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

+ **BAIL APPLN. 1330/2020**

BHARAT

..... Petitioner

Represented by: Mr.Sundeep Sehgal, Advocate.

versus

STATE

..... Respondent

Represented by: Ms.Meenakshi Chauhan, APP for
State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

13.07.2020

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1. The hearing has been conducted through Video Conferencing.
2. By this petition, the petitioner seeks bail in case FIR No. 197/2019 under Sections 376D/377/506/34 IPC registered at P.S. Amar Colony.
3. Allegations of the prosecutrix in the above-noted FIR were that on 16th June, 2019, she came to Delhi from Kanpur, reached at the railway station Hazrat Nizamuddin and stayed there at the station for three days uptill 19th June, 2019. On 19th June, 2019, she went to a tea stall in Lajpat Nagar in search of the work, when the owner of the tea stall i.e. the mother of the petitioner informed that she can find the work but the same will take time of two-three days and till that time, the prosecutrix could stay in her house. The mother of the petitioner called her sons i.e. the petitioner and his brother who took the prosecutrix to their house and it is alleged that the prosecutrix was raped there. According to the prosecutrix, the last incident took place on 22nd June, 2019 at 5.30 pm whereafter she fled from the said

house when the petitioner and his brother were under the influence of liquor and somebody made a phone call to the police.

4. Learned counsel for the petitioner contends that the prosecutrix has since been examined before the Court, there is no other material witness to be examined and the witnesses now remaining to be examined are police witnesses/other official witnesses. He states that the testimony of the prosecutrix does not deserve credence for the reason, in her statement before the Court also, she clearly stated that on 22nd June, 2019 in the evening, rape was committed on her and thereafter, she fled and after the rape, she did not take bath, nor changed or washed her clothes. The prosecutrix in her cross examination also clearly stated that the ejaculation was intra-vaginal and intra-anal. Learned counsel for the petitioner states that this version of the prosecutrix is belied by the MLC and the FSL report where, no semen was detected. He also states that in the cross-examination, the prosecutrix admitted that she had lodged a similar FIR earlier when she came to Delhi. However, she denied the fact that she has settled the dispute with the accused in the earlier FIR after taking money though she was unaware of the outcome of the said case.

5. A status report has been filed. Statement of the prosecutrix has been recorded in the Court wherein she reiterated her statement recorded under Section 164 CrPC. It is also stated that besides the prosecutrix, there is another public witness namely Harish, who is yet to be examined. When learned counsel for the petitioner pointed out that Harish has not been cited as a witness, a supplementary status report has now been filed which indicates that inadvertently, Harish was not cited as a witness and now, an application has been moved in the concerned Court to examine the said

witness.

6. Be that as it may, it is sufficient to record that the prosecutrix has since been examined and cross-examined at length. It is the case of the prosecutrix that she had gone to the tea stall of the mother of the petitioner when she was asked to go to the house of the petitioner, where rape was committed on her. Though this Court will not enter into the realm of appreciation of the evidence at this stage, however, it cannot be denied that there is some merit in the contention of learned counsel for the petitioner that soon after the rape, the prosecutrix fled and she and her clothes were duly examined and despite her specific statement that ejaculation was intra-vaginal and intra-anal, no semen was detected.

7. Since the prosecutrix who is the material witness has already been examined, the petitioner has been in custody from more than nearly one year; the trial is likely to take some time as it is only at this stage that the prosecution has filed an application for examination of the above-noted independent witness who saw the prosecutrix at the house of the petitioner and that the petitioner having a residence in Delhi, there is no likelihood of his fleeing away from justice, this Court, deems it fit to grant bail to the petitioner. It is, therefore, directed that the petitioner be released on bail on his furnishing a personal bond in the sum of ₹ 50,000/- with two surety bonds of the like amount subject to the satisfaction of the learned Trial Court/CMM/Duty Magistrate, further subject to the conditions that the petitioner and two sureties will furnish their mobile numbers which will be kept in active mode so that as and when required, the petitioner can be contacted and that the petitioner will not leave NCT of Delhi without the prior permission of the Court concerned.

7. Petition is disposed of.
8. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

JULY 13, 2020
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