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

+ **BAIL APPLN. 2029/2020**

JITENDER KUMAR

..... Petitioner

Through Mr Nishant Sharma, Advocate.

versus

THE STATE

..... Respondent

Through Mr Ravi Nayak, APP for State.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

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04.08.2020

[Hearing held through videoconferencing]

CRL. M.A. 10403/2020

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

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3. The petitioner has filed the present application, *inter alia*, praying that he be released on bail in FIR No. 133/2019 under Section 363 IPC registered with PS Kirti Nagar.
4. The said FIR was registered at the instance of the maternal grandfather of the victim (Ms R). He reported that on 01.05.2019 his maternal grand-daughter (Ms R) had left the house at 2.30 p.m. to use a public convenience but had not returned since then. He stated that some unknown persons had induced her and kidnapped her.

5. Investigation revealed that Ms R was with the petitioner. According to the petitioner, he had married Ms R and they were living together. They also have a child from the said marriage.

6. Ms R has also joined the proceedings along with petitioner's father and her mother. They are identified by the petitioner's counsel. Ms R states that she had married the petitioner of her free will and without any coercion. She stated that she is residing with her in-laws (parents of the petitioner) since march 2020 and would continue to reside with them. She further states that she has a four months infant from her marriage with the petitioner.

7. The petitioner has also averred that Ms R was major at the relevant time of her marriage with him. However, this is seriously disputed by Mr Nayak, learned APP. He states that the investigation revealed that she was seventeen years, one month at the time of marriage as her date of birth has been verified as 25.03.2002.

8. It does appear from the interacting with Ms R that she wants to live with the petitioner. The petitioner also claims that he has lawfully married the prosecutrix. The question whether any offence under Section 376 IPC or any offence under the POCSO Act has been committed or not would be determined by the Trial Court including by ascertaining whether Ms R was below eighteen years at the relevant time.

9. Considering the conspectus of the present controversy, this Court considers it apposite to allow the present petition. The petitioner is directed to be released on bail on his furnishing a personal bond in the sum of ₹10,000/- with one surety of the equivalent amount to the satisfaction of the Jail Superintendent/Duty Magistrate. This is also subject to the following further conditions:-

- (a) that the petitioner shall provide his contact number to the SHO of the concerned PS (PS Kirti Nagar) and ensure that he is reachable at all times;
- (b) that the petitioner shall not leave the National Capital Territory of Delhi without informing the SHO of the concerned PS;
- (c) that the petitioner shall mark his presence telephonically with the concerned SHO PS Kirti Nagar on first Monday of each calendar month;
- (d) that the petitioner shall ensure his presence before the Trail Court at all hearings;
- (e) that in case of any change in the residential address, the petitioner shall immediately inform the concerned PS.

10. The petition is allowed in the aforesaid terms.

11. A copy of this order be communicated to the concerned Jail Authorities electronically.

VIBHU BAKHRU, J

AUGUST 04, 2020

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