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

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Judgment delivered on: 27.08.2018

+ BAIL APPLN. 1711/2018

KAMAL NAYAN

..... Petitioner

versus

THE STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioners :

Mr. Sidharth Kapoor with Mr.
Virender Gupta, Advocates

For the Respondents:

Mr. Panna Lal Sharma, APP for the
State
SI Dharmendra Pratap Singh, PS
Samaipur Badli

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

27.08.2018

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks regular bail in FIR No. 1190/2016 Police Station Samaipur Badli initially registered under Sections 363 & Section 6 of POCSO Act and subsequently, charge-sheet has been filed under Sections 376/363/366 IPC.

2. Learned counsel for the petitioner submits that petitioner has

been falsely implicated as the prosecutrix had voluntarily gone with the petitioner to his village where they got married. He submits that the prosecutrix has appeared before the trial Court and in her statement recorded on 05.06.2018, categorically stated that she left with the petitioner on 28.11.2016, on her will and there after they got married. He submits that the prosecutrix was over 16 years of age when she left her home with her own consent.

3. Learned counsel submits that in view of exception 2 to Section 375 IPC, *sexual intercourse by a man with his own wife, the wife not being under 15 years of age, is not rape*. He submits that the case of the petitioner is squarely covered by Exception 2 and from the testimony of the prosecutrix no offence is made out under Sections 375/376.

4. Learned APP submits that the age of the prosecutrix as recorded is 04.11.2000. This shows that the prosecutrix allegedly went with the petitioner after she has completed the age of 16 and thereafter they got married.

5. The prosecutrix is present in court and identified by the Investigating Officer. She confirms the contentions of the petitioner.

6. Without commenting on the merits of the case and on perusal of the records, I am satisfied that the petitioner has made out a case for grant of regular bail. Accordingly, on petitioner furnishing a bail bond

in the sum of Rs. 50,000/- with one surety in the like amount to the satisfaction of the Trial Court, the petitioner shall be released on bail, if not required in any other case. The petitioner shall not do anything, which may prejudice either the trial or the prosecution witnesses. The petitioner shall not leave the country without permission of the Trial Court.

7. The petition is disposed of in the above terms.

8. Order Dasti under signatures of the Court Master.

SANJEEV SACHDEVA, J

AUGUST 27, 2018
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