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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ Bail Appln. No. 1287/2020

RAHUL

..... Petitioner

Through: Mr. Mohammad Sajid, Advocate

versus

STATE OF NCT OF DELHI.

..... Respondent

Through: Mr.Ashok Kumar Garg, APP for
State with SI Ranjana
Mr.Sudhir Vats, Advocate for
complainant.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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14.07.2020

(hearing through Video Conferencing)

In terms of the order dated 9.7.2020, the status report has been submitted by the State as per which it has been found that DD No. 36B dated 14.10.2019 was made by the prosecutrix at Police Station Wazirabad alleging about intoxication, abduction and sexual assault on her by the applicant and that the matter was under inquiry at Police Station Wazirabad as the prosecutrix had changed her earlier version given on 20.9.2019 when she was traced from Bharuch when she had stated that at that time no sexual assault and molestation had happened with her. The status report has further indicated that pursuant to a complaint dated 31.10.2019 filed by the complainant under Section 156(3) of the Cr.P.C. and that the matter was already before the learned Trial Court, the status report was filed by the SHO concerned and vide order dated 21.1.2020 the learned Trial Court directed the registration of the FIR under appropriate Sections and thereafter

case FIR No. 35/2020 under Sections 376/366/323/506 of the Indian Penal Code, 1860 was registered at Police Station Wazirabad.

It has been submitted on behalf of the petitioner that the petitioner is incarcerated since 13.2.2020 and has undergone seven months of custody. It is further submitted on behalf of the petitioner that the petitioner has been falsely implicated in the present case in as much as initially when the prosecutrix was traced out by the police she was traced out along with the petitioner and in her statement which she has made at page 52 of the petition, the prosecutrix has stated that her date of birth was 8.3.2001 and that she has studied till standard Xth and she is an adult and that she of her own will had gone with her friend, i.e., the petitioner and that they had been roaming around and reached Bharuch at Gujarat and that there was nothing wrong done forcibly on her and that she did not want herself to be medically examined and that she of her own accord wanted to go with her parents and was going with her parents and that she had written the said statement in the presence of her parents to the police of Wazirabad, Delhi which was also signed by the father of the prosecutrix. It has been submitted on behalf of the petitioner that after a month of this statement made by the prosecutrix she has changed her stand and that she had also made a similar statement as was made by her at Police Station Sahibabad, to the Counsellor and the Counselling report is to the effect that the prosecutrix on 11.9.2019 had left her home with her boyfriend, i.e., petitioner and had gone to Gujarat where there was a friend of her boyfriend and they both stayed there for 10 days and the prosecutrix and her boyfriend were caught by the police and brought to the police station and according to the counsellor the victim was mentally and physically fit and that she wanted to live with her boyfriend and

counselling had been provided by the counselor and that there was no sexual assault and molestation with the victim. The MLC from the Aruna Asaf Ali Government Hospital dated 20.9.2019 shows that there was no fresh external injury visible on the prosecutrix who had declined her internal examination. It has been submitted on behalf of the applicant that the prosecutrix has changed her stand totally and that the same is uncalled for and that the statement made by the prosecutrix under Section 164 of the Cr.P.C. on 24.1.2020 before the learned Metropolitan Magistrate, N.I.Act is also placed on record by the State along with the status report that was submitted previously on the date of hearing 25.6.2020 is wholly erroneous and false and that in the criminal proceedings there can be no such change of stands.

