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## **Gulshan Vs State ( Govt Of Nct Of Delhi**

### **Bail Application No. 303 Of 2020**

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**Court:** Delhi High Court

**Date of Decision:** March 4, 2020

**Acts Referred:**

Indian Penal Code, 1860 " Section 323, 354, 354A, 376, 506#Code Of Criminal Procedure, 1973 " Section 164, 439#Protection of Children from Sexual Offences Act, 2012 " Section 4

**Hon'ble Judges:** Brijesh Sethi, J

**Bench:** Single Bench

**Advocate:** Dr. M.K. Gahlaut, Varun Jain, Tarang Srivastava

**Final Decision:** Dismissed

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### **Judgement**

Brijesh Sethi, J

1. Vide this order, I shall dispose of a bail application filed under section 439 Cr.P.C on behalf of the petitioner Gulshan in FIR No. 141/2019 u/s.

376/506 IPC & 4 POCSO Act, PS Sarai Rohilla.

2. Ld. Counsel for the petitioner has prayed for bail on the ground that petitioner is innocent and has been falsely implicated. Petitioner is in judicial

custody since 28.05.2019. It is submitted that investigation has already been completed and charge-sheet has also been filed and petitioner is not

required for any investigation.

3. It is submitted that one Monu had good friendly relations with family of prosecutrix "K", "K" and her mother. The real sister of the petitioner

namely Monika has lodged the criminal proceeding vide FIR bearing No.58/19 under Section 354/354A/323 IPC P.S. Sarai Rohilla against Monu on

11.03.2019. Resultant thereof, the prosecutrix and her mother have developed the malice, ill will, personal vendetta and grudge against the petitioner

and due to which a false case was lodged against the petitioner by misusing and abusing the statutory provisions of Section 376/506 IPC and Section 4

of POSCO Act to create a pressure, force and coercion upon the petitioner so that real sister of the petitioner may not pursue her criminal case

against said Monu.

4. It is submitted that the entire case of the prosecution is based upon the statement of the complainant i.e. mother of victim and victim herself and

there is no chance of tampering with the prosecution evidence in any manner whatsoever.

5. It is lastly submitted that petitioner has clean antecedents and he is a permanent resident of Delhi. It is, therefore, prayed that petitioner be released

on bail.

6. Ld. APP for the State has opposed the bail application on the ground that the allegations against the petitioner are serious in nature. Petitioner has

made sexual intercourse with the victim who was minor i.e. about 14 years old at the time of commission of offence without her consent. He has,

therefore, prayed for dismissal of bail application.

7. I have considered the rival submissions. The present case was registered on the complaint of complainant  $\tilde{A}\hat{c}\hat{a},-\tilde{E}\hat{c}\hat{e}\tilde{S}\tilde{A}\tilde{c}\hat{a},-\hat{a},\hat{c}$ , who is the mother of the

prosecutrix  $\tilde{A}\hat{c}\hat{a},-\tilde{E}\hat{c}\hat{e}\tilde{K}\tilde{A}\tilde{c}\hat{a},-\hat{a},\hat{c}$  wherein she alleged that her neighbour Gulshan i.e. the petitioner took her daughter to the room of his friend co-accused Firoz

in July 2018 where he forcefully made physical relations with her daughter and threatened to kill her brother, if she tells anyone about the incident.

When she came to know about the incident that has happened with her daughter, she filed the complaint. Statement of the complainant i.e. mother of

the victim u/s 164 Cr.PC was recorded wherein she corroborated the FIR and also stated that the mother and sister of the petitioner were well

conversant of what the petitioner had done to the victim.

8. In her statement recorded u/s. 164 CrPC, the victim has categorically stated that petitioner had taken her to his friend  $\tilde{A}\hat{c}\hat{a},-\hat{a},\hat{c}$ s house (Firoz) at Daya

Basti. The petitioner had taken the keys from Firoz who had thereafter left the house. Thereafter, the petitioner had removed her Salwar and

committed sexual intercourse with her. Thereafter petitioner threatened the victim that if she discloses anything to anyone, her brother would be killed

and she would be defamed. The victim had stopped going to the school and revealed everything to her mother. The victim has submitted that petitioner

is still threatening her on phone and also compelling her for marriage. His mother and sister are also building pressure for marriage.

9. Ld. counsel for the petitioner, has however, argued that petitioner is innocent and falsely implicated. In one audio conversation between the

prosecutrix and petitioner which is in the custody of investigating agency, the prosecutrix has admitted the fact that petitioner did not commit any rape

upon her. I have considered the contention of Ld. counsel for the petitioner. The authenticity of the conversation recorded in CD can only be judged at

the appropriate stage i.e. during the course of trial. However, there is another CD on record regarding conversation dated 26.04.2019 between

petitioner and prosecutrix. Transcription of the same reveals that on second page of the second recording it is stated by the petitioner that he has done

everything. Of course, the authenticity of this conversation will also be judged during the course of trial. It is settled law that at this stage of bail, the

court cannot minutely examine and analyze the evidence in detail as no mini trial can be conducted while deciding the bail application.

10. Keeping in view the above facts and the allegations leveled against the petitioner which are very grave in nature and further keeping in mind the

age of the victim/ prosecutrix and further in view of the fact that even threat was extended to the victim, no grounds for bail are made out at this

stage. The bail application is, therefore, dismissed and stands disposed of accordingly.