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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 2352/2017

KANAHIYA LAL

..... Petitioner

Through Mr. Pramod Ahuja and Ms. Amita Sachdeva, Advs.

versus

STATE THR. GOVT. OF NCT OF DELHI

..... Respondent

Through Mr. Kewal Singh Ahuja, APP for the State along with SI Rajiv Kumar.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **04.01.2018**

Petitioner is seeking bail. He has been charged under Section 376 (2)(i) of the IPC as also Section 4 of the POCSO Act. The statement of the daughter of the complainant was recorded under Section 164 of the Cr.PC. The victim had been impregnated by the petitioner pursuant to which she gave birth to a baby girl on 29.05.2017. In the course of investigation, the potency test of the petitioner had been conducted; the blood samples of the baby child, the victim and the petitioner were sent to the CFSL for a DNA profile which reveals that the petitioner is the father of the baby girl. The petitioner, at this stage, states that he is willing to take the custody of the child who is presently in an orphanage as the complainant was also not willing to keep custody of the said child.

Learned counsel for the petitioner argues that the trial is yet

going to take time and the last ossification test of the prosecutrix opining that she was aged 17-18 years, the benefit of this should be given to the accused and she being an adult, there is a clear case where a consent relationship had been entered into between the parties and for this proposition he has placed reliance upon a judgment delivered in Crl. Appeal No.430/2013 Mahesh Vs. State delivered on 07.08.2015.

This Court notes this argument. This Court also notes that the petitioner is in custody since the last six months. The victim is yet to come into the witness box. The fact that she was impregnated by the petitioner pursuant to which a baby girl was delivered is not in dispute. The DNA profile has revealed that the petitioner has fathered the child. The submission of the petitioner that the victim was an adult which is evident from the ossification report and benefit of two years should be granted in his favour is an argument which cannot be considered at this stage. Trial is yet to take place. The ossification test is only an opinion and at best can be considered as a relevant fact at the time of appreciation of evidence. It cannot, at this stage, endorse the submission of the petitioner that this was a consent relationship between two consenting adults.

This Court is not inclined to grant the prayer made by the petitioner. Dismissed.

INDERMEET KAUR, J

JANUARY 04, 2018

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