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

+ **BAIL APPLN. 3703/2023**

RAVI PAL

..... Petitioner

Through: Mr. Rohit Singh, Mr. Prince Dubey,
Mr. Vikram Singh Nayal, Mr.
Chandan Kumar Jha, Mr. Sujit
Kumar, Mr. Mohit Saini & Ms.
Kanika Saini, Advocates.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Amit Ahlawat, APP for the State.
Ms. Astha, Advocate, DHCLSC, for
R-2.

**CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA**

**ORDER
13.02.2024**

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1. This is the second application under Section 439 of the CrPC seeking regular bail in case FIR No. 287/19 under Sections 363/376 of the IPC and Section 6 of the POCSO Act registered at PS Jaitpur.
2. The case of the prosecution, as per the status report dated 17.11.2023 authored by Inspector Sanjeev Kumar, SHO, PS Jaitpur, is as under:

“2. That the brief facts of the case are that the above-mentioned case got registered on 23/10/2019 on the statement of the Sh. SR** S/o D** in which he stated that her daughter namely J* *, Age- 1 7 Yrs had been missing since 18/10/2019 and he doubted that some unknown person had kidnapped his daughter. On the statement of the complainant a case u/s 363 IPC got registered and investigation



was taken up. During investigation on the information of secret informer the victim girl got traced from Ludhiana, Punjab on 22/11/2019 along with applicant/accused Ravi Pal S/o Chandra Pal Rio C-221, Hari Nagar Part-2, New Delhi, Age- 24 Yrs.

3. Victim was then taken to AIIMS Hospital, where she was medically examined vide MLC No. 13615/19 and the exhibits received from the Doctor were taken into police possession and statement u/s 161 Cr.P.C of the victim got recorded and on the basis of the statement section 376 IPC & 6 POCSO Act was added.

4. On 22/11/2019 applicant/accused Ravi Pal S/o Chandra Pal Rio C-221, Hari Nagar, Part-2, New Delhi, Age- 24 Yrs got arrested in the above-mentioned case and his medical examination and potency test was conducted and he was sent to JC on 23/11/2019.”

3. Learned counsel for the applicant submits that the first bail application filed on behalf of the latter, i.e, BAIL APPLN. 3615/2022 was dismissed as withdrawn *vide* order dated 08.05.2023 passed by a coordinate bench of this Court. It was pointed out that the said application was withdrawn as the parents of the victim had not been examined. It was pointed out that the parents of the victim thereafter, have been examined on 16.09.2023. Hence, the present second application.

4. Learned counsel for the applicant submits that the case of the prosecution *qua* the applicant is that he kidnapped the victim on 18.10.2019 by pulling her into an auto-rickshaw, he took her from Jaitpur to Badarpur and then to Ludhiana *via* a bus. It is submitted that the applicant and the victim knew each other and were in a consensual relationship.

5. Learned counsel for the applicant further submits that as per the case of the prosecution, the victim was aged 17 years 08 months and 08 days on the date of the incident, which is incorrect. It is submitted that on the date of incident, the victim was a major, aged about 19-20 years and the same is also corroborated by the statements of the parents of the victim.



6. Learned counsel for the applicant draws the attention of this Court to an affidavit annexed alongwith the chargesheet to establish the age of the victim. It is submitted that the said affidavit was furnished at the time of the victim's admission to her school. Learned counsel submits that though the affidavit has been drawn in the name of the victim's mother, it has been signed by her father and the said fact has been admitted by them in their cross-examination before the learned Trial Court. In view of the said discrepancy, it is submitted that the said affidavit is not a credible proof of age of the victim. Learned counsel for the applicant further draws the attention of this Court to the cross examination of the victim's mother wherein she states that the victim was born three years after the birth of her elder daughter, which would make the victim a major on the date of incident. Attention of this Court is further drawn to the cross-examination of the victim's father, wherein he states that since there is an approximate gap of two years between the birth of both his daughters, he got the victim's date of birth recorded as 10.02.2002. He further states that he is unaware of her actual date of birth. It is further pointed out that the mother of the victim, in her cross-examination, has stated that she does not know the victim's year of birth. Similarly, the father of the victim, also in his cross-examination, stated that he does not remember the correct date of birth of the victim. It is further submitted that the date of birth as 10.02.2002 in the aforesaid affidavit was mentioned in order to get her admitted to the school at the relevant point of time. It is further pointed out that statement of Mr. Ramesh Kumar Singh, Primary Teacher, SDMC Primary School, Jaitpur No. 1, New Delhi-110044 (PW-5), also reflects that no date of birth certificate was submitted by the parents of the child at the time of admission.



