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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1616/2022**
SHIVAN @ SAIVAN (IN JC)

..... Applicant

Through: Mr.Raj Mani Mishra, Adv.

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Mr.Aman Usman, APP. With
W/SI Aarushi Rajput, PS:
Khyala.
Mr.Shiv Chopra, Ms.Aadhyaa
Khanna & Mr.Siddharth Arora,
Advs. for the complainant.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **01.02.2024**

1. This application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying that the applicant be released on bail in FIR No. 122/2020 registered with Police Station: Khyala, West District, Delhi under Section 363 of the Indian Penal Code, 1860 (in short, 'IPC'). Later on, Sections 366/376 of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short, 'POCSO Act') were also invoked.
2. It is the case of the prosecution that a complaint was received from the father of the victim stating that his daughter aged around 13 years has been missing since 01.02.2020 at 2:00 PM. On 22.02.2020, the victim was recovered from the house of the accused/applicant.



Based on her statement recorded under Section 161 of the Cr.P.C, charges under Section 366/376 of the IPC and Section 6 of the POCSO Act were added. It is stated that in her statement recorded under Section 164 of the C.r.P.C., the victim stated that her age is 18 years and she had gone along with the applicant out of her own free will. It is further stated that the applicant was arrested on 30.09.2020.

3. By the order dated 27.03.2023, this Court granted *interim* bail to the applicant observing as under:-

“6. Learned counsel for the petitioner submits that even in the cross-examination, the prosecutrix had stated that she had an affair with the accused and eloped with him at her own free-will. The father of the prosecutrix in the cross-examination has not furnished any proof of date of birth of the prosecutrix. Learned counsel for the petitioner submits that the prosecutrix in the cross-examination, has even stated that she and the petitioner did nikah at a masjid in the presence of a Molvi. Learned counsel submits that the father of the prosecutrix in his statement dated 15.02.2022 has simply stated that at the time his daughter was aged about 14-16 years but he could not tell the exact age as he did not maintain any birth records of any children and can tell their age only by approximation. Learned counsel for the applicant has placed on record the photographs of Aadhar Card and PAN Card of the prosecutrix on which, the date of birth (DOB) of the prosecutrix is 01.02.2001.

7. Let the DOB sent by father of the prosecutrix and Aadhar Card and PAN Card be verified. Let status report be filed before the next date of hearing.

8. Since there is a dispute regarding the DOB of the prosecutrix, the petitioner is entitled to be released on interim bail. Thus, the



petitioner is admitted to interim bail till the next date of hearing on furnishing of a personal bond of Rs. 25,000/- with one surety of the like amount to the satisfaction of the learned Trial Court subject to the condition that the petitioner will reside in his village Navdiya, Serpur Kalan, Piliphit, U.P. during the period of interim bail and will not in any manner come across the family of the prosecutrix.”

4. As per the Status Report dated 07.11.2023 filed by the learned APP, it is stated that the Unique Identification Authority of India (UIDAI) has refused to give information on the age of the victim. As far as the verification in relation to the Pan Card is concerned, it has been reported that the authority in reply to the query has stated that the Pan Card bears the date of birth of the victim as 01.02.2001. However, as per the school documents, the date of birth of the victim is 13.04.2007.

5. Be that as it may, the question of the age of the victim will have to be determined by the learned Trial Court on appreciation of the evidence.

6. Keeping in view that there is a dispute on the age of the victim and as per her statement under Section 164 of the Cr.P.C., she had gone of her own free will with the applicant, the *interim* bail granted to the applicant in FIR No. 122/2020 registered with Police Station: Khyala, West District, Delhi, vide order dated 27.03.2023, is confirmed, subject to the applicant furnishing a personal bond in the sum of Rs.25,000/- with one local surety of the like amount to the satisfaction of the learned Trial Court and further subject to the



following conditions:

- i. The Applicant will not leave the country without the prior permission of the learned Trial Court.
- ii. The Applicant shall provide his permanent address to the learned Trial Court. The applicant shall also intimate the Court, by way of an affidavit, and the IO regarding any change in his residential address.
- iii. The Applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the Applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the learned Trial Court and the IO concerned. The mobile location be kept on at all times.
- v. The Applicant shall not, directly or indirectly, try to contact/influence or communicate with the complainant/victim or their family members or with any of the prosecution witnesses or tamper with evidence of the case; and,
- vi. The Applicant shall not indulge in any criminal activity.

7. Needless to state, any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the matter.

8. The bail application is disposed of in the above terms.



9. Copy of this order be sent to the Jail Superintendent for information and necessary compliance.

NAVIN CHAWLA, J

FEBRUARY 1, 2024/rv/AS

Click here to check corrigendum, if any