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

+ **BAIL APPLN. 1896/2020**

INTEJAR KHAN

..... Applicant

Through: Ms.Swati Verma, Advocate.

Versus

STATE (GOVT OF NCT OF DELHI)

.....Respondent

Through: Mr.Ashok Kumar Garg, APP for State
with SI Mahendra Kumar with
prosecutrix.
Ms.Aishwarya Rao, Advocate for
prosecutrix (DHCLSC)

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

08.09.2020

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(hearing through Video Conferencing)

The applicant, vide the present application seeks the grant of bail in relation to FIR No.147/2019, PS Kirti Nagar under Sections 363/366A/376(2)(n)/34 of the Indian Penal Code, 1860 and Sections 6 & 17 of the POCSO Act, 2012. It has been submitted on behalf of the applicant that he has been falsely implicated in the instant case; that the allegations levelled against the applicant in relation to the alleged sexual relations with the prosecutrix are premised only on the stated averment of the State that the prosecutrix was a minor at the time of the alleged commission of the offence and cannot be believed, in as much as, there are no supportive documents for the same.

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It has further been submitted on behalf of the applicant that through her statement under Section 164 of the Cr.P.C., 1973, the prosecutrix on 20.06.2019 in her said statement had categorically stated that she had left her parental home of her own accord and had gone to meet the applicant and subsequently got married to the applicant after conversion to Islam and that as per her statement under Section 164 of the Cr.P.C., 1973 also she had stated that in as much as, she loved the applicant and wanted to live with him and that she was under no pressure from the applicant and that till the age of 18 years, she would live with her family and thereafter, she would live with the applicant. On behalf of the applicant, it has been submitted further that there was no injury sustained by the prosecutrix as per the MLC and there was thus, nothing to corroborate the prosecution version of any sexual intercourse between the applicant and the prosecutrix.

It has also been submitted on behalf of the applicant that the prosecutrix was allegedly recovered at Bareilly which is a large district and the specific place from where the applicant was recovered has not been specified nor has the place of occurrence been specified even in the statement under Section 164 of the Cr.P.C., 1973.

On behalf of the State, learned APP for the State places reliance on the factum that the date of birth of the prosecutrix has been borne out to be 18.07.2003 from the verified school records of the prosecutrix; the attempts to arrest the co-accused in the matter i.e. Maulana Jahid Ali who had allegedly got the prosecutrix converted to Islam and thereafter, allegedly got the prosecutrix married to the applicant are stated to have not fructified and the stated Jahid Ali @ Maulana has till date not been arrested and proceedings under Section 82/83 of the Cr.P.C. have been initiated against him.

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The learned legal aid counsel as deputed by this Court for the prosecutrix who has interacted with the prosecutrix pursuant to the proceedings dated 17.08.2020 submits that the prosecutrix has apprised her that she was compelled to make the statement under Section 164 of the Cr.P.C., 1973 under duress. She has also stated that at that time, the prosecutrix was living with the family of the applicant when she had made her statement under Section 164 of the Cr.P.C., 1973.

On a consideration of the rival submissions that have been made on behalf of either side, presently, at this stage, the verification report that the State has submitted of the date of birth of the prosecutrix being 18.07.2003, cannot be disbelieved. The said aspect thus, makes the prosecutrix *prima facie* a minor at the time of the alleged commission of the offence.

Furthermore, though, learned counsel for the applicant submits that the statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix is categorical and that the prosecutrix cannot be permitted to make a mockery of the Court proceedings by having varying versions, the factum that the prosecutrix on 17.08.2020 when she was present before this Court through Video Conferencing and was allowed to read her statement under Section 164 of the Cr.P.C., 1973 dated 20.06.2019 which she had stated before the learned MM, West, in reply to a specific Court query put by this Court to the prosecutrix, she submitted that she had made a false statement on 20.06.2019 during the course of the proceedings under Section 164 of the Cr.P.C., 1973, in as much as, she had made that statement under the pressure of the applicant's family that her parental family would be killed and the said aspect cannot be overlooked presently.

It has been submitted on behalf of the applicant that the prosecutrix chose to continue to remain with the CWC Authorities and did not go to

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her parent's house and if the allegations that she made on 17.08.2020 were true, she would have gone with her parents.

In reply to a specific Court query, learned counsel for the prosecutrix submits that the prosecutrix is now living with her parents and her brothers and sisters.

On a consideration of the submissions that have been made on behalf of either side and as observed hereinabove that the prosecutrix having been a minor, cannot be disbelieved presently without their being an analysis of the said document from the anvil of examination and cross examination with the further submission made by the prosecutrix in person on 17.08.2020 before this Court as well as a submission having been reiterated through the submissions made by the counsel for the prosecutrix that she was under duress and threat when she made her statement under Section 164 of the Cr.P.C., 1973 there is no ground for the grant of bail to the applicant.

The application is thus, declined.

Nothing stated hereinabove shall however amount to any expression on the merits or demerits of the trial that may take place.

ANU MALHOTRA, J

SEPTEMBER 08, 2020

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