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IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on: 29.04.2022

Order delivered on: 05.05.2022

+ BAIL APPLN. 429/2022

MOHIT

..... Petitioner

Through: Mr. R.N. Sharma, Advocate.

versus

THE STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Ms.Meenakshi Chauhan, APP for the
State along with SI Anjali Rana

+ BAIL APPLN. 505/2022

AZAD

..... Petitioner

Through: Mr. Harpreet Singh, Mr. Arunesh
Sharma, Mr. Akshay Saxena and Mr.
Jatin, Advocates.

versus

THE STATE GNCT OF DELHI

..... Respondent

Through: Ms.Meenakshi Chauhan, APP for the
State along with SI Anjali Rana.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

ANOOP KUMAR MENDIRATTA, J.

1. This is a petition filed by the petitioners under Sections 439 of Cr.PC seeking regular bail in case FIR No.31/2020 under Sections 366A/370(4)/372/376D/34/506/109 IPC and Sections 4/6/17 of POCSO Act registered at Police Station Patparganj Industrial Area, East District, Delhi.

2. In brief, on 02.02.2020 prosecutrix 'H' along with her mother reported about commission of rape with 'H'. In the MLC, prosecutrix named Harinder and Mohit and some persons who had allegedly assaulted her and also named Mannu to have facilitated sexual assaults. Initially, prosecutrix refused for internal examination and UPT was found to be negative. However, later on during the course of investigation, prosecutrix was found positive for UPT and the fetus was sent to FSL for forensic examination.

3. Prosecutrix alleged that she is a student of 9th class and had met a girl namely Mannu in Village Gazipur and they became friends. Prosecutrix asked Mannu to arrange some job for her and on one day, Mannu along with Harinder and Mohit took her to a hotel in Sahibabad. Harinder and Mohit had booked two rooms. Mannu allegedly locked her in one room with Harinder, while Mannu went to other room. Harinder raped her in the hotel room and subsequently to that Mohit also came and raped her. Thereafter they left her at Gazipur bus stop and prosecutrix was threatened not to

disclose to anyone. Thereafter on 31.01.2020, Mannu again met her in Gazipur and called one person namely Azad wherein she was raped by Azad.

4. On the aforesaid facts, the FIR was registered on 03.02.2020. During investigation, CCTV footage of Welcome Residency was procured and sent to FSL for examination. The accused were identified and arrested. The date of birth of prosecutrix was established as 02.10.2005.

5. Learned counsels for the petitioners submit that the statements of prosecutrix and alleged owner of Hotel have been recorded. It is vehemently contended that as per FSL report, DNA profile generated from the blood sample of Mohit, Azad and Harinder were found to be dis-similar with the DNA profile generated from the product of conception of prosecutrix/victim 'H' and despite the aforesaid evidence on record, the assault is alleged to have been committed by the accused and Azad. It is also contended that as per the FSL report, the CCTV footage of 19.01.2020 could not be found in the exhibits/DBR forwarded to FSL. It is submitted that during cross examination, prosecutrix admitted that Investigating Officer had enquired from her on 21.10.2020 as to with whom she had established physical relations because of which she became pregnant and prosecutrix stated that no other person had committed rape with her. As such it is urged by the

counsel for petitioner that in the light of FSL report, the testimony of the prosecutrix on the face does not appear to be reliable. Further contradictions in the statement of the prosecutrix have been pointed out. Co-accused Mannu is already stated to have been released on bail.

6. The application is opposed by the learned APP for the State and it is submitted that the sexual assault by the accused has been supported by the prosecutrix. The identity of the accused is further stated to be not in dispute since prosecutrix allegedly remained with accused for a considerable period during sexual assault. Accused Azad is also stated to be involved in another FIR No. 240/2018 under Sections 323/341/506 IPC.

7. I have given considered thought to the contentions raised.

It cannot be ignored that prosecutrix alleged sexual assault only by Harinder, Mohit and Azad though admittedly the DNA profile generated from the blood sample of Harinder, Mohit and Azad were found to be dis-similar with the fetus. This important fact cannot be ignored at this stage since the consistent stand of prosecutrix is that she did not have sexual intercourse with anyone else. Further CCTV footage of 19.01.2022, also could not be found in the exhibits/DBR forwarded to FSL. The cross-examination of

prosecutrix recorded before the learned Trial Court contains discrepancies as to the date of incident. It is also pertinent to note that during cross-examination, some calls have been admitted on behalf of prosecutrix to be made by her mother, asking for certain amounts from mother of Harinder. However, since the trial is still pending, it may not be appropriate to elaborate and comment on the same at this stage in detail. It may be noticed that prosecutrix again accompanied co-accused Mannu on 31.01.2020 despite the earlier alleged incident of sexual assault. The earlier incident was not reported by her immediately, for the reasons best known.

Statement of prosecutrix has already been recorded and as such there does not appear to be any possibility of influencing the witnesses in any manner at this stage. The accused are in custody for about two years. Considering the totality of facts and circumstances, the petitioners are admitted to bail on furnishing personal bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each with one surety each in the like amount to the satisfaction of the learned trial court and subject to following conditions :

- (i) The petitioners shall provide their mobile numbers to the Investigating Officer (IO) concerned/SHO concerned at the time of release, which shall be kept in working conditions at all

times. The petitioners shall not switch-off, or change the same without prior intimation to the IO concerned, during the period of bail;

- (ii) The petitioners shall not leave the NCT of Delhi without the prior permission of the concerned trial court;
- (iii) The petitioners shall not indulge in any criminal activity or any illegal activities during the bail period;
- (iv) The petitioners shall not communicate with, or come into contact with the prosecution witnesses, or any member of the victim's family, or tamper with the evidence of the case;

The bail applications are accordingly disposed of.

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

8. A copy of this order be sent to the Jail Superintendent and concerned trial court for information and compliance.

(ANOOP KUMAR MENDIRATTA)
JUDGE

May 05, 2022/A