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

+ **BAIL APPLN. 986/2021**

SARABJEET SINGH

..... Petitioner

Through: Mr. K.Z. Khan and Mr. Deepak
Kumar Mishra, Advocates.

versus

THE STATE NCT OF DELHI

.... Respondent

Through: Mr. Kamal Kumar Ghai, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

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24.11.2021

1. The present bail application has been filed by the petitioner under Section 439 read with Section 482 Cr.P.C. seeking regular bail in case FIR No. 770/2020 under Section 376/506 IPC & Section 6 of POCSO Act, registered at P.S Khyala.

2. Briefly stated, the facts of the case are that the present case was registered on the complaint of the prosecutrix in which she alleged that she is 18 years old and has studied till 12th class. She further alleged in her complaint that in July, 2019, she and the petitioner became friends. The petitioner told her that he is going to take divorce from his wife

because his marriage was solemnized by deception. The prosecutrix further alleged in her complaint that the petitioner blackmailed her emotionally and they started talking with each other. After two months, petitioner pressurized the prosecutrix to make sexual relationship with him but she refused.

3. The complainant/prosecutrix further alleged in her complaint that despite her repeated refusal, the petitioner emotionally blackmailed her and made sexual relations with her in her house and two or three times in the hotel and so far, the petitioner has made physical relation with her for 5 or 6 times. The complainant/prosecutrix further alleged that after this, she told her mother in January, 2020 about her relationship with the petitioner but her mother refused for their marriage and asked the petitioner not to meet the prosecutrix. She further alleged that the petitioner used to threaten her for marriage. The prosecutrix further stated in her complaint that on 08th August, her mother committed suicide and in such a situation also, the petitioner had come to her house and was troubling her and her family members. After the registration of the present FIR in police station Khyala on the complaint of the prosecutrix, the petitioner was arrested.

4. I have heard the Ld. counsel for the petitioner, Ld. APP for the State and perused the records of this case.

5. It is submitted by the Ld. counsel for the petitioner that the petitioner is in J.C. since 11.08.2020. It is further submitted by the Ld. counsel for the petitioner that the petitioner has been falsely implicated in the present case and the relation between the petitioner and the complainant/prosecutrix were consensual in nature. It is further submitted by the Ld. counsel for the petitioner that the complainant/prosecutrix was not a minor on the date of the incident and there is discrepancy in the age of the complainant/prosecutrix because as per the prosecutrix herself she is not sure as to what is her date of birth and at what age of she at the time of the incident.

6. It is further submitted by the Ld. counsel for the petitioner that as per the MCD record the date of birth of the victim/prosecutrix is 22-8-2002 but as per the school record her date of birth is 22.03.2002 and there is no other document to prove the date of birth of the victim. He further submitted that the testimony of the victim has already been recorded and now there are no chances of the petitioner threatening or tampering with the evidence. He further submitted that at no point of time, the petitioner has misled the prosecutrix and the prosecutrix was aware about the marital status of the petitioner and despite that she maintained relations with the petitioner. It is further submitted by the Ld. counsel for the petitioner that in her testimony in the Court, the prosecutrix has even stated that she had told her mother about the petitioner who called him at his house in order to convince him to stop

meeting with the prosecutrix. He further submitted that there are material contradictions in the testimony of the victim and she has made improvements in her statement recorded in the Court.

7. On the other hand, it is submitted by the Ld. APP for the State that the allegations against the petitioner are grave and serious in nature and the prosecutrix was minor at the time of the incident and the petitioner had threatened the victim for continuing the relations with him.

8. In the instant case, the testimony of the victim has been recorded in the trial court. Without analyzing the testimony of the prosecutrix/victim in depth because in depth analysis of the testimony of the witness at this stage, might prejudice the case of either of the parties, but it is apparent from the testimony of the victim/prosecutrix that the prosecution has not been able to prove conclusively as to what is the date of birth of the victim and how old she was at the time of the incident. From the testimony of the victim/prosecutrix it appears that she was aware about the marital status of the petitioner and she has even talked to the wife of the petitioner and the petitioner has even met with the mother of the victim. However, as far as the question of threats given by the petitioner is concerned, even no such complaint has been made by the mother of the victim/prosecutrix to the police.

9. There are contradictions and improvements between the testimony of the victim/prosecutrix given to the police, in her statement recorded U/s 164 Cr.P.C and in her testimony recorded in the Court but at this stage, it will not be appropriate to discuss those improvements and contradictions in detail. Similarly, the question with regard to the date of birth of the victim/prosecutrix, whether it is 08.08.2002, as told by the victim/prosecutrix in her examination in chief, or it is 22-08-2002 as mentioned in the MCD record and told by the victim/prosecutrix in her cross examination or it is 22.03.2002 as mentioned in the school record as per the counsel for the petitioner, cannot be decided at this stage and the same would be seen by the Trial Court at the time of final judgment. Looking into the facts and circumstances of this case, testimony of the victim/prosecutrix recorded in the Court and also the fact that the petitioner is in J.C. since 11.08.2020, the application is allowed and the petitioner is admitted to bail on his furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the concerned trial Court. The bail application is disposed of accordingly.

10. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

NOVEMBER 24, 2021

Sumant