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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2918/2023**

VIJAY KUMAR

..... Petitioner

Through: Mr. Amitesh Pandey, Advocate.

versus

THE STATE

..... Respondent

Through: Mr. Sanjeev Sabharwal, APP for State
with SI Jay Prakash, P.S. Inderpuri
and SI Richa Sharma, P.S. Cyber
North.
Ms. Aishwarya Rao, Advocate for
prosecutrix.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

11.03.2024

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1. By way of present bail application filed under Section 439 Cr.P.C., the petitioner/applicant seeks regular bail in FIR No.42/2021 registered under Sections 354/354A/354B/376 IPC at P.S. Inderpuri.
2. Learned counsel for the applicant submits that the victim has been observed to be mentally challenged and as per the psychological assessment, her IQ level was found to be 42 and SQ level was found to be 45. He submits that at the first instance the victim has not even identified the applicant and the applicant has been arrested on mistaken identity as there is nothing to connect him with the alleged offence. He further submits that in her statement recorded under Section 161 Cr.P.C., the victim has made out a case of insertion of finger whereas subsequently in her examination before the Court, she has also made out a case of penetrative sexual assault. It is



further stated that the prosecution has relied upon the statements of two neighbours who have stated that the applicant was living in the neighbourhood, however, the said witnesses have neither identified the applicant nor supported the prosecution case. Lastly, it is submitted that FSL Report has also returned negative finding insofar as the applicant is concerned.

3. Mr. Sabharwal, learned APP for the State, who is duly assisted by the counsel for the victim, has vehemently opposed the bail application. It is stated that the applicant was initially arrested after the victim had identified him in the photograph shown to her. The victim has consistently taken the name of the applicant as the person who had committed the offence. It is further submitted that at the time of her examination in Court, though the applicant was produced and was having a beard, still the victim identified him as *Vijay* who had committed the offence. Lastly, it is submitted that the MLC recorded internal bleeding during her examination.

4. I have heard the learned counsels for the parties and gone through the material available on record.

5. The prosecution has relied on the statement of the victim to identify the applicant. Although, learned counsel for the applicant has pointed out the improvements made in the statement of the victim recorded before the Court, the same needs to be appreciated by the Trial Court at the conclusion of trial. At present, the victim is statedly residing in Asha Kiran, Rohini and the Court refrains from commenting on the merits of her testimony.

6. Considering the aforesaid facts and circumstances as well as the fact that the applicant has been in custody since 21.02.2021 and that all the material witnesses including the victim have already been examined, it is



directed that the applicant be released on regular bail subject to his furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/concerned Court/Duty M.M. and subject to the following further conditions :-

- i) The applicant shall not leave the NCR without prior permission of the concerned Court.
 - ii) Applicant shall mark his presence before the Investigating Officer on every alternate Sunday during the pendency of trial.
 - iii) The applicant shall provide his mobile number to the Investigating Officer on which he will remain available during the pendency of the trial.
 - iv) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.
 - v) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.
 - vi) The applicant shall regularly appear before the concerned Court during the pendency of the trial.
7. The bail application is disposed of in the above terms.
 8. Copy of the order be communicated to the concerned Jail Superintendent electronically for information.
 9. Copy of the order be uploaded on the website forthwith.
 10. 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 of the case as the same has been expressed only for the purpose of the disposal of the present bail application.

MANOJ KUMAR OHRI, J

MARCH 11, 2024/ga