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

+ BAIL APPLN. 400/2017

MANDEEP

..... Petitioner

Through Mr.Bhagat Singh, Adv.

versus

STATE

..... Respondent

Through Mr.M.S. Oberoi, APP with SI Rajani,
PS Rajouri Garden.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

% **30.03.2017**

Arguments heard.

The present application has been filed under Section 439 Cr.P.C. read with Section 482 Cr.P.C. for the grant of regular bail in FIR No.932/2016, under Sections 363/376 IPC and Section 4 of the POCSO Act, Police Station Rajouri Garden.

The FIR of the present case was initially registered under Section 161 Cr.P.C. on the basis of statement made by Ms.Anjali to the effect that her sister Soniya, aged about 15 years, who was working at F-14, Front Side Rajouri Garden, Delhi went missing since 07.12.2016. During the course of investigation, on 25.12.2016, the prosecutrix was traced. Her medical examination was conducted at DDU Hospital and as per her MLC, doctor opined that her hymen was ruptured. Statement of the prosecutrix was recorded in which she

stated that she met the accused Mandeep and started liking him and after sometime accused asked her for marriage to which she agreed. On 07.12.2016, the prosecutrix went away with the accused and he kept her in the basement of H.No.F-10, Rajouri Garden, Delhi. On 16.12.2016, they got married at a temple but the marriage was not registered. Thereafter, they started living as husband and wife. On the basis of statement of the prosecutrix and her MLC, Sections 376 IPC and 4 of the POCSO Act were added. Accused was arrested on 25.12.2016.

Argument advanced by the counsel for the accused is that he works as a car cleaner and domestic help and used to reside in the servant quarter of the building where prosecutrix used to work as domestic help. Both accused and prosecutrix knew each other, they started liking each other and got married and thereafter started living together as husband and wife. It is further submitted that the accused has not committed any offence and there is no accusation by the prosecutrix against the accused.

On the other hand, learned APP for the State opposed the bail application on the ground that the prosecutrix is a minor girl aged about 15 years and thus there is no question to give consent in the first place. As per the MLC of the prosecutrix, she was sexually assaulted and that is the reason for invoking Section 376 IPC and 4 of the POCSO Act. The allegations levelled against the accused are serious in nature.

During the course of arguments, it has been shown that the prosecutrix was a minor girl when she was allegedly kidnapped by the

accused. It is not even disputed by the counsel for the petitioner that the prosecutrix was a minor girl on the date when she allegedly went along with the accused.

When it has come on record that the prosecutrix was a minor girl on the alleged date of her going with the accused, no case of giving consent by the prosecutrix is made out on account of her being a minor. There are allegations of sexual assault and rape by the accused upon the prosecutrix as well. Copy of the statement of the prosecutrix recorded under Section 164 Cr.P.C. has also been placed on record which also shows that the prosecutrix is a minor girl aged 15 years.

Keeping in view the above mentioned facts and circumstances, prosecutrix being minor and the seriousness of offence, this Court is not inclined to grant bail to the accused.

Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

The application is accordingly dismissed.

P.S.TEJI, J

MARCH 30, 2017
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