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

+ **BAIL APPLN. 517/2024**

PRASHANT

..... Petitioner

Through: Mr Neeraj, Advocate.

versus

STATE (GOVT OF THE NCT DELHI)

..... Respondent

Through: Mr Raghvinder Varma, APP for the State.

Mr Sandeep Mahapatra, Advocate (amicus curiae).

Prosecutrix in person along with mother of the prosecutrix.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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16.05.2024

1. The present bail application has been filed seeking regular bail in connection with FIR No.0216/2022 under Sections 363/366/376/467/471/34 IPC and Sections 6/17 POCSO Act registered at PS Badarpur, Delhi.
2. The FIR was registered at the instance of father of the prosecutrix initially under Section 363 IPC reporting missing/kidnapping of his 13 years old daughter. He stated that his daughter had been missing since 03.05.2022.
3. During investigation, a raid was conducted at House No.175, First Floor, Harijan Basti, Badarpur, New Delhi resulting in the recovery of the victim. Her statement was recorded wherein she described how she came into contact with the accused. Investigation further revealed that the petitioner/accused had taken the victim to Farukhabad, U.P. where they solemnised their marriage in November, 2022. Thereafter, the victim had



been staying with the petitioner/accused in Delhi as his legally wedded wife which resulted her into pregnancy.

4. Subsequently, the offence under Sections 366/376/467/471/34 IPC and Sections 6/17 POCSO Act were also invoked.

5. He further invites the attention of the Court to the statement of the victim recorded under Section 164 CrPC wherein she has reiterated that she married the petitioner on her own and she herself had stated her age as above 18 years. She has further stated that in the entire episode, her husband is not at fault and that she had left her home voluntarily. She is happy and she wants to stay with her husband. It is further stated that her husband had never assaulted her.

6. Learned counsel for the petitioner submits that it is the case of consensual romantic relationship. He submits that the age of the petitioner at the relevant time was 21 years and he is in custody since 25.03.2023. The petitioner does not have any criminal record.

7. *Per contra*, learned APP for the State has argued on the lines of the status report. He submits that the victim was minor at the time of the incident, therefore, the consent of the victim has no relevance in law.

8. The learned Amicus also assisted the Court and made his submissions. Besides referring to the statement of the victim under Section 164 CrPC, he has invited the attention of the Court to the MLC of the victim, to contend that the victim herself in the MLC has stated that she had left her home because of quarrel at home and went to live with her boyfriend Prashant (petitioner herein). Then the petitioner and the victim solemnised marriage in the presence of the parents of the petitioner. The relationship of the present petitioner with the victim in the MLC has been mentioned as



“husband”. It is also stated in the MLC that no physical assault was made on the victim.

9. I have heard the learned counsel for the petitioner, learned *Amicus Curiae* appointed by this Court, as well as, the learned APP for the State and have perused the material on record.

10. The history given by the victim in the MLC, as well as, her statement recorded under Section 164 CrPC *prima facie*, indicates that the victim was in relationship with the petitioner and she had left her parents home voluntarily and, thereafter, she got married to the petitioner. The legality of such marriage is in question, as the case of the prosecution is that the victim is still minor, however, the statement recorded under Section 164 CrPC also records that the victim has stated that she told her age to the petitioner and his parents as above 18 years.

11. The question as to what was the exact age of the petitioner will be decided by the learned Trial Court during the course of trial. However, at this stage it appears that the victim was in love with the petitioner and she voluntarily married the petitioner and was staying with the petitioner in a rented accommodation at Delhi till the time she was recovered.

12. A Coordinate Bench of this Court in ***Mahesh Kumar vs. State (NCT of Delhi)*** passed in BAIL APPLN. 1240/2023, while dealing with a similar situation wherein the victim was alleged to be a minor, and had eloped with the petitioner therein, granted interim bail and made following pertinent observations:

“7. Be that as it may, the fact remains as apparent from the record that it was a teenage love story where the main characters of the story i.e. the prosecutrix ‘X’ and the accused were only in their teens. They had developed liking for each



other as is clear from the statement of the prosecutrix. The prosecutrix wanted to get married to him and therefore, being in love, both of them left Delhi so that they could live in peace away from their families. The story reveals that the boy who is accused started working and looked after the prosecutrix. The prosecutrix gave him another idea, as she states in her statement, that in case they will be blessed with a child, their parents will accept their marriage.

