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

+ BAIL APPLN. 254/2021

SHIV CHANDER

..... Petitioner

Through Mr. Pritish Sabharwal, Mr. Kunal
Mittal and Mr. Sanjeet Kumar,
Advs.

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through Mr. Amit Chadha, APP for State
with WSI Kiran, PS Maidan Garhi

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

22.01.2021

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The hearing has been conducted through video conferencing.

Crl. M.A.1030/2021 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

BAIL APPLN. 254/2021

1. The present petition has been filed by the petitioner under Section 439 Cr.P.C. for grant of bail in case FIR No.247/2020, for the offences punishable under Sections 376 AB IPC and Section 6 of POCSO Act, registered at PS Maidan Garhi, Delhi.
2. Notice issued.
3. Learned APP for the State accepts notice.
4. With the consent of the counsel for the parties, the present petition has been taken up for final disposal.

5. Learned APP has opposed the present petition by stating that on 05.10.2020, at about 12:30 PM, one Karan Dagar (brother of the complainant) allegedly came to the shop run by the complainant, with certain goods and on seeing him, the complainant went to call Ganesh (father of the victim) seeking his help to unload the goods brought by Karan. At this point of time, the complainant saw the petitioner in an intoxicated state sitting outside the gate of Ganesh room and subsequently, Ganesh went to the shop to help him in unloading the goods. The daughter of Ganesh (victim) was playing in the parking area and the Complainant went inside to allegedly use the washroom situated in the parking/ground floor. When he came back, he saw that the petitioner had taken the victim on the side of the main gate and the zip of the pants of the petitioner was already open and he allegedly heard the petitioner insisting the victim to perform oral sex.

6. Learned APP further submits that on seeing this incident lot of neighbor's had gathered there and they had given beating to the petitioner and thereafter, the petitioner was handed over to the police and was arrested in the present FIR on the complaint made by the complainant Yogesh Dagar.

7. On the contrary, the case of the petitioner is that there are major contradictions in the material placed on record by the prosecution as the FIR and the charge-sheet are both self-contradictory in nature. Moreover, MLC of the petitioner does not show any sign of intoxication and abrasion, though as per the allegations, the petitioner was beaten up by the neighbors of the complainant and the fact that there is a considerable delay of 8 hours in preparing the rukka cannot be overlooked.

8. Learned counsel for the petitioner had further contended that the alleged recording of the CCTV which was produced by the complainant himself was never verified by the IO and neither the DVR was ever seized. Furthermore the CCTV footage loses its evidentiary value because the recording of the same was done by a mobile phone and the same was played on a screen.

9. This Court has seen the CCTV footage and in the said CCTV footage, father of the victim was outside the building. Complainant entered into the building and within a minute, he is seen catching hold of the petitioner and bringing him out. If such type of heinous crime had taken place and that with a 2 ½ years old girl, why immediately the FIR was not registered.

10. Moreover, there is a delay of 8 hours in registration of FIR and there was no sign of beating and intoxication in MLC of the petitioner because if the neighbors had beaten the petitioner and he was in a state of intoxication then the said fact should have come in the MLC, but the said MLC does not show any sign of bruises or abrasion, indicating that there was no public beating which was alleged in the FIR.

11. In view of the aforesaid facts and the fact that the prosecutrix being 2 ½ years old, due to which her statement was not recorded, however, without commenting on the merits of the prosecution case and keeping in view the fact that there is a delay of 8 hours in registration of FIR, I am of the view that the petitioner deserves bail.

12. Accordingly, he shall be released on bail on his furnishing a personal bond in the sum of Rs.15,000/- with one surety in the like amount to the satisfaction of the Trial Court.

13. The petition is, accordingly, allowed and disposed of.
14. Copy of this order be transmitted to the Jail Superintendent concerned and Trial Court for necessary compliance.
15. The order be uploaded on the website of this Court forthwith.

SURESH KUMAR KAIT, J

JANUARY 22, 2021/rk