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

+ **BAIL APPLN. 2744/2020**

SHADAB ALI

..... Petitioner

Through: None.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Ms Meenakshi Chauhan, APP for
State with SI Sanjogita, PS Sector 23,
Dwarka.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

21.09.2020

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[Hearing held through video conferencing]

CRL.M.A.12907/2020

1. Allowed, subject to all just exceptions.

BAIL APPLN. 2744/2020

2. The petitioner has filed the present petition, *inter alia*, praying for bail in FIR No.38/2018 under Sections 363/366/376 of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), registered with PS Dwarka, Sector 23.

3. The said FIR was registered at the instance of the elder brother of the prosecutrix (name withheld). Initially, the FIR was only under Section 363 of the IPC as it was reported that the prosecutrix was missing

4. It transpires that the prosecutrix had voluntarily left in the company of

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Signing Date: 22/09/2020
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the petitioner. They had proceeded to Gajrola, where their marriage was solemnised. Thereafter, the petitioner and the prosecutrix approached the Allahabad High Court in order to remain together.

5. The prosecutrix and the petitioner were living as husband and wife. Subsequently, the prosecutrix had conceived and delivered a girl child. In view of the pregnancy, a report was made and since it was stated that she was a minor at the material time, an offence under Section 6 of the POCSO Act was also added.

6. The statement of the prosecutrix under Section 164 of the Cr.PC was recorded on 16.04.2018. In her statement, she stated that she accompanied the petitioner to Gajrola and had married him after converting her religion. She also stated that the petitioner had asked her to wait but she had threatened him that she would commit suicide if they did not get married. The petitioner had acceded to her wishes and had married her.

7. The prosecutrix produced her aadhar card, which indicates that the prosecutrix's date of birth is 01.01.1998. According to the aadhar card, the prosecutrix was a major at the material time. A copy of the Certificate of Registration of the marriage has also been produced, wherein the petitioner's date of birth is recorded as 01.01.1994 and the date of birth of prosecutrix is recorded as 01.01.1998.

8. In addition, the prosecutrix also stated in her statement that her date of birth recorded in her school records is incorrect. It is apparent from the above that the petitioner has been prosecuted solely for the reason that the prosecutrix was allegedly a minor at the time of their marriage.

9. The present petition has also been filed by the prosecutrix acting as a

parokar of the petitioner. Since, there is a controversy as to the date of birth of the prosecutrix and there is no allegation that the petitioner has acted forcibly or contrary to the will of the prosecutrix, this Court considers it apposite to allow the present petition.

10. The petitioner is directed to be released on bail on his furnishing a Personal Bond in the sum of ₹5,000/- to the satisfaction of the learned trial court/duty magistrate. This is also subject to the following further conditions:-

- a) the petitioner shall provide his mobile number and ensure that he is reachable on it at all times;
- b) the petitioner shall give prior intimation to the concerned IO/SHO, if he intends to change his place of residence; and
- c) the petitioner shall ensure that he is available for all hearings before the court in relation to the FIR in question.

11. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

SEPTEMBER 21, 2020
MK