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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 4035/2023 & CRL.M.A. 32657/2023**
SAJID Applicant

Through: Ms.Swati Verma, Adv.
versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr.Aman Usman, APP with SI
Sapna.
Mr.Brahmanand Gupta, Adv.
for complainant.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **02.04.2024**

1. This application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), praying for the applicant to be released on bail in FIR No.0242/2021 registered at Police Station: Aman Vihar, Rohini-District, Delhi under Sections 363/366/376 of the Indian Penal Code, 1860 (in short, 'IPC') and Section 6 of the The Protection of Children from Sexual Offences Act, 2012 (in short, 'POCSO Act').

2. It is the case of the prosecution that on 05.05.2021, a complaint was received from the father of the victim, stating that she has been missing from the house since the afternoon of 04.05.2021. He also stated that he had a suspicion on the applicant being involved in making the victim run away with him.

3. The prosecution alleges that, in the course of investigation, the victim was traced out on 26.07.2021. She was staying alongwith the applicant. Thereafter, she was medically examined and was found to



be pregnant.

4. In her statement recorded under Section 164 of the Cr.P.C., on 28.07.2021, the victim had stated that she was aware of the applicant being married earlier and having two children from his marriage. She further stated that she had been talking to the applicant for more than 3-4 years prior to 2021, and thereafter, had a Court Marriage with him on 05.01.2021. She stated that she left her house on her own free will with the applicant on 04.07.2021 and started staying with him. She stated that she was four months pregnant as on 24.07.2021.

5. Based on the above materials, Charge-Sheet has been filed against the applicant.

6. The learned counsel for the applicant submits that the victim left her paternal house of her own free will and volition. The applicant married the victim on 05.01.2021. A copy of the marriage certificate is also filed along with the present application.

7. She submits that there is a doubt on the age of the victim inasmuch her Aadhar Card shows her date of birth as 15.02.2001, whereas the prosecution, on the basis of the School Certificate, is alleging her date of birth as 13.06.2003. Placing reliance on the testimony of the (PW-7), who is the teacher in the school where the victim was studying, the learned counsel for the applicant submits that the witness has admitted that the School Certificate was prepared not on the basis of any Birth Certificate issued by any appropriate authority but only on the basis of what was disclosed to be date of birth of the victim by her parents.

8. She submits that even taking this age to be the correct age of the



victim, the victim was about to turn major at the time of the marriage, and certainly when she went missing as per her statement recorded under Section 164 of the Cr.P.C. She submits that the applicant has been in custody since 27.07.2021; has clean criminal antecedent; is not a flight risk; and has deep roots in the society and there is no likelihood of him absconding.

9. On the other hand, the learned APP and the learned counsel for the complainant submit that the victim in her statement before the learned Trial Court has stated that the applicant established physical relationship with her not only post the alleged marriage but since 2017, when she was admittedly a minor at that time. They further submit that there is a vast difference of age between the applicant and the victim and therefore, the victim was allured into the false relationship by the applicant, who was earlier married and having children from the marriage. They further submit that in terms of Section 29 of the POCSO Act, there is a presumption of the applicant having committed the offence.

10. I have considered the submissions made by the learned counsels for the parties.

11. As is evident from the above, the applicant is in custody since 27.07.2021. The material witnesses, that is, the father of the victim and victim herself, already stand examined before the learned Trial Court. Therefore, the possibility of the applicant tampering with the evidence is rather not present. There is also a doubt on the age of the victim, however, one thing stands established that the victim has consistently stated that she went away with the applicant of her own



free will. As far as her statement that the applicant had been establishing physical relationship with her since 2017, the same has been stated only in her statement before the learned Trial Court. The effect of the same shall be considered by the learned Trial Court on appreciating the other evidence led before it.

12. The purpose of keeping a person in custody, while the trial is in progress, is not to punish the accused, but to ensure that he shall remain present to face the trial and the punishment, if awarded to him.

13. In the present case, there is no apprehension expressed that the applicant is likely to abscond if he is released on bail. He is married, has aged parents as also children. He has social ties in the society.

14. Keeping in view the totality of the circumstances, in my view, the applicant deserves to be released on bail.

15. Accordingly, it is directed that the applicant Sajid be released on bail in FIR No.0242/2021 registered at Police Station: Aman Vihar, Rohini-District, Delhi under Sections 363/366/376 of the IPC and Section 6 of the POCSO Act, on furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- i. The Applicant shall not move out of National Capital Region without the prior permission of the learned Trial Court.
- ii. The Applicant shall provide his permanent address to the learned Trial Court. The applicant shall also intimate the Court, by way of an affidavit, and to the IO regarding any



change in his 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 shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the learned Trial Court and the IO concerned. The mobile location be kept on at all times.
- v. The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses or the victim.

16. Needless to state, any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the matter.

17. The bail application is disposed of in the above terms. Pending application is also disposed of being rendered infructuous.

18. A copy of this order be sent to the Jail Superintendent for information and necessary compliance.

19. *Dasti.*

NAVIN CHAWLA, J

APRIL 2, 2024/Arya/ss

[Click here to check corrigendum, if any](#)