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

+ **BAIL APPLN. 1961/2019**

ADESH RATHI

..... Petitioner

Through: Ms. Lavisha Karma, Mr. Vidur
Kamra and Ms. Sonia Bhati, Advs.

versus

STATE

..... Respondent

Through: Mr.Panna Lal Sharma, APP for State.
Inspector K.K. Mishra, W/SI Sushma,
PS – Uttam Nagar

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

31.10.2019

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Vide the present petition, the petitioner seeks bail in FIR No. 1513/2015, registered at Police Station – Uttam Nagar for the offences punishable under Sections 307/328/363/376D/34 IPC, Sections 25/27 Arms Act and Section 6 POCSO Act.

It is stated in the present petition that the FIR was registered initially under Section 363 IPC on 22.11.2015.

The case of the prosecution is that in the intervening night of 06.12.15 and 07.12.15, the statement under Section 164 Cr.P.C. of victim was recorded by the Ld. MM in the Apollo Hospital; wherein the victim stated to be of 15 years and further stated that she was being kidnapped by one Kishan the morning of 22.11.15 and later being raped/sexually assaulted by Kishan, Vipin and Devender @ Daku Singh.

Learned counsel appearing on behalf of the petitioner submits that the petitioner has been impleaded in the present FIR only on disclosure statements of the other co-accused Mohit @ Kishan and Vipin. As per the prosecution story, the accused Mohit@ Kishan along with the petitioner Adesh Rathi had kidnapped the victim Ms. X by making her smell some intoxicant in Santro car bearing No. UP 13 AJ 5857 being driven by petitioner on the morning of 22.11.2015 and the victim had been raped and shot by other co-accused Mohit @ Kishan, Vipin and Devender @ Daku Singh.

Learned counsel further submitted that the petitioner surrendered himself before the IO on 23.12.15 and he has been languishing in judicial custody since then. The other co-accused Jitender Rathi @ Jitte was arrested on 29.01.2016 and Devender @ Daku Singh was arrested on 28.01.2016 in the aforesaid FIR.

She further submitted that in examination-in-chief and cross-examination, nothing has come on record against the petitioner. The victim has not identified the car and car number, alleged to have been driven by the applicant.

Learned APP has opposed the present application and submits that the petitioner is the main accused who along with Mohit kidnapped the prosecutrix, who is aged about 10 years, as per the birth certificate dated 12.02.2005 issued by the Government of NCT of Delhi, wherein the date of birth of the prosecutrix is shown as 24.01.2005 and the date of incident is 23.12.2015.

Keeping in view the serious allegations against the applicant and the fact that the prosecutrix, at the time of the incident, was 10 years old, I am

not inclined to grant bail.

Accordingly, the application is dismissed.

SURESH KUMAR KAIT, J

OCTOBER 31, 2019

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