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

+ **BAIL APPLN. 993/2024**

SIRAJUDDIN @ ISROJ

.....Petitioner

Through: Mr. Umang Tyagi with Ms. Nikita Anand, Ms. Aditi and Ms. Anchal, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Tarang Srivastava, APP for the State with SI Pooja, P.S.: Dayalpur. Complainant in court.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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24.10.2024

CRL.M.A. 32305/2024

By way of the present application filed under section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner/applicant seeks advancement of the date of hearing in the matter, which is otherwise posted on 04.11.2024.

2. For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed.
3. The matter is taken-up for hearing today.
4. The date of 04.11.2024 stands cancelled.
5. Application stands disposed-of.

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6. By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973, the petitioner seeks regular bail in case FIR No. 636/2023 dated 26.09.2023 registered under section 376 of the Indian Penal Code, 1860 and section 6 of the Protection of Children



from Sexual Offence Act, 2012 at P.S.: Dayalpur, Delhi. Consequent upon completion of investigation, the offences under sections 328/506 IPC have been added *vide* chargesheet dated 22.11.2023.

7. Notice on this petition was issue on 18.03.2024. Status Reports dated 08.05.2024 and 17.07.2024 have been filed. Nominal Roll dated 09.05.2024 has been received from the Jail Superintendent.
8. The prosecutrix is present in court and has been identified by the Investigating Officer.
9. Mr. Umang Tyagi, learned counsel for the petitioner submits, that as narrated in the FIR, the petitioner was acquainted with the prosecutrix since he had given her a job after she left her home by reason of the family situation prevailing in the household.
10. Counsel submits that the prosecutrix worked with the petitioner, who is a *hakim* and used to run a clinic, from June to July 2023; whereafter in July 2023 the petitioner relocated to Mumbai.
11. Mr. Tyagi further submits, that the prosecutrix was 'major' at the time she was employed by the petitioner in his clinic and the allegations made in the FIR are completely false.
12. Other things apart, Mr. Tyagi draws attention to Letter dated 13.05.2024, addressed by the prosecutrix to S.H.O. P.S.: Dayalpur, Delhi, in relation to the subject FIR, in which she has categorically said that she lodged the FIR only because she was very upset with the petitioner for closing his clinic in Delhi and leaving for Mumbai without informing her, which had rendered her jobless and resourceless even for her survival.



13. The prosecutrix has in fact specifically stated in that letter, that since she lives alone, she had filed the case alleging rape only so that the petitioner would be called back to Delhi. She has further stated that physical relations between the two of them were made with her consent and concurrence and without any coercion or force being used by the petitioner. Furthermore, it is pointed-out, that the prosecutrix has also said in that letter that her date of birth is 29.10.2004; and that therefore, at the time she interacted with the petitioner, she was 'major'.
14. Mr. Tyagi also submits, that as will be seen from the nominal roll, the petitioner has suffered judicial custody for almost 01 year as an undertrial as of date.
15. Mr. Tarang Srivastava, learned APP appears for the State, and on instructions of the I.O. – S.I. Pooja – who is present in court, submits that receipt of Letter dated 13.05.2024 stands acknowledged and a copy of the said letter has also been filed by the I.O. alongwith Status Report dated 17.07.2024.
16. Learned APP further submits, that based on the contents of the letter the I.O. made enquiries and it was found that *vide* document dated 06.02.2024 issued by Shri Dalchand Memorial Public School, Ghaziabad, Uttar Pradesh, the prosecutrix's date of birth is recorded in that school as 29.10.2004, as it being stated by the prosecutrix in the present proceedings.
17. Learned APP however points-out, that some other certificates and documents that have been collected by the I.O. from other schools which the prosecutrix attended subsequently, show a different date of



birth; and the learned trial court would have to enquire into the prosecutrix's correct date of birth. Learned APP further submits, that the other evidence collected in the course of investigation requires to be assessed in the light of the age of the prosecutrix, once that is determined.

18. Learned APP fairly submits, that in the course of her examination-in-chief, which is going-on before the learned trial court, the prosecutrix has not supported the case of the prosecution.
19. The court has queried the prosecutrix who is present in court. She confirms having addressed Letter dated 13.05.2024, as referred to above; she also confirms what she has said in the said letter; and in particular she affirms that the physical relations between the petitioner and her were consensual.
20. Nominal Roll dated 09.05.2024 received from the Jail Superintendent shows that the petitioner has been in judicial custody for almost 01 year as an undertrial; that his jail conduct has been 'satisfactory'; and that he has no other criminal involvements.
21. Investigating in the matter is over. Chargesheet has been filed. Prosecution evidence is going-on. The deposition of the prosecutrix is underway; and as recorded above, the prosecutrix is stated to have turned hostile.
22. Upon a conspectus of the foregoing facts and circumstances, this court is persuaded to admit the petitioner – ***Sirajuddin @ Isroj s/o Yusuf*** (recorded in the nominal roll as "*Isroj @ Sirajuddin s/o Yusuf*") – to *regular bail* pending trial, subject to the following conditions :



- 22.1. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- (Rs. Twenty-five Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court;
- 22.2. The petitioner shall furnish to the S.H.O., P.S.: Dayalpur, Delhi a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 22.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 22.4. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing;
- 22.5. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial. More specifically, the petitioner shall neither contact nor interact, whether directly or indirectly, with the complainant or her family, in any manner whatsoever. The petitioner shall also not visit the locality in which the complainant stays; and
23. Since the petitioner is facing trial, and would therefore be appearing before the learned trial court from time-to-time, no reporting requirement has been imposed as a condition of bail.



24. Nothing in this order shall be construed as an expression of opinion on the merits of the matter.
25. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
26. Petition stands disposed-of in the above terms.
27. Pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

OCTOBER 24, 2024
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