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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1734/2020**
VINEET KUMARPetitioner
Through Mr. Lal Singh Thakur, Adv.
versus
STATE OF NCT OF DELHIRespondent
Through Mr. Hirein Sharma, APP for State.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

09.09.2020

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[Court hearing convened *via* video-conferencing on account of COVID-19]

1. This is a petition seeking regular bail for the petitioner.
2. Learned counsel for the petitioner, at the outset, says that he would limit his prayer, at this stage, to grant of interim bail to the petitioner.
3. To be noted, an FIR bearing no. 69/2016, under Sections 323/354/365/376-D/506/34 IPC, was registered with P.S. Ranhola, New Delhi against the petitioner and other co-accused.
 - 3.1 The other accused in the matter, to begin with, were, namely, Narender, Sandeep, Surender and Atul.
 - 3.2 Insofar as Surender is concerned, he has been granted bail as the complainant failed to identify him. Consequently, even according to the prosecution, the case against Surender has collapsed.
 - 3.3 The other important aspect is that, although, initially, allegation was levelled against the co-accused i.e. Atul as well, he has, now, been cited as a witness for the prosecution. The examination of Atul has not taken place as yet.

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3.4 The reason for the delay, according to Mr. Hirein Sharma, the learned APP, is the intercession of COVID-19.

3.5 The record shows that the complainant's testimony has already been recorded.

3.6 It may also be relevant to note that, although, the petitioner is said to be involved in three other cases, apart from the instant case, he has served sentence in FIR No. 327/2016. Insofar as the remaining two cases are concerned i.e. FIR bearing nos. 274/2016 and 328/2016 registered with P.S. Ranhola, Delhi, the copies of judgements filed by Mr. Thakur show that the petitioner was not named as accused in those cases, although, on an earlier date, it was indicated by him that the petitioner had been acquitted.

3.7 In this behalf, reference is made to the judgement dated 26.08.2019 passed in FIR No. 274/2016 and judgement dated 11.12.2019 rendered in FIR No. 327/2016.

3.8 Mr. Lal Singh Thakur, who appears on behalf of the petitioner, submits that the petitioner has been in custody since 02.12.2016.

3.9 Mr. Thakur submits that given the fact that coronavirus is raging in the city, there is uncertainty as to when further evidence in the matter would be recorded. On this aspect of the matter, I tend to agree with Mr. Thakur.

4. Furthermore, there is a certain amount of inconsistency in the version of the incident related by the complainant at different stages.

4.1 This and other crucial features of the matter are recorded in the order dated 10.08.2020. For the sake of convenience, the same is extracted hereafter:

“1. There is a reference to three other cases in the status report filed on behalf of the respondent/State.

2. Mr. Lal Singh Thakur, who appears on behalf of the petitioner, says that out of the three other cases referred to in the status report [apart from the instant case which is registered as FIR No. 69/2016], the petitioner has been acquitted in two cases which are registered as FIR Nos. 274/2016 and 328/2016.

2.1 Furthermore, Mr. Thakur says that insofar as the third case is concerned which was registered as FIR No. 327/2016, the petitioner has already undergone the sentence. Mr. Thakur says that an appeal qua the same is pending in this Court.

3. Mr. Hirein Sharma, learned APP, who appears on behalf of the respondent/State, says that he would like to examine the judgements, and, therefore, the matter be stood over by a week.

4. To hasten the aforesaid exercise, Mr. Thakur will file copies of the judgements which will also be transmitted, albeit electronically, to Mr. Sharma.

5. Brief arguments in the matter have been heard by me.

6. I may only note the following which has emerged from the record.

6.1 The incident qua the complainant occurred on 23.01.2016. The initial accusation against the petitioner and other co-accused was, inter alia, one of causing hurt, outraging modesty and criminal intimidation. The FIR was, consequently, registered under Sections 323/354/506/34 IPC.

6.2 The record also discloses that on 27.01.2016, the complainant had her statement recorded under Section 164 of the Cr.P.C. Importantly, the complainant did not make any accusation of gang-rape. However, on 03.02.2016, the complainant appears to have lodged a complaint with the concerned DCP. Based on this and further investigations, a charge-sheet was filed which included the accusation of gang-rape.

