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

Judgment delivered on 21.11.2019

+ **BAIL APPLN. 1929/2019**

SAJID

..... Petitioner

Through: Mr. Ram Kumar, Mohd. Asif
and Bramjeet Singh, Advocates.

versus

STATE(N.C.T. OF DELHI)

..... Respondent

Through Mr. G.M.Farooqui,
APP for State.
SI Dinesh Kumar:
PS Jamia Nagar

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J.(Oral)

1. Vide this order, I shall dispose of a bail application u/s. 439(1) r.w Section 482 CrPC filed by the petitioner **Sajid** in FIR No. 1297/2016, under Section 376 IPC & Sec. 6 POCSO Act, P.S. Jamia Nagar, Delhi and setting aside of impugned order dated 31.05.2019 passed by the Ld. Additional Sessions Judge-01 South-East, Special court (POCSO), Saket District Court, New Delhi.

2. Ld. Counsel for the petitioner has prayed for bail on the ground that petitioner is innocent and falsely implicated. He has clean antecedents. It is submitted that Ld. Trial Court has failed to appreciate that the marriage/nikah was performed between the prosecutrix and petitioner according to muslim rites and rituals and they have started living as husband and wife and prosecutrix got pregnant. It is further submitted that Ld. Trial Court failed to appreciate that complainant gave contradictory version under Section 161 and 164 Cr.P.C. during the investigation. Two documents for determining the age of the prosecutrix has come on record which are contrary to each other.

3. It is further submitted that Ld. Trial Court has failed to appreciate that the investigation in the present case has been completed and charge sheet has been filed. It is further submitted that Ld. Trial court has failed to give any cogent reason while dismissing the bail application of the petitioner and passed the impugned order only on the basis of apprehension.

4. It is further submitted that Ld. Trial court has failed to appreciate that the complainant in conspiracy with her associates with

intention to grab the property of the petitioner opened fire upon her mother and got registered the case and IO of the said case after investigation filed cancellation against the petitioner which clearly proves the conspiracy against the petitioner.

5. It is further submitted that Ld. Trial Court has failed to appreciate that the charges were framed on 15.09.2018 against the accused under Section 376D IPC and Section 6 POCSO Act and prosecutrix has been examined wherein she has retracted from her original version.

6. It is further submitted that Ld. Trial Court has failed to appreciate that the prosecutrix is living with parents of the petitioner and contently married with the petitioner and she had filed the present case under duress. Prosecutirx has also admitted her *nikah* with the petitioner. All the public witnesses have been examined and petitioner is no more required for the purpose of investigation.

7. It is lastly submitted that investigation in all respect have been completed and charge sheet has been filed and the material witnesses have been examined therefore, petitioner be, released on bail, in the interest of justice.

8. Ld. APP for the state has opposed the bail application on the ground that allegations against the petitioner are serious in nature. Petitioner has sexually assaulted the petitioner when she was minor. He has, therefore prayed for dismissal of the bail application.

9. I have considered the rival submissions. The present case FIR No. 1297/16 u/s. 376 IPC & 6 POCSO Act, PS Jamia Nagar, New Delhi was registered on 11.12.2016 on the statement of complainant/prosecutrix alleged to be aged about 15 years. She has alleged that her friend Saba had introduced her to petitioner Sajid and later on petitioner Sajid took her to a flat in Shaheen Bagh, Jamia Nagar, New Delhi, where he exploited the prosecutrix and made forceful intercourse with her and also recorded her video. He used that video to blackmail prosecutrix and threatened her that if she did not indulge in sexual activity with him, he will upload her recorded video on internet. She further alleged that petitioner Sajid also brought 3 other people along with him in the month of August and all of them raped her turn by turn. Thereafter, prosecutrix came to know that she has become pregnant and informed the aforesaid incident to her mother. Medical examination of the prosecutrix was got conducted

from AIIMS hospital and it was confirmed that prosecutrix is pregnant. Statement of the prosecutrix u/s. 164 CrPC was recorded in which she corroborated the aforesaid incident and allegations levelled against the petitioner.

10. On 23.12.2016, petitioner Sajid was arrested and during police custody he had also disclosed the name of his other associates as Juber, Waseem and Firoz who were involved in this case along with petitioner Sajid. DNA sample of petitioner Sajid was also obtained for FSL purpose. On 15.06.2017, prosecutrix has given birth to a baby at Hamdard Majidia Hospital. During the course of investigation, the DNA samples of baby and mother were collected from hospital. Thereafter, IO had also sent the samples including the sample of petitioner Sajid to FSL Rohini for expert opinion. Scrutiny of the FSL report, dated 25.01.2018 revealed that petitioner Sajid is biological father of the baby of the prosecutrix. During the course of investigation, transfer certificate of prosecutrix was verified from the concerned school. According to one transfer certificate, her date of birth is 15.08.1998. Though on the date of registration of case on 11.12.2016, the age of prosecutrix was 18 years and three months,

however, the prosecutrix has stated in her statement that she was raped by the petitioner in July, 2016. Thus, at the time when offence was committed, the prosecutrix was minor.

11. It is a settled law that while granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, the circumstances which are peculiar to the accused, his role and involvement in the offence, his involvement in other cases and reasonable apprehension of the witnesses being tampered with. The offence committed by the petitioner is serious in nature. Petitioner had taken prosecutrix to a flat in Shaheen Bagh, Jamia Nagar, New Delhi and raped her in July, 2016 when she was a minor.

12. Though it is contended by learned counsel for the petitioner that since both the petitioner and prosecutrix are living as husband and wife, no offence is made out against the petitioner. However, I am not in agreement with the contention of learned counsel for the petitioner. As per transfer certificate, date of birth of prosecutrix is 15.08.1998

and as per statement of prosecutrix, she was raped by the petitioner in July, 2016 i.e. when she was a minor.

13. The alleged solemnization of marriage of petitioner with victim vide *nikahnama* dt. 17.08.2016 is of not much help to him since offence of rape is a very serious and grave one and cannot be compounded/settled and subsequent marriage does not exonerate the petitioner from the alleged commission of offence. It is also difficult to ignore the fact that when victim was sexually assaulted, the petitioner was already married and had five children. It may further be noted that **during her examination in chief** in court on 04.02.2019, the victim has categorically stated that petitioner had made forcible physical relations with her after removing her clothes. She has also deposed that her date of birth is 15.08.2001 as per school record. In her cross examination, she has categorically denied the suggestion that no forcible relations were made by the accused with her in last week of July, 2016.

14. In view of the above facts appearing on record and also keeping in mind the fact that even if date of birth of victim is taken to be 15.08.1998 and not 15.08.2001 (as there are two certificates showing

different dates of birth of victim), the victim was a minor at the time of commission of offence in July 2016 and further in view of the fact that victim has supported the prosecution version of sexual assault by the petitioner, no grounds for bail are made out. The bail application is, therefore, dismissed and stands disposed of accordingly.

NOVEMBER 21, 2019
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BRIJESH SETHI, J

