainant, has vehemently opposed the bail application. He submits that the victim was a minor at the time when the offence was first committed in the year 2012 which continued till the year 2015. It is also submitted that the victim has supported her allegations in her statement recorded under Section 164 Cr.P.C. On instructions, it is submitted that the incident was lastly committed in the year 2015.

6. I have heard the learned counsel for the petitioner as also the learned APP for the State, duly assisted by the learned counsel for the complainant and have perused the case records.

7. It is an admitted fact that the victim married the brother of the petitioner, namely, *Shahbaz* on 19.04.2015 and no further incident of rape had occurred after the year 2015. The FIR was lodged in the year 2019 after the CAW cell complaint lodged by the co-accused, *Shaista*. Further, the similarly placed co-accused have already been released on bail.

8. Looking into the totality of the facts and circumstances and the fact that the petitioner is in judicial custody since 29.07.2019, it is directed that the petitioner be released on bail, on his furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of

the concerned Jail Superintendent/concerned Court, subject to the following further conditions:-

- (i) The petitioner will not leave NCT of Delhi without prior permission of the concerned Court.
- (ii) The petitioner will not directly or indirectly get in touch with the complainant or any other prosecution witness and shall not try to tamper with the prosecution evidence.
- (iii) The petitioner will remain in touch with the IO SI Shivangi Katiyar on her mobile number: 7379861801 or SHO, P.S. Jagatpuri on his mobile number: 7011902856 on the first Monday of every month.
- (iv) The petitioner will remain available on his mobile number: 97703833110, which he undertakes to keep operational at all times during the period of trial.
- (v) In case of change of address or contact details, the petitioner will promptly bring the same to the notice of the concerned IO and the Court.
- (vi) The petitioner will regularly appear before the Trial Court.

9. The application stands disposed of accordingly.

10. Nothing contained herein shall be considered an expression on the merits of the case. The observations are only *prima facie* and made for the purpose of deciding the bail application.

11. A copy of this order be communicated to the concerned Jail Superintendent for information and necessary compliance.

MANOJ KUMAR OHRI, J

AUGUST 20, 2020

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