

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

Reserved on : 21.11.2019
Pronounced on : 20.12.2019

+ **BAIL APPLN. 2552/2019**

MANOJ KUMAR

..... Petitioner

Through **Mr. Pramod K. Tiwari, Advocate**

versus

STATE

.... Respondent

Through **Mr. Amit Ahlawat, APP for the State.**
SI Amit Bhati, ASI Tulli Ram, PS :
Badarpur.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

1. This is an application filed under Section 439 Cr.P.C for grant of bail to the petitioner/applicant in case FIR No.0195/2016 U/s 376/363 IPC & 6 POCSO Act registered at Police Station-Badarpur.

2. Briefly stated, the facts of the case are that on 12.06.2016 wife of the petitioner / applicant made a complaint alleging therein that the petitioner / applicant who is her husband had kidnapped her younger sister aged 13 years. On her complaint the present FIR was registered U/s 363 IPC. On 06.06.2019 missing victim was recovered from Dairy No. 18, Masoodpur, Vasant Kunj, New Delhi. During the course of investigation the victim was examined and she made no allegations of kidnapping and assault against the

petitioner/applicant. She further stated that she had married the petitioner/applicant and from this wedlock she is having a girl child aged around one and a half years. During the course of investigation, the victim refused to undergo her internal examination when she was taken at AIIMS and on 06.06.2019, her statement U/s 164 Cr.P.C was recorded wherein she did not support the case of the complainant. As no documents relating to the age of the victim could come on record, therefore, on 10.06.2019 her ossification test was conducted at Safdarjung Hospital and as per the ossification test report the age of the victim was found to be between 18 years to 21 years. Therefore, section 376 IPC & 6 POCSO Act were added in the present case.

3. On 28.06.2019, the victim was produced before the CWC Kalkaji where she was counseled in front of the committee. She refused to go with her parents. Thereafter, the victim and her daughter were sent to AIIMS, where on the request of the IO blood samples of victim and her daughter were preserved. On 24.06.2019, the petitioner/applicant was arrested and blood sample of the petitioner/applicant were also sent to FSL for examination.

4. It is submitted by the Ld. counsel for the petitioner / applicant that the victim was major on the date of the incident. He further submits that no allegations have been made by the victim against the petitioner/applicant. She has not even supported the case of the prosecution in her statement recorded U/s 164 Cr.P.C. He further submits that the victim and the petitioner/applicant have now married and are having one and a half year girl child. He further submits that as per the ossification test, age of the

victim have been found to be between 18 to 21 years, therefore, age of the victim should be considered as 21 years because it is in the benefit of the petitioner/applicant and considering so, the victim was a major on the date of the marriage. He further submits that the petitioner/applicant is in J.C. since 24.06.2019 and no useful purpose would be served by keeping him in custody.

5. On the other hand, it is submitted by the Ld. APP for the state that the allegations against the petitioner/applicant are grave and serious in nature. The petitioner/applicant had kidnapped her minor sister-in-law and kept her in captivity and raped her.

6. In the instant case, as far as the age of the victim is concerned which according to the ossification test has been found to be between 18 to 21 years, the settled principle is that the ossification test is not conclusive of age determination. It is settled that it is difficult to determine the exact age of the person concerned on the basis of ossification test or other tests. The Supreme Court, in several decisions has taken judicial notice of the fact that the margin of error in age ascertained by radiological examination is two years on either side. Now the question that arises for consideration is as to whether the lower of the age or the higher of the age is to be taken. If benefit of doubt has to go to the accused then one would have to take the higher limit and if benefit of doubt has to go in favour of the victim then the lower of the two limits would have to be taken. It is also settled position of law that benefit of doubt, other things being equal, at all stages goes in favour of the accused.

7. In the present case, as no document of age was available, the age of

the victim has been determined by the ossification test, according to which the same has been found to be between 18 to 21 years. In the instant case, the date of incident is dated 16.03.2016 and the ossification test was done on 10.06.2019 i.e. after 3 years of the date of the incident. As per ossification test, in the instant case, the age of the victim has been found to be between 18 to 21 years. So applying the margin of error principle, of two years on either side, the age could be between 16 to 23 years. Therefore, giving the benefit of doubt of 3 years to the petitioner, the age of the victim has to be taken as 20 years.

8. The petitioner/applicant is in J.C. since 24.06.2019. He is married with the victim and has a girl child from her. The victim has not supported the case of the complainant / prosecution and has not made any allegations against the petitioner / applicant in her statement recorded U/s 164 Cr.P.C. The victim has even refused to go to her parents house. She is blessed with a daughter who is aged around one and a half years from the petitioner/applicant. Therefore, keeping in view the facts and circumstances of the case, the application is allowed and the petitioner/applicant is admitted to bail on his furnishing a personal bond in the sum of Rs. 20,000/- with one surety of the like amount subject to the satisfaction of the concerned court below. The application is disposed of accordingly.

9. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.

Order dasti.

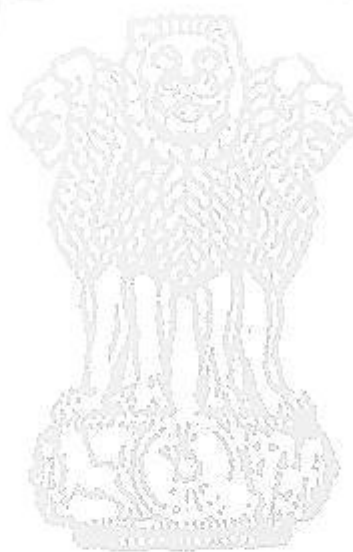
RAJNISH BHATNAGAR, J

DECEMBER 20, 2019/Sumant

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