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

+ **BAIL APPLN. 2183/2020**

KAMAL KUMAR

..... Petitioner

Through: Mr Vaibhav Kumar, Advocate.

versus

THE STATE OF NCT OF DELHI THROUGH

SHO NEB SARAI

..... Respondent

Through: Mr Ravi Nayak, APP for State with
WSI Maneeta, PS Neb Sarai.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

28.08.2020

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[Hearing held through video conferencing]

1. The petitioner has filed the present petition seeking bail in connection with FIR No.0526/2018 under Sections 376/366(A) of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO) registered with PS Neb Sarai.
2. The said FIR was registered on the basis of the complaint filed by the complainant – Ms 'I' (name withheld). She has alleged that she was friendly with the petitioner since June, 2015 and claimed that at the material time she was sixteen years old. She alleged that the petitioner used to call her regularly and on 15.02.2016, had persuaded her to accompany him to his friend's place. She alleged that the petitioner had forcibly established physical relationship with her at his friend's house. She claimed that she

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started weeping and he consoled her and then later dropped her home. He told her not to narrate the incident to anybody and, therefore, she did not inform anyone about the incident. She stated that subsequently, the petitioner again approached her through her aunt and apologised to her. She forgave him and they continued to maintain contact with each other. She stated that subsequently, on another day (the date is not mentioned in the FIR), he took her to the house of one woman and offered her a cold drink. After consuming the beverage, she felt giddy and in her state of near unconsciousness, the petitioner forcefully established physical relations with her. She also alleged that he threatened her that if she narrated the incident to anybody, he would place her nude photographs on social media/facebook.

3. Ms 'I' stated that she decided to lodge a complaint against petitioner but before she could do so, the petitioner persuaded her to accompany him and get married to him. She stated that she agreed to do so and left her house to join his company on 05.11.2017. They married each other on 09.11.2017 at Arya Samaj Mandir in the presence of the petitioner's parents.

4. Ms 'I' submitted that, thereafter, a few days later, the petitioner abandoned her. She also alleges that she found that the petitioner was already married to another girl about six months earlier in June, 2017.

5. The FIR was registered on 02.12.2018. The petitioner was arrested on 18.04.2019 and has been in custody since.

6. Ms 'I' has been examined and her evidence has been recorded.

7. The learned counsel appearing for the petitioner contends that Ms 'I' was not a minor at the material time. The petitioner denies that he established any physical relationship with her in the year 2016, as alleged.

He states that Ms 'I's' date of birth is 19.09.1999 and thus she was major at the said time and they established intimate relationship in the year 2017.

8. The complainant has joined the proceedings and this Court had interacted with her. She expressed her apprehension regarding the petitioner approaching her and harming her if he is released from jail. However, she subsequently stated that if he is restrained from visiting her locality where she resides, she would have no objection to the petitioner being released on bail.

9. The principal material witness (Ms 'I') has been examined and that there appears to be little evidence that the petitioner had forcibly established physical relations with Ms 'I' in the year 2016 apart from the Ms I's statement. It is material to note that it is Ms I's own case that she had continued to maintain relationship with the petitioner after he had allegedly forced himself on her. Considering the above, this Court considers it apposite to allow the present petition.

10. The petitioner shall be released on bail on his furnishing a Personal Bond in the sum of ₹10,000/- and one surety of an equivalent amount to the satisfaction of the Jail Superintendent/Duty Magistrate/Trial court. This is also subject to the following further conditions:-

- a) the petitioner shall provide a contact number and ensure that he is reachable on it at all times;
- b) the petitioner shall mark his presence before the concerned police station (PS Neb Sarai) on the first Monday of each calendar month;

- d) the petitioner/his family members shall not try to contact the complainant or her family members either directly or indirectly; and
- e) the petitioner shall not visit Devli village where Ms 'I' resides.

11. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

AUGUST 28, 2020
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