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

+ BAIL APPLN. 1811/2024 & CRL. MA 35857/2024

RAJESH KUMAR @ GAURAVPetitioner

Through: Mr. Birendra Kumar Pandey, Ms.
Naman Dwivedi, Mr. Bibhash Kumar
Sharma, Mr. Vaibhav Dwivedi and
Mr. Mrinal Kaushik, Advocates.

versus

THE STATE GNCT OF DELHI

THROUGH SHO MOTI NAGARRespondent

Through: Mr. Laksh Khanna, APP for State
with SI Kiran Dayal PS Moti Nagar,
Delhi.

Ms. Swaty Singh Malik Amicus
Curiae, Mr. Rohan Kumar, Ms.
Divisha Chaudhary and Mr. Sasha
Kumar, Advocates for complainant.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **18.12.2024**

1. By way of present application, the petitioner/applicant seeks regular bail in FIR No.350/2018 registered under Sections 354C/365/506/376D/34 IPC & Section 6 of POCSO Act at PS Moti Nagar, Delhi.
2. Learned counsel for the petitioner/applicant submits that the applicant is in custody since 05.10.2018. It is further submitted that there is variance in the statement of the prosecutrix as recorded during investigation *vis-à-vis* in her deposition recorded before the Trial Court. In this regard, he submits that while there is no mention by the prosecutrix of having studied together with the applicant and the co-accused in the *tehrir* as well as her statement



recorded under Section 161 Cr.PC, the said aspect has been stated for the first time at the time of recording her statement under Section 164 Cr.P.C. as well as in her deposition recorded before the Court. It is also contended that in her earlier statement recorded, the prosecutrix has not stated anything with respect to her being given any money to keep quiet. This aspect has been stated by her only later, thus, raising doubt on its veracity. It is further stated that till date, only 12 out of the 23 witnesses cited by the prosecution have been examined. It is also submitted that though the last date of incident is stated to be 27.08.2018, as per the CDR collected by the I.O. of that date, the applicant was not found at the spot of the incident but some place in U.P. Lastly, it is stated that the applicant has previously been released on interim bail on three occasions, a concession which he did not misuse.

3. The bail application is opposed by learned APP for the State, duly assisted by learned Amicus Curiae for the prosecutrix. Learned Amicus Curiae submits that the applicant is none other than the first cousin of the child victim, who was 15 years of age at the time of the incident. She further draws the attention of the Court to the statement of prosecutrix wherein she has categorically stated that the commission of the offence continued to take place for two months and that the offence was lastly committed on 27.08.2018. She submits that the variations as pointed out by the learned counsel for the petitioner/applicant would not affect the reliability of the testimony of the prosecutrix, as the applicant as well as the co-accused are none other than her first cousins.

4. Learned APP additionally submits that the applicant had surrendered on 05.10.2018, at which time, he has handed over his mobile phone. However, on inquiry, the said mobile phone was found to be in the name of



his father and as such, the location of the mobile phone will not be relevant as it is not the case of the prosecution that the applicant and the prosecutrix were not connected through any phone, especially in light of the fact that they were first cousins.

5. I have heard learned counsels for the parties and perused the material placed on record.

6. The prosecutrix/child victim was of 15 years of age at the time of the incident. The identity of the applicant is not in dispute, who is none other than the first cousin of the child victim. On a careful examination of the statements of the child victim recorded during investigation as well as her Court depositions, this Court is of the *prima facie* opinion that the child victim has consistently stated about the commission of the rape by the present applicant.

7. In view of the aforesaid discussion and considering the totality of the facts and circumstances, I find no ground to entertain the present bail application and the same is accordingly dismissed.

8. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial as the same has been expressed only for the purpose of the disposal of the present bail application.

MANOJ KUMAR OHRI, J

DECEMBER 18, 2024/rd