6.3 It is not in dispute that the first medical examination which was conducted on 23.01.2016 resulted in a report which adverted to the fact that the complainant had swelling both on her forehead and lower lip. Pursuant to the complaint preferred with the DCP, a second medical examination was conducted which did not, specifically, allude to injuries that would unambiguously support the accusation of the complainant that she was gang-raped.

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6.4 That being said this position may also have obtained on account of the fact that there was a time-lag between the first and the second medical examination. The second medical examination was conducted on 06.02.2016.

7. What has also emerged from the record is that the petitioner has been booked under Section 174A of the IPC on account of not making an appearance in the concerned court after a proclamation notice was issued against him under Section 82 of the Cr.P.C.

7.1 Evidently, the petitioner surrendered before the court on 02.12.2016 and has been in custody since then.

7.2 Mr. Sharma has pointed out that the complainant's evidence has been recorded. It is, however, Mr. Sharma's contention that one prime witness, namely, Atul, has not been examined as yet.

7.3 To be noted, to begin with, apart from the petitioner, accusation was also levelled against four other persons i.e. Narender, Sandeep, Surender and Atul.

7.4 The record shows that the case against Surender has collapsed as the complainant during her examination was not able to identify the said person.

7.5 However, according to Mr. Sharma, the past record of the petitioner is such that it does not inspire confidence that the petitioner would put in an appearance before the court as and when so directed.

7.6 Mr. Sharma has also made a reference to the punishment meted out to the petitioner by the jail authorities on account of unauthorized possession of mobile phones, chargers and sim cards.

7.7 A perusal of the punishment order does not indicate that this incident concerned only the petitioner. The order does not specifically attribute the role, each of the delinquents had to play, in the acquisition of or possession of the aforementioned material.

7.8 Mr. Thakur has, in this behalf, referred to the judgement of a Co-ordinate Bench of this court dated 11.06.2020, passed in Bail App. No. 1142/2020, titled Baharuddin vs. State of NCT of Delhi. Mr. Thakur points out that the petitioner, in the aforementioned judgement, was one of the ten persons who had been meted out the punishment by the jail authorities for wrongfully acquiring and possessing the aforementioned material.

8. Given this background, the matter will be heard further after Mr. Sharma has examined the judgements adverted to hereinabove.

9. I may also indicate that the reason that the complainant appears to have furnished for delay in reporting gang-rape was that she was terrorized and threatened by the accused that obscene pictures concerning her would be uploaded on the internet.

9.1 I have queried Mr. Sharma qua this issue. He says that no such material has been placed on record before the concerned trial court by the prosecution.

9.2 This aspect of the matter will be examined on the next date of hearing.

10. At request, renotify the matter on 21.08.2020.”

5. Thus, having regard to the overall circumstances of the case, for the moment, the petitioner is directed to be released on interim bail on the following terms and conditions:

(i) The petitioner will surrender before the concerned Jail Superintendent on 31.10.2020.

(ii) The petitioner will furnish a personal bail bond of Rs. 20,000/- with one surety of the like amount to the satisfaction of the duty magistrate.

(iii) The petitioner will not establish contact with the victim or tamper with the evidence.

(iv) The petitioner will keep in touch with the Investigating Officer over the mobile phone on the following number furnished by Mr. Thakur +91-9811740917.

(v) The Investigating Officer will ensure that he has an update on the petitioner's whereabouts at least once a week.

6. The trial court is requested, in the very least, to record the evidence of Atul, in the interregnum, and any other witnesses who are crucial to the case.
7. Mr. Thakur says that the petitioner will cooperate in the evidence being recorded by the trial court.
8. The captioned petition is disposed of in the aforesaid terms.
9. The Registry will transmit the order passed today, *albeit* electronically, to the concerned Jail Superintendent and the trial court for due compliance.

RAJIV SHAKDHER, J

SEPTEMBER 09, 2020

RB/KK [Click here to check corrigendum, if any](#)

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