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

% **Date of Decision : 29.02.2024**

+ BAIL APPLN. 682/2024

PAWAN KUMAR @ MONU

..... Petitioner

Through: Ms. Neha Singh, Advocate

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: with Inspector Rakesh Dadwal and SI
Ram Kishan, P.S. Neb Sarai.

Mr. Manas Rao, Advocate for
complainant along with complainant.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J (ORAL)

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 grant of bail in case arising out of FIR bearing No. 181/2023, registered at Police Station Neb Sarai, Delhi for offences punishable under Sections 376/370 of the Indian Penal Code, 1860 ('IPC') and Sections 6/17 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').
2. Issue notice. Mr. Naresh Kumar Chahar, learned APP accepts notice on behalf of State.
3. Briefly stated, facts of the present case are that on 20.03.2023, an



information had been received that the victim 'N' had been apprehended in case FIR bearing No. 123/2023 for offences punishable under Sections 363/323/342/376/370/506/509 of IPC and Sections 17/6 of the POSCO Act and she had been medically examined at AIIMS where her pregnancy test was found to be positive and the victim 'N' had narrated during her gynaecological examination before the Doctor that she was in an alleged relationship with the present applicant/accused i.e., Monu. It had been further alleged that they both are in a relationship from past 3 to 4 months and had sexual relationship once/twice in a month. After that, DCW counsel had been called and victim 'N' had been counselled. Thereafter, her statement under Section 161 Cr.P.C had been recorded wherein she had alleged that she lived in the house of co-accused i.e., Suman @ Jamila Khatoon and used to call her 'Mummy'. It is alleged that the victim 'N' used to do the work of cleaning the house of the co-accused i.e., Suman. It is also alleged that during that time, many ladies would come to the house of co-accused Suman, and the customers who went there would do bad things with them for money, which they gave to Suman. Suman would then share the money with the those ladies. It is further alleged that when Suman asked her i.e., Victim 'N' to do the same thing, she agreed because she needed money. It has been further alleged that for the past 8-9 months, some unknown persons had engaged in sexual relations with her, after which various individuals from different places would come to the house of co-accused Suman and also engage in such activities, paying her for it. During this time, she met the applicant/accused, son of co-accused Suman, and who had fallen



in love with her and had engaging in physical relations with her multiple times. It is further alleged that among the customers, co-accused Anand Kumar Jain and Babu Miyan, who sold fish, had also been involved in sexual relations with her. It is alleged that recently, a minor girl named 'G' also visited the house of co-accused Suman, engaging in the same business. She had revealed that inquiries were made regarding the case of the minor victim 'G', during which she, the victim 'N', was found to be pregnant. She added that all the individuals involved used condoms during their encounters except for the present applicant/accused. It is further alleged that she did not know when she had become pregnant. After that, she was sent to a Shelter Home. Thereafter, based on these allegations, the present FIR was registered.

4. Learned counsel appearing on behalf of the applicant states that the accused/applicant and the victim identified as 'N' in the chargesheet filed before this Court have entered into a compromise and therefore, no useful purpose will be served by proceeding further with the case. Learned Counsel further insists that since the parties have compromised and entered into a MOU dated 14.02.2024, the applicant be granted bail enabling him to get married to victim 'N'.

5. Learned APP for the State, on the other hand, strongly opposes the present application and argues that the present case is not a case of elopement or any relationship of affection between the minor victim 'N' and the accused but of being captivated, being beaten up, being raped and also being forced into prostitution by the co-accused Suman. Therefore, the



allegations are serious and bail be denied.

6. This Court has heard arguments addressed by learned counsel for the applicant as well as learned APP for the State and has perused the material placed on record.

7. This Court notes that on 21.03.2023, statement of victim 'N' under section 164 CrPC had been recorded wherein, it is allegedly stated that the victim 'N' had been living at the residence of co-accused Suman @ Jamila Khatoon, for the past 3-4 years. It is alleged that co-accused Suman would arrange for individuals to come to the house via phone calls and engage in inappropriate activities with her (victim 'N'). Additionally, she mentioned that among these individuals, a fisherman and a person of Jain faith also visited and engaged in physical relations with her, using condoms for safety. Thereafter on 27.04.2024, a second statement had been recorded wherein it is alleged that the minor victim 'N' along with other minor victim 'G' had been working in the house of co-accused Suman and also took care of Suman's grandsons. It is specifically alleged that the co-accused Suman called various persons at her house and had got them engaged in physical relations with the minor victim 'N' and minor victim 'G'. It is alleged that those persons had forcibly made physical relations with the victim 'N' and that she had been threatened that if she disclosed anything about the said incidents her father and brother would be killed.

8. This Court takes note of the fact that the present prosecutrix was about 17 years of age at the time of incident. It is also noted by this Court that there is an MoU entered into between the brother of the



accused/applicant herein and the mother of the victim 'N' in a case attracting serious offences punishable under Sections 376/370 of IPC and Sections 6/17 of POCSO Act. Since the victim 'N' is a minor her mother has entered into a compromise. This Court observes that even if the present case was the case of compromise by the victim herself, the case would have been examined on its own merits, on the basis of allegations levelled in the FIR and other statements recorded under Sections 161 and 164 of Cr.P.C.

9. The present case is not as simple as put forth by the learned counsel for the applicant. It is neither a case of innocent adolescent love nor a consensual relationship between two majors wherein the FIR would have been registered on the basis of some misunderstanding. But, the allegations in the present case are that two minors girls have been forced into prostitution by the co-accused who is the mother of the present accused/applicant. Further, the allegations are specific in nature wherein the names of different persons namely other co-accused i.e., Anand Kumar Jain and Babu Miyan who had sexually abused the present victim in the house of the applicant herein have been disclosed. The entire sexual abuse by other persons who were using the victim 'N' as a sex worker was happening not only in the presence of the present accused/applicant but at the same time the accused though knowing that she had been forced into prostitution by the co-accused who happens to be his mother had also started sexually abusing her. The victim was a minor at the time of alleged incident and was being forced by the co-accused by beating and threatening her.

10. It is shocking that in such a case of serious nature, the brother of the



accused and the mother of the minor victim have entered into compromise and bail is being sought on this ground. The consideration for grant of bail though at times can be a compromise between the parties however, a court of law in a criminal case has to tread very slowly and cautiously while taking a decision and granting bail on the basis of compromise. Some compromises are reached between the parties only for the purpose of procuring bail from a court of law, the courts thus are entrusted with a duty to separate grains from the chaff and have to take a decision after due circumspection, especially in a case of sexual assault on a victim who is a minor who is alleged to have been forced into prostitution.

11. Therefore, at this stage, this Court is not inclined to grant bail to the present accused/applicant.
12. In view of the same, the present application stands dismissed.
13. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.
14. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 29, 2024/hs