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

+ **BAIL APPLN. 2390/2023**

RAGHAV YADAV

..... Petitioner

Through: Mr. Shiv Chopra, Ms. Aadhyaa
Khanna and Mr. Siddharth Arora,
Advocates.

versus

STATE (GNCT OF DELHI)

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State.
SI Anju, PS Gazipur.
Ms. Astha (DHCLSC), Advocate for
prosecutrix.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

21.02.2024

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1. This is the second application under Section 439 of the Cr.PC. read with section 482 of the Cr.P.C. seeking regular bail in case FIR No. 241/2018 under Sections 363/366/368/376 of IPC and section 6 of the POCSO Act registered at PS Gazipur.
2. The case of the prosecution, as per the status report dated 04.11.2023 authored by SHO, PS Gazipur, is as under:

“That on 19.06.2018 one complainant namely HG' came to PS and stated that he used to work in weekly market. On 16.06.2018 at about 11.00 AM, her daughter N Age about 16 ½ Yrs left her home saying that she was going to Gharoli Village to meet her friend but she did not return till now. He had searched for her daughter but no clue was found. He was sure that her daughter 'N' was lured away by unknown person. His statement was got recorded by ASI Shiv Om and the



above mentioned case was got registered. The investigation of the case was taken up.

During the course of investigation, efforts were made to trace the victim but no clue was found. On 22.03.2019 a PCR call vide GD No. 60A stating that **“ek ladka ek saal phle ek ladki ko bhaga kar le gya tha jisko aaj pakad rkha h wo ladki nabalik hai”** was received in PS Ghazipur and the same was assigned to ASI Vinod for necessary action. On receiving PCR call, ASI Vinod reached near Kondli Bridge where complainant HG met and stated that Raghav Yadav S/o Laxman took away her daughter ‘N’. On interrogation, he disclosed that his involvement in case FIR No. 241/2018 of PS Ghazipur. Raghav Yadav above was handed over to ASI Shiy Om. ASI Shiy Om. ASI Shiv Om arrested accused Raghav Yadav and victim N was recovered on the instance of accused Raghav Yadav. Victim N was sent to LBS hospital for medical examination in custody of W/Ct. Baby. Medical examination of victim was got conducted and Dr. mentioned that MLC kit not opened as last intercourse contact > 96 Hrs (01 Week back). The counselling of victim was got conducted by CIC Counsellor and her statement U/s 161 CrPC was got recorded. Section 376 IPC & 06 POCSO Act were added in above mentioned case and the case file for further investigation of the case was handed over to W/SI Sonia.

Accused Raghav was produced before Duty MM and he was sent to judicial custody. On 25.03.2019, statement of victim (U/s 164 CrPC) was got conducted wherein she stated that I had gone to wedding of my friend 'S' in may 2018. There I met Bhola (Uncle of my friend) who gave a phone to me and I returned the phone next day. In June 2018, I got a call from one boy at my family's mobile phone. Talks between us was started. The boy told his name Raghav. He said that he wants to marry me. My marriage was fixed with Raghav but my mother said that we had not enough money for marriage. Our family members were agreed for our court marriage. In June 2018 Cyber Cell Police came to my house and asked me for phone of Bhola. They asking for Bhola or Phone. They are saying to caught me. I alongwith Raghav tried to search Bhola but he could not be found. Cyber Cell Staff coming to caught me so I went to Raghav's home with him. Next day on seeing cyber cell police, I went to Arjun's home (Friend of Raghav). After a week, I went to house of brother and sister-in-Jaw of Raghav with Jyoti (Sister of Raghav). Parents of Raghav used to come to meet us. His family member asked us to marry. His family in Ghaziabad and later we went to Bihar. After some days we



came to Delhi. We had been provided a room by Saddam (Friend of Raghav) in Inderpuri where we stayed for three to four months. Raghav used to talk his family members. We shifted in Gurgaon and stayed for 03 months. I asked parents of Raghav about my family members then mother of Raghav said that my father is ill and they went to village for treatment. My father had taken ten lacs rupees from them and demanding for 25 lacs. Family members of Raghav were forcing me to marry and have a child. We both shifted in Narayana from Gurgaon and we stayed for 04 months there. Raghav's family member never told me that the case of cyber cell was closed. I was running due to fear of cyber cell. There is no mistake of Raghav. I went with Raghav to escape myself. I want to marry with Raghav. There is no mistake of him. I went with him willingly. Physical relations between us were made with my consent. No coercion was made with me. The age of the victim was got verified. The chargesheet in above mentioned case has been filed and the case is on prosecution evidence. However, the prosecutrix during the court examination supported the allegations levelled in her statement recorded by IO U/s 161 CrPC. The NDOH of the case is fixed for 14.12:2023.”

