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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Order pronounced on 11.10.2022*

+ BAIL APPLN. 3682/2021

LAXMAN

..... Petitioner

Through: Mr. Gaganpreet Singh, Adv.

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. N.S. Bajwa, APP for State with
Insp. Sushila, PS Narela.

CORAM:

HON'BLE MR. JUSTICE TALWANT SINGH

Talwant Singh, J.:

1. The petitioner has filed this application for bail in case FIR No. 0011/2021 registered under Sections 363/376/34 IPC and under Section 6 of Protection of Children from Sexual Offenses Act, (hereinafter referred to as POCSO Act). He is stated to be in custody since 31.01.2021. The date of incident is 12.01.2021, the matter was reported to police on 13.01.2021 and FIR was registered on 14.01.2021.

1.1. The charge-sheet stands filed. As per the petitioner, the prosecutrix has been examined so there are no chances of petitioner influencing the prosecutrix. It has further submitted that prosecutrix and applicant were just friends. There have been glaring contradictions in evidence noted at different stages of the case. The prosecutrix was not minor on the alleged date of the incident. The applicant is stated to be a respectable member of the society. He is the sole earning member of the family consisting of 3 brothers and 2 sisters, apart from his mother. The brother of the prosecutrix

tried to extort money from the brother of the present petitioner on 03.03.2021. There is a delay of 2 days in registration of the FIR. The prosecutrix on her own sweet will, had gone to the place of meeting, from where it is alleged that she was picked up in a car. The medical report does not disclose forced sex. There are inherent contradictions in the version given in the FIR and in statement of prosecutrix under Section 164 Cr.P.C.

1.2 The prosecutrix is stated to be with the accused/applicant for 62 hours. She did not make any effort to rescue herself or resist the alleged crime. The prosecutrix and applicant used to speak for several hours every day in December, 2020 and till his arrest and even after the incident the prosecutrix was in contact with the applicant till registration of the FIR.

1.3 The petitioner put forward a case that prosecutrix made physical relations with the petitioner on her own will, as she was mature enough to understand the nature of relationship. The prosecutrix has not claimed that she was drugged or intoxicated. On these grounds, the petitioner has prayed for being released on bail.

2. Notice was issued.

2.1 Arguments have been heard.

2.2 In the meantime, the prosecutrix has been examined and cross-examined and copy of the same has been placed on record.

2.3 Learned counsel for the petitioner has reiterated that since the prosecutrix has been examined and cross-examined, so, there is no chance of influencing her. There are glaring contradictions at different stages; the prosecutrix was not a minor and prosecutrix as well as applicant were friends, who were in regular touch with each other prior to the date of alleged incident.

2.4 On the other hand, learned APP has submitted that the prosecutrix has stood by her statement made under Section 161 and 164 Cr.P.C. while being examined or cross-examined in Court. This is a heinous offence of which, the applicant has been charged; other public witnesses are yet to be examined. If the petitioner is released on bail at this stage, he may influence the said witnesses as well as the prosecutrix.

3. After hearing both the sides, I am of the view that the petitioner is not entitled to bail at this stage because of the following reasons:-

- (1) The petitioner has been charged with a heinous offence and the seriousness of the offence under which the applicant has been charged, is an important factors which is to be considered at the time of consideration of bail;
- (2) The victim has stood by her statement while deposing in Court;
- (3) Minor contradictions are bound to appear as and when the witness is deposing in Court after a lapse of time. These minor contradictions may be considered at the time of finally deciding the case but these contradictions cannot be the basis of grant of bail to the accused of a heinous crime;
- (4) Nothing has come on record by petitioner to substantially prove that victim/prosecutrix was not a minor on the date of incident. The learned Trial Court may take a call regarding this aspect at the time of final hearing of the case and the petitioner is at liberty to argue on the said ground;
- (5) Even if the version of the petitioner is believed, he was in a friendship with the prosecutrix and they were talking to each other on mobile phones off and on, but that itself cannot be a ground to grant

bail where Section 376 IPC and Sections 6 and 7 of POCSO Act have been invoked.

(6) The evidence of the prosecution is under progress and if the petitioner is released, he may threaten or coerce the witnesses.

3.1 In view of the above, I am not inclined to grant bail to the present petitioner at this stage. The bail application is accordingly dismissed.

3.2 A copy of this order be sent to learned Trial Court for information.

TALWANT SINGH, J

OCTOBER 11, 2022/nk

[Click here to check corrigendum, if any](#)