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

+ BAIL APPLN. 2400/2017

SOHAIL

..... Petitioner

Through: Mr.Shivan Chowdhry & Mr.Shashank
Chowdhry, Advocates

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP for the
State

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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27.11.2017

1. This application has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in FIR No.1110/2014, under Sections 363/366/376/34 IPC and 6 POCSO Act, registered at PS Moti Nagar, Delhi.
2. Learned counsel for the petitioner has submitted that the petitioner is a young boy aged about 20 years. In the statement under Section 164 Cr.P.C the prosecutrix did not level any allegation of rape. Rather she stated that she accompanied the petitioner and started living with him on her own. It was a case of love-affair and the prosecutrix and her sister eloped with two boys namely Mohd.Phulo and Mohd.Sohail (Mohd.Sohail is the petitioner before this Court). The prosecutrix has already been examined.
3. Learned counsel for the petitioner has also submitted that in the report under Section 173 Cr.P.C, it is also mentioned that both the sisters i.e. the

prosecutrix 'K' and her sister 'P' (name withheld to conceal identity) left for Hyderabad with Mohd.Phulo and Mohd.Sohail and started living as husband and wife. When the money carried by both the boys Mohd.Phulo and Mohd.Sohail exhausted, they came to Delhi whereas both the sisters continued living in Hyderabad from where they were recovered on 3rd February, 2015 by the police, accompanied by father of both the girls.

4. The MLC of the prosecutrix records the alleged history given by the prosecutrix herself as under:

'B/B police for medical and gynaecological examination a girl named 'K' aged 14 yrs. who is herself giving h/o eloping with her boyfriend on 11/11/14 and is giving h/o multiple coital acts since then, last being on Saturday i.e. 31/1/15.'

5. Learned APP for the State has submitted that since the prosecutrix had not attained the consenting age, her consent is immaterial, hence bail application may be dismissed.

6. Taking into consideration the facts of the case and that the prosecutrix has already been examined in this case, the prosecutrix herself has given the history of eloping with the petitioner with whom she was in love, coupled with the fact that in her statement under Section 164 Cr.P.C, she did not level any allegation of being raped, the petitioner is directed to be released on bail on his furnishing a personal bond in the sum of ₹25,000/- with one surety of the like amount to the satisfaction of the Trial Court/Link Court, subject to following conditions:

- (i) The Petitioner shall not leave the country without the permission of the Court.
- (ii) During the pendency of the trial, the Petitioner shall not contact the Complainant or other public witnesses in any manner whatsoever.

7. Application stands disposed in the above terms.
8. Any observations made hereinabove for the purpose of dealing with the contentions of counsel for the Petitioner shall not be deemed to be an expression on merits of the case.
9. A copy of this order be sent to the concerned Jail Superintendent for information.

Order *dasti*.

PRATIBHA RANI, J.

NOVEMBER 27, 2017

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