7. Learned counsel for the applicant further submitted that during the cross-examination, the victim also stated that during their stay in Ludhiana, the present applicant used to go for work at about 09:00 AM and return at 06:00 PM. It is further stated that several other circumstances has come on record in the said cross-examination to show that the victim was staying with the present applicant with her own consent. It is pointed out at no point of time, the victim raised any alarm during the alleged forcible transit from Delhi to Ludhiana and during her stay in Ludhiana.

8. *Per contra*, learned APP for the State assisted by learned counsel for the complainant submits that the allegations against the applicant are serious. It is submitted that the learned Trial Court framed charges *qua* the applicant for commission of offence under the POCSO Act and the said order on charge has not been challenged by the applicant. It is submitted that the victim was a minor at the time of incident, which is corroborated by an affidavit furnished at the time of her admission to the school. The same is also confirmed by a school register placed on record alongwith the chargesheet, which records the victim's date of birth as 10.02.2002. It is submitted that as far as the cross-examination of the victim's father is concerned, the same has no bearing on the credibility of the documents relied upon by the prosecution to establish the age of the victim since he has stood by his statement that the victim's date of birth is 10.02.2002. Attention of this Court is drawn to the statement of the victim recorded under Section 164 of the CrPC and her testimony before the learned Trial Court to submit that her stand has been consistent throughout and she has supported the case of the prosecution. It is submitted that any minor discrepancies in the statement do not vitiate the case of the prosecution. As far as consent is



concerned, it is submitted that the victim has consistently and categorically stated that the applicant established sexual relations without her consent. Even under cross-examination, the victim did not change the said stance.

9. Heard learned counsel for the parties and perused the record.

10. The case of the prosecution is that the present applicant forcefully took the victim in an auto-rickshaw and thereafter, travelled all the way to Ludhiana with her. It has come on record that the victim, during the entire period, did not raise any alarm while she was travelling *via* public transport as well as during her stay in Ludhiana. As far as the proof of date of birth of the victim is concerned, it is pertinent to note that the same is sought to be proved by the prosecution by way of a school record which was endorsed on the basis of an affidavit filed by the father of the victim. As noted hereinabove, both the parents of the victim have candidly admitted in their cross-examination that the said date of birth was given for the purpose of getting the daughter admitted and they are not aware of the exact date of birth of the victim.

11. Be that as it may, the aforesaid facts and circumstances are a matter of trial to be determined by the learned Trial Court upon conclusion of the trial in the present FIR. As per the nominal roll received from the concerned Jail Superintendent, the applicant has been in judicial custody for a period of 04 years 25 days as on 18.12.2023. Out of 18 witnesses cited by the prosecution, only 07 witnesses have been examined so far. All the relevant material witnesses have been examined. No useful purpose will be served by keeping the applicant in judicial custody any further.

12. In totality of the facts and circumstances, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a



personal bond of Rs. 50,000/- with one surety of like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
 - ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in 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 is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
 - v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
13. The application is allowed and disposed of accordingly.
 14. Pending application, if any, also stand disposed of.
 15. Needless to state that nothing stated hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of disposing of the present bail application.
 16. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
 17. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

FEBRUARY 13, 2024/bsr