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

+ **BAIL APPLN. 115/2024 & CRL.M.A. 5323/2024**

MOHD SALIM

..... Applicant

Through: Mr. R. P. S. Bhatti, Adv.

versus

THE STATE (GOVT OF NCT OF DELHI)

& ANR.

..... Respondents

Through: Mr. Pradeep Gahalot, APP
for the State with SI Richa,
PS Patel Nagar.
Ms. Ankita Gaur, Adv. for
victim.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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26.02.2024

1. The present petition is filed under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in FIR No. 554/2023, under Sections 363/366/376 of the Indian Penal Code, 1860 ('IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO') registered at Police Station Patel Nagar.
2. The FIR was registered on a complaint given by the father of the victim stating that his daughter is missing since 05.08.2023.
3. It is averred that the complainant was informed by his landlord that he had seen the victim (daughter of the complainant), with the applicant.
4. During the course of investigation, the victim was recovered from Police Station Katra, District Shahjahanpur, Uttar Pradesh on 10.08.2023 and was brought to Police Station Patel

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Nagar. Afterwards counselling was provided and her medical examination was conducted *vide* MLC No. E/158703/2023.

5. Thereafter, the statement of the victim under Section 161 of Cr.PC was recorded, in which she stated that she was in a relationship with the present applicant from last three years and when her parents came to know, she left her home on 05.08.2023 and reached Anand Vihar Bus Stand and called the applicant. She in her statement stated that at first the present applicant refused and asked her to go back home.

6. On her constant persuasion the applicant took the victim to Jaipur where they got married in a temple, stayed overnight in a small hotel, and made physical relations. She stated that the physical relations were made according to her will.

7. The next day both of them took a bus from Jaipur to Bareilly (applicant's village) where Jahid, elder brother of the applicant, came to pick them up, and took them to the house of the elder brother Babban and thereafter to Hardoi. Later Jahid took the victim to Police Station Katra and Delhi Police was informed.

8. The present applicant was arrested on 11.08.2023, from the Police Station Patel Nagar when he went to meet the victim, and is under incarceration since then.

9. The learned Counsel for the applicant submits that the victim in her statement has categorically stated that she left her house without informing the parents at her own will. He submits that the victim stated that applicant denied at first and instructed her to return to her house, then later when the victim threatened that she will commit suicide the applicant reached the bus stand and went to Jaipur with her.

10. He submits that the applicant despite being a Muslim
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married the victim in Hindu temple as per her desire and thereafter took her to his village. He submits that the victim was handed over to the Police by the elder brother of the applicant.

11. He submits that the applicant and victim were in a relationship and it was at the behest of the victim that they had run away. It is stated that the statement of the victim was recorded under Section 161 as well as Section 164 Cr.P.C. and she did not support the case of the prosecution.

12. The learned Additional Public Prosecutor 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.

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

14. The present is a case of teenage love story where the victim and the accused had developed liking for each other as is clear from the statement of the victim. The victim wanted to get married to the applicant and therefore both of them left Delhi.

15. It is pertinent to note that the victim was of 16 years of age was studying in 10th standard, having sufficient maturity and had knowingly left the custody of her parents and eloped with the applicant.

16. The Hon'ble Supreme Court in *S. Varadarajan v. State of Madras: AIR 1965 SC 942* while interpreting the term "inducement" in the context of Section 361 of IPC (kidnapping from lawful guardianship) and Section 363 of IPC (punishment for kidnapping), observed as under:

"7...She was not a child of tender years who was unable to think for herself but, as already stated, was on the verge of attaining majority and was capable of knowing what was good and what was bad for her. She was no



uneducated or unsophisticated village girl but a senior college student who had probably all her life lived in a modern city and was thus far more capable of thinking for herself and acting on her own than perhaps an unlettered girl hailing from a rural area..."

17. In the present case, the victim has stated that she had left the house of her own will and thereafter got married to the applicant in Jaipur, thus this is not a case where the victim was coerced to stay with the applicant. The statement of the victim makes it clear that this is a romantic relationship between the two and the alleged sexual act between the two was consensual. Although the victim was a minor at the time of incident her consent does not have any legal bearing.

