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

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Reserved on: 31.01.2023
Pronounced on: 02.02.2023

+ BAIL APPLN. 1379/2022

SH. RAJEEV KUMAR

..... Petitioner

Through: Mr. Rahul Maurya, Mr.
Devanshu Kumar, Mr. Adnan
Siddiqui, Mr. Madhur
Maheshwari and Ms. Ankita
Sehgal, Advocates

versus

THE STATE & ORS.

..... Respondents

Through: Mr. Manoj Pant, APP for the
State with SI Ramesh, P.S.
Nihal Vihar

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant application under Section 439 of the Code of Criminal Procedure, 1973 has been filed on behalf of the applicant seeking regular bail in FIR bearing No. 228/2021 registered at Police Station Nihal Vihar, Delhi for offences punishable under Sections 363/366/376 of the Indian Penal Code, 1860 ("IPC") and Section 6 of Protection of Children from Sexual Offences Act, 2012

(“POCSO”).

2. To state briefly, the present FIR emanates from the missing complaint lodged by the mother of the prosecutrix on 02.04.2021. In the complaint, it was alleged that complainant was residing with her family in a tenanted property for last six months and working as tailor for earning her livelihood, and that her daughter/prosecutrix, aged around 16 years, who had studied till class 6th, had left the home in the morning at around 09:00 am and had not returned. During the course of investigation, the prosecutrix was traced from a village in District Nalanda Islampur, Bihar, on 12.04.2021. On interrogation, the prosecutrix stated that she had got married to applicant/accused out of her own free will and both had physical relations. After that, her medical examination was conducted vide MLC No.122/2021 wherein she had refused for internal examination. The applicant was arrested on 14.02.2021 pursuant to the present FIR. Thereafter, on 16.04.2021, the statement of the victim was recorded under Section 164 Cr.P.C. As per prosecution, the date of birth of the prosecutrix, as confirmed from the records during investigation, was found to be 02.08.2006.

3. Learned counsel for petitioner states that applicant/accused is in judicial custody since 14.04.2021. It is stated that applicant was having love affair with the prosecutrix and upon being compelled by the prosecutrix, who told him that her mother was going to solemnize her marriage with some other boy against her will, he took her to his native village and solemnized marriage with her. It is argued by learned counsel for applicant that the statement of prosecutrix under

Section 164 Cr.P.C. clearly shows that applicant has been falsely implicated in the present case and that there were no physical relations between the applicant and prosecutrix.

4. Learned APP for the State, on the other hand, submits that the prosecutrix had stated in her statement under Section 161 Cr.P.C. as well as in her MLC that applicant had sexual intercourse with her after they had got married to each other at the native of applicant in Bihar. It is stated that at the time of commission of offence, prosecutrix was around 15 years of age.

5. I have heard learned counsels for the parties and have perused the record.

6. The prosecutrix is present in person before this Court. I have interacted with the prosecutrix and her mother in camera. She states that she is 17 years of age and has a minor child who is about 1 ½ months old. It is stated by the mother of the prosecutrix as well as the prosecutrix herself that she got married to some other person in the year 2021 when she was 15 years of age and has been blessed with a child. The prosecutrix in her statement under Section 164 Cr.P.C. stated that she had gone on her own with the applicant herein and had forced him to get marry to her. She has also stated in her statement under Section 164 Cr.P.C. that no sexual intercourse (consensual or otherwise) had taken place between the parties.

7. The applicant is in Judicial Custody since 14.04.2021. It appears that the present case, like many others which have been coming up before the Courts, had sprung from an adolescence attraction which ended up into more of an emotional relationship

which led them to get married trying to give validity to their relationship before the society, than a case of sexual assault or physical relationship.

8. The edifice and intention of Protection of Children from Sexual Offences Act, 2012 was primarily to protect children below the age of 18 years from sexual exploitation. This Court remains conscious of the fact that it is dealing with grant of bail and not a quashing of FIR. This Court had already mentioned above that the prosecutrix in her statement under Section 164 Cr.P.C. has clearly stated before the learned Magistrate that no sexual contact had taken place between her and the applicant and even after their marriage, she had stayed with the mother of the applicant.

9. Considering the peculiar facts and circumstances of the case, that now the prosecutrix is married to someone else and has been blessed with a child and has admitted before this Court that she had gone with the petitioner voluntarily and had rather herself gone to him and had asked him to be married, keeping the applicant behind the bars will amount to travesty of justice. This Court, therefore, is inclined to grant bail to the applicant on furnishing a personal bond in the sum of Rs. 5,000/- with one surety of like amount, to the satisfaction of Trial Court/Successor Court/Link Magistrate/Duty Magistrate, on the following conditions:

- a) The applicant shall appear before the Trial Court as and when the matter is taken up for hearing;
- b) The applicant shall share his mobile number with the Investigating Officer (IO) which shall be kept active at all

the times. The applicant shall not switch off, or change the same without prior intimation to the IO concerned;

c) In case of change of residential address, applicant shall intimate the same to the Trial Court as well as to the IO concerned;

d) The applicant shall not tamper with any evidence or influence any witness connected with the present case.

10. Accordingly, the present bail application is allowed.

11. This Court, however, clarifies that the observations made in this order shall have no bearing on the merits of the case during the trial.

12. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 2, 2023/ns