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

Date of Decision: 08.05.2023

+ BAIL APPLN. 1240/2023

MAHESH KUMAR

..... Petitioner

Through: Mr. I.A. Siddiqui, Advocate
alongwith petitioner in person

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Satish Kumar, APP for State.
with SI Ajay Sharma, PS
Kalyanpuri

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

1. The instant application under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of accused/applicant seeking grant of regular bail in case FIR bearing no. 181/2021, registered at Police Station Kalyanpuri, Delhi for offences punishable under Sections 363/376 IPC ('IPC') and Section 6 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').

2. Brief facts of the case are that on 30.04.2021, a complaint was received by the police lodged by sister of the prosecutrix 'X' that she was missing from home. Investigation in this case was conducted and during investigation, it transpired that she used to speak to the present

accused/ applicant whose mobile phone number was provided to the police. The Call Detail Record (CDR) of the said mobile phone number was obtained and analysis of the same revealed that the location of the mobile phone was at Delhi on 23.04.2021 and in Chennai, Tamil Nadu on 25.04.2021. On the basis of CDR location analysis, the prosecutrix was recovered from Chennai who informed the police that she had come with the accused out of her own free will. The present FIR was thereafter registered under Section 376 IPC and Section 6 of POCSO Act. After investigation, the accused was arrested and chargesheet was filed. During investigation, the prosecutrix was found seven weeks pregnant. The medical termination of pregnancy was conducted as per law and the DNA report confirmed that the present accused/applicant was the biological father of the child. Chargesheet was filed and the applicant is in judicial custody since 07.06.2021.

3. Learned counsel for the present accused/applicant states that the applicant and the prosecutrix were in a relationship with each other and it was at the behest of the prosecutrix that they had run away from their home. It is stated that the statement of the prosecutrix was recorded under Section 161 and 164 Cr.P.C. as well as in the Court where she was examined as PW-1 and she did not support the case of the prosecution. It is also stated that the prosecutrix stands examined by the learned Trial Court. It is further stated that the prosecutrix who is present in the Court also does not support the case of prosecution and states that she was 18 years of age at the time of alleged incident.

4. Learned APP for the State, on the other hand, argues that the prosecutrix was only 16 years of age at the time of incident and her

consent is of no consequence and, therefore, bail be rejected.

5. I have heard arguments advanced on behalf of both the parties and have gone through the material on record.

6. In the present case, notice was issued to the prosecutrix since the bail application of accused was being heard. The prosecutrix appeared before this Court and stated that she was 18 years of age at the time of incident, although the record i.e. her school record does not support the said claim. Ossification test in this case was not conducted. Perusal of the statements of the prosecutrix reveal that in her statement under section 161 and 164 Cr.P.C. as well as her testimony recorded in the Court, she has consistently stated that she had gone with the accused out of her own free will as she had developed a liking for him. She has also consistently stated that it was only at her insistence that the accused had taken her to Chennai as she did not want to live with her parents. She also states that she had, at the time of accompanying the accused to Chennai, told him that she was 18 years of age. The statement recorded under section 164 Cr.P.C. also points out the same. Perusal of record further reveals that she had stated that in Chennai, when the accused had come to know that she was less than 18 years of age, he himself had told her that he would get married to her once she will turn 18 years of age. It is also the case of the prosecutrix herself that she had given the idea of getting pregnant immediately so that in case they will be blessed with a child, her parents will not object to their relationship. It is to be noted that even the accused in this case is 19 years of age. The prosecutrix has stated that she was 18 years of age at the relevant time. This Court cannot go into the question as to whether she was 16 or 18 years of age

at the relevant time. The statement recorded under Section 164 Cr.P.C. mentions the answer given by the prosecutrix to the learned Magistrate that her real age is 18 years and not 16 years. Though the learned Magistrate has written the same in an answer form to a question under Section 164 Cr.P.C., neither did the learned Magistrate ask her nor did he record as to why she was saying that she was, in reality, 18 years of age.

7. Be that as it may, the fact remains as apparent from the record that it was a teenage love story where the main characters of the story i.e. the prosecutrix 'X' and the accused were only in their teens. They had developed liking for each other as is clear from the statement of the prosecutrix. The prosecutrix wanted to get married to him and therefore, being in love, both of them left Delhi so that they could live in peace away from their families. The story reveals that the boy who is accused started working and looked after the prosecutrix. The prosecutrix gave him another idea, as she states in her statement, that in case they will be blessed with a child, their parents will accept their marriage.

8. Though, the entire story reads like story of a romantic novel or a film about teenage love, in real life, this Court notes that it had two main characters in their teens who loved each other, supported each other and somehow wanted their relationship in marriage to be validated, and for that, the only idea that came to the mind of the prosecutrix was giving birth to a child from their union.

