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

% **Date of Decision: 17.10.2023**

+ **CRL.M.C. 7308/2023 & CRL.M.A. 27268/2023**

JAGBIR IN J/C

..... Petitioner

Through: Mr. Asim Naeem, Advocate

versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Naresh Kumar Chahar, APP
for the State with SI Gunjan
Singh, AHTU/Crime Branch
alongwith victim and
complainant in person.
R-2 & R-3 in person.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

CRL.M.A. 27266-67/2023 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CRL.M.C. 7308/2023

3. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioner seeking quashing of FIR bearing no. 226/2019 registered at Police Station Mayur Vihar, Phase-I, Delhi for offences punishable under Sections 363/366/376 of Indian Penal Code, 1860 ('IPC') and Section 4/6 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').



4. Issue notice. Mr. Naresh Kumar Chahar, learned APP accepts notice on behalf of the State.
5. Briefly stated, the facts of the present case are that respondent no. 2 had lodged a complaint whereby she had stated that her daughter i.e. the victim/respondent no. 3 had gone missing from her house on the night of 09/10.07.2019, and the said complaint had culminated into the present FIR for offence punishable under Section 363 of IPC. After investigation, chargesheet was filed for offences punishable under Sections 363/366/376 of IPC and Section 4/6 of POCSO Act.
6. Learned counsel for the petitioner states that the petitioner and respondent no. 3 had got married in the year 2020 as per Hindu rites and ceremonies. It is also stated that the petitioner and respondent no. 3 have two minor children born out of the wedlock. It is stated that the petitioner is in custody since 05.10.2021, and the respondent no. 3 is unable to look after the children alone and she is facing undue physical and financial hardships.
7. The victim is present before this Court and states that she is 21 years old at present. She also states that she had got married to the accused out of her own free will and there was no pressure upon her at any point of time. Mother of victim is also present, who states that she had mentioned the age of the victim in the school records on a lower side since her neighbor had told her that it would be better if she mentions lower age of the victim.
8. This Court takes note of the fact that in her statement recorded under Section 161 and 164 of Cr.P.C. as well as in her testimony before the learned Trial Court and statement made before this Court, the



victim/respondent no. 3 has continuously supported her version that she had gone with the accused on her own and out of her free will and that she was a major at that time. She has also stated to the police as well as to the learned Trial Court and this Court that two children have been born out of the wedlock in this case and the sexual relationship had not taken place against her consent.

9. This Court also notes that this is a peculiar case where when the victim was recovered, she had given birth to one child and she was also carrying pregnancy of the second child. She had also refused to undergo Medical Termination of Pregnancy since she had told the police that she wanted to give birth to the child as her relationship and her marriage to the present petitioner was consensual.

10. On a query made by this Court, respondent no. 2 and 3 who have been identified by the Investigating Officer, have categorically stated that they have given their consent for quashing of present FIR out of their own free will and without any pressure, coercion or threat. They further stated that they have no objection if FIR is quashed.

11. This Court therefore, cannot ignore the fact that in this case, the victim herself alongwith her mother has appeared before this Court and prayed that FIR be quashed since the parties are married and have two children. The victim also states before this Court that in case, the petitioner is not released and the FIR is not quashed, it will not only affect her future, but also the future of her children. She also states that since the accused/petitioner has not been even granted bail despite her statement before the Courts, she is facing lot of difficulty in taking care of her children as she is not working and is dependent on her parents for



fulfilling the needs of her children.

12. The Hon'ble Apex Court in *Kapil Gupta v. State of NCT of Delhi* 2022 SCC OnLine SC 1030 while quashing an FIR under Section 376 of IPC, had observed as under:

“13. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. **The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.**

14. The Court has further held that it is also relevant to consider as to what is stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power.”

(Emphasis Supplied)

13. In the present case, the contention of learned APP for the State is that the victim was a minor at the time of the incident, therefore, her consent for marriage with the present petitioner is of little consequence. This Court is of the opinion that, as a general rule, the consent of a minor in a given set of circumstances will be of little consequence. This Court concludes that if material is available on record that reflects the minor's consent was obtained due to any extraneous factor, including coercion, force, threats, or misrepresentation of any fact, the Courts will not entertain the quashing of the FIR in a case under Section 376 of



IPC. The age of the victim in such cases will also be of significant relevance. In case of a victim of tender age who can be easily influenced by any extraneous factor, promise, or threat, the consent of such a victim will be of little consequence.

