

\$~6

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

+ **BAIL APPLN. 406/2020**

MANOJ KUMAR

..... Petitioner

Through

Mr.Nitish Shekhar and Mr.Nishant
Kumar, Advocates

versus

STATE

..... Respondent

Through

Ms. Meenakshi Dahiya, APP for State

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

%

26.02.2020

1. By the present petition, the Petitioner seeks regular bail under Section 439 Cr.P.C. in connection with FIR No.161/2017, PS Baba Hari Dass Nagar for the offence under Section 363 of the Indian Penal Code, 1860. Petitioner is stated to be in custody since 23.08.2019.

2. The brief facts of the case giving rise to the present petition are that a FIR was registered at the instance of the mother of the prosecutrix, reporting that her daughter (prosecutrix) was missing. Pursuant to DD Entry No.48A, dated 21.08.2017, the FIR in question came to be recorded.

3. On the directions given by this Court vide order dated 11.02.2020, status report has been filed by the State. In the said status report, it is stated that during the course of the investigation, search of victim-prosecutrix was made by ASI Ramesh. The victim was recovered on 22.08.2019 and her

statement was recorded under Section 161 of the Cr.P.C., wherein she stated that she got married to the accused and had physical relations with him and have a one year old child as a result of the same.

4. Further, the status report also mentions that the statement of the prosecutrix was recorded under Section 164 of Cr.P.C. before the Court of Metropolitan Magistrate, Dwarka Courts, New Delhi, on 23.08.2019, after a period of almost 2 years from the date of registration of the FIR. The extract of her statement recorded under Section 164 of Cr.P.C. that does not accompany the petition, has been handed over by the Ld. APP, and the same is taken on record. In the said statement before the Magistrate, the prosecutrix stated her age to be 18 years. She further stated that she had left her home on her own free will and volition without any pressure or coercion. She also stated that she married the accused and there is nothing untoward which requires any action

5. The prosecutrix was medically examined at DDU Hospital Hari Nagar, Delhi, vide MLC No. 350/19 but she refused to undergo internal examination and also declined to give any samples to the doctors. During the investigation, the age of the prosecutrix was verified from a certificate issued by SDMC Primary Girls School, Gopal Nagar, Najafgarh, Delhi, which records her date of birth as 13.08.2001.

6. On the basis of the investigation a charge sheet has been filed under Section 363/376 of the Indian Penal Code read with Section 6 of the POCSO Act. The prosecutrix is present in Court today and states that her mother has wrongly recorded her age in the certificate and as on the date of her

marriage she was 18 years of age.

7. The statement of the prosecutrix recorded under Section 164 apparently does not support the case of the prosecution. Also, taking into consideration that the said statement was recorded after a period of 2 years of the filing of the FIR, and that the prosecutrix is now peacefully and happily living with her husband and their child at her matrimonial home, in the opinion of the Court, the petitioner is entitled to and is granted bail, subject to filing of a bail bond of Rs.25,000/- with one surety of the like amount to the satisfaction of the Ld. Trial Court and with the condition that he shall provide his address proof before the Trial Court and shall not leave the National Capital Territory of Delhi.

8. The petition is accordingly disposed of.

9. Order *Dasti* under the signatures of the Court Master.

SANJEEV NARULA, J

FEBRUARY 26, 2020
SG