



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 28.02.2022

Pronounced on : 12.04.2022

+ BAIL APPLN. 2830/2021

MUKESH

..... Petitioner

Through: Mr. Sidharth Kapoor, Adv.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. K.K.Ghei, APP for the State.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. This is a petition filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in FIR No. 92/2016 under Sections 354/452/376/506 IPC and 4/8 POCSO Act registered at Police Station Shahbad Dairy, Delhi.

2. In brief the facts of the case are that the instant case was registered on the statement of victim "A" aged 17 years, wherein she stated that she is residing at Shahbad Dairy, Delhi and is studying in Lai School in 9th class. She further mentioned that on 29.01.2016 at about 07:30-08:00 PM she was present at home alone and her mother Sumari Devi was present at the shop which is situated at some distance from her house. In the meantime, her



neighbour Mukesh (Petitioner herein) entered her house and bolted the door from inside. Mukesh told her that he loved her and he will keep her with him. She asked Mukesh as to why he has come to her house but Mukesh started kissing her forcibly and touched her inappropriately. She tried to save herself but Mukesh tore her clothes. She further mentioned that her mother knocked the door but Mukesh fled away from the spot. Initially a case vide FIR No. 92/2016 under Sections 354/452 IPC and 7 POCSO Act, P.S. Shahbad Dairy, Delhi was registered and investigation was taken up. However, during the course of investigation, statement of prosecutrix got recorded under Section 164 Cr.P.C. and she made allegation of sexual assault by accused Mukesh, hence, sections 376/506 IPC and 4/8 POCSO Act were added in the case.

3. I have heard the learned counsel for the petitioner and the learned APP for the State and perused the status report filed by the state.

4. It is submitted by the Ld. counsel for the petitioner that petitioner has been falsely implicated in this case and is in judicial custody since 18.02.2019 and has undergone more than 3 years. It is further submitted that there are various discrepancies in the story of the prosecution and she has also refused to get her medical examination conducted. It is further submitted that all the material witnesses including the prosecutrix have already been examined and prosecution could not bring forward any material to connect the petitioner with alleged offence as the story of the prosecution is highly doubtful and improbable and the prosecutrix has taken different stands at the time of registration of FIR and at the time of getting



her statement recorded under Section 164 Cr.P.C. It is further submitted that the only allegation against the petitioner is that he used criminal force upon the prosecutrix in order to outrage her modesty. It is further submitted that nine witnesses have been examined by the prosecution till date and the last witness was examined by the prosecution on 29.04.2019 and subsequently, the prosecution could not examine any other witness and the matter was adjourned on different dates due to non-appearance of any PW on one or other ground. It is further submitted that no purpose will be served by keeping the petitioner in judicial custody.

5. On the other hand, learned APP for the State has vehemently opposed the bail application and has argued on the lines of the status report. It is submitted that the allegations are grave and serious in nature and the victim has supported the case in her statement recorded under section 164 Cr.P.C and has levelled specific allegations against the petitioner of sexual assault. It is further submitted that the petitioner herein is a habitual offender and is the BC of Bundle-A of Police Station Shahbad Dairy and has previous involvements in five cases. It is further submitted that the petitioner was granted bail by the Ld. ASJ, Rohini Court on 18.05.2016 but the petitioner did not appear before the Hon'ble Trial Court on 27.10.2017, hence, NBW were issued against him and he was declared PO by the Hon'ble Trial Court on 25.08.2018. Lastly, it is submitted by the Ld. APP that there is likelihood of the petitioner absconding if he is released on bail and he may not be available for trial which may vitiate the interests of justice.



6. The petitioner is in judicial custody since 18.02.2019 and has undergone more than 3 years. All the material witnesses including the prosecutrix have been examined in the present case and the petitioner is no more required for investigation purposes. The trial would take a long time to conclude and no fruitful purpose would be served by keeping him detained in prison. Therefore, in view of the submissions mentioned hereinabove and considering the period of incarceration, the bail application stands allowed and the petitioner is admitted to bail on his furnishing a personal bond in the sum of 25,000/- with one surety in the like amount to the satisfaction of concerned trial court.

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

8. The application stands disposed of in the aforesaid terms.

RAJNISH BHATNAGAR, J

APRIL 12, 2022

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