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

+ BAIL APPLN. 132/2024

SANOJ HALDAR @ SANJU

..... Petitioner

Through:

versus

THE STATE OF DELHI

..... Respondent

Through:

+ BAIL APPLN. 147/2024

SANJU @ SANOJ HALDAR

..... Petitioner

Through:

versus

THE STATE OF DELHI

..... Respondent

Through:

Present :

Mr. Sanchit Sehgal, Mr. Nagendra Singh and Mr. Virendra Tiwari, Advocates for petitioner in both items.

Ms. Meenakshi Dahiya, APP with SI Rekha Chauhan, P.S.: New Ashok Nagar and Prosecutrix in-person in both items.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

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13.02.2024

1. BAIL APPLN. 132/2024 under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner for grant of regular bail in FIR No. 369/2021, under Sections 363/376/506/174A IPC and Section 6 of POCSO Act, registered at PS: New Ashok Nagar, Delhi.

BAIL APPLN. 132/2024 and 147/2024

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2. In brief, as per case of prosecution, FIR was registered on complaint of mother of prosecutrix, who alleged that her daughter namely 'PD', aged about 16 years, was kidnapped by an unknown person on 21.08.2021. On 20.09.2024, prosecutrix on her own came at police station. Her medical examination was got conducted, wherein, she stated that she had left the parental home on her own. Prosecutrix further stated that they were intimate and denied internal medical examination.

3. It is further the case of prosecution that statement of prosecutrix was got recorded under Section 164 Cr.P.C. on 21.09.2021, wherein she did not allege any sexual assault and only stated that she left for Kolkata without informing her parents and had stayed there at the house of her friend Tanushree. She further stated that she had returned on her own.

However, in the supplementary statement thereafter recorded by the police under Section 161 Cr.P.C., prosecution alleged that she had left for Kolkata along with the petitioner, wherein they had solemnized marriage in local temple and sexual relations were established.

Since, as per school record, prosecutrix was found to be minor (i.e. more than 16 years of age) Sections 376/506 IPC and Section 6 of POCSO Act were invoked. Chargesheet was also filed against one Suraj under Section 363 IPC.

4. BAIL APPLN. 147/2024 under Section 439 read with Section 482 of Cr.P.C. been preferred on behalf of the petitioner for grant of regular bail in FIR No. 530/2022, under Sections 363 IPC, registered at PS: New Ashok Nagar, Delhi. Section 376 IPC and Section 6 of POCSO Act were subsequently invoked.

5. In brief, aforesaid FIR No. 530/2022 was lodged on complaint of father



of prosecutrix (M.K.D.), as he alleged that his daughter 'PD' was kidnapped by the petitioner on 06.08.2022, despite registration of earlier FIR No. 369/2021 on 21.08.2021.

Thereafter, prosecutrix came to the police station along with her parents on 19.01.2023 and during medical examination in the hospital, informed that she had left along with the petitioner and had consensual relations with him in August, 2022. She further denied internal medical examination.

In her statement under Section 164 Cr.P.C., recorded on 28.01.2023, prosecutrix alleged that petitioner had taken her somewhere in Faridabad, but after some time his behavior was different as she was not involved in any work. Thereafter, she returned back on her own at her parental home.

6. Learned counsel for the petitioner submits that admittedly in FIR No. 369/2021, no allegations of sexual relations, were made by prosecutrix in her statement under Section 164 Cr.P.C. However, under pressure of parents, the allegations were recorded by way of supplementary statement under Section 161 Cr.P.C., alleging the establishment of sexual relations.

So far as second FIR No. 530/2022 is concerned, it is submitted that prosecutrix herself contacted the petitioner and on the face of record, it appears that both of them consented to stay with each other. It is further pointed out that prosecutrix was aged more than 17 years at the time of leaving her parental home.

7. On the other hand, the applications are opposed by learned APP for the State. She submits that despite registration of earlier FIR No. 369/2021 petitioner again established sexual relations with the prosecutrix. It is further pointed out that during course of proceedings, petitioner was also declared as



proclaimed offender and was finally arrested on 23.09.2023. The consent of prosecutrix is stated to be immaterial, since she was minor.

8. On the face of record, as per status report, in FIR No. 369/2021, the prosecutrix on her own returned back to parental home and in her statement under Section 164 Cr.P.C., she did not level any allegations against the petitioner. It is only thereafter, that a supplementary statement was recorded under Section 161 Cr.P.C. though there does not appear to have been any necessity in this regard. It may further be noticed that prosecutrix in the meantime crossed the age of 17 years and again voluntarily left her parental home along with the petitioner.

Prosecutrix being in the age group of 17-18 years was well aware of the consequences of leaving her parental home. Finally, she voluntarily returned back to her parental home and was never under any forced confinement with the petitioner at any point of time. Petitioner is in custody since 23.09.2023 and chargesheet has already been filed.

9. Petitioner has clean past antecedents except for the aforesaid cases. Considering the totality of the facts and circumstance of the case, without making any observations on the merits of the case, petitioner is admitted to bail in both FIRs on furnishing of personal bond in the sum of Rs. 20,000/- (Rupees Twenty Thousand only) each with one surety in the like amount to the satisfaction of the learned Trial Court / Duty MM and subject to following condition :

- (i) Petitioner shall provide his mobile number to the Investigating Officer (IO)/SHO concerned at the time of release;



(ii) Petitioner shall not influence the witness in any manner.

Applications are accordingly disposed of.

A copy of this order be forwarded to the learned Trial Court and Superintendent Jail for information and compliance.

A copy of this order be kept in connected application.

ANOOP KUMAR MENDIRATTA, J.

FEBRUARY 13, 2024/R