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

+ CRL.M.C. 7406/2024, CRL.M.A. 28277/2024 & CRL.M.A.
28278/2024

MR. SUJIT KUMAR

.....Petitioner

Through: Mr. Shreesh Chadha, Mr. Divjot
Singh Bhatia, Mr. Aman Singh
Bakhshi, Advocates, along with
Pairokar of Petitioner
(M:9910048284)

versus

STATE (GOVT. OF NCT OF DELHI) AND ANRRespondents

Through: Mr. Hitesh Vali, APP for State
SI Kashish Swami,

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
19.09.2024

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1. This petition has been filed seeking quashing of FIR No.378/2024 P.S. Dwarka, North Delhi, under section 363/366/376/506, IPC and section 6 POCSO Act.
2. Respondent no.2-prosecutrix is present in the Court along with her parents and her new born baby boy.
3. The quashing is sought in peculiar circumstances that petitioner is 19 years of age while respondent no.2 is 17 years of age, are family friends and known to each other since their childhood and are staying as neighbours in Delhi. It is claimed that petitioner and respondent no.2 were in romantic relationship and got married in August 2023 of their own free will and started residing at petitioner's residence in Samstipur, Bihar. A consensual sexual



relationship resulted and respondent no.2 got pregnant in November 2023. In the month of May 2024, in the final stages of her pregnancy, respondent no.2 came to Delhi for her medical treatment and was staying with her parents and was admitted to Dada Dev Hospital, Dabri. Since respondent no.2 was minor, hospital authorities informed the police and FIR was registered. Respondent no.2 gave birth to a baby boy on 17th August 2024. Petitioner was however arrested on 3rd September 2024 and is in custody since.

4. Mother of respondent no.2, being her legal guardian, has filed an affidavit stating that she has no objection to quashing of the FIR in these circumstances. Also, a compromise deed has been filed dated 12th September 2024 in this regard.

5. The Court had an extensive interaction with the prosecutrix and her parents and it transpires that the parents of prosecutrix were aware about this relationship. However, when prosecutrix got pregnant, in order to not interfere with the life and health of a newborn, delivery was done at the hospital. It is noted that the hospital called the police, after which, before going into labour, a statement of prosecutrix was taken. Prosecutrix herself stated that she and the petitioner had been in a romantic relationship and the child is theirs. She was in delirium at that stage when her statement was taken as she was going into labour.

6. The objection has been taken by the APP for the State on the basis that the respondent no.2 was a minor and was not legally capable of giving a consent. Moreover, he has referred to decisions which point out that settlements in these situations cannot be accepted.

7. Counsel for petitioner however has drawn attention to the decisions of Coordinate Benches of this Court in *Amarpal v. State* order dated 15th March 2024 in CrI. M C 2289/2023 and in *Faizan v. State*, decision dated 29th July



2024 in W.P.(Crl.) 915/2024 where the Courts in similar circumstances had quashed the FIRs.

8. Additionally, it may be noted that various High Courts have quashed FIRs in similar such circumstances, one such decision being ***Tarun Vaishnav v. State of Rajasthan through PP & Anr.*** 2022 SCC OnLine Raj 2237 by the Jodhpur Bench of the Rajasthan High Court. Said decision has attained finality as a Special Leave Petition against the same was dismissed by the Apex Court on 03rd March 2023 *vide* SLP (Crl.) No. 1890/2023. Decision of the Rajasthan High Court was rendered in a case where prosecutrix delivered a baby in the hospital and the FIR was lodged pursuant to statement of the minor girl. Statement recorded by IO revealed a romantic relationship between the 16 year old prosecutrix and 22 year old accused. Court, in that case, took into consideration the facts and circumstances of that case and noted that there was a love affair involving a physical relationship out of immaturity, and quashed the FIR against the accused/petitioner therein. Relevant portions of this decision are extracted as under:

“13. This Court is not oblivious of the legal position that in cases concerning sexual act with a minor, consent, if any, has no legal sanctity and it cannot be used as a defence. Needless to mention that this Court cannot and does not accord any approval or sanction to the sexual act of petitioner with the prosecutrix but then, it is a hard reality that their love affair has traversed beyond the legal and moral bounds, consequence whereof has begotten a child.

14. This Court cannot be a silent spectator to or turn its back on the distressed family. If the impugned FIR is not quashed, the petitioner will have to face incarceration for at least 10 years. The mistake or blunder which otherwise constitutes an offence has been committed due to immature act and uncontrolled emotions of two persons, out of whom, one is still a minor.



15. The petitioner's prosecution and conviction will lead to pain and tears in the eyes of the family members of both the parties and future of two families, and above all, an innocent child will be at stake, whereas, if the impugned FIR is quashed, it would serve the ends of justice.

16. It is to be noted that in almost similar circumstances, different High Courts have quashed the FIR/proceedings. The following are to mention a few:—

(i) Vijayalakshmi v. State (Crl.M.P. No. 109/2021), decided on 27.01.2021 by Hon'ble High Court of Madras;

(ii) Kundan v. State (Crl.M.C. No. 27/2022), decided on 21.02.2022 by Hon'ble High Court of Delhi;

(iii) Shri Skhemborland Suting v. State of Meghalaya (Crl. Petition No. 63/2021), decided on 23.03.2022 by Hon'ble High Court of Meghalaya.

17. Different High Courts have given different reasonings dealing with medical, psychological, social angles of the situation; analysing the statement of objects and reasons of the POCSO Act; considering practical realities including future of the newborn child involved.”

(emphasis added)

9. In the present case as well, parents of the prosecutrix have expressed concern for the prosecutrix, as also her baby, and are mindful of the lack of maturity and mistake of the daughter which ultimately led to the delivery of the baby.

10. In these facts and circumstances, this Court is of the opinion that considering that prosecutrix is staying with her parents along with her new born child, petitioner being major in age; if the FIR is not quashed, it will adversely affect the minor child who needs protection and care from his parents, and destroy the lives of three individuals, the couple and the new



born.

11. Needless to state that these are exceptional circumstances which invite Court's inherent powers under Section 482 Cr.P.C. to modulate the relief and take a view on humanitarian grounds.

12. Accordingly, the petition is allowed. Consequently, the FIR No.378/2024 P.S. Dwarka, North Delhi, under section 363/366/376/506, IPC and section 6 POCSO Act and proceedings emanating therefrom are quashed. Pending applications are rendered infructuous.

13. Copy of order be communicated to the Jail Superintendent for compliance.

14. Order be uploaded on the website of this Court.

ANISH DAYAL, J

SEPTEMBER 19, 2024/sm