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

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Judgment delivered on: 06.09.2018

+ BAIL APPLN. 1665/2018 & CrI. M.A. 28000/2018

VIRENDER

..... Petitioner

versus

STATE NCT OF DELHI

..... Respondent

**Advocates who appeared in this case:**

For the Petitioner : Mr. G.S. Sharma, Mr. V.K. Sharma and Mr. R.A. Sharma, Advs.

For the Respondent : Mr. Raghuvinder Verma, Addl. PP for the State with SI Ajay Kumar

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**ORDER**

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**06.09.2018**

**SANJEEV SACHDEVA, J. (ORAL)**

1. The petitioner seeks regular Bail in case FIR No. 258 of 2014 under Sections 363/376 of the IPC Police Station Rajouri Garden, New Delhi.

2. The Charge sheet was filed additionally under Section 4 of POCSO Act. It is informed that the charge has been framed under Section 6 of POCSO.

3. The allegations against the petitioner are that the prosecutrix,

who claimed to be aged about 10 years, in the evening at 6.00 PM, had gone to purchase some eatables. The petitioner is alleged to have dragged her into a park and then committed penetrative sexual assault against the prosecutrix.

4. Learned counsel for the petitioner submits that no evidence has been produced to show that the prosecutrix was aged 10 years. He submits that reliance has been placed only on a certificate issued by one NGO, no document as stipulated under the Juvenile Justice Act has been produced. He further submits that as material witnesses have already been examined, there is no purpose of keeping the petitioner incarcerated any further. The petitioner has already undergone 4- ½ years of incarceration.

5. Learned counsel for the petitioner submits that since out of 16 witnesses, only 4 witnesses have been examined. The trial is not likely to be concluded shortly so the petitioner should be enlarged on bail.

6. Learned APP appearing for the state submits that the child was being provided education by the NGO and as per records the NGO was the school first attended by the prosecutrix, thus the certificate issued by the NGO was sufficient for the purpose of determining the age of the prosecutrix. He further contends that even if assuming prosecution fails to establish the age of the prosecutrix, an offence under Section 376 is clearly made out as per the averments in the FIR as well as statement recorded under Section 164 Cr. P.C. He further

submits that independent witnesses have already been examined and they have supported the case of the prosecution. The prosecutrix has identified the petitioner and has reiterated the averments contained in the FIR and has reiterated that the petitioner had dragged her into the park and committed penetrative sexual assault on her.

7. Without commenting on the merits of the case, on perusal of the record I am not inclined to grant bail to the petitioner. The mere fact that the material witnesses have been examined is no ground, per se, to grant bail. Court has to consider the gravity of the offence and the material on record against the accused as well as the testimony of the prosecution witnesses that has come on record. Keeping in view the totality of facts and circumstances, I am of the view that the petitioner cannot be released on bail.

8. However, keeping in view the fact that the petitioner has been incarcerated 4½ years, the trial court is directed to expedite the recording of prosecution witnesses and conclude the same preferably within a period of six months from today.

9. The Petition is dismissed, however with a direction to the Trial Court to expedite the trial of the case.

10. Order *Dasti* under signatures of the Court Master.

**SEPTEMBER 06, 2018/‘rs’**

**SANJEEV SACHDEVA, J**