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

+ BAIL APPLN. 4473/2021

POONAM

..... Petitioner

Through: Mr. Akhilesh Kumar Singh, Advocate

versus

STATE NCT OF DELHI

..... Respondent

Through: Ms. Kusum Dhalla, APP with W/SI
Sangeeta, P.S. Nihal Vihar

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

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16.02.2022

1. The instant bail application has been filed by the petitioner under Section 439 of the Code of Criminal Procedure, 1973, (hereinafter "Cr.P.C.") seeking regular bail in FIR No. 776/2019 under Section 370/376D/376(2)(n)/323/506/120B/34 of the Indian Penal Code, 1860 (hereinafter "IPC").

2. The background of the case, as per the FIR, is that the complainant filed an application under Section 156(3) of the Cr.P.C. stating that she is an *Adiwasi* girl from Jharkhand and was brought to Delhi from Jharkhand by one Chotu in search of work. She was placed as a house maid with the accused Anand and Chintamani, who were running a placement office.

3. After one year of work, she was forcefully brought as a maid to Anand's house. However, whenever the complainant used to demand her salary, she was denied payment and instead tortured. Anand committed rape

on the complainant several times while she was living in his house and whenever the complainant told the same to Chintamani, she used to beat her and threatened her not to tell anyone about it.

4. After some days, the accused Anand and Chintamani sent the complainant to Poonam, the petitioner herein, in Uttar Pradesh and the petitioner sent the complainant along with Sonu and Jasmer to Kaithal, Haryana. The accused Jasmer used to commit rape on the complainant and treated her like a slave. He also told the complainant that he had purchased her from the petitioner for a consideration of Rs. 2 lakhs.

5. One night, the complainant ran away from the house of the accused Jasmer and came to Delhi to her known Ashok. Thereafter, she lodged an FIR against all the accused bearing no. 776/2019 under Section 370/376D/376(2)(n)/323/506/120B/34 of the IPC at PS Nihal Vihar. The petitioner, upon getting information regarding the FIR being registered against her, surrendered before the Court and was sent to Judicial Custody on 20th March, 2021.

6. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is innocent and has been falsely implicated in the present case with the intention of extorting money from her. The petitioner is a relative of the accused Chintamani and has nothing to do with the instant case.

7. It is submitted that as per the observations of the Hon'ble Supreme Court in *Priya Patel vs. State of Madhya Pradesh*, (2006) 6 SCC 263, a woman cannot be charged under the offence of rape and hence, the petitioner being a woman cannot be held guilty of the said offence.

8. It is further submitted that it is only hearsay that the accused Jasmer purchased the complainant from the petitioner and instead, the fact is that

Jasmer and the complainant were married. It is the applicant's case that during the period of nine months of their marriage the complainant never complained against the accused Jasmer to anyone and it is only in the present FIR that she has made strong allegations against him.

9. The petitioner has been in Judicial Custody for over nine months and since the investigation is completed and chargesheet has been filed, there is no requirement of keeping her in custody. It is submitted that there is no likelihood of the petitioner absconding and she undertakes to abide by all the conditions imposed upon her by this Court while granting bail. It is further submitted that the petitioner has no criminal history. She has two minor children to take care of, and in light of the aforestated she prays to be released on bail.

10. *Per Contra*, Ms. Kusum Dhalla, learned APP appearing on behalf of the State, vehemently opposed the instant bail application and submitted that the petitioner has been alleged of committing the heinous crimes of human trafficking and rape. It is submitted that the complainant was a minor girl at the time she was brought to Delhi and all these offences were committed upon her. It is further submitted that the petitioner is not entitled to the benefit of bail and the present bail application is liable to be dismissed as being devoid of any merit.

11. Heard learned counsel for the parties and perused the record.

12. The complainant is a tribal girl who was brought to Delhi from Jharkhand in search of work when she was merely 14 years of age. It is unfortunate that an innocent girl of tender age was subjected to such heinous crimes as alleged in her complaint and has been severely abused, exploited and tortured by several people accused in the FIR.

13. The offences under Sections 370 and 376 of the I.P.C are grave and serious in nature and have adverse social implications. The petitioner has been charged for trafficking a minor girl which is in itself a heinous offence.

14. Keeping in view the facts of the case, contents of the FIR and the gravity of the offences, this Court is not inclined to grant the relief of bail to the petitioner.

15. The petition is accordingly dismissed.

16. It is made clear that the observations made by the Court while dismissing the instant application shall have no bearing whatsoever on the merits of the case during the trial.

CHANDRA DHARI SINGH, J

FEBRUARY 16, 2022

Aj/ms