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

Date of decision: March 10, 2021

+ BAIL APPLN. 3774/2020

DEVENDER KUMAR @ RAHUL Petitioner

Through: Mr. K.Rana, Advocate

Versus

THE STATE, GOVT. OF NCT OF DELHI ... Respondent

Through: Mr. Amit Chadha, Additional
Public Prosecutor for State
with WASI Sunita

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (ORAL)

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The hearing has been conducted through video conferencing.

1. Vide this petition, petitioner is seeking bail in FIR No. 496/2019, under Sections 363/376/342/506 IPC and Section 4 of Protection of Children from Sexual Offences Act, registered at police station Harsh Vihar, Delhi. Petitioner is stated to be in custody since 02.10.2019.

2. The case of the prosecution, as per the FIR, is that the complainant has alleged that a month prior to the incident, she had

met the petitioner and became friendly with him. On 30.09.2019, he took her to a restaurant where they had chowmin and thereafter, they boarded a bus and when she asked as to where they were going, petitioner first said that they were just roaming about and after some time he asked her to remain quiet or to face dire consequences. Thereafter, prosecutrix/complainant was taken to someone's house by the petitioner, where she met one uncle. Prosecutrix/complainant requested that Uncle to drop her to her house, to which he replied that she should first call her parents to get petitioner's parents released and thereafter only, she would be sent to her house. Prosecutrix/complainant has further alleged that at night, petitioner slept with her and did wrong acts with her and it was only in the morning at around 05:00 am that her parents and two uncles came there and rescued her and soon upon reaching Delhi, the FIR in question was got registered at the police station.

3. At the hearing, learned counsel for the petitioner submitted that petitioner and prosecutrix/complainant were having a love affair against the wishes of parents of prosecutrix/complainant and therefore, petitioner has been falsely implicated in this case by the

prosecutrix/complainant at the instance of her parents.

4. Learned Additional Public Prosecutor for State has opposed the present petition and submitted that on 04.10.2019, the prosecutrix/complainant was produced before the court and in her statement recorded under Section 164 Cr.P.C. , she had supported her complaint and further added that petitioner had made forceful relations with her. Learned Additional Public Prosecutor for State submitted that at the time of alleged incident prosecutrix/complainant was a minor girl, aged 16 years and in the DNA examination report received from FSL, Rohini, New Delhi, it is opined that DNA could not be examined as semen could not be detected on the exhibits. He submitted that this does not belie the story of the prosecution and keeping in view that the prosecutrix/complainant was a minor and there are allegations of abduction and rape against the petitioner, the present petition deserves to be dismissed.

5. At this stage, learned counsel for petitioner pointed out that the version of prosecutrix/complainant before the doctor, who had conducted her medical examination, is totally different from the one

made in the complaint. It is pointed out that before the doctor, prosecutrix/complainant had said that petitioner was living in her vicinity and he had offered her to go to *mela* near their house and thereafter, he offered her to go for another *mela* in Karkardooma and on the pretext of going there, they had boarded a bus, but petitioner took her to his grandmother's (*nani*) house and threatened her that he would harm her parents if she raised a voice. Both of them reached at petitioner's grandmother's (*nani*) house at around 07:00 p.m. on 03.09.2019, where she took bath and changed clothes given by petitioner's cousin sister and after having dinner at around 08:30 p.m., she went to sleep with petitioner's cousin sister. The prosecutrix/complainant further stated that in the morning at around 05:00 a.m. when she was woken up by her mother, she was topless. She specifically stated that she is not aware as to what happened to her in between 09:00 p.m. on 01.09.2019 till 05:00 a.m. of 02.10.2019.

6. Learned counsel for petitioner further pointed out that in her statement under Section 164 Cr.P.C. recorded before the court, another version of prosecutrix/complainant is forthcoming. It is

submitted that prosecutrix/complainant therein had stated that on 30.09.2019, when she came out of her tuition, she saw the petitioner standing there, who was her friend for last one month and thereafter, both of them went to a restaurant where they had chowmin and thereafter, they came back. She had further stated that on the same night around 08:00 p.m., while she was riding a cycle, petitioner met her and offered her to show Ramlila and she went with him and at around 10:00 p.m. when she told him that she wanted to go back, he threatened her and thereafter they boarded a bus and petitioner took her to a far off forest area and from there to the house of his relatives, who did not permit her to make a call to her parents and when she secretly made a call, they threatened her to get first petitioner's parents released from the jail. Prosecutrix/complainant further stated that she stayed there for two days and on 01.10.2019, petitioner shut her mouth and made physical relations with her.

7. It is submitted on behalf of petitioner that the aforesaid different versions put forth by prosecutrix/complainant shows that he has been falsely roped in this case and therefore, he deserves the benefit of bail.

8. The rival contentions raised by both the sides have been heard and I have gone through the material placed on record.

9. There is no doubt that the in the narration of the alleged incident by the prosecutrix/complainant in the FIR in question, her statement before the doctor at the time of medical examination and also her statement under Section 164 Cr.P.C., different versions have been put-forth by the prosecutrix/complainant. It is specifically mentioned in the MLC that the victim had no pain of abdomen and on genitalia or any bleeding and also that hymen was old and torned. It is also mentioned that since there is no fresh injury. Moreover, no semen could be detected on the exhibits sent and for this reason, DNA test could not be done.

10. Petitioner is behind bars since 02.10.2019. This Court is informed that investigation is complete and charge sheet in this case has already been filed. Keeping in view the aforesaid facts and circumstances, without commenting on the merits of the case, I find that petitioner deserves to be released on bail.

11. Accordingly, petitioner is directed to be released on bail forthwith on his furnishing personal bond in the sum of Rs.20,000/-

with one surety in the like amount to the satisfaction of the trial court.

12. The petitioner shall not directly or indirectly influence the witnesses or tamper with the evidence and shall appear before the court as and when directed.

13. The petition is accordingly disposed of.

14. A copy of this order be transmitted to the Jail Superintendent concerned and trial court for information and necessary compliance.

(SURESH KUMAR KAIT)
JUDGE

MARCH 10, 2021

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