3. Learned counsel for the applicant submits that all the material witnesses in the present case have been examined. It is submitted that the applicant has been in judicial custody since 03.03.2019. It is submitted that the applicant has been falsely implicated in the present case and that the relationship between the applicant and the victim was consensual. Reliance is placed on a handwritten note as well as the victim’s statement under Section 164 of the CrPC wherein she has admitted that she was living with the applicant of her own free will. It is submitted that the applicant is the sole bread earner of his family and no useful purpose will be served by keeping the applicant in judicial custody any further.

4. *Per contra*, the learned APP for the State assisted by learned counsel for the complainant, points out that the previous application seeking bail



moved on behalf of the present application, i.e., BAIL APPLN. 2587/2021 was dismissed by a learned Single Judge of this Court *vide* judgment dated 29.04.2022, recording as under:

“10. In the present case, according to the date of birth certificate relied upon by the prosecution, the victim was minor on the date of the incident, therefore, her consent to any sexual relationship has no value. Even otherwise, the victim in her first statement recorded under Section 161 Cr.P.C. dated 23.03.2019 has made specific allegations against the petitioner, though in her statement recorded under Section 164 Cr.P.C. she has not made allegations against the petitioner but she has stated that physical relations were established with her consent, however, when she deposed before the Court as PW -1, she again made specific allegations in regard to forceful establishment of physical relations by the petitioner on the pretext of marriage.

11. There is no denial to the fact that physical relations were established between the petitioner and the victim who was minor on the date of the incident as per the prosecution. However, the victim has categorically deposed before the Court about the forceful establishment of physical relationship with her, though in her statement recorded under Section 164 Cr.P.C., she stated that physical relations between her and the petitioner were consensual and she wanted to marry the petitioner, but this is of no consequence in view of X (Minor) vs. The State of Jharkhand & Anr., Criminal Appeal No 263 of 2022 (Arising out of SLP(Crl) No 9317 of 2021) decided by the Hon'ble Supreme Court on February 21, 2022, wherein, it is observed and held as under:

“...The reason that from the statement under Section 164 and the averments in the FIR, it appears that “there was a love affair” between the appellant and the second respondent and that the case was instituted on the refusal of the second respondent to marry the appellant, is specious. Once, prima facie, it appears from the material before the Court that the appellant was barely thirteen years of age on the date when the alleged offence took place, both the grounds, namely that “there was a love affair” between the appellant and the second respondent as well as the alleged refusal to marry, are circumstances which will have no bearing on the grant of bail. Having regard to the age of the prosecutrix and the nature and gravity of the crime, no case



for the grant of bail was established..”

12. Keeping in view, the categorical statement of PW-1, the victim, and in view of the fact that the victim was a minor on the date of the incident, at this stage, it will not be proper for this Court to deeply analyze the testimony of the victim recorded in the Court as PW-1 and contradictions in her statement recorded under Section 161 Cr.P.C. with the statement recorded under Section 164 Cr.P.C. Though in her statement recorded under Section 161 Cr.P.C. the victim has given the version which she has stated in the Court, but what would be the cumulative effect of all the above statements of the victim will be seen during the course of the trial as analyzing the contradictions and discrepancies in the above statements, at this stage, might prejudice the case of the prosecution or the petitioner but one cannot loose sight of the fact that the victim was a minor on the date of incident. Therefore, in view of the discussions mentioned hereinabove and also relying upon the judgment supra, no ground for bail is made out. The bail application is, therefore, dismissed.”

5. Heard the counsel for the parties and perused the record.
6. The submissions made by learned counsel for the applicant have been dealt with by a learned Single Judge of this Court while dismissing his previous bail application. On a pointed query from this Court, it is submitted that the present case is now listed before the learned Trial Court for recording of the statement of the accused/applicant.
7. In view of the above, the present application is dismissed and disposed of accordingly.
8. Pending applications, if any, also stand disposed of.
9. Keeping in view the stage of trial, the learned Trial Court is directed to expedite the proceedings and complete the same, preferably within a period of 03 months, without granting any undue adjournments to either of the parties.
10. Needless to state, nothing stated hereinabove is an opinion on the



merits of the case.

11. Order be uploaded on the website of this Court, *forthwith*.
12. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
13. Copy of the order be sent to the concerned learned Trial Court for necessary information and compliance.

AMIT SHARMA, J

FEBRUARY 21, 2024/K