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

+ BAIL APPLN. 225/2020

AKHILESH SHARMA Petitioner

Through Mr.Pankaj Srivastava, Adv.

versus

STATE & ANR. Respondents

Through Mr. Hirein Sharma, APP for State.
SI Ajeet Kumar, PS Sangam Vihar.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

% **27.01.2020**

Crl. M.A. 1795/2020

Allowed, subject to all just exceptions.

Application is disposed of.

Bail Appln.225/2020

The present petition is filed under section 439 Cr.P.C. for grant of bail in FIR No.587/2017 dated 08.11.2017 registered at Police Station Sangam Vihar for the offences punishable under section 376/506 IPC and section 6 of the POCSO Act.

As is alleged in the complaint, which has been culminated into FIR mentioned above, that respondent no.2/prosecutrix was a 15 years old girl and student of Sarvodaya Vidhyalaya studying in 9th class. Conversations with the petitioner began in November 2016 who was residing next door. Petitioner used to call her to his house and say that if she would not come,

he would kill her. Further alleged that she went 5 times to the house of the petitioner who forcibly took off clothes. She did not tell anyone because of threats and fear. Finally, on 08.11.2017, she told her mother and thereafter, they filed a complaint on the basis of which an FIR No. 580/2017 was registered.

Learned counsel appearing on behalf of petitioner submits that in original complaint dated 08.11.2017 which forms part of the charge-sheet, respondent no.2 has alleged that whenever she used to go for tuition and to school the petitioner used to chase her. She went to house of the petitioner 5 times and alleged that out of fear, she did not tell anyone about dirty acts of the petitioner.

Counsel for petitioner further submits that both the petitioner and respondent no. 2 are well known to each other and respondent no. 2 filed a false case against petitioner. Marriage of petitioner was solemnized on 21.09.2017 and after marriage, respondent no. 2 resorted to such an extreme step of lodging an FIR against petitioner. The letters of the respondent no.2 to the petitioner clearly establish the fact that petitioner and respondent no.2 knew each other and she herself had written that, "*she smokes, takes supari, chutki and wine. If a young girl of 15 years is exposed to all said things, it is apparent that she is matured enough to be doing what she is doing with the petitioner*". She had openly shown her liking by requesting petitioner to respond to her letters. She requested and invited petitioner to come to the railing at 6 pm in the evening and opening of the letter admitted that they both knew each other. The said letters are written in her hand writing too.

Learned counsel further submits that petitioner's marriage is not taken too kindly by respondent no.2, who thereafter resorted to such an extreme

step of filing a false case against petitioner, who is absolutely innocent.

Issue notice.

Learned APP accepts notice and submits that respondent no.2/prosecutrix is minor and the alleged incident had taken place in a room on the top floor of the same building. The prosecutrix has supported prosecution case in her deposition made before the Trial Court. Thus, bail application deserves to be dismissed.

In the complaint dated 08.11.2017, it is alleged that she got to know the petitioner in November 2016 and she has been to his house five times. The first complaint was made on 08.11.2017 and consequently, FIR was also registered on the said date. Thus, there is a delay of 11 months in lodging of the FIR but there is no explanation.

In November, 2018, respondent no.2 alleged that she met the petitioner and on 21.09.2017, marriage of the petitioner was solemnized and on 08.11.2017, the present FIR was registered.

The petitioner is in judicial custody since 08.11.2017 and the material witnesses have been examined i.e. victim/complainant & mother of the complainant/victim in her cross examination, prosecutrix could not explain the delay for lodging the FIR. She could not tell the date and time of the incident. Moreover, the place of the incident is disputed one. The Flat at 4th floor belongs to an army officer who is residing along with his family, therefore, the possibility of incident of rape seems to be doubtful.

At page 87 of the petition, the bill of supply for electricity dated 19.11.2018 is evident that the room on the top floor belongs to Smt.Promila, wife of Bijender, who is an army officer.

Moreover, there are letters on record written by her and however, in

the chargesheet, but not even a single response has been communicated by petitioner to respondent no.2.

In view of above facts and since petitioner is in JC from 08.11.2017, however, without commenting upon merits of the case, I am of the view that present case is fit for bail.

Accordingly, petitioner shall be released on bail on his furnishing personal bond in the sum of ₹25,000/- with one surety of the like amount to the satisfaction of Trial Court.

Before parting with the order, it is relevant to mention that nothing contained in this order shall be construed as an expression on the merits of the case. The Trial Court shall not get influenced by the observations made by this Court, while passing the final orders in the trial.

Present petition is allowed and disposed of.

Copy of this order be transmitted to the Jail Superintendent and the Trial Court concerned for compliance.

Order *dasti* under the signatures of Court Master.

SURESH KUMAR KAIT, J

JANUARY 27, 2020

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