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

+ **BAIL APPLN. 3402/2024**

MANISH PRAKASH MISHRA

.....Petitioner

Through: Mr. Shubham Singh Rana, Mr. Rajat Gupta and Mr. Saurabh Dahiya, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for the State with SI Ankita Singh, P. S.: Safdarjung Enclave.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

22.10.2024

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By way of the present petition filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner seeks grant of regular bail in case FIR No. 168/2024 dated 17.07.2024 registered under sections 354/354D of the Indian Penal Code, 1860 ('IPC') and sections 8/12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') at P.S.: Safdarjung Enclave, New Delhi.

2. Notice on this petition was issued on 20.09.2024. Status Report dated 21.09.2024 has been filed.
3. Though nominal roll has not been requisitioned, the Investigating Officer ('I.O.') informs the court that the petitioner was arrested on 18.07.2024; and has been in judicial custody ever-since. Furthermore, the petitioner's SCRB record, a copy of which has been placed on record, shows that he has no other criminal involvement.
4. On the very first day when this matter was listed *i.e.* 20.09.2024 and when notice was issued, the prosecutrix and her sister were present in



court. They had been identified by the I.O. and the court had interacted with them. On that day, the prosecutrix had told the court that she had made a complaint to the local police only to scare the petitioner and was not aware of the consequences of the complaint.

5. Mr. Shubham Singh Rana, learned counsel appearing for the petitioner submits that the matter has been settled between the parties; and in fact, the prosecutrix, her sister, as well as her mother had filed Affidavits dated 31.07.2024 before the learned Trial Court, affirming that they had settled their issues with the petitioner and his family members, in the presence of witnesses.
6. Counsel further points-out, that though there are allegations in the FIR *inter-alia* under sections 8/12 of the POCSO Act, but as narrated in the status report filed in the matter, the complainant's date of birth is 07.09.2006, and therefore, in or about July 2024, when the complaint was made and the subject FIR came to be registered, the complainant/prosecutrix was about 17 years and 10 months old, *i.e.*, she was almost 'major'.
7. Counsel submits, that the status report also shows that the prosecutrix had befriended the petitioner on 'Instagram' and that she had met the petitioner at public parks, which obviously she had done of her own free volition; and that therefore, there was no force or coercion exercised by the petitioner.
8. Mr. Rana submits that the petitioner is presently pursuing a degree in B.Sc (Hons.) Biomedical Science at the Bhaskaracharya College of Applied Sciences, University of Delhi; and if he is not granted bail, his academic career will be ruined.



9. On the other hand, Mr. Utkarsh, learned APP appearing for the State submits, that though it is correct that the prosecutrix was just shy of 18 years of age and may have met the petitioner of her own free will, as narrated in the subject FIR and subsequently in her statement recorded under section 164 of the Code of Criminal Procedure 1973, the act that is subject matter of the offence was not done with her consent and the petitioner had forced himself upon the prosecutrix.
10. Learned APP further submits, that though charges are yet to be framed in the matter; but substantial material has come on record by way of the charge-sheet which shows that the petitioner had committed the offences alleged in the subject FIR. Hence, learned APP submits that the petitioner should not be enlarged on bail.
11. Upon being queried, learned APP confirms that the I.O. has verified that the petitioner is a college student; that he is presently studying for a degree in B.Sc (Hons.) Biomedical Science at the Bhaskaracharya College of Applied Sciences, University of Delhi; and the identity card, a copy of which has been filed on record, is genuine.
12. As recorded in order dated 20.09.2024, the prosecutrix (and her sister) were heard by the court at the stage of issuance of notice; and the prosecutrix had confirmed that her mother, her sister and she had filed affidavits before the learned Trial Court stating that they had settled their issues with the petitioner and his family members, in the presence of witnesses. The prosecutrix had also categorically confirmed to the court that she had filed the complaint *only* to scare the petitioner, without being aware of the consequences of filing such a complaint.



13. As recorded above, the petitioner's SCRB record shows that he has no other criminal involvement.
14. Upon an overall consideration of the matter, the following factors weigh with the court at this stage :
 - 14.1. The prosecutrix has clearly stated in court that she had filed the complaint *only* to scare the petitioner, without being aware of the consequences that would ensue;
 - 14.2. The prosecutrix has also affirmed the contents of the affidavits that she, her mother and her sister had filed before the learned Trial Court, copies of which have also been appended to the bail petition. These affidavits affirm that they have settled the matter with the petitioner and his family, in the presence of witnesses, and have no pending grievances them. In the affidavits, the prosecutrix, her mother and sister have also said that they support the release of the petitioner on bail and even the quashing of the subject FIR; and
 - 14.3. The prosecutrix was about 17 years and 10 months of age in and around July 2024, when the offence is alleged to have been committed; and therefore, she was of the age of discretion, though not legally of the age of consent.
15. In light of the foregoing considerations, this court is persuaded to admit the petitioner – **Manish Prakash Mishra s/o Mohan Mishra** – to *regular bail* pending trial, subject to the following conditions :
 - 15.1. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- (Rs. Twenty-five Thousand Only) with 02 sureties in



the like amount from family members, to the satisfaction of the learned Trial Court;

- 15.2. The petitioner shall furnish to the S.H.O of P.S.: Safdarjung Enclave, New Delhi a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 15.3. If the petitioner has a passport, he shall surrender the same to the learned Trial Court and shall not travel out of the country without prior permission of the Jail Superintendent;
- 15.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial. In particular, the petitioner shall not approach or contact the complainant/prosecutrix or any member of her family; and
- 15.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
- 15.6. Since the petitioner is facing trial, and would therefore be appearing before the learned Trial Court from time-to-time, no reporting requirement has been imposed as a condition of bail.
16. Nothing in this order shall be construed as an expression of opinion on the merits of the matter.
17. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.



18. The petition stands disposed-of in the above terms.
19. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

OCTOBER 22, 2024
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