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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2429/2023**

ROHIT SONI

..... Petitioner

Through: Mr. Anuj Kumar, Advocate.

Versus

STATE OF NCT DELHI

..... Respondent

Through: Mr. Ritesh Kumar Bahri, APP for
State with SI Satyam, P.S. Pandav
Nagar.
Ms. Astha, Advocate, DHCLSC for
prosecutrix alongwith prosecutrix in
person.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

15.01.2024

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1. By way of present bail application filed under Section 439 read with Section 482 Cr.P.C., the applicant seeks regular bail in FIR No. 0054/2023 registered under Section 376 IPC and Section 4/6 POCSO at Police Station Pandav Nagar, Delhi.
2. Learned counsel for the applicant contends that the present FIR came to be registered on 04.02.2023 on the statement of the prosecutrix who has now been examined in Court. In her testimony, the prosecutrix admitted that relations ere consensual. There is no other pubic witness to be examined. The applicant is 22 years of age and is in judicial custody since 06.02.2023. The applicant was released on interim bail for 3 months as he wanted to



marry the prosecutrix. He duly surrendered in time and didn't misuse the concession granted to him.

3. Learned APP for the State, who is assisted by the counsel for the prosecutrix, opposes the same and submits that the prosecutrix was a minor at the time of the incident. At the time of incident, she was a minor, her date of birth being 16.11.2005. In her testimony also it was stated that she was around 17 years of age at the time of the incident.

4. Prosecutrix, is present in Court alongwith her counsel. Learned counsel states that she is now a major, which fact is also substantiated by the Investigating Officer. Prosecutrix states that she does not intend to marry the applicant immediately as she first wants to complete her studies. She also states that she has no objection to the grant of bail to the applicant.

5. In her cross examination, prosecutrix stated that physical relations were established with the applicant with her consent. It is noted that prosecutrix being around 17 years of age at the time of incident was indeed a minor and her consent being immaterial, the offence is serious. At the same time, it cannot be brushed aside that on the date of incident, she had attained the age of discretion and was on the verge of attaining majority. (cf: S. Varadarajan v. State of Madras, 1964 SCC OnLine SC 36)

6. The fact-situation in the present case, has surfaced in other cases as well. The Court while considering the issue of bail in Dharmender Singh v. State (Govt of NCT) (Bail Appl. 1559/2020) considered some of the following parameters while granting bail to the accused:

“77. Though the heinousness of the offence alleged will beget the length of sentence after trial, in order to give due weightage to the intent and purpose of the Legislature in engrafting section 29 in this special statute to protect children from sexual



offences, while deciding a bail plea at the post-charge stage, in addition to the nature and quality of the evidence before it, the court would also factor in certain real life considerations, illustrated below, which would tilt the balance against or in favour of the accused :

a. the age of the minor victim : the younger the victim, the more heinous the offence alleged;

b. the age of the accused : the older the accused, the more heinous the offence alleged;

c. the comparative age of the victim and the accused : the more their age difference, the more the element of perversion in the offence alleged;

d. the familial relationship, if any, between the victim and the accused : the closer such relationship, the more odious the offence alleged;

e. whether the offence alleged involved threat, intimidation, violence and/or brutality;

f. the conduct of the accused after the offence, as alleged;

g. whether the offence was repeated against the victim; or whether the accused is a repeat offender under the POCSO Act or otherwise;

h. whether the victim and the accused are so placed that the accused would have easy access to the victim, if enlarged on bail : the more the access, greater the reservation in granting bail;

i. the comparative social standing of the victim and the accused : this would give insight into whether the accused is in a dominating position to subvert the trial;



j. whether the offence alleged was perpetrated when the victim and the accused were at an age of innocence : an innocent, though unholy, physical alliance may be looked at with less severity;

k. whether it appears there was tacit approval-in-fact, though not consent-in-law, for the offence alleged;

l. whether the offence alleged was committed alone or along with other persons, acting in a group or otherwise;

m. other similar real-life considerations.

The above factors are some cardinal considerations, though far from exhaustive, that would guide the court in assessing the egregiousness of the offence alleged; and in deciding which way the balance would tilt. At the end of the day however, considering the myriad facets and nuances of real-life situations, it is impossible to cast in stone all considerations for grant or refusal of bail in light of section 29. The grant or denial of bail will remain, as always, in the subjective satisfaction of a court; except that in view of section 29, when a bail plea is being considered after charges have been framed, the above additional factors should be considered.”

7. Considering the aforesaid and that that the prosecutrix has already been examined, it is directed that the applicant be released on regular bail subject to him furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/concerned Court/Duty M.M. and subject to the following further conditions :-

- i) The applicant shall not leave the NCR without prior permission of the concerned Court.
- ii) The applicant shall provide his mobile number to the Investigating



Officer on which he will remain available during the pendency of the trial.

iii) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.

iv) The applicant shall not directly/indirectly try to tamper with the evidence.

v) The applicant shall regularly appear before the concerned Court during the pendency of the trial.

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

9. Copy of the order be communicated to the concerned Jail Superintendent electronically for information.

10. Copy of the order be uploaded on the website forthwith.

MANOJ KUMAR OHRI, J

JANUARY 15, 2024

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