

Mukesh Vs. State

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Court : Delhi

Decided On : Dec-03-2013

Judge : Sunita Gupta

Appellant : Mukesh

Respondent : State

Advocate for Pet/Ap. : Mr. Faisal Naseem

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI DATE OF DECISION:

03. d DECEMBER, 2013 + BAIL APPLN. 1420/2013 MUKESH Through
Petitioner Mr. Faisal Naseem, Advocate versus STATE Through Respondent
Ms. Aashaa Tiwari, APP for the State, with SI Sushma Saxena, P.S Sunlight
Colony. CORAM: HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

: SUNITA GUPTA, J.

1. This is an application u/s 439 Cr.P.C moved by the petitioner for regular bail in case FIR No.406/2012 u/s 376/328 IPC, P.S. Sun Light Colony.

2. It is the case of prosecution that petitioner was the neighbour of the prosecutrix and was known to her for the past two years. They used to visit each other. It is

alleged that the petitioner had called the prosecutrix to his house for curing her stomach pain; prosecutrix went to his house and was told that there was a stone in her stomach. He asked her to lie down and said that he knew how to remove the stone from her stomach. Then he blindfolded the prosecutrix and gave her something to drink; she drank the same, after which she was not aware of what happened to her.

3. I have heard Mr. Faisal Naseem, learned counsel for the petitioner and Ms. Aashaa Tiwari, learned APP for the State.

4. It is submitted by learned counsel for the petitioner that the allegations in the FIR are absolutely false and baseless. It was submitted that there are contradictions in her statement u/s 161 Cr.P.C and 164 Cr.P.C; there is considerable delay in lodging the FIR. It is inconceivable that a lady having pregnancy with five months foetus is unaware of the same till the time of its delivery. In her initial statement, she had stated that when the petitioner gave her the medicine, she became unconscious and did not know what happened to her. It is only at the fag end of her complaint that she alleges that she became pregnant due to rape committed by the petitioner. Prima facie there is nothing on record to prove that the foetus belonged to the petitioner. No medical proof including DNA is there on record. The material witnesses have already been examined; petitioner is not a previous convict and is having roots in the society; there is no likelihood of his absconding or fleeing from justice or tampering with prosecution evidence, as such, he be released on bail. There is considerable delay in lodging the FIR and the allegations are vague. It is not disclosed as to when for the first time, petitioner gave her something to drink on the pretext of giving medicine and moreover in the FIR there is no allegation that it was repeated in future, which the prosecutrix has tried to depose in her deposition. Furthermore, at least at the time of delivery on 21.09.2012, the prosecutrix and her father came to know about the pregnancy, yet the FIR was registered on 09.12.2012 i.e 18 days thereafter, without explaining the reasons for such delay.

5. Reliance was placed on Vijayan v. State of Kerala, (2009) 3 SCC(Crl.) 585 and Ashu Kumar V. State, 2009(2) JCC1445 where there was delay in lodging the

complaint for seven months. The case was based on the sole testimony of the prosecutrix. No DNA test was conducted to find out whether the child was born out of the incident of rape and whether the accused was responsible for fathering the child. Due to lack of any other evidence, the accused was acquitted.

6. On the other hand, it was submitted by learned APP for the State that although discrepancies are sought to be pointed out by counsel for the petitioner in her statement u/s 161 Cr.P.C and 164 Cr.P.C but the prosecutrix was never confronted with the same.

7. While considering the application for grant of bail, the Court is required to consider the nature and gravity of the offence; the possibility of the accused fleeing from justice, the possibility of accused tampering with evidence and influencing the witnesses. No doubt the allegations against the petitioner are grave and serious in nature. However, at this stage it is not appropriate for the Court to evaluate the evidence. The prosecutrix and the material witnesses have been examined, as such, there is no possibility of the petitioner influencing the witnesses. The petitioner is a permanent resident of Delhi and nothing has been brought on record to show that there is possibility of his fleeing from justice. He is in custody since 10.10.2012 8. Keeping in view the totality of the facts and circumstances, he is ordered to be released on bail subject to:(i) his furnishing personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the concerned Court; (ii) he shall not leave the NCT of Delhi without the prior permission of the Court concerned; (iii) he shall not contact, coerce or intimidate the complainant or her family members, nor will tamper with evidence. The application is accordingly disposed of. A copy of this order be given Dasti under the signature of the Court Master. SUNITA GUPTA (JUDGE) DECEMBER03 2013 as