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

% **Date of Decision: 28.01.2020**

+ **BAIL APPLN. 3244/2019**

LAKHAN

..... Petitioner

Through: Mr. Kali Charan, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr G.M. Farooqui,
APP for State with SI
Pushpender PS: Ambedkar
Nagar.
Mr. Rohitash, Ld. Counsel for
Complainant with
Complainant in person.

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 filed under section 439 Cr.P.C. by the petitioner **Lakhan** in FIR No. 536/2018 u/s. 363/365/376 IPC & 6 POCSO Act, PS Ambedkar Nagar.

2. Ld. Counsel for the petitioner has prayed for bail on the ground that petitioner is innocent and has been falsely implicated.

Petitioner is in judicial custody since 01.05.2019. It is submitted that prosecutrix had eloped with the petitioner on her own free will on 11.11.2018. In her statement recorded under Section 164 Cr.P.C. dated 04.04.2019, prosecutrix has stated that she did not make any physical relations with the petitioner and left her parental house on her own free will alone and the petitioner was not with her. However in her later statement recorded on 23.05.2019 under Section 164 Cr.P.C. she has stated that she established physical relations with the accused Lakhan on her own free will and consent. It is submitted that benefit of this changed statement should go to the petitioner. It is further submitted that the age of prosecutrix was above 18 years when she had eloped with the petitioner. It is further submitted that prosecutrix even refused to go for internal medical examination and in the absence of proper medical examination of the prosecutrix, no offence under Section 376 IPC is made out. It is further submitted that chargesheet in this case has already been filed and case is pending before Ms. Priya Mahindra, Ld. Addl. Sessions Judge (POCSO), District South, Saket Courts, New Delhi. It is, therefore, prayed that petitioner be released on bail in the interest of

justice.

3. Ld. APP for the state has opposed the bail application on the ground that allegations against the petitioner are serious in nature. Petitioner has made physical relations with the prosecutrix who was 15 years and, therefore, her consent is immaterial. He has, therefore prayed for dismissal of the bail application.

4. I have considered the rival submissions. The prosecution version is that on 12.11.2018, complainant Jaiprakash s/o Sh. Masicharan R/o E-167, Daxinpuri had given a complaint at PS Ambedkar Nagar regarding missing of his daughter, aged 15 years and raised doubt on petitioner Lakhan. On the said complaint, the present FIR bearing no. 536/18, under Section 363 IPC was registered. During the course of the investigation the prosecutrix was produced before the CWC and on 04.04.2019, her statement U/S: 164 CrPC was recorded by the Ld.M.M, Anjani Mahajan, Saket Court, South. During the course of the investigation copy of birth certificate was also taken from the school. On 01.05.2019, petitioner surrendered in the court and after interrogation he was arrested. On 23.05.2019, statement of the prosecutrix under Section

164 CrPC was again recorded by the Ms.Alka Singh, MM, Saket Court, South wherein prosecutrix has stated that she eloped with petitioner at his (petitioner) instance to Himachal Pradesh and lived with him at Dharamshala and Hisar for around 4-5 months. They had sexual intercourse but it was consensual. She further stated that she has not spoken truth in her earlier statement dated 04.04.2019 recorded under Section 164 Cr.P.C. as she was scared and wanted to protect the petitioner.

5. The prosecution has placed on record order dated 25.01.2020 vide which Ld. ASJ Ms. Priya Mahendru has decided the age of the prosecutrix on an application moved by the petitioner for conducting appropriate medical test to ascertain correct age of prosecutrix and observed that the birth certificate shows that the date of birth of the prosecutrix is 10.08.2003. The birth certificate from the school also shows that the date of birth of the prosecutrix is 10.08.2003. As per Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015, for determining the age of any victim of sexual offence, first document which is to be considered is Date of Birth Certificate issued from school or Matriculation or equivalent Certificate from

concerned examination Board. The Ld. ASJ has, thus, held that date of birth of the prosecutrix was 10.08.2003.

6. The above facts reveal that prosecutrix was about 15 years old at the time of the alleged offence and her consent for sexual intercourse was therefore immaterial. In these circumstances, keeping in mind the nature of offence, no grounds for bail are made out. The bail application is, therefore, dismissed and stands disposed of accordingly.

BRIJESH SETHI, J

JANUARY 28, 2020

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