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

+ **BAIL APPLN. 2840/2019**

SANTOSH @ SAPLU

..... Petitioner

Through Mr Rshan Lal Saini, Advocate with
Mr Vikas Padora, Advocate.

versus

STATE

..... Respondent

Through Mr Kewal Ahuja, APP for state.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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13.05.2020

1. The petitioner has filed the present petition, *inter alia*, praying for bail in FIR No. 278/2012 under Section 363 IPC, registered with P.S. Dwarka North. Subsequently, offences under Section 366 IPC and Section 6 of the Protection of Children From Sexual Offences Act, 2012 (POCSO) were also added.
2. The aforesaid FIR was registered at the instance of one Sh Sumer Lal. He had reported that his minor daughter ('S') who was aged about 13 years was missing since 07.11.2012. The said FIR was registered on 22.11.2012.
3. During investigation, the prosecution ascertained the date of birth of 'S' to be 10.01.2001. 'S' was subsequently, traced and found on 17.06.2018. She was living with the petitioner along with her two minor children. Her statement under Section 164 Cr.p.c. was recorded on 27.06.2018. She stated that she had left with the petitioner out of her own free will and consent and

had married him. She also stated in unequivocal terms that she wanted to live with her husband (the petitioner). The prosecution states that it is established that the petitioner is the father of the two minor children – a boy and a girl aged two years and six years respectively.

4. The petitioner claims that he had married 'S' with the consent of the biological father of 'S'. He also states that the FIR was lodged in view of certain disputes that had arisen between the parents of 'S'. It is also contended on behalf of the petitioner that 'S' was not a minor at the time of the marriage. The petitioner has produced a marriage certificate dated 23.01.213 which also reflects the photograph of 'S'. The learned counsel appearing for the petitioner submitted that on plain viewing of the said photograph it is apparent that 'S' could not have been 11 years old as is alleged by the prosecution. He also states that the school certificate where 'S' first attended the school has not been produced.

5. A status report has been filed. Mr Kewal Ahuja, learned APP appearing for the State submits that the testimony of 'S' has been recorded and she has not supported the case of the prosecution. Her cross-examination is yet to be conducted. He states that the petitioner and 'S' had applied for quashing of the FIR, however, the said petition was subsequently withdrawn.

6. In view of the above, it is conceded that 'S' (who is stated to be the victim) is also opposing the prosecution's case. The petitioner and 'S' have two minor children who require to be looked after. Further, this Court is of the view that the investigation is complete and no useful purpose would be

served in directing that the petitioner be kept in custody. There is no probability of the petitioner evading the process of law or attempting to influence the material witnesses, considering that the principal witness has already supported his defence and not the case of the prosecution.

7. In the given circumstances, this Court directs that the petitioner be released on bail on his furnishing a personal bond in the sum of ₹5000/- to the satisfaction of the Jail Superintendent. The petitioner shall provide a contact number and ensure that he is reachable at all times. The petitioner shall also ensure that he participates in the trial and is present in Court as and when required.

8. The Jail Authorities are directed to act on this order as placed on the website of this Court without any further communication.

9. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

MAY 13, 2020

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