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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN. 565/2016 & CrI. MB 628/2016
NITESH KUMAR

..... Petitioner
Through Mr Rajiv Nanda, Senior Advocate with Mr
Pankaj Singh and Ms Loveleen Khaitan,
Adv.
versus

STATE

..... Respondent
Through Ms Neelam Sharma, Additional Public
Prosecutor for the State alongwith WSI
Josepha Kujur Police Station Sarita Vihar,
New Delhi
Ms Mumtaz Ahmad, Adv. for complainant
alongwith complainant in person alongwith
her mother

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER
% 22.04.2016

BAIL APPLN. 565/2016

Vide this application under Section 439 of Cr.PC, the petitioner seeks regular bail in case FIR No. 908/2015 under Sections 376 (2) (n)/323/328/506 IPC and Section 6 of POCSO Act registered at Police Station Sarita Vihar, Delhi.

Learned Senior Counsel for the petitioner submits that the petitioner and the prosecutrix are neighbours and their houses are adjacent. In 2013, the prosecutrix and the petitioner were familiar with each other. There was a chat dated 29.06.2013 on Facebook whereby prosecutrix asked the petitioner as to whether he is not interested in girls etc. With the passage of time, the prosecutrix and the petitioner became friends and they started loving each other. Their families also gave nod for their marriage. However, in July, 2015, father of prosecutrix – Mr Yusuf Ali put a condition that if the petitioner wants solemnization of the marriage then he has to convert his faith from Hinduism to Islam which was opposed by the petitioner and it was suggested that both can follow their respective religions even after marriage. On this issue, an altercation took place between the parties on 19.07.2015. The police arrived and a settlement was entered

between the parties. The prosecutrix again contacted the petitioner in September, 2015 and their relations again flourished against the wishes of prosecutrix's father. On 07.10.2015, both went to a public park and recorded their video and reaffirmed their commitment against each other and their future plans for marriage. They got secretly married in Kali Bari temple on 20.10.2015 (wrongly mentioned as 20.10.2016) and after that they returned to their homes. During the period 20.10.2016 to 25.10.2016, they started addressing each other as husband and wife in their email / chat communications. In the first week of December, 2015, the petitioner came across a diary and photographs of prosecutrix and was shocked to see that prosecutrix is having simultaneous love relations and physical relations with one Akhvinder Singh Rawat and was having plans to get settled with him. When he confronted the prosecutrix with the said diary then an altercation took place between them. Out of vengeance, the prosecutrix threatened the petitioner to implicate in criminal case. Pursuant thereof, she lodged a false FIR on 14.12.2015 and the petitioner was arrested on the same day. The bail applications moved by him before learned Additional Sessions Judge were dismissed vide order dated 19.12.2015 and 19.02.2016.

It is submitted by learned Senior Counsel for the petitioner that charge-sheet has already been submitted; the petitioner is no longer required for the purpose of investigation; and there is a long delay in lodging the FIR as the same has been lodged after a delay of 20 months for which there is no explanation. It is further submitted that in the FIR, it is wrongly alleged by the prosecutrix that she met the petitioner through Facebook on 01.03.2014 and thereafter they started meeting each other. Reference in this regard is made to facebook chats for showing that it started in the month of June, 2013 itself. Reliance was placed on *Sanjay Chandra v Central Bureau of Investigation*, (2012) 1 SCC 40 for submitting that although grant or refusal to grant bail lies within the discretion of the Court, however, right to bail is not to be denied merely because of the sentiments of the community against the accused.

The bail application is vehemently opposed by learned Additional Public Prosecutor for the State on the ground that at the relevant time, prosecutrix was minor as such her consent, if any, is immaterial. The offence under Section 376 IPC is a

continuing offence. In any case, delay, if any, is required to be explained during trial of the case. The charge-sheet has already been submitted, however, prosecution evidence is yet to start possibility of tampering with evidence cannot be ruled out as such the petitioner is not entitled to be released on bail.

No doubt the averments made in the FIR, statement of prosecutrix recorded under Section 164 Cr.PC, various chats placed on record by the petitioner reveal that the petitioner and the prosecutrix were closely intimate to each other and developed physical relations, however, it is alleged that the prosecutrix was a minor at the time of commission of offence. Although charge-sheet has been filed but so far prosecution has not started its evidence. The petitioner himself has placed on record the photographs to show that the prosecutrix and the petitioner live very nearby and in fact in the same property and the father of prosecutrix is having his shop at the ground floor. Under the circumstances, it will not be desirable to release the petitioner at this stage on bail. However, keeping in view the peculiar circumstances of the case, it is impressed upon the learned Additional Sessions Judge, who may be seized of the matter to record the statement of prosecutrix as expeditiously as possible but not later than three months from the date of receipt of this order. Thereafter, it will be open to the petitioner to move appropriate application for bail which will be decided by learned Additional Sessions Judge in accordance with law uninfluenced with the observations made in this order.

The application is accordingly dismissed.

Crl. MB 628/2016 (interim bail)

Vide this application, the petitioner seeks interim bail on the ground that he is the sole bread-earner of his family and his parents and younger brother are dependent on him.

In view of the observations made in the Bail Appln. No. 565/2016, it will not be desirable to release the petitioner on bail at this juncture.

Accordingly this application is also dismissed.

A copy of this order be sent to learned Trial Court concerned for information and compliance.

SUNITA GUPTA, J

APRIL 22, 2016/*rd*