8. Though, the entire story reads like story of a romantic novel or a film about teenage love, in real life, this Court notes that it had two main characters in their teens who loved each other, supported each other and somehow wanted their relationship in marriage to be validated, and for that, the only idea that came to the mind of the prosecutrix was giving birth to a child from their union.

9. This Court notes that the prosecutrix has been consistent in her statement under Section 161 and 164 Cr.P.C. as well as before the Court and supports the man she loves, blissfully unaware that the law in this country does not support such love stories. The main character i.e. the present accused is not a criminal, but was merely in love and at the instance of her lady love, being unaware of the nitty-gritties of law, had taken her to a place which was 2200 kms. away from Delhi to lead a peaceful life. The criminal intent of any kind from the record is completely missing as neither of the characters of the story i.e. prosecutrix and accused had switched off their mobile phones so that their location may not be available to the police or to their family. The police was able to locate them on the basis of their mobile phone location only. They had found that accused was working in a salon and earning for himself and the prosecutrix and she was seven weeks pregnant which was also at her own insistence. The prosecutrix before this Court as well as before the learned Trial Court insisted that she has turned 18 and she and accused are to get married to within a month.

10. This Court remains aware that though consent of a minor may be of no value in the eyes of law, in the peculiar circumstances and facts of the present case, it will not be



prudent for a Court to label the applicant herein as an accused, more so, since there is no incriminating evidence against him on record. Though the facts of every such case of elopement may not fall into this category and the consent of the prosecutrix and its consequences have to be adjudged considering evidence of inducement by the accused or as to how she was led into eloping with him, this Court is not laying down law applicable in every case of such elopement.

11. Therefore, this Court repeats that it is not laying down any law, but only notes with caution that in cases such as the present one, the Courts are not dealing with the criminals, but with two teenage individuals who wanted to live their life as they deemed fit being in love. The love of course did not understand or knew the bar of age of consent as the lovers only knew that they have right to love and lead life as they thought fit for themselves.

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.”

[Emphasis supplied]

13. In *Ajay Kumar vs. State Govt. of NCT of Delhi & Anr.*: BAIL APPLN.2729/2022, this Court had observed that the intention of POCSO was to protect children below the age of 18 years from sexual exploitation. It was never meant to criminalize consensual romantic relationships between



young adults.

14. In the present case as well, the criminal intent on the part of the petitioner *prima facie* appears to be missing. Rather, it appears to be a case where the victim and the accused who were in their teens developed liking for each other and decided to get married as it appears from the statement of the prosecutrix recorded under Section 164 CrPC.

15. From the said statement of the victim it also appears that the victim never wanted any case to be registered against the present petitioner, rather she has expressed that she is happy with her husband and wishes to stay with him. The offences against the petitioner appears to have been invoked at the insistence of the victim's family who were perhaps upset and embarrassed after the discovery of victim's marriage against their wishes and consequent pregnancy.

16. Apart from the allegations made against the petitioner, other parameters for granting bail are also required to be considered at this stage. The petitioner is in custody since 25.03.2023 and is presently aged about 23 years, keeping him in jail will not serve any useful purpose, rather subjecting young boy in the company of the hardened criminals at a young age will do more harm than good to him.

17. The object of judicial custody is to secure the presence of the accused during the trial. The presence of the accused at the time of trial can otherwise be secured by putting appropriate conditions.

18. It is also not the case of the prosecution that the petitioner has a criminal record or that he is at flight risk.

19. In view of the above, the petitioner is entitled to be released on regular bail. Accordingly, the petitioner is admitted to bail subject to his



furnishing a Personal Bond in the sum of Rs. 10,000/- with one surety of like amount, subject to the satisfaction of the Trial Court/Duty Magistrate/CMM, further subject to the following conditions.

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
 - b) Petitioner shall provide his permanent address, as well as, his mobile number to the IO concerned. The mobile shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
 - c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the prosecutrix, as well as, her family members.
20. It is made clear that the observations made herein are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.
21. The petition stands disposed of.
22. Copy of the order be forwarded to the concerned Jail Superintendent for information and necessary compliance.
23. Order be uploaded on the website of this Court.
24. Order *dasti* under the signatures of the Court Master.

VIKAS MAHAJAN, J

MAY 16, 2024/MK