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

+ **BAIL APPLN. 2125/2017**

VIJAY PANDEY Petitioner
Through: Mr. Pradeep Kumar, Adv.

versus

THE STATE GNCT OF DELHI Respondent
Through: Mr. Ashish Dutta, APP
ASI Sugam Singh, P.S. Nihal Vihar.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **02.11.2017**

The petitioner seeks bail in connection with FIR No.52/2016 (PS Nihal Vihar) instituted for the offence under Sections 363/366/376 of the IPC read with Section 6 of POCSO Act, 2012.

The petitioner is said to be in custody since 20th August, 2016.

The present case has been lodged by the father of the prosecutrix alleging that the victim was not to be found and had become traceless from home. The victim returned after 8 months, i.e. on 19th August, 2016 and gave her statement before the police that she had eloped with the petitioner for the purposes of marrying him. Similar statement was made by prosecutrix before the learned M.M. under Section 164 of the Cr.P.C.

During the course of the investigation, it was found out from the school records that the date of birth of the prosecutrix is 3rd March, 2000.

Learned counsel for the petitioner, however, has drawn the attention

of this Court to the Aadhar Card of the prosecutrix which indicates her date of birth as 1st January, 1997. The prosecutrix is stated to have eloped with the petitioner on 13th January, 2016. If the date of birth as indicated in the Aadhar Card is to be accepted, the prosecutrix would have to be treated as a major. If the school records is to be believed, then, on the day of the occurrence, the prosecutrix was a minor as she has not completed 18 years of age.

The petitioner had earlier approached this Court for grant of bail but later withdrew the same for approaching the court below for getting his application, which was pending, pre-poned as the trial court had fixed a date in July, 2018 in the matter for hearing the prosecutrix and her parents. After withdrawing the bail petition, the petitioner approached the trial court for giving an early hearing to his bail application but the same was dismissed by the trial court vide order dated 1st August, 2017, stating that the court is over burdened with number of cases and no early date could be given for hearing. The trial court has fixed 12th July, 2018 as the date for hearing the prosecutrix and her parents. For the aforesaid purposes, the prosecutrix and her parents have been issued notice by the Trial Court by ordinary as well as through I.O. for their P.E.

This Court is unable to understand as to how this plea could be taken by the trial court in fixing such a long date, more so, when the petitioner has been in custody since August 2016. It is the specific case of the petitioner that in Aadhar Card, the date of birth of prosecutrix is shown as 1st January, 1997. The statements made by the prosecutrix under Sections 161 and 164 Cr.P.C. further indicate that only on the insistence of the prosecutrix, the petitioner went with her to Agra for solemnisation of marriage.

Taking the period of custody of the petitioner into account as also the statement of the prosecutrix recorded under sections 161 and 164, Cr.P.C., this Court is inclined to grant bail to the petitioner.

The petitioner is directed to be released on bail on his furnishing personal bond in the sum of Rs.10,000/- with one surety in the like amount, to the satisfaction of the trial court.

The petitioner shall, however, positively present himself before the trial court on 12th July, 2018, the date already fixed for examination of the prosecutrix and her parents.

Application stands disposed of.

Dasti.

ASHUTOSH KUMAR, J

NOVEMBER 02, 2017
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