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

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **BAIL APPLN. 2627/2022**

Between:-

**SH. BHARAT
S/O SH. PAPPU
R/O H. NO. 3/1339, H-3 BLOCK
JAHANGIR PURI,
DELHI-110033**

**THROUGH ITS PEROKAR
SH. PAPPU
S/O LATE MOMAN
R/O H.N.3/1339, H-3 BLOCK
JAHANGIR PURI,
DELHI-110033**

.....PETITIONER

(Through: Mr. Anuj Aggarwal, Advocate.)

AND

**THE STATE
(GOVT. OF NCT OF DELHI)
THOUGH ITS CHIEF PUBLIC PROSECUTOR
HIGH COURT OF DELHI AT
NEW DELHI**

..... RESPONDENT

*(Through: Mr. Pradeep Gahalot, APP for the State with
SI Sanjeeta.)*

% Pronounced on : 19.10.2022

J U D G M E N T

1. This is the application under Section 439 of the Code of Criminal Procedure, 1973 (in short, Cr.P.C.) in connection with FIR No.517 of 2022 for the offences punishable under Sections 363/366/376/323/384 of the Indian Penal Code, 1860 (in short, IPC) and Section 06 of the Protection of Children from of Sexual Offences Act, 2102 (in short, POCSO Act).

2. Learned counsel appearing on behalf of the applicant submits that the applicant is in judicial custody since 01.06.2022. According to him, the applicant is innocent and has been falsely implicated in the instant case. The prosecutrix in the instant case is a niece of the applicant. The applicant is aged about 19 years and the applicant being under *bona fide* believes that the prosecutrix is also major and has developed friendly relations with her. While placing reliance on various WhatsApp chats and photographs, he states that the prosecutrix was very happy in the company of the applicant and the prosecutrix was in a relationship with the applicant. According to him, the investigation in the instant case is complete. The chargesheet has already been filed. No custodial interrogation of the applicant is required. There is no other criminal case against the applicant. He further states that even the prosecutrix in her statement before the police had accepted that she joined the company of the applicant as per her own will, however, later on, on account of the pressure being built up by her family members, she has made allegations against the applicant including the allegation of extending threat etc. Whereas, the applicant is in continuous custody right from 01.06.2022 and there is no reason to cause any threat to the prosecutrix.

3. The learned APP has filed a status report and also served the notice of the application on the prosecutrix. The prosecutrix appeared

with a learned APP. Learned APP has opposed the application while placing reliance on the status report. According to the status report on the complaint of the mother of the prosecutrix regarding missing of the prosecutrix since 27.05.2022 and on raising apprehension against the present applicant, an FIR in question has been registered for the offence punishable under Section 363 of the IPC. On 31.05.2022 parents of the prosecutrix themselves brought the prosecutrix and the applicant to the police station. Based on the statement of the prosecutrix, offences punishable under Sections 366, 376 of the IPC and Section 06 of the POCSO Act were added. Statement of the prosecutrix under Section 164 Cr.P.C. was recorded on 01.06.2022. A certified copy of her school register has also been obtained which reflects the date of birth of the prosecutrix as 26.05.2005. All the exhibits were deposited in the FSL, Rohini for further DNA examination on 10.06.2022. After the investigation chargesheet has been filed. As per the status report, there is no previous criminal involvement of the accused.

4. This court has considered submissions made by the learned counsel appearing on behalf of the parties and has perused the record.

5. The reply to the bail application filed by the learned APP dated 01.06.2022 before the court below states that on 31.05.2022, on the production of the prosecutrix by her parents, she was examined. The prosecutrix on her examination had stated that she was in a relationship with her uncle, namely, Bharat (present applicant) since 04-05 months. On 26.05.2022, the applicant called her telephonically and told her that they both would elope from home on the following day. It is stated by her that she was extended threat if she would not accept his proposal. She on account of the threat had taken some money from her home and went to the house of the friend of the

applicant in Raghbir Nagar, Delhi. They stayed there for the whole day. They thereafter left for Haridwar and got married and came back to Raghbir Nagar on 28.05.2022. According to her, the applicant established physical relation with her in the night of 30.05.2022. This court has also perused the WhatsApp conversations and the photographs etc. brought on record by the applicant. It is seen that the instant case appears to be consensual. This court is not oblivious of the fact that the consent would not absolve the applicant from the rigour of Section 375 of the IPC when the prosecutrix is under 18 years of age. Nevertheless, the overall facts and circumstances of the case show that the investigation in the instant case is already over. The chargesheet has also been filed. The trial will take sufficient time for its conclusion and the applicant cannot be kept in jail for the entire duration of the trial.

6. Under the aforesaid circumstances without commenting anything on the merits of the case and taking into consideration the overall facts and circumstances of the case, this court finds it appropriate to enlarge the applicant on bail on his furnishing a personal bond in the sum of Rs.15,000/- with one surety of the like amount, subject to the satisfaction of the trial court and subject to the following further conditions:-

- (i) In case of a change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as the concerned Court.
- (ii) The applicant shall regularly appear before the concerned Court during the pendency of the trial.
- (iii) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.

7. The bail application stands disposed of in the above terms.
8. In case, the applicant violates any terms and conditions of the bail, the State/prosecutrix is at liberty to move before this court for cancellation of the bail thereto.
9. *Dasti.*

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER, 2022
Priya



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