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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 4157/2024**

BABU LAL BAWARIYA

.....Petitioner

Through: Mr.Uttam Datt, Sr. Advocate with
Mr.Tushar Singh, Mr.Anil Kumar
Jha, Mr. Akhilesh Yadav, Ms.
Sunakshi Singh, Ms. Khiyati Jain and
Ms. Akshra Arshi, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Manjeet Arya, APP for State with
SI Sangeeta, P.S. Shahbad Dairy.
Mr.Madhav Khurana, Sr. Advocate
with Mr.Teeksh Singhal, Advocate
for Complainant/prosecutrix.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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20.12.2024

1. By way of present application, the applicant/petitioner seeks regular bail in FIR No.448/2022 registered under Section 376 IPC and Section 6 of POCSO Act at Police Station- Shahbad Dairy, Delhi.
2. Learned Senior Counsel for the applicant submits that the applicant is in custody since 27.06.2022 and not only have the charges have been framed but the prosecutrix also stands examined and discharged. It is submitted that entire case of prosecution rests on the allegations that the applicant initially committed sexual assault upon her at his home where she was offered water, after consumption of which she became unconscious and at that moment, an objectionable video with her was made and on the pretext of publicizing the



same, subsequent physical relations were established against her will. In this regard, it is further submitted that though the applicant has handed over his mobile phone, however, as per the FSL report, no such video could be recovered. On the other hand, it is pointed out that the mobile phone of the prosecutrix was never seized or sent for FSL examination.

3. Learned Senior Counsel next contends that the offence was first stated to be committed in April, 2021 on which date the prosecutrix claimed to be a minor, her date of birth is stated to be 16.01.2004. It is submitted that though the prosecution has cited prosecutrix's school leaving certificate and class 10th mark sheet towards her age proof, however, on an RTI response received from the school, the copy of admission register has been provided, which shows that initially no document was given, however, later on an interpolation was done showing her date of birth as 16.01.2004. Further, in the response received under RTI from the concerned school, it is stated that the prosecutrix was admitted in the school vide admission number 206/2008 but the same does not match with the school records filed alongwith the chargesheet. Additionally, it is submitted that in another reply received from the office of Municipal Council, Beri, