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**(2017) 11 DEL CK 0354**

**In the Delhi High Court**

**Case No : Bail Application No. 2190, 2191 Of 2017**

Sanjeev Kumar

APPELLANT

Vs

State (Govt Of Nctof Delhi)

RESPONDENT

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**Date of Decision : 20-11-2017**

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 161, 164, 439

Indian Penal Code, 1860 — Section 328, 376D

Protection Of Children From Sexual Offences Act, 2012 — Section 6

**Citation : (2017) 11 DEL CK 0354**

**Hon'ble Judges : Sangita Dhingra Sehgal, J**

**Bench : Single Bench**

**Advocate : Lokesh Kumar Mishra, Akshai Malik**

**Final Decision : Dismissed**

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## **Judgement**

Sangita Dhingra Sehgal, J

1. By this common order, I shall dispose of the petitions filed under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as

'Cr.P.C.') whereby the petitioners seek grant of regular bail in FIR No. 635/2016 under Sections 376-D/328 of the Indian Penal Code, 1860

(hereinafter referred to as 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO')

registered at P.S New Ashok Nagar, Delhi. The petitioners are stated to be in judicial custody since 16.12.2016. Status report is on record.

2. Briefly stated the prosecution case as reflected in the chargesheet was that on 16.12.2016 a complaint was filed wherein the prosecutrix alleged

that on 15.12.2016 at about 09:00 - 09:30 PM when the prosecutrix was preparing dinner in the kitchen, all the three accused persons (including the

present petitioner) pulled out the prosecutrix from the window of the kitchen and took her to the stairs where they committed rape upon her. She

alleged that she was sexually assaulted first by the landlord/Prashant Sharma, then by accused Vikas Singh/ present petitioner and lastly by accused

Sanjeev/present petitioner. The prosecutrix further alleged that thereafter the accused persons left the prosecutrix on a table outside her room and left

the spot. The prosecutrix was then woken up by her aunt and the matter was reported to the police.

3. During the course of investigation it has been revealed that the prosecutrix is more than 18 years of age and hence chargesheet against the present

petitioners was filed under Sections 376D/328 IPC on 15.04.2017.

4. The previous application filed by the petitioners for seeking regular bail was dismissed vide order dated 24.10.2017 by the Additional Sessions

Judge, KKD, Delhi. Hence the present petitions.

5. Mr. Lokesh Kumar Mishra, learned Counsel for the petitioners contended that the petitioners have been falsely implicated in the present case by

the complainant and all the allegations made in the FIR are concocted and baseless; that the petitioners have not been named in the statement of the

complainant recorded in MLC, FIR as well as under Section 164 Cr.P.C.; that no TIP proceedings have been conducted to prove the identity of the

petitioners; that the case of the prosecution is not supported by the FSL Report; that there are major contradictions in the statements of the prosecutrix

recorded under Section 161 & 164 Cr.P.C.; that as the investigation of the case has already been completed and charge sheet has been filed, no

purpose would be served by keeping the petitioners in judicial custody during the pendency of Trial; that the petitioners are ready and willing to join

investigation and hence in the aforesaid circumstances the petitioners be released on regular bail as prayed for.

6. Per contra, Mr. Akshai Malik, learned APP for the State opposed the bail application of the petitioners and submitted that there are specific

allegations of sexual assault on the person of prosecutrix against the petitioners; that the petitioners have played an active role in the commission of the

alleged offence as the MLC of the prosecutrix clearly supports the case of the prosecution; that there are no material contradictions in the statements

of the prosecution that can cast a serious doubt on the veracity of the

allegations; that there is no question of conducting TIP proceedings as both the petitioners are residents of the same building where the prosecutrix resides; that the prosecutrix is yet to be examined and there are chances of petitioners tampering with the prosecution evidence; hence, the present bail applications cannot be allowed.

7. Perusal of the complaint reveals that the prosecutrix has made specific allegations of sexual assault against both the petitioners. Further in her statement recorded under Section 164 Cr.P.C., she has attributed a specific and definite role to each one of them while narrating the sequence of events and has given a vivid detail of the incident as to how and in what manner the petitioners caught hold of her and committed the alleged offence.

Moreover, no material contradictions are apparent in the statements of the prosecutrix recorded under Section 161 and Section 164 Cr.P.C so as to make the case of the prosecution doubtful.

8. As per records, the prosecutrix was medically examined soon after the alleged incident without any significant delay. In the MLC, it has been stated by the examining doctor therein that the hymen is torn and the nature of injury is ""fresh"". Hence the same points out to a recent coitus.

9. After careful scrutiny of the facts and circumstances of the case, the contents of the FIR in question and other material placed on record and in view of the serious allegations against the petitioners and other factors including severity of the punishment prescribed in law, I find no sufficient ground to grant bail to the petitioners.

10. Accordingly, the petitions stand dismissed.

11. Before parting with the above order, it is made clear that anything observed in the present petition shall not have any bearing on the merits of the case during trial.