9. This Court notes that the prosecutrix has been consistent in her statement under Section 161 and 164 Cr.P.C. as well as before the Court and supports the man she loves, blissfully unaware that the law in this

country does not support such love stories. The main character i.e. the present accused is not a criminal, but was merely in love and at the instance of her lady love, being unaware of the nitty-gritties of law, had taken her to a place which was 2200 kms. away from Delhi to lead a peaceful life. The criminal intent of any kind from the record is completely missing as neither of the characters of the story i.e. prosecutrix and accused had switched off their mobile phones so that their location may not be available to the police or to their family. The police was able to locate them on the basis of their mobile phone location only. They had found that accused was working in a salon and earning for himself and the prosecutrix and she was seven weeks pregnant which was also at her own insistence. The prosecutrix before this Court as well as before the learned Trial Court insisted that she has turned 18 and she and accused are to get married to within a month.

10. This Court remains aware that though consent of a minor may be of no value in the eyes of law, in the peculiar circumstances and facts of the present case, it will not be prudent for a Court to label the applicant herein as an accused, more so, since there is no incriminating evidence against him on record. Though the facts of every such case of elopement may not fall into this category and the consent of the prosecutrix and its consequences have to be adjudged considering evidence of inducement by the accused or as to how she was led into eloping with him, this Court is not laying down law applicable in every case of such elopement.

11. Therefore, this Court repeats that it is not laying down any law, but only notes with caution that in cases such as the present one, the Courts are not dealing with the criminals, but with two teenage

individuals who wanted to live their life as they deemed fit being in love. The love of course did not understand or knew the bar of age of consent as the lovers only knew that they have right to love and lead life as they thought fit for themselves.

12. The prosecutrix and the accused herein might have made a mistake in the affairs of the heart, however, the teenage psychology and adolescent love cannot be controlled by the Courts and therefore the judges have to be careful while rejecting or granting bail in such cases depending on the facts and circumstances of each case. This Court also observes that the attitude towards early love relationships, especially adolescent love, has to be scrutinised in the backdrop of their real life situations to understand their actions in a given situation. The teenagers who try to imitate romantic culture of films and novels, remain unaware about the laws and the age of consent.

13. This Bench in *Rajeev Kumar v. The State, Bail Appln. 1379/2022*, had also held a similar view.

14. The Court notes that the prosecutrix in this case who was allegedly 16 years of age on the day of incident was working somewhere since it transpires from the FIR that she had left home for work. The accused in question, though only about 19 years, was also working in a salon which reveals that both of them did not have the advantage of pursuing higher studies and due to their financial background and financial status, they had started working at an early age. The social factors and forces that operate in any given case and the circumstances of cases of adolescent love reveal in a sizable percentage of cases that they may want to marry and settle down with each other.

15. In the present case, while responding to social pressure and feeling attached to the person concerned and being in steady relationship with that person for more than a year, both the accused and the prosecutrix were looking for their escape for a better future in their own togetherness. For them, marriage and being blessed with a child was a socially approved way of establishing themselves as a couple. The father of the present accused is working as a labourer. The prosecutrix even at the age of 16 years was working and was living with her sister who was also working. Since they did not have the advantage of pursuing further education, they were trying to find purpose and sense of identity in their love relationship. Though their involvement may have been pre-mature or impulsive, they were known to each other for more than one year. These are the cases that Courts may find difficult to deal with in which it may not be advisable that the accused should be kept in judicial custody as they are not the 'accused' in the sense of term as used in criminal jurisprudence, so as to keep them with hardened criminals and doing so will be travesty of justice and playing with their future.

16. This Court, considering the overall facts and circumstances of the case and also taking note of the fact that in such cases of teenage love, the genuine innocent teenage boys and girls, being unaware of age of consent in law being 18 years, languish in jail or in protection home. It has adverse negative impact on their future too. This Court notes that in such cases, confinement in jail will cause distress and will impact the psychological health of the accused also. The Court, however, is bound by the law as it is and therefore, at this stage, in such circumstances can only direct that the accused be granted his freedom of bail and not

languish in jail.

17. It was stated before this Court that the marriage of the accused and the prosecutrix is tentatively fixed in end of May, 2023. The prosecutrix in any case, even if she was 16 years of age at the time of alleged incident (which she has disputed now), has turned more than 18 years now. Considering the overall facts and circumstances of the case, accused/applicant is admitted to bail, *for a period of two months from the date of release*, on furnishing personal bond in the sum of Rs.10,000/- with one surety of like amount to the satisfaction of the concerned Trial Court/Link Court/Successor Court/Duty Magistrate. The applicant shall provide his mobile number to the Investigating Officer which shall be kept active and in working conditions at all times. On period of expiry of two months, the applicant shall surrender before the Trial Court concerned.

18. This Court, as a note of caution while granting bail in this case and making the above observations, clarifies that every case of such nature has to be adjudged on its own peculiar facts and circumstances, and the age being in shadow of doubt as well as the consistency in the statement of the prosecutrix and lack of inducement or threat in such cases has to be adjudicated on facts and circumstances of each case.

19. Accordingly, the present bail application stands disposed of.

20. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 8, 2023/ns