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

+ BAIL APPLN. 516/2017

SUNIL @ MONU

..... Petitioner

Through Mr.Kunal Madan, Adv.

versus

STATE

..... Respondent

Through Mr.Akshai Malik, APP with SI
Kamlesh Kumar, PS Ranjeet Nagar.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

% **29.03.2017**

Arguments heard.

The present application has been filed under Section 439 Cr.P.C. for the grant of regular bail in FIR No.265/2016, under Sections 363/366/376 IPC and Section 4 of the POCSO Act.

The allegations levelled in the present case are that on 13.05.2016, on the basis of complaint made by the complainant Smt.Omwati, FIR of the instant case was initially registered under Section 363 IPC regarding kidnapping of her daughter Priyanka aged about 17 years. During the course of investigation, the date of birth of the prosecutrix was found to be 14.08.1998. On 20.06.2016, the prosecutrix was traced working in a mobile factory in the name and style of M/s Saral Communications Pvt. Ltd. at Naraina. On enquiry, the prosecutrix told that she was kidnapped by the accused Sunil @

Monu and she stayed with the accused in a rented accommodation at Baljeet Nagar where she was sexually assaulted. On the basis of statement made by the prosecutrix, Sections 366/376 IPC and 4 of the POCSO Act were added. Statement of the prosecutrix under Section 164 Cr.P.C. was recorded.

Argument advanced by the counsel for the petitioner/accused is that the accused and prosecutrix were friends and knew each other well. On 10.05.2016, the prosecutrix came to the petitioner and he helped her to find the rented accommodation. It is further submitted that the prosecutrix is a major girl and the said fact has been corroborated by her employer. It is further submitted that the accused was arrested on 23.06.2016. It is further argued that since the prosecutrix is a major girl, no case against the accused is made out.

Counsel for the petitioner has relied upon judgments in the cases of ***Sunil Mahadev Patil v. The State of Maharashtra* 2015 SCC OnLine Bom 6204**, ***S.Varadarajan v. State of Madras* AIR 1965 SC 942**, ***Kevin Nathabhai Satvara v. State of Gujarat* 2013 SCC OnLine Guj 6650** and ***Anu v. State of Kerala* 2016 SCC OnLine Ker 32172** to press the contention that bail has been granted to the accused by different Courts in the cases of prosecutrix being minor when it has been shown that she accompanied the accused of her own.

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 kidnapping by the accused, no case of giving consent by the prosecutrix is made out on account of her being a minor. Apart from kidnapping, there are allegations of sexual assault by the accused upon the prosecutrix as well.

Keeping in view the above mentioned facts and circumstances 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 29, 2017
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