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

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*Reserved on: 16.10.2023
Pronounced on: 19.10.2023*

+ **BAIL APPLN. 2790/2023**

GYANENDRA KUMAR

..... Petitioner

Through: Mr. Mohit Kapoor and Ms.
Komal Shukla, Advocates

versus

STATE

..... Respondent

Through: Mr. Manoj Pant, APP for the
State with SI Pinki Rana, P.S.
Maidan Garhi, Delhi with
Respondent no. 2

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 ('Cr.P.C.') has been filed on behalf of the applicant seeking regular bail in FIR bearing No. 0038/2023, registered at Police Station Maidan Garhi, New Delhi for offences punishable under Sections 376/313/323 of Indian Penal Code, 1860 ('IPC') and Section 6 of Protection of Children from Sexual Offences Act, 2012 ('POCSO').

2. The brief facts of the case are that a complaint was lodged by the prosecutrix in this case on 18.01.2023 on the basis of which the



present FIR was registered. The complainant had alleged that in the year 2012 when she was studying in 9th standard and was 14 years of age, she used to attend coaching centre for taking tuition classes. She had alleged that the accused herein used to teach her and had indulged in inappropriate behavior. He had also taken her to a place at Palam, Delhi on 12.10.2012 where he had sexually assaulted her. Thereafter whenever she used to be alone at home, he used to have physical relations with her against her consent. In the year 2013 when she had become pregnant he had got the child aborted by administering some medicines to her. Till the year 2017, he had kept assuring her that he will get married to her and on that pretext had made physical relations with her forcibly. In April 2022, when she had again become pregnant he had taken to her Radha Nirmal Hospital, Mahipalpur, Delhi where he had got the pregnancy terminated. She had also come to know in the meantime that the accused was already married and when she had confronted him with the same, he had beaten her however, he had thereafter assured her that he will obtain divorce from his wife and will get married to her. In August 2022 the applicant had taken a room on rent in Mahipalpur, Delhi and had sexually assaulted her on many occasions on the false pretext of marriage, he also used to beat her. It was also alleged whenever she used to confront him or resist the sexual assault, the applicant used to assault her physically.

3. The learned counsel for the petitioner has argued that the relationship between the prosecutrix and the applicant was consensual. He has also stated that the accused had not promised her



marriage and that the accused has been falsely implicated in the present case. It is argued that there are material contradictions in the FIR itself, and the WhatsApp chats between the applicant and the prosecutrix. Hence, the bail application of the applicant be allowed.

4. The learned APP for the State, on the other hand, has stated that the allegations against the accused are serious in nature and that the prosecutrix in this case had conceived twice due to the sexual assault and has undergone Medical Termination of Pregnancy twice. It is stated that when the Medical Termination of Pregnancy was conducted on the second occasion i.e. on 21.06.2022, the accused had made payment of the fee as well as the treatment papers mentioned his name as husband of the one Sumit as had had signed as her husband and the handwriting experts opinion is awaited.

5. This Court has heard arguments addressed by learned counsel for the applicant and learned APP for the state, and has perused material on record.

6. A perusal of the statement of the prosecutrix given to the Police as well as recorded under Section 164 Cr.P.C reveals that the prosecutrix as per her complaint was a minor at the time of the first incident of sexual assault which had taken place in the year 2012 when she was only 14 years of age. During investigation, a copy of marksheet of Class 10th Examination of the prosecutrix was collected, which confirmed that she was a minor on the date of alleged incident in 2012, and was thus incapable of giving consent. This Court further notes that prosecutrix has supported her claim in her statement under Section 164 Cr.P.C that she was repeatedly sexually assaulted by the



accused herein against her wishes. She had also stated that he had been promising to get married to her since the year 2017. The argument of the learned counsel for the applicant that the relationship between the parties was consensual has no merit since at the time of first sexual assault in the year 2012, the prosecutrix was only 14 years of age and her consent was no consent in the eyes of law. This Court also notes that at the relevant time he was in a dominant position of being a teacher as she used to study in the coaching centre where he used to teach.

7. This Court further notes that there are specific allegations that though the sexual assault against her wishes continued since the year 2012, and in the year 2017 the applicant had promised to marry her and had thereafter continued to sexually assault her on false pretext of marriage. There are also allegations that she had undergone Medical Termination of Pregnancy twice. In the second incident of Medical Termination of Pregnancy in June 2022, there are documents to reflect that he had taken her to the hospital for the purposes of Medical Termination of Pregnancy. There are allegations that he had given her some medicines for undergoing abortion and since she had suffered incomplete abortion and was bleeding profusely, she was taken to the hospital for treatment. The prosecutrix in this case is yet to be examined. The accused had also concealed from the prosecutrix that he was already married and had sexually assaulted her repeatedly on the false pretext of marriage as he could not have married her being already married.



8. In view of the seriousness of the allegations and the fact that the prosecutrix has not yet examined, no ground for bail, at this stage, is made out.
9. Accordingly, the application for grant of bail is rejected.
10. Nothing expressed hereinabove shall tantamount to an expression of opinion on merits of the case.
11. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

OCTOBER 19, 2023/SU