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

+ **BAIL APPLN. 124/2020**

KULDEEP SINGH

..... Petitioner

Through

Ms.Sonika Tyagi, Adv. with
Mr.Abhinao Kr. Rani, Adv.

versus

STATE

..... Respondent

Through

Mr.K.K. Ghei, APP for State.
SI Usha Rao PS Bindapur.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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20.01.2020

Crl. M.A. 982/2020

Allowed, subject to all just exceptions.

Application is disposed of.

Bail Appln.124/2020

The present petition is filed under section 439 Cr.P.C. in pursuance to FIR No.387/2017 registered at Police Station Bindapur for the offence punishable under section 4 of the POCSO Act.

As stated in the present petition, section 4 of POCSO Act is not applicable in this case as prosecutrix is a major girl and the report of ossification test exclusively reveals that the age of prosecutrix is between 17-19 years and further, she had hidden her Aadhar card and did not disclose her actual age.

To strengthen her arguments, learned counsel for the petitioner has

relied upon the decision given by this court in the case of **Sweta Gulati vs. State** on 08.08.2018 whereby held as under:

" In the present case as no document of age was available, the age has been determined by the Child Welfare Committee as 17 years based on the ossification report. The bone ossification test report has estimated the age as 17 to 19 years. So applying the margin of error principle, of two years on either side, the age could be between 15 to 21 years. In the present case even if the margin of error is not taken on the higher side, the upper limit of the age estimated by the ossification test is 19 years. Giving the benefit of doubt to the accused, the age of the victim has to be taken as 19 years of age."

She further submits that both prosecutrix and the petitioner were major at the time of alleged incident and were in love with each other and she wanted to marry him. There were consensual physical relation between them and thereof, no offence under section 4 of POCSO Act or section 376 is made out.

Issue notice.

Learned APP accepts notice on behalf of the State and has opposed the present petition by stating that the age of the prosecutrix at the time of alleged incident is 16 years, therefore, her consent is immaterial and keeping in view the serious allegations against the petitioner, he may not be released on bail. Moreover, only 4 witnesses have been examined and 10 witnesses are yet to be examined before the Trial Court.

Learned APP, however, has fairly conceded, on the instructions from the IO, who is personally present in court, that there is no proof of age of the prosecutrix and the IO asked the proof of the age, however, the prosecutrix has not submitted any of the documents regarding the age proof.

As per the prosecution, the alleged offence was committed in the afternoon at around 01:30 p.m. and the place of incident is a residential-cum-commercial area, but there was no hue and cry from the side of the prosecutrix.

It is not in dispute that in the MLC of the prosecutrix, no external or internal injury has been mentioned. In the statement based upon which the FIR was registered, she stated that the petitioner asked her to come upstairs to his friend Kalu's room for 5 minutes and thereafter he locked the room from inside and committed rape.

The fact remains that after the alleged incident, the petitioner asked the prosecutrix to go to Shiv Mandir and wait there for him. She waited there as the petitioner had told her that he would drop her to her house. Meanwhile, the parents of the prosecutrix came there and, subsequently, case was registered.

However, without commenting on the merits of the case which is pending for trial and the fact that the petitioner is in jail since 11.06.2017, I am of the opinion that the petitioner is entitled for bail.

Accordingly, he shall be released on bail, on his furnishing personal bond of ₹15,000/- with one surety of the like amount to the satisfaction of the Trial Court.

Trial Court shall not get influenced by the observations made by this Court while granting bail.

The petitioner shall cooperate with the investigation and make himself available for interrogation by police officer, as and when required;

In case of default of aforementioned conditions, the State is at liberty to take appropriate recourse in accordance with law.

The petition is allowed and disposed of.

Order dasti under signatures of the Court Master.

SURESH KUMAR KAIT, J

JANUARY 20, 2020/ab