18. From the perusal of the statement given by the victim under Section 164 of the CrPC, it is apparent that the applicant, at no stage, wanted to take the victim away from the custody of the parents. The applicant instead had refused to accompany the victim. The victim herself in her statement has stated that she had threatened the applicant, upon which he agreed to elope. The victim has also stated that the applicant and his family took the victim to the Police Station and informed the concerned Police Station in Delhi.

19. Thus, it is not a case where the accused was apprehended after the search, in fact, they came back on their own. The victim has also stated that she got married to the applicant in Jaipur. It is not in doubt that the consent of the victim who is under 18 years of age is of no consequence, at the same time, victim has stated that she got married to the applicant in Temple.

20. From the statement of the prosecutrix, it is apparent that the applicant cannot, prima facie, be held to be guilty of any offence under Section 363/366 of the IPC. The victim is not a

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child of tender age and had gone with the applicant on her own free will and from the statement it appears that she in fact had coerced the applicant to take her out of the custody of her parents.

21. The status report indicates that the prosecutrix and the applicant were in a consensual romantic relationship. It cannot be held to be a case where the offence has been committed by the applicant with any criminal intent. In fact, admittedly, the applicant and his family members brought the prosecutrix to her family.

22. The Coordinate Bench of this Court in the case of ***Mahesh Kumar v. State (NCT of Delhi)*, 2023 SCC OnLine Del 2634**, while deciding the bail application in somewhat similar circumstances has held as under :

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.

23. This Court in judgement of ***Dharmender Singh v. State*** in **BAIL APPLN. 1559/2020**, while considering the bail application of an applicant in relation to offence under POCSO Act had considered the presumption of guilt as provided under **BAIL APPLN. 115/2024**

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Section 29 of the POCSO Act. It was held that at the stage of considering a bail application before the charges are framed, the Court has to form an opinion on the merits of the evidence. The presumption of guilt in terms of Section 29 of the POCSO Act gets triggered only once the trial begins or after the charges are framed. An application for grant of bail is to be decided on the ordinary principles. However, given the intention and the purpose in the drafting of Section 29 of the POCSO Act, certain facts are to be considered, such as the age of the minor victim; age of the accused; whether threat, intimidation, violence or brutality is involved in the offence; the conduct of the accused; whether the physical relationship is an outcome of the consent etc.

24. Even if the statement of the victim under Section 164 of the CrPC is taken as gospel truth, at this stage, any use of force by the applicant is ruled out.

25. It is not in doubt that a mere testimony of the prosecutrix can be sufficient for the purpose of conviction of the accused in relation to Section 376 of the IPC. The testimony does not require corroboration as long as same inspires confidence.

26. Whether the applicant sexually assaulted the victim would be a matter of trial. Also, whether any act, as alleged, was a unilateral act of the applicant so as to make the applicant liable for the offence as alleged, would be tested during the course of the trial. Any participatory act by the victim or as narrated in the statement under Section 164 of CrPC that the applicant was coerced to take the victim out of the custody of the parents, renders the prosecution's version, at this stage, doubtful. It is not in dispute that the applicant has clean antecedents and is presently aged around 22 years of age.

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27. This court is of the opinion that the factum of alleged consensual physical relationship born out of consensual romantic affair has to be given due consideration while considering application for bail. To ignore the statement of the victim in the facts of the present case and let the applicant suffer behind the bars would otherwise amount to injustice.

28. The Court has to keep in mind the fact that the judicial custody of the accused during the trial is only to secure his presence. There is no apprehension that the applicant, if released on bail would flee from justice. Any such apprehension can be taken care by putting appropriate conditions.

29. Considering the totality of facts and circumstances, and without any expression on the merits of the case, the present bail application is allowed; and the applicant is directed to be released on bail on furnishing a bail bond for a sum of ₹20,000/- with one surety of the like amount to the satisfaction of the learned Trial Court/ Duty Metropolitan Magistrate, subject to the following terms and conditions:

- I. The applicant shall upon his release provide his mobile number to the concerned IO / SHO and keep it switched on at all times;
- II. The applicant shall not take unwarranted adjournment and attend the Trial Court proceedings on every date;
- III. The applicant shall not tamper with the evidence in any manner whatsoever.

30. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by way of seeking cancellation of bail.

31. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application

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and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

32. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

FEBRUARY 26, 2024