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

+ **BAIL APPLN. 2436/2020**

JITENDER

..... Petitioner

Through Mr. Ram Pal Singh, Adv.

versus

THE STATE

..... Respondent

Through Mr. A.K Garg, APP for State
SI Priyanka with victim and her
mother.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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17.09.2020

(Hearing through Video Conferencing)

The status report dated 3.9.2020 under signatures of Inspector Prem Singh, SHO, PS Ghazipur has been submitted through e-mail along with documents, the printout thereof be placed on the record by the registry. Submissions have being made on behalf of either side. The investigating officer of the case is present with the prosecutrix and the mother of the prosecutrix, Shrimati Brijesh through video conferencing.

The applicant has sought the grant of bail in relation to FIR 96 of 2018 PS Ghazipur under Section 363,366 and 376 of the IPC, 1860 and Section 6 of the POCSO Act, 2012. It has been submitted on behalf of the applicant by the learned counsel for the applicant that the prosecutrix and the applicant were in a consensual relationship and the prosecutrix was not a minor at the time of the alleged commission of the offence.

It has also been submitted on behalf of the applicant that even in her testimony recorded on 15.1.2019 before the learned Trial Court the prosecutrix, examined as PW-1, gave her date of birth to be 5.1.2000 and not 5.1.2004.

It has been submitted on behalf of the applicant that the date of birth certificate issued by the SDMC of the prosecutrix gives her date of birth to be 5.1.2004 but that this was contrary to her testimony.

The mother of the victim examined on 19.3.2019 as PW-2 is also stated to have admitted that the date of birth had been given on the lower side. It has also been submitted on behalf of the applicant that PW-3, the father of the prosecutrix, in his deposition on 30.4.2019 had stated that his son was born in the year 1997 and that his son is aged 21 years and the victim was born about three and a half years after the birth of his son and that the father of the prosecutrix had also admitted that he had given a wrong date of birth of the prosecutrix as 5.1.2004 to the school of the victim rather than the correct date of birth which was 5.1.2000.

On behalf of the State, the learned APP for the State has submitted that in as much as the school certificate gives the date of birth of the prosecutrix to be 5.1.2004, the applicant ought not to be released on bail. The prosecutrix who is present through video conferencing reiterates that her date of birth is 5.1.2000 and states that she is not a minor.

She has further stated in reply to a specific Court query that she seeks that the petitioner be released on bail. The mother of the prosecutrix in reply to the specific court queries has opposed the prayer for grant of bail submitting further that she has nothing to say and that she is not aware of the marriage between prosecutrix and the petitioner but there are documents that

had been produced by the petitioner and the prosecutrix which includes photographs which show that a marriage had been performed and that such a marriage may have been performed.

The Investigating Officer in reply to a specific court query states that the chargesheet has been filed and further states that the documents i.e. the Aadhar Card giving the date of birth of the prosecutrix as 5.1.2004 was given subsequently after the filing of the chargesheet but that the said document has also been verified.

Without any observations on the merits or demerits of the trial that is in progress, taking into account the response of the prosecutrix to a specific court query specifying her date of birth to be 5.1.2000 as also so indicated in her Aadhar Card placed on record which has been verified by investigating agency, and taking also her response into account in relation to her statement dated 11.9.2018 under Section 164 of the CrPC to the effect that she wanted her child to be aborted because she was of young age, with her submission to the effect that she had so stated as was so informed to her by the then investigating officer, in view of the documents i.e., her school certificate showing her date of birth to be 5.1.2004, taking the totality of the circumstances into account, it is considered appropriate to allow the applicant to be released on bail on filing a bail bond for Rs 50000/- with one surety of the like amount to the satisfaction of the Trial Court with directions that the applicant shall not leave the city of Delhi; shall keep his mobile phone on at all times; shall drop a pin on the Google map; and shall not intimidate the witnesses in any manner and shall commit no offence whatsoever.

The petition is disposed of.

ANU MALHOTRA, J

SEPTEMBER 17, 2020/sb