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

% *Date of decision :11.10.2023*

+ **BAIL APPLN. 41/2023**

VIVEK KUMAR @ ISHMIEL

..... Petitioner

Through: Mr. Pradeep Rana, Mr. Ankit
Rana, Mr. Himanshu Rana and
Mr. Deepak Chhillar,
Advocates.

versus

THE STATE GOVT. OF NCT OF DELHI AND ANR.

..... Respondents

Through: Mr. Amit Ahlawat, APP for the
State with SI Bharti, PS
Dwarka North and SI Reena.
Ms. Gayatri Nandwani and Ms.
Mudita Sharda, Advocates
along with R-2 in person.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C.) for grant of regular bail in FIR No. 395/2021 dated 27.05.2021, under Sections 343/363/365/376D/506/34 of the Indian Penal Code, 1860 (IPC) and Sections 4/17 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), at Police Station – Dwarka North, Delhi, District – South West, New Delhi.
2. In brief the facts of the case are that the present FIR was registered on the complaint of the father of the prosecutrix. It is alleged



that daughter of the complainant had gone to a grocery store to buy biscuits and thereafter she went missing.

3. On 07.06.2021, the prosecutrix was recovered and the present petitioner was arrested. Thereafter, the prosecutrix was taken to Rao Tula Ram Memorial Hospital, Jaffarpur, Delhi for her medical examination. On the same day, statement of the prosecutrix under Section 161 Cr.P.C. was recorded.

4. On 09.06.2021, the statement of the prosecutrix was recorded under Section 164 Cr.P.C, which is allegedly contradictory to her statements recorded under Section 161 Cr.P.C. Thereafter, the investigation was taken in the present case.

5. It is submitted by learned counsel for the petitioner that on the date of the incident, the petitioner was 20 years of age and the victim was 18 years of age as stated in her cross-examination. It is further submitted that the prosecutrix herself created an Instagram account so the petitioner had no occasion to know that the prosecutrix was a minor on the day they met each other. It is further submitted that all the public witnesses including the victim have been examined. It is further submitted that prosecutrix, in her statement recorded under Section 161 Cr.P.C., had not made any allegations against the petitioner but after two days from the arrest of the petitioner, she leveled allegations of rape in her statement recorded under Section 164 Cr.P.C. under the influence of her parents.

6. It is further submitted by the learned counsel for the petitioner that counseling of the prosecutrix was done on 07.06.2023 and on the very same day, she was taken to the hospital for her medical



examination where she refused for her internal medical examination. It is further submitted that father of the prosecutrix in his statement given to the police had stated that he had met his daughter on 07.06.2021 and she has not made any complaint about the conduct of the petitioner. It is further submitted that during the hearing of the bail application before the Sessions Court, the prosecutrix had stated twice that she had no objection in case the bail was granted to the petitioner. It is further submitted that petitioner has been falsely implicated by the prosecutrix as she was under the pressure of her parents.

7. On the other hand, it is submitted by learned APP duly assisted by learned counsel for the victim, while vehemently opposing the present bail application, that the allegations against the petitioner are grave and serious in nature and the victim was minor of 16 ½ years age at the time of the incident which is evident from the documents produced by the IO and any prudent man could have gauged from physical appearance of the prosecutrix that she must be a minor who is still in school. It is further submitted that since the victim was minor, her consent is immaterial. It is further submitted that the prosecutrix has fully supported her testimony and petitioner is a flight risk.

8. I have heard learned counsel for the petitioner, learned APP for the State assisted by learned counsel for the prosecutrix and perused the records of the case.

9. During the course of the arguments, learned counsel for the petitioner has drawn the attention of this Court to first para at page no. 6 of the cross-examination dated 27.08.2022 annexed as P/5 in the petition to contend that the victim was not taken forcibly by the



petitioner and she was happily living with the petitioner. It is further contended that this abovementioned part of cross-examination shows that despite having an opportunity to complain regarding conduct of the petitioner and having opportunity to escape, she never complained about the conduct of the petitioner nor did she escape. Learned counsel for the petitioner has also drawn the attention of this Court to the photographs of the prosecutrix with the petitioner to contend that the prosecutrix was happy with the petitioner and same is evident from the photographs uploaded on the Facebook account of the prosecutrix.

10. In the present case, the prosecutrix and her parents have already been examined. I have perused the testimony of the victim. Without going into the detailed analysis of the testimony of the victim, who has been examined as PW -1, before the trial court, she has in her cross-examination more or less supported the petitioner. I have perused the photographs uploaded on the Facebook account of the prosecutrix annexed in present petition as Annexure – P/8 which shows that they are loving couple. One cannot also lose sight of the fact that the victim on her Facebook account has mentioned her age as 18 years and it was only during the course of the investigation, it was found that she was a minor.

11. In the instant case, the petitioner was a young boy aged around 19 years at the time of the incident when he became friends with the victim who had posted her age as 18 years on her Facebook account and one cannot expect from a young boy entering into a relationship with a girl to ask for her age proof. Two young persons have fallen in love with each other which did not go well with the parents of the victim at that point of time.

12. Today, during the course of the hearing, victim is present in person along with her father and they both have stated that they have no objection if



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the petitioner is granted bail. Therefore, keeping in view the entire facts and circumstances, the bail application is allowed and the petitioner who is in judicial custody since 08.06.2021, is admitted to bail on his furnishing a personal bond in the sum of ₹50,000/- with one surety of the like amount to the satisfaction of concerned trial court.

13. The application stands disposed of in the aforesaid terms.

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

RAJNISH BHATNAGAR, J

OCTOBER 11, 2023

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