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

+ **CRL.M.C. 4748/2024 & CRL.M.A. 17738/2024**

NXXXXX RXXXXX

.....Petitioner

Through: Dr. Ajay Chaudhary, Mr. Vikram
Singh and Mr. Bharat Chaudhary,
Advocates with Petitioner in person.

versus

STATE (GOVT. OF NCT OF DELHI) & ANR.Respondents

Through: Mr. Shoaib Haider, APP for the State.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

12.09.2024

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1. The Petitioner has approached this Court challenging the Order dated 29.04.2024 passed by the Ld. ADJ-06, (West), Tis Hazari Court, Delhi granting bail to Respondent No.2 herein in FIR No.28/2022 dated 05.01.2022, registered at Police Station Mundka for an offence punishable under Section 363 IPC.

2. Material on record discloses that on 05.01.2022, a missing complaint was made by the father of the victim stating that his eldest daughter aged about 19 years went out from home on 31.12.2021 and since then she is missing. FIR was got registered on 05.01.2022 by the father of the victim. He states that his daughter went out from home on 31.12.2021. It is stated that on 05.01.2022, i.e., on the date of the complaint, the age of the victim was given as 19 years but she was actually about 17.5 years of age at that time. The complaint records that the victim went out of the residence at



02:00 PM for school related activities at a friend's house. It is stated that the victim was a student of 9th Standard in a school in Delhi. It is stated that the father of the victim tried to find the victim but she could not be traced. It is stated that later on the father of the victim came to know that his daughter/victim has been misled by one Shubham who took his daughter along with him. The Respondent No.2 herein is the Aunt of the co-accused/Shubham. On the statement of the father of the victim, the present FIR was registered.

3. Material on record indicates that the co-accused/Shubham and the victim were tracked down on 03.03.2022 from Peeragarhi Chowk, Delhi. On the very same day i.e., 03.03.2022, the statement of the victim was recorded under Section 164 Cr.P.C. In the statement, the victim has stated that she went to the house of her friend after informing her mother where she had called the co-accused/Shubham for a meeting. It is stated that they were planning for a New Year Party and decided to go to Metro Walk but it was cancelled later on. It is stated that she wanted to meet the Bua of the co-accused/Shubham and then they went to the house of the bua at Laxmi Nagar by Metro but by the time they reached there, it was evening. It is stated that she was receiving phone calls from her parents but out of fear she switched off the mobile phone. It is stated that the co-accused/Shubham was from Madhya Pradesh and, therefore, they purchased tickets from Kashmiri Gate and they went to Madhya Pradesh and started residing there in a rented accommodation which was arranged by a Senior in the office of the co-accused/Shubham. It is stated that they resided in Madhya Pradesh for 15 days and, thereafter, went to Hajipur, Patna. It is stated that on coming to know that the father of the victim has filed a case, they took a train from



Hajipur, Patna to New Delhi and, thereafter, a call was made to the police. The medical examination of the victim was conducted before a Doctor and the victim stated that she had eloped with the co-accused/Shubham, and no complaints were given by the victim against the co-accused/Shubham.

4. Material on record further indicates that after about 23 days i.e., on 26.03.2024, another statement of the victim was recorded under Section 164 Cr.P.C. In that statement, the victim stated that she lied to her mother that she had gone to the house of her friend. It is stated that the co-accused/Shubham wanted to meet her and wanted to celebrate New Year with her but later on the co-accused/Shubham cancelled the program. It is stated that the co-accused/Shubham told her that he would take her to his Aunt/Bua's house at Laxmi Nagar and drop her at home by 05:00 PM. It is stated that by the time they reached the Aunt's house of the co-accused/Shubham and had tea & snacks, it was already 06:00 PM there. It is stated that the victim was receiving phone calls from her parents and, therefore, out of fear, she switched off her mobile phone. It is stated that when the co-accused/Shubham was accompanying the victim outside his bua's house, he started saying, that your parents are searching for you and if you go to your parents now then they would kill you. It is stated that the co-accused/Shubham, thereafter, took the victim to Madhya Pradesh and they started residing there in an accommodation arranged by the co-accused/Shubham's employer/owner. It is stated that after four days, the victim asked the co-accused/Shubham to take her to her parents in Delhi, on which the co-accused/Shubham informed the victim that he would take her to meet her parents to Delhi after his training is over. It is stated that after 04 days, i.e., on 05.01.2022, the co-accused/Shubham's father and uncle came



to Madhya Pradesh from Bihar and they took the co-accused/Shubham and the victim from Madhya Pradesh to Hajipur, Bihar. It is stated that the father and uncle of the co-accused/Shubham confined the victim and gagged her mouth in Hajipur, Bihar. It is stated on 19.01.2022, forged documents of the victim were prepared for court marriage. The victim refused to marry the co-accused/Shubham stating that she is a minor. It is stated that on this the bua and aunty of the co-accused/Shubham gave beatings to the victim and burned her leg using a heated knife. It is stated that after that, the marriage of the victim was solemnized with the co-accused/Shubham. It is stated that, thereafter, the father of the co-accused/Shubham brought the victim to Delhi and handed her over to the Police.

5. The Petitioner herein is the father of the victim and the Respondent No.2 herein is the Aunt of the co-accused/Shubham. Chargesheet has been filed for offences punishable under Sections 363, 366, 368, 323, 344, 376, 506, 120B and 34 IPC and Sections 6, 17 and 21 of the POCSO Act.

6. The Impugned Order dated 29.04.2024 discloses that no notice has been given to the Petitioner/Complainant by the Trial Court before passing the Impugned Order granting bail to Respondent No.2.

7. Applying the rationale of the Judgment passed by the Apex Court in Jagjeet Singh v. Ashish Mishra, (2022) 9 SCC 321, this Court is of the opinion that the Petitioner/Complainant should have been given a notice by the Trial Court before passing the Impugned Order granting bail to Respondent No.2.

8. In view of the above, the Impugned Order dated 29.04.2024 is set aside. However, it is directed that the Respondent No.2 be not taken into custody. Respondent No.2 is directed to appear before the Trial Court on the



next date of hearing, which is 30.09.2024, and file a bail application, which shall be considered by the Trial Court on merits after hearing the father of the victim.

9. With these observations, the petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 12, 2024

S. Zakir