14. This Court notes that the proof of age will be of significant importance in all cases of sexual assault. However, in cases where authentic investigation reveals that the victim's age is not 18 years or is in the area of suspicion, the Courts make decisions in accordance with judicial precedents and the law. However, in cases as the present one, the victim's age is not only within the area of suspicion, which should have been ordinarily left to examination and proof during trial, but it has been considered due to the peculiar circumstances of the case that the victim and her mother appeared before this Court, prayed and pleaded that the victim had voluntarily accompanied the accused and had rather persuaded him to accompany her, even though he had initially shown willingness to take her with him. The other compelling factor in this case is that the parties were married, and both affirm that after getting married, they entered into a sexual relationship, willingly gave birth to two minor children, and continued to live a loving and happy matrimonial life. It is on record that when the victim was recovered, she had one child aged one year and was also carrying a second pregnancy of about one and a half months' duration. She had refused to undergo medical termination of pregnancy because she had told the police in her statement that she wanted to give birth to the child, as her relationship and marriage to the present petitioner were consensual.



15. This Court, while passing this order, is conscious of the fact that as per the present law, the consensual relationship of a minor is considered to be sexual assault even if it is with her consent as consent of a minor is of no consequence. However, in case where it is apparent from the record itself and from the statement of the mother of the victim where she states that she had herself recorded the age of the victim on lower side to get her admitted in the school, where their education and social background reflects that it would have been possible since they did not have the opportunity to study and get educated due to their poor financial background, where the love between the parties has withstood the test of not only time but also statements to the police, statement to the Magistrate and before the learned Trial Court as well as the questioning by this Court, confirms that the victim was not minor at the time of incident.

16. This Court is of the view that when two individuals wish to lead a peaceful matrimonial life and have consistently deposed and given statements to the police and Court that they are married, and also the mother of the victim and the victim herself have stated that the victim is a major and the victim states that she has, out of her own choice, given birth to two children fathered by the accused, the discretion vested in this Court has to be exercised in their favour to grant them the relief they are seeking.

17. The victim and her family have waited patiently for the return of the petitioner who is the alleged accused, and is presently lodged in Tihar Jail, for his return so that they can resume their peaceful loving matrimonial life and the children born from the wedlock can also lead a



normal life and get care of both the parents.

18. This Court, using its inherent powers under Section 482 of Cr.P.C., deems it appropriate to assist them in joining each other and raising children that they have given birth to. The petitioner herein is not a criminal but a victim of circumstance himself, who fortunately has found support of the alleged victim herein and her family members who have disclosed the truth before the Court and the police about his innocence. The petitioner therefore does not seem to have committed an offence except for being in a consensual mutual love relationship with a woman who he loves and supports and patiently waits to return back to join her in raising the two children.

19. This Court also takes note of the fact that the parties are not affluent and for the parents of the victim, who have informed this Court that she was not a minor at the time of incident, it is difficult to take care of the victim and her two children and to raise them properly. It will be, thus, in the fitness of things that not only the parties are given their right to live happily as husband and wife, but also that the children get back their father so that he also fulfills his duty towards them of looking after and raising them.

20. Thus, in the exceptional circumstances such as present one where the parties had got married to each other about three years ago and have also been blessed with two children who are minor and whose future depends on the outcome of the present FIR, this Court is of the opinion that it would be in interest of justice to quash the abovementioned FIR and the proceedings pursuant thereto no useful purpose will be served by continuing the proceedings, rather the same would create further



acrimony between them and affect their future lives.

21. Accordingly, FIR bearing No. 226/2019 registered at Police Station Mayur Vihar, Phase-I, Delhi for offences punishable under Sections 363/366/376 of IPC and Section 4/6 of POCSO Act and all consequential proceedings emanating therefrom are quashed.

22. Accordingly, the present petition alongwith pending application stands disposed of.

23. The petitioner be released forthwith from the judicial custody, if not required in any other case.

24. Copy of this order be sent to the concerned Jail Superintendent for information and compliance.

25. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

OCTOBER 17, 2023/ns