The statement that the prosecutrix has made under Section 164 of the Cr.P.C., 1973 dated 24.1.2020 states to the effect that the prosecutrix goes to the stitching Centre where a girl named Sudha also used to go, who made her meet her brother and for about two to three months, they were friends and then Sudha asked the prosecutrix to marry her brother which she declined. The statement under Section 164 of the Cr.P.C. further states that her friend had not told her that her brother was married and had two children. The prosecutrix through her statement under Section 164 of the Cr.P.C. further states that on 11.9.2019 the applicant telephoned her and told her to meet him and at that time also the applicant's sister Sudha was with the applicant when they met and there was one boy named Sudan and there they gave her a cold drink in which there was something mixed and on taking the same she felt intoxicated and that she was put into an auto by the applicant and was taken away and was made to roam around in buses and on

the third day she was taken to Gujarat and thereafter the applicant and the prosecutrix went to his relative's house and after two days' gave her something to eat and married her at a temple and then had sexual relations with her, and thereafter her father came with the police at Gujarat to take her and they stayed in a hotel. The statement under Section 164 of the Cr.P.C. further indicates that there a police officer had beaten her and asked her to settle the matter and made her and her father sign some blank papers and that her photographs from her phone were also deleted and that the applicant was also left free who also used to harass her family members and used to threaten her then to take the case back and also threatened her father.

On behalf of the State it has been submitted that the chargesheet in the matter has been filed and that in view of the statement that has been made by the prosecutrix under Section 164 of the Cr.P.C., the prayer that has been made by the applicant may be considered only after the examination of the prosecutrix on oath during trial and after cross-examination of the prosecutrix is conducted. On behalf of the State, the State also opposes the prayer made by the applicant seeking interim bail.

On behalf of the prosecutrix, learned counsel for the prosecutrix has vehemently opposed the prayer that has been made by the applicant submitting inter alia to the effect that even after the prosecutrix and the applicant had been traced out, on 11.1.2020, the applicant had made a threatening call to the younger sister of the prosecutrix in relation to which a DD No. 24A dated 11.1.2020 was got registered at Police Station Wazirabad which has been lodged on the complaint of the mother of the prosecutrix alleging to the effect that the applicant has been harassing her and her

younger daughter and has been insisting that the prosecution launched against him be withdrawn and has been threatening them with their lives and in the event of the prosecution having not been withdrawn in relation to which learned counsel for the petitioner submits that there has been no assertion made in relation to this DD No. 24A at Police Station Wazirabad, dated 11.1.2020 at any stage earlier and that the same was not even mentioned during the course of the proceeding of the Bail Application dated 26.5.2020 nor during the course of the previous bail application disposed of vide order dated 5.6.2020. It has been submitted on behalf of the applicant that the applicant has been falsely implicated in the present case and that he be released on bail.

On behalf of the prosecutrix, it has been submitted whilst opposing the grant of bail to the applicant, that the applicant was found with the prosecutrix in a different State after taking her away and the prosecutrix was found in the attire of a newly wedded woman and that as to in which temple they got married no enquiry was effected by the Investigating Agency and that the prosecutrix in her statement under Section 164 of the Cr.P.C. and the complaint which has been lodged by her vide DD No. 36 B in relation to which in CC No. 11507/2019 vide order dated 21.1.2020 the learned Trial Court directed the registration of the FIR which FIR has since been registered with it having thus been submitted on behalf of the prosecutrix that the applicant is a married man with two children and has been making young girls the target of his lust and desire.

On a consideration of the submissions that have been made on behalf of either side though undoubtedly the statement of the prosecutrix had been recorded at the Police Station Sahibabad and before the Counsellor, the

statement under Section 164 of the Cr.P.C. made during the course of the proceedings in relation to FIR No. 35/2020 under Sections 376/366/328/506 IPC at police Station Wazirabad cannot be overlooked as the same has been made before the Magistrate concerned on oath. At this stage, in view of the factum that DD No. 24A dated 11.1.2020 has also been registered against the petitioner in relation to the alleged act of the petitioner, threatening the mother of the prosecutrix as well as the younger sister with dire consequences if they did not withdraw the prosecution also cannot be overlooked at this stage.

As rightly submitted on behalf of the State and on behalf of the prosecutrix by the learned counsel, in the circumstances of the case, in view of the gravity of the allegations levelled against the applicant under Section 164 CrPC there is no ground for grant of bail. In view thereof, the application is declined.

Nothing stated herein above shall however amount to an expression on the merits or demerits of the trial that would take place.

ANU MALHOTRA, J

JULY 14, 2020/sv