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

Date of decision: 25th March, 2021

+ **BAIL APPLN. 776/2021**

RAKESH HALDAR

..... Petitioner

Through: Mr. M.N. Dudeja with Mr. Aditya
Mishra, Advocates

versus

STATE GOVT. OF NCT DELHI

..... Respondent

Through: Ms. Kusum Dhalla, APP for the State
with SI Reena and SI Pratibha Yadav
P.S: Kanjhawala

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J. (ORAL)

1. This application under Section 439 Cr.P.C. is for grant of regular bail in FIR No.358/2019 dated 13.09.2019, registered at Police Station Kanjhawala, Delhi for offences punishable under Sections 363, 376, 366, 328 and 120B IPC and Section 6 of the POCSO Act.

2. On 13.09.2019, the mother of the victim registered a complaint with the Police Station Kanjhawal stating that her daughter, about seven years of age, who is studying in Government Middle School for Girls, B Block, JJ Colony, Sawada, Delhi, left home for school at about 7:30 AM on 26.08.2019 and has not returned back home. It is stated in the FIR that the victim had refused to go to the school. After being scolded she left for school. It is stated in the FIR that the complainant went in search of her daughter but she could not locate her. In the FIR it is stated that she doubts

that a lady named Sikha has kept her daughter.

3. On the complaint, FIR No.358/2019 dated 13.09.2019, was registered at Police Station Kanjhawala, Delhi for offence punishable under Section 363 IPC.

4. On 03.10.2019, the complainant/mother along with the victim came to the Police Station and the complainant stated that her girl/victim had come back home safely. It was stated by the complainant that her daughter had told her that she was staying with her friend, one Nisha, at her house in Shashtri Nagar. She also stated that no untoward incident has happened to her daughter and she does not want her daughter to undergo any medical test. She stated that since her daughter has come back safe she does not want to pursue the matter further.

5. The statement of the victim was also recorded wherein she stated that on 26.08.2019, she left her house and went to her friend, Nisha's house at Shashtri Nagar, Gali No.14.

6. The material on record shows that counselling of the victim was done by an NGO and the victim was sent to Sanjay Gandhi Memorial Hospital, where the victim was medically examined by Doctor vide MLC No.168/1220/19. The doctor in the MLC has stated that there is a history of being abducted by the victim's friend's mother, Sikha, who later forced her to get married to her brother, Rakesh/petitioner herein. The MLC also records that her friend Nisha's mother, Sikha, forced her to sleep in the petitioner's room where she has been raped for a period of one month. The MLC also states that the victim has given a history that the last intercourse took place on the morning of 27.09.2019 after which she escaped. The MLC records that the victim called her brother after escaping from her friend's

house and her brother and mother came and rescued her. The MLC also records that the victim has attained her periods on the day the MLC was conducted.

7. The statement of the victim was recorded under Section 161 Cr.P.C wherein the victim stated that on 26.08.2019, at about 2:00 PM when she was standing outside her school, her friend Sonia, who stays at B-Block came to her and the victim accompanied her friend to Lakshmi Nagar Metro Station. She states that Sonia went away with a boy. She states that she did not have any money. She got a phone from some person and she gave a call to her friend Nisha who stays at Lakshmi Nagar, Gali No.7 and asked her to come to Lakshmi Nagar Metro Station. It is stated that after some time Nisha came to Lakshmi Nagar Metro Station and took the victim to her home. It is stated that the victim stayed there for two days. It is stated that on the third day Nisha's mother Shikha came there and asked the victim to marry her brother, the petitioner herein. It is stated that on the same day the petitioner came there and the petitioner and Shikha prevented the victim from going back to her house and she was forcefully married to the petitioner. The victim has stated that the petitioner, her friend Nisha, Nisha's mother Shikha and a Pandit were present there at the time of her marriage. She was then sent to the house of the petitioner which is on the third floor of Gali No.14, Lakshmi Nagar. It is stated by the victim that the petitioner committed rape on her. It is stated that the petitioner kept the victim there for about a month. In the morning the petitioner would leave her with his sister, Shikha, go for work and in the evening he would come back and take the victim from her sister's house. It is stated that whenever the victim expressed her desire to go home she was admonished. On 07.09.2019, the

victim escaped and reached Lalit Park and gave a call to her brother. It is stated that her brother and mother came there and rescued her and took her to the Police Station. On the statement of the victim offences under Section 376 IPC and Section 6 POCSO Act were added in the FIR.

8. During the course of the investigation the date of birth of the victim was verified from *Prathmic Vidhyalaya B Block J.J. Colony Sawada* and the date of birth of the victim was found to be 15.08.2004. The victim was found to be a minor at the time of the incident.

9. The statement of the victim under Section 164 Cr.P.C was also recorded wherein she reiterated the same facts as made during her statement under Section 161 Cr.P.C. Sections 366, 328 and 120B were also added in the FIR and charge-sheet was filed for offences under Sections 363, 376, 366, 328 and 120B IPC and Section 6 of the POCSO Act. The petitioner was taken into custody on 15.10.2019.

10. Mr. M.N. Dudeja, learned counsel for the petitioner contends that a reading of the charge-sheet does not inspire confidence. He would state that admittedly the victim was kept in a residential area at Lakshmi Nagar, which is a crowded locality, for about 30 days. He contends that it is impossible that a person can be kept against her will for 30 days in a house in a crowded locality without attracting any attention. He would state that the MLC does not indicate any injury in the private parts of the victim. The learned counsel for the petitioner contends that had the victim been raped for 30 days there would have been injuries on her body and on her private parts. He would contend that the entire case of the prosecution is false. He would also contend that there is a contradiction in the case of the prosecution. He would state that in the FIR the age of the victim was given as 12 years. The father

of the victim has stated that the victim was 15 years old. He would further rely on the photographs wherein the victim is seen to be extremely happy with the petitioner and his sister. Mr. M.N. Dudeja, learned counsel for the petitioner would also rely on the letter dated 02.01.2019, written by the victim, wherein she had stated that she was staying with her friend out of her own free will and she is leaving her house with her own will.

11. On the other hand, Ms. Kusum Dhalla, learned APP contends that the victim was a minor at the time of the incident. She would contend that the victim was kidnapped by the petitioner and was taken away from the custody of her parents. Ms. Kusum Dhalla, learned APP contends that in her statements under Section 161 Cr.P.C and Section 164 Cr.P.C the prosecutrix has stated that there was physical relationship between the victim and the petitioner. She would state that the petitioner has been accused of committing heinous and grave offence under the POCSO Act. She would state that the charges are yet to be framed and hence bail ought not be granted to the petitioner as there is a possibility of the victim being pressurized by the accused.

12. The material collected by the investigating authorities from the school of the victim shows that the victim was only 15 years of age when the incident occurred. The victim has stated that the accused had confined her and raped her for more than a month. In view of these circumstances, the possibility of the accused pressurizing the victim and tampering with evidence cannot be ruled out.

13. In view of the fact that the petitioner is accused of a grave and heinous offence and there is a possibility of the accused tampering with evidence this Court is not inclined to grant bail to the petitioner at this stage.

14. However, keeping in view the fact that the petitioner is in custody for about 15 months and charges are yet to be framed, the Trial Court is directed to proceed with the case and if charges are framed against the petitioner herein then the Trial Court is further directed to examine the victim within six months.

15. Accordingly, the bail application is dismissed with the above observations.

MARCH 25, 2021

Rahul

SUBRAMONIUM PRASAD, J