

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

Reserved on : 22.03.2021
% **Pronounced on : 09.04.2021**

+ **BAIL APPLN. 3091/2020**

MAHENDER SWAMI Petitioner

Through: **Mr. Satish Kr. Panchal, Advocate.**

versus

STATE (NCT OF DELHI) Respondent

Through: **Ms. Rajni Gupta, APP for the
State with SI Sarla Asthana,
P.S. Kirti Nagar.**

**Ms. Inderjeet Sindhu, DHCLSC
with Ms. Mehak Bhatia, Adv.
for the complainant.**

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

1. By way of this order, I shall dispose of the present petition filed under Section 439 Cr.P.C. on behalf of the petitioner for grant of bail in case FIR No. 0279/2017 U/s 328/365/376-D IPC, P.S. Kirti Nagar (Distt. West), New Delhi.

2. Briefly stated, the facts of the case are that on 24.08.2017 on receiving DD No. 14-A SI Asha Singh reached at E.S.I.

Hospital, Basai Dara Pur, Delhi, where she found the victim admitted vide MLC No. 524/17. The victim was not in a position to give the statement. Therefore, on the basis of DD No. 14-A and as per the contents of the MLC, the present FIR was registered. In her MLC, the victim gave the alleged history of kidnapping on 8 July 2017 by 4 people from Kirti Nagar by auto after inhalation of drug and then she was gang raped 5-7 times at unknown place, thereafter, she was left at her home.

3. I have heard the Ld. counsel for the petitioner, Ld. APP for the state and have also gone through the records of this case.

4. It is submitted by the Ld. counsel for the petitioner that the petitioner has been falsely implicated. It is further submitted by him that the prosecutrix had given different version in her different statements and even she has not supported the case of the prosecution. It is further submitted that there is not even an iota of evidence against the petitioner. It is further submitted that the present FIR has been registered on behalf of the mother of the victim to save herself from the punishment of feticide as she has given some pills to the prosecutrix for abortion. It is further submitted that the testimony of the prosecutrix suffers from inconsistencies and contradictions and the story put forth by her is highly improbable. It is further submitted that the prosecutrix had a long pending grievance against co-accused Ajay @ Ajju

and for the reasons best known to her she has implicated the petitioner. It is further submitted by the Ld. counsel for the petitioner that the prosecutrix and her mother have been examined and now there are no chances of tampering with the evidence. It is further submitted that the petitioner has clean past antecedents.

5. The application has been opposed by the Ld. APP for the State. It is submitted by the Ld. APP that the allegations against the petitioner are grave and serious in nature and the petitioner alongwith his co-accused had gang raped the prosecutrix. It is further submitted by the Ld. APP that there are specific allegations against the petitioner and even if, there are some contradictions or inconsistencies in the testimony of the victim, that cannot be the sole ground for discarding her testimony and this is not the stage to credit or discredit the testimony of the victim recorded in the Court. It is further submitted that the prosecutrix was taken captive in a house where she was repeatedly raped for 3 days.

6. In the instant case the prosecutrix has made specific allegations against the petitioner and has even denied the suggestion during the cross-examination that she was not raped by the present petitioner. The contention of the counsel for the petitioner that the prosecutrix has not supported the case of the

prosecution and there are inconsistencies and contradictions in her statement have also no force in it as at this stage, it would not be proper to discuss in detail any such contradictions or inconsistencies in the testimony of the victim, otherwise the same might prejudice the case of either of the parties. The counsel for the petitioner during the course of the arguments has not been able to point out any such glaring contradiction or inconsistency which could at the threshold make the testimony of the victim unreliable. The allegations against the petitioner are grave and serious in nature and as per the prosecutrix she was held captive and raped for 3 days and she has categorically deposed about the role of the present petitioner. Therefore, in these circumstances, no ground for bail is made out, the application is, therefore, dismissed.

7. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

APRIL 09, 2021

Sumant