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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 223/2020 & CRL.M.(BAIL) 443/2020,**
CRL.M.A. 5551/2020

LAKHAN

..... Petitioner

Through Mr Kali Charan, Advocate.

versus

STATE

..... Respondent

Through: Mr Amit Gupta, APP for State.
SI Sandeep Maan, P.S. Ambedar Nagar.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **16.03.2020**

1. The petitioner has filed the present petition impugning an order dated 25.01.2020, whereby the petitioner's application for conducting the appropriate medical test of the prosecutrix (victim) for ascertaining her correct age was rejected.
2. According to the petitioner, there is a serious doubt as to the age of the prosecutrix/victim and, therefore, a medical test is necessary. The Trial Court had examined the material on record and held that there was no doubt as to the age of the prosecutrix/victim. The birth certificate of the prosecutrix indicated her date of birth as 10.08.2003. The certificate issued by the school, which the petitioner first attended, also indicated her date of birth as 10.08.2003. Thus, according to both these documents, the prosecutrix/victim was aged fifteen years at the time of the incident.

3. The learned counsel appearing for the petitioner contends that a doubt as to the age of the prosecutrix/victim arises for two reasons. First, because the MLC refers to the age of the prosecutrix as fourteen years. And second, because her statement recorded on 04.04.2019, under Section 164 of the Cr.P.C., mentions her age to be sixteen plus years.

4. The contentions advanced on behalf of the petitioner are unmerited. Although, the MLC does mention the age of the victim as fourteen years on one page, it also mentions her age as fifteen years on another page. It is thus apparent that her age recorded on one page of the MLC is incorrect. Moreover, the age on the MLC would have been recorded on the basis of information stated at the material time. Considering that there are authoritative documents available on record that reflect the petitioner's date of birth as 10.08.2003, the age of the petitioner as recorded in the MLC would be of little relevance; more so, considering that the correct age of the prosecutrix/victim is also recorded in the MLC.

5. Insofar as the statement of the prosecutrix/victim recorded under Section 164 of the Cr.P.C. is concerned, a plain reading of the said statement indicates that the prosecutrix had expressed her desire that the accused be released. It is in this context, that she had made the statement that her age is sixteen years plus.

6. This Court is refraining from making any further observations with regard to the said statement recorded under Section 164 of the Cr.P.C. as the same is a subject matter of controversy before the Trial Court. However, it is important to note that in the opening part of the statement, the prosecutrix disclosed her age as fifteen years in response to the first question that was

put to her by the Magistrate.

7. It is also relevant to note that subsequently, the prosecutrix resiled from her statement made earlier. Her statement under Section 164 of the Cr.PC was recorded for the second time on 23.05.2019, and she stated that she had recorded her earlier statement to save the petitioner.

8. In view of the above, even if it is accepted that there is some issue whether the age of the prosecutrix is fourteen years or sixteen years – although this Court finds no reason to do so – there is little doubt that she was below the age of eighteen years at the material time. In this view, there is no requirement for conducting any medical test of the prosecutrix.

9. The petition is, accordingly, dismissed. The pending applications are also disposed of.

VIBHU BAKHRU, J

MARCH 16, 2020

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