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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 158/2021**

SUBHASH Petitioner
Through Mr. Naveen Tripathi, Advocate

versus

STATE Respondent
Through Ms. Meenakshi Chauhan, APP

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **18.01.2021**

1. This application filed under Section 439 Cr.P.C. is for grant of regular bail in FIR No.460/2016 dated 16.05.2016 registered in Police Station Hauz Khas under Sections 376, 342, 354D IPC and Section 4 of the Protection of Children from Sexual Offence Act, 2012 (for short 'POCSO Act').
2. Heard Mr. Naveen Tripathi, learned counsel appearing for the petitioner and Ms. Meenakshi Chauhan, learned APP appearing for the State.
3. The petitioner is accused of having committed rape on a minor girl. The complaint was filed on 16.05.2016. The petitioner was arrested on the same date. The petitioner got bail on 18.05.2016 from Juvenile Justice Board-II, Delhi. Since the petitioner was not a minor on the date of the offence, the case was transferred to the regular court and the petitioner was

taken into custody on 03.09.2016 and since then he is stated to be in judicial custody.

4. Mr. Naveen Tripathi, learned counsel appearing for the petitioner states that the prosecutrix has been examined. He states that FSL report does not corroborate the allegation of rape. He further states that the prosecutrix in her complaint had stated that after the incident, she went to use the bathroom which is not supported by the site plan, as there is no bathroom adjoining the room where she was alleged to have been raped. He states that the petitioner has been in incarceration for 4½ years and the trial is not likely to end soon.

5. The bail application has been opposed by Ms. Meenakshi Chauhan, learned APP appearing for the State. She states that the victim was 15 years old when the rape was committed. She states that the uncle of the prosecutrix is yet to be examined.

6. The petitioner had moved an application for bail before the learned Additional Sessions Judge-05(POCSO)/SD/Saket Courts, New Delhi. The application has been dismissed by an order dated 11.08.2020.

7. There is no change in circumstance from the date when the application for bail has been rejected by the learned Additional Sessions

Judge. The allegations against the petitioner are serious and grave in nature for having committing a rape on a minor girl. This Court is not inclined to enter into the contradictions in the statement of the prosecutrix and the documents at this stage.

8. The Supreme Court in NIA v. Zahoor Ahmad Shah Watali, reported as (2019) 5 SCC 1, has restated the settled legal position about the factors to be kept in mind for deciding an application of bail and has observed as under :

“21. Before we proceed to analyse the rival submissions, it is apposite to restate the settled legal position about matters to be considered for deciding an application for bail, to wit:

- i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- ii. nature and gravity of the charge;*
- iii. severity of the punishment in the event of conviction;*
- iv. danger of the accused absconding or fleeing, if released on bail;*
- v. character, behaviour, means, position and standing of the accused;*
- vi. likelihood of the offence being repeated;*
- vii. reasonable apprehension of the witnesses being tampered with; and*
- viii. danger, of course, of justice being thwarted by grant of bail. (State of U.P. v. Amarmani Tripathi [State of U.P. v. Amarmani Tripathi,*

*(2005) 8 SCC 21, para 18 : 2005 SCC (Cri) 1960
(2)] .)”*

9. Keeping in mind the fact that the offences alleged against the petitioner are serious and grave in nature inasmuch as the allegation is that he has committed rape of a minor girl; the uncle of the complainant is yet to be examined; the petitioner stays in the same building and possibility of tampering with the evidence cannot be ruled out, this Court is not inclined to admit the petitioner on bail at this stage. The bail application is accordingly dismissed.

10. However, since the petitioner has undergone incarceration for 4½ years and only the uncle of the prosecutrix and some official witnesses are left to be examined, the Trial Court is requested to expedite the examination of the witnesses. It is expected that the prosecution will complete the examination of the uncle of the prosecutrix within a period of 45 days from today.

11. Liberty is granted to the petitioner to file another bail application after a period of 45 days.

SUBRAMONIUM PRASAD, J.

JANUARY 18, 2021/pst