



2024:DHC:3260



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

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Date of Decision: 25th April, 2024

+ **BAIL APPLN. 1067/2024**

VIVEK KASHYAP

..... Applicant

Through: Mr. Kamlesh Kumar Verma,
Mr. Dinesh Singh Bachgoti and
Ms. Somiya Rajput, +Advs.

versus

THE STATE (GOVT. OF NCT OF
DELHI)

..... Respondent

Through: Mr. Pradeep Gahalot, APP for
the State with Ms. Aditi Singh,
Adv. with SI Nishita Pundir, PS
Bhajanpura.
Mr. Prem Chand Ganganiya,
Adv. for the complainant and
victim.
Victim and complainant in
person.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') read with Section 482 of the CrPC, seeking regular bail in FIR No. 111/2023 dated 16.02.2023,

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registered at Police Station Bhajan Pura, for offence under Section 363 of the Indian Penal Code, 1860 ('**IPC**').

2. Charge sheet has been filed against the applicant for the offence under Sections 363/376(3)/366/471 of the IPC read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO Act**').

3. The present FIR was registered on a complaint given by the mother of the victim, alleging that her daughter who was 14 years of age, had been missing since 14.02.2023.

4. The victim was later traced in the month of June, 2023. After the statement of the victim was recorded, Sections 366/376(3) of the IPC and Section 6 of the POCSO Act was added in the FIR.

5. The applicant was arrested on 07.06.2023 and has been in incarceration since then. The charge sheet was filed alleging that offences punishable under Section 376(3) of the IPC and Section 6 of the POCSO Act were attracted as the applicant had sexual intercourse with the victim, who was 14 years of age.

6. The learned counsel for the applicant submits that the applicant has been unnecessarily implicated in the present case.

7. He submits that the victim is a major and is happily married with the applicant. He submits that one child is also born out of the wedlock.

8. He submits that the mother of the victim was not agreeable to the relationship of the applicant and the victim, which led to the registration of the present FIR.

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9. The victim is present in Court and states that her date of birth was mentioned as 01.01.2008 in the school record for the purpose of securing admission in school.

10. She submits that she is a major and her date of birth is 09.11.2003. She states that she is happily married with the applicant and is also staying in her matrimonial home.

11. The mother of the victim is also present in Court. She states that she has since accepted the applicant as her son in law. She states that the complaint was given since she did not want her daughter to marry the applicant initially.

12. The charge sheet has already been filed and the applicant is no longer required for any further investigation.

13. The victim has categorically stated the she had gone with the applicant and married him on her own free will and that she is now happily residing at her matrimonial home.

14. She has further stated that her date of birth is wrongly recorded in the school certificate in order to secure admission. The same casts a doubt on the age of the victim.

15. In view of the above, the applicant has made out a case for grant of bail. No purpose would be served by keeping the applicant in further incarceration.

16. The applicant is directed to be released on bail on furnishing a personal bond of ₹25,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM, on the following conditions:



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- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicant shall under no circumstance leave the country without taking permission from the learned Trial Court;
- c. The applicant shall appear before the learned Trial Court as and when directed;
- d. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;

17. 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 filing an application seeking cancellation of bail.

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

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

AMIT MAHAJAN, J

APRIL 25, 2024 / 'KDK'

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