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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 3673/2023

RAN VIJAY

..... Petitioner

Through: Mr. Suraj Prakash Sharma, Adv.

versus

STATE (GNCT DELHI)

..... Respondent

Through: Mr. Raghuvinder Verma, APP For
State with SI Tilak Raj, PS. Ranhola.
Mr. Hemant Singh, Ms. Urvashi Jain
and Ms. Medhavi Bansal, Adv. for
complainant (DHCLSC).

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

17.05.2024

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1. The present petition has been filed under Section 439 CrPC seeking regular bail in connection with FIR No.662/2021 under Section 363 IPC (*subsequently, charge sheet was filed under Sections 363/376 IPC and Section 6 of POCSO Act*) registered at Police Station Ranhola.
2. The FIR was registered on a missing complaint lodged by the father of the victim on 28.08.2021. Initially, victim was not traceable. Subsequently, as per charge sheet, on 09.06.2022 the victim came to Police Station Ranhola along with her parents. On the same day, the medical examination of the victim was conducted at DDU Hospital and the victim was found UPT positive. This led to the registration of aforesaid FIR.
3. The learned counsel for the petitioner submits that the victim is related to the petitioner and they were in relationship. In support of his



contention, he has invited the attention of the Court to the testimony of the victim, who was examined as PW-1, wherein she has testified that the petitioner and the victim were in love with each other.

4. Further referring to the testimony of the victim, he contends that the victim has also testified that it is the petitioner who had brought the victim to the Police Station, which shows the conduct of the petitioner. In so far as the allegation that the victim was found to be UPT Positive, the learned counsel refers to the cross-examination of the victim to contend that the victim had deposed that ultrasound revealed that the uterus of the victim was empty.

5. He refers to the testimony of the mother of the victim, who was examined as PW-4, to contend that she was confronted with her statement under Section 161 CrPC wherein it had been recorded that the victim had told her mother that she is in love with the petitioner. She was also confronted with that part of her statement under Section 161 CrPC wherein it has been recorded that the victim had admitted that she had gone to West Bengal along with the petitioner voluntarily and where she stayed with the petitioner and the petitioner had established physical relationship with victim for which she had consented.

6. He further submits that the victim has also admitted in her testimony that she had stayed with the petitioner in West Bengal for about 08 months. According to the learned counsel, the very fact that the victim had stayed with the petitioner for eight long months in West Bengal, goes to show that she was voluntarily residing with the petitioner and she was not under any kind of threat nor any inducement or allurement was made by the petitioner. Further, had the victim under any kind of threat during eight months of her



stay with the petitioner in West Bengal, she had ample opportunities to escape from the custody of the petitioner or inform her parents if she so wished.

7. He submits that the material witnesses viz., the victim, as well as, her mother have already been examined, therefore, there is no possibility that they may be influenced in the event the petitioner is enlarged on bail. Further, the petitioner does not have any criminal record.

8. He submits that the petitioner is in custody since 10.06.2022 and has been incarcerated for almost 02 years and the conclusion of trial is likely to take long time, in as much as, out of 18 witnesses only 05 witnesses have been examined.

9. He, therefore, urges the Court to enlarge the petitioner on bail.

10. *Per contra*, the learned APP has argued on the lines of the Status Report.

11. He submits that the age of the victim was 16 years whereas the petitioner's age was 33 years at the time of incident and he was married with one daughter aged about 05 years. He submits that the consent of minor is no consent in law. Further, as per the MLC, the victim was found to be pregnant which adds to the seriousness and gravity of the offence.

12. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the record.

13. This Court is conscious of the fact that the victim in the present case was a minor but it is the case of the prosecution itself that she was 16 years of age at the time of incident, therefore, it cannot be said that the victim lacked sufficient maturity and intellect to understand the consequences of her actions.



14. It is in the testimony of victim that she is related to the petitioner and was in touch with him since long and they were in love with each other. The mother of the victim was also confronted during her testimony with her statement under Section 161 CrPC and it has come on record that in her statement under Section 161 CrPC, the mother had stated that she was told by the victim that she was in love with the petitioner. The victim had further told her mother that she had gone to West Bengal along with the petitioner voluntarily where she stayed with the petitioner and the petitioner had established physical relationship with the victim with her consent. The evidentiary value of the testimonies of the victim as well as her mother will though be seen during the trial, however, in the above factual backdrop, the submission of the learned counsel for the petitioner that there was no inducement or enticement made by the petitioner and the victim left her parental home voluntarily, completely uninfluenced by any promise or inducement emanating from the petitioner *prima facie* cannot be said to be wholly without substance.

15. It is also in the testimony of the victim that during the ultrasound her uterus came to be empty but the MLC reveals that she was UPT positive. The probative value of this evidence in the light of the testimonies of the victim and medical evidence, will be appreciated by the Trial Court at the stage of trial and any comment by this Court may prejudice the case of either the prosecution or the defence.

16. At this stage, this Court cannot be unmindful of the fact that it is not a case where the alleged offence has been committed by resorting to intimidation, violence or brutality. The consent of the petitioner is though not consent in law but in facts and circumstances of the present case *prima*



facie there appears to be victim's tacit approval-in-fact. The conduct of the petitioner in bringing the victim to the police station as borne out from the testimony of the victim, cannot be overlooked, rather it shows that the petitioner had no intention to run away from the administration of justice.

17. Besides that, it cannot be overlooked that the petitioner is in custody for almost 02 years and his custody is no more required. The testimonies of the material witnesses viz., the victim, as well as, her mother, have already been recorded, therefore, there is no possibility of petitioner influencing the said witnesses.

18. Even otherwise, the petitioner is a permanent resident of District Ambedkar Nagar, U.P. whereas the victim is a resident of Delhi, therefore, the petitioner would not have easy access to the victim if the petitioner is enlarged on bail.

19. It is also not the case of the prosecution that the petitioner is a flight risk. The presence of the petitioner can otherwise be secured at the time of trial by putting appropriate conditions. The antecedents of the petitioner are also clean.

20. The aforesaid circumstances when considered in entirety, satisfies the higher threshold requirement to be met after the framing of charge for an offence under the POCSO Act in view of the impact of Section 29 thereof.

21. In view of the above, this Court is satisfied that the petitioner has made out the case of grant of regular bail. Accordingly, the petitioner is enlarged on regular bail subject to his furnishing a Personal Bond in the sum of Rs. 20,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-



- a) Petitioner shall appear before the Trial Court as and when the matter is taken up for hearing.
 - b) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
 - c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
22. The petition stands disposed of.
23. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case.
24. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
25. Order *dasti* under signatures of the Court Master.
26. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

MAY 17, 2024/dss