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

+ **BAIL APPLN. 1835/2016 & CrI. M.A. No.14009/2016**

LALIT @ LALI

..... Petitioner

Through: Mr. Rahul Dev Sharma and Mr.
Ghanshyam Thakur, Advocates

versus

STATE

..... Respondent

Through: Ms. Anita Abraham, APP with SI
Dinesh, PS Nihal Vihar

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

08.09.2016

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The petitioner has preferred the present petition under Section 439 Cr PC to seek regular bail in case FIR No. 372/2015 registered under Section 363/376 IPC and section 4 of POSCO Act at PS Nihal Vihar. The petitioner has been in judicial custody since 23.09.2015. The charge sheet has been filed and the case made out against the petitioner is that he had taken the victim with him to his sister's house and on the night of Janmashtami, while the party was on, some intoxicant/ substance was mixed in her cold drink and thereafter she was not in her senses. The victim has stated in her statement made under Section 164 Cr PC that the petitioner then established physical relations with her and she was informed of the same subsequently.

The petitioner expressed his desire to marry the victim and thereafter they established the relationship on several occasions.

According to the prosecution, the age of the victim on the date of occurrence was between 15-16 years. Learned APP submits that certificate from the school of the victim has been obtained with regard to her age. The charge sheet has been filed and the charge has been framed under Section 363/366/328/376 IPC and section 4 of POSCO Act.

The submission of learned counsel for the petitioner, firstly, is that the age of the victim has not been established to be below 16 years of age on the date of occurrence. She further submits that the relationship established between the parties was consensual. In relation to the said proposition, learned counsel for the petitioner has placed reliance on *Dileep Singh v. State of Bihar*, AIR 2005 SC 203.

Learned counsel for the petitioner submits that even a perusal of the charge sheet does not make an offence under Section 363 IPC.

A reading of the charge sheet which reproduces the statement made by the victim under Section 164 Cr PC, prima facie, makes out a case under Section 328 and 376 IPC. The aspect as to whether the victim was under 16 years of age or not on the date of occurrence is a matter which could be determined in trial. Reliance placed on *Dileep Singh* (supra) misplaced. The said decision was rendered post trial. While dealing with the present application, the court has to only make a prima facie evaluation of the case of the prosecution and the defence of the accused. Most importantly, the prosecutrix/ victim is yet to be examined in this case and the release of the petitioner on bail at this stage may jeopardise the case of the prosecution.

In these circumstances, I am not inclined to entertain the present petition at this stage.

Dismissed.

VIPIN SANGHI, J

SEPTEMBER 08, 2016

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