

\$~12

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

+ **BAIL APPLN. 2437/2020**

**ANIL**

..... Petitioner

Through Ms. Manika Tripathi Pandey, Adv.

versus

**STATE**

..... Respondent

Through Mr. K.S Ahuja, APP for State with  
SI Nitesh Sharma with complainant.

**CORAM:**

**HON'BLE MS. JUSTICE ANU MALHOTRA**

**ORDER**

%

**17.09.2020**

**(Hearing through Video Conferencing)**

The status report dated 14.9.2020 of the state is on the record. Furthermore, the State has also submitted the missing page of the MLC of the victim and the copy of the Section 164 Cr.P.C. statement of the victim along with the testimony of PW-1. The applicant has sought the grant of bail in relation to FIR 507/2018, PS Fatehpur Beri under Section 376 of the IPC 1860 and Sections 4&6 of the POCSO Act, 2012, submitting to the effect that the applicant has been falsely implicated that the prosecution version in relation to the FIR through the statement under Section 164 CrPC and the examination in chief of the prosecutrix are at wholly at variance in relation to the time when the prosecutrix was allegedly raped by the petitioner as well as to when the prosecutrix had been asked to go and call another student to come for tuitions and whether it was another student who had been sent to call the other student by the teacher.

It has also been submitted on behalf of the petitioner that the allegations that had been levelled against the petitioner of having gone and pulled the prosecutrix into the washroom are concocted with a note having been allegedly given by petitioner to the prosecutrix asking her to come to the third washroom and the very factum that the prosecutrix continued to stay at that spot even after having been given a note by the petitioner to that effect, sets at naught the veracity of the prosecution version.

It has further been submitted on behalf of the petitioner that there is information that the counsel has received that the prosecutrix is even willing to testify before the Court in relation to the falsity of the prosecution version.

On behalf of the State, the prayer made by the petitioner seeking that the petitioner be released on bail is vehemently opposed submitting to the effect that the prosecutrix has only been examined-in-chief so far and her cross-examination is yet to be conducted and that her testimony on oath corroborates the material factum of the alleged rape on her and that even in her statement under Section 164 of the CrPC which she had made on 7.12.2018 before the learned MM(03) and it is submitted on behalf of the State that the statements made by the prosecutrix at all stages are wholly complimentary and support the prosecutrix version in relation to the incident in question.

Interalia it has been submitted on behalf of the State that the MLC results shows the hymen of the prosecutrix to be torn qua which learned counsel for the petitioner submits that the period since when the hymen of the prosecutrix was torn is not indicated which itself does not suffice to bring forth any allegations against the petitioner.

It has further been submitted on behalf of the State that as per the prosecution version at the time of the alleged conduct of rape, the ejaculation by the petitioner had not taken place on the body of the victim and thus the semen could not be found on her very clothes or on her body but the same has been found on the undergarment of the petitioner as per the FSL report that has been placed on record in relation to exhibit-19.

On a consideration of the rival submissions made on behalf of either side without any observations on the trial that is in progress, taking into account the factum that the deposition of the prosecutrix is yet to be completed and the testimony of her parents also yet to be completed, coupled with the factum that both through her deposition on oath to the extent that it has been recorded and through her statement under Section 164 of the CrPC the prosecutrix has stated in relation to the alleged commission of rape on her by the petitioner and taking into account the young age of the prosecutrix, she being a minor at the time of the alleged commission of the offence being only 14 years of age, there is no ground whatsoever to grant bail to the applicant.

The petition is declined.

**ANU MALHOTRA, J**

**SEPTEMBER 17, 2020/sb**