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

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Order pronounced on 31.05.2022

+ BAIL APPLN. 428/2022

MOHAN SINGH JOGI @ MOHINI

..... Petitioner

Through: Mr. R.K. Mishra, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Tarang Srivastava, APP with SI
Shilpa, PS Jaitpur.

Mr. Jagdish Prasad, father of victim.

CORAM:**HON'BLE MR. JUSTICE TALWANT SINGH****TALWANT SINGH, J.:**

1. This is an application for grant of bail moved by the present petitioner, who is an accused in FIR No. 793/2018 under Section 363/376 IPC & 6 POCSO ACT, registered at PS Jaitpur (South East).

1.1 The case of the prosecution is that on 23.12.2018, a missing complaint was lodged by the father of the prosecutrix and on 05.02.2019, the father of the prosecutrix came to the Police Station along with the prosecutrix and her mother and told ASI Bhagwan Das that his daughter had come to her home in Rajasthan on 04.02.2019 and she told her mother that one Mr. Mohan *alias* Mohani (the present petitioner) had taken her away by alluring her and he had made physical relations with her forcefully and on the basis of the said statement, Section 376 IPC and Section 6 POCSO Act were added to the FIR.

1.2 As per the petitioner, he and the prosecutrix were having a love affair. Both of them had secretly married each other and started living as husband



and wife, which is clear from the statement of PW5, who is the owner of the premises, where petitioner and prosecutrix lived together.

1.3 The prosecutrix wanted to marry the accused/applicant but her parents were not ready for the same. Earlier, she ran away from her father's house and came to the accused/applicant, who informed the parents of the prosecutrix and had handed over the prosecutrix back to her parents. Even thereafter, the prosecutrix kept on making phone calls to the petitioner.

1.4 At the asking of the prosecutrix on 20.12.2018, the applicant met with the prosecutrix at Delhi Railway Station and they went to Rajasthan and after getting married to each other, they started living as husband and wife.

2. It is an admitted fact that the prosecutrix had left her house in the midnight. The statement of the prosecutrix has been already recorded before Court. The trial is not likely to be concluded in the near future.

3. The petitioner had joined the investigation when the IO asked him to join the same and he has handed over the photographs of his marriage to the IO. The prosecutrix was major, as admitted by herself. Under these circumstances, it has been prayed that the accused/applicant may be granted bail.

4. Notice was issued. Status report has been filed in which the bail has been opposed on the ground that the accused allured the prosecutrix and married her forcefully, the accused has no permanent address of Delhi and if he is granted bail, he may jump the same.

4.1 Along with the status report, statement of the victim, i.e., PW1 has also been enclosed. The said statement was recorded on 30.07.2019. She had claimed to be 17 years old on the said date and she tells her date of birth to be 20.04.2002. Although, in examination in chief, she has more or less supported the version of the prosecution but in cross-examination, she has



admitted that she had friendly relations with the petitioner.

4.2 She further admits that her Mama's house was locked from inside on 20.12.2018 at night and she had herself opened the gate and gone to meet the petitioner near the *gali* during night time but as per her, she had no idea about his intentions and she thought that he would take her for shopping, although she admits that no shops were open at night. She boarded the train along with the petitioner from New Delhi Station to Jaipur, who had assured her to drop her back at her house in the morning. She had not informed her parents or anyone that she was in Jaipur as she was not having a phone.

4.3 She had not told any Police person or any public person either at the hotel or at Gangapur or at Baadi. As per her, the petitioner had taken the room on rent after telling the landlord that prosecutrix was his wife. She also admitted that she was wearing *Mangalsutra* and was also putting *Sindoor* at her forehead, but she voluntarily stated that the petitioner was forcing her to do so.

4.4 She admitted that the petitioner was not threatening her with the use of gun or a knife. She was not on talking terms with the landlord/landlady at Gangapur.

4.5 At Baadi, she went for shopping with the petitioner and there were many persons present in the market at that time. She did not tell anything to anybody in the market. Later on, she eloped from Baadi and went to her village.

5. The statement of PW5, who was the landlord of the petitioner and the prosecutrix at Gangapur, Rajasthan is also on record, in which he had stated that in December, 2018 the present petitioner and his wife had asked him to give a room on rent. They both stayed in the room from December, 2018 to January, 2019. Most of the time, they used to remain out and only for a few



days, they used to stay in the room.

5.1 The petitioner had given a copy of his Aadhar Card to the landlord. No rent agreement was executed. In cross-examination, the landlord stated that the girl appeared to be a married lady. She was wearing *Mangalsutra* and *Sindoor*, etc. He never heard any quarrel between them and the girl never made any complaint to him or to his wife that she was being kept in the room against her desire.

6. Keeping in view the facts and circumstances of the case, specially the fact that the present petitioner is in custody since 07.02.2019; the statement of the prosecutrix has already been recorded apart from few other public witnesses; the trial is still at the prosecution evidence stage and it will take a long time to record the statement of the witnesses and without commenting upon the merits of the case but considering the averment of the petitioner that the prosecutrix has stated that she was major at the time of her elopement and she had herself eloped from the house of her maternal uncle during night time and met the present petitioner and they stayed at different places and they had travelled through various modes of transport; at no point of time the prosecutrix had raised any hue and cry; especially the statement of PW5, the landlord, that the petitioner and the prosecutrix stayed as husband and wife in his premises and they used to go out together and the prosecutrix never complained to him that she was being forcibly held back in the rented premises, I am inclined to grant bail to the present petitioner. He shall be released on execution of personal bond of Rs. 25,000/- with a surety of the like amount to the satisfaction of the learned Trial Court, subject to the following conditions:

(i) He shall not contact, induce or threaten the complainant or other witnesses.



- (ii) He shall attend Court on each and every date when his matter is listed before the learned Trial Court.
- (iii) He shall share his Mobile Number with the IO within one week of his release and shall keep his Mobile location on at all times.
- (iv) He shall not leave the country without permission from the learned Trial Court.

7. It is made clear that the above order has been passed on the preliminary submissions of both the sides and no opinion has been expressed on the merits of the case. The learned Trial Court is expected to decide the case on the basis of the evidence produced by both the parties during the conduct of the trial and the learned Trial Court shall not get influenced by any observations made herein above.

8. The bail application is disposed of.

9. Copy of this order be sent to the learned Trial Court and the concerned Jail Superintendent for information and compliance.

TALWANT SINGH, J

MAY 31, 2022

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