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

+ **BAIL APPLN. 298/2020**

MOHD. SHAKIR

..... Petitioner

Through Mr. Khalil A. Ansari, Adv.

versus

STATE

..... Respondent

Through Mr. Hirein Sharma, APP with SI
Sandeep Maan, PS Ambedkar Nagar,
Delhi

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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10.02.2020

CRL.M.A.2329/2020 (for exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

BAIL APPLN. 298/2020

Vide the present application, petitioner/applicant seeks Bail in FIR No.175/2018, registered at Police Station Ambedkar Nagar, Delhi for the offences punishable under Sections 363/366/376 IPC & 6 POCSO Act, 2012.

Case of the prosecution is that on 9.4.2018, at about 6.00 pm, prosecutrix, aged about 16 years left her home for tuition but did not return back. The family kept on searching the prosecutrix but her whereabouts could not be ascertained. Thereafter, a complaint was made by brother of

prosecutrix with Police Station Ambedkar Nagar, Delhi on 10.4.2018 at 20.40 hrs alleging therein that three months earlier as well, prosecutrix had gone to Select City Walk, at the instance of Shakir Khan (petitioner herein), son of their landlord and petitioner is also missing from his residence. It was further alleged that petitioner has enticed his sister away and on the basis of the aforementioned complaint, the aforesaid FIR was registered and later on, section 366/376 IPC and Section 6 POCSO Act were added.

Learned counsel for the petitioner submits that complainant, in her examination-in-chief, has deposed that she went with the petitioner-accused to Goa on 09.04.2018 on a vacation. She stayed with him in a hotel, named 'Vrindawan' took some rest there and then they went to 'See Beach'. Thereafter, they went to hotel and slept separately in one room. During their stay, hotel persons came to their room and asked about their relationship status. They told them that they are husband and wife. They stayed in Goa for about two months at three places. Firstly, they stayed at one house arranged by a friend of the petitioner and then they went to stay at another place but she did not remember the location of the said place and thereafter, they shifted to a hotel which she referred to earlier. She further deposed that petitioner-accused was her boyfriend and they did not have any physical relation during that period as they decided to have physical relation only after solemnization of marriage and they wanted to get married. However, they were not married.

Learned APP has pointed out that as per the MLC, hymen of prosecutrix is ruptured, thus, it is established that petitioner and prosecutrix had physical relations though may be with her consent but her consent is not material as she was 16 years old at the time of alleged incident.

However, without commenting on merits of prosecution case which is the subject matter of trial whether petitioner had sex with the complainant or not, I am of the opinion that, since petitioner, is in judicial custody from 21.6.2018 and prosecutrix has already been examined and not supported the prosecution case, therefore, petitioner deserves to be admitted on bail.

Accordingly, the petitioner shall be released on bail on his furnishing a personal bond in the sum of ₹20,000/- with one surety of the like amount to the satisfaction of the Trial Court.

The application is allowed and disposed of.

Order *dasti* under the signatures of Court Master.

Copy of this order be transmitted to the Jail Superintendent and the Trial Court concerned for necessary compliance.

SURESH KUMAR KAIT, J

FEBRUARY 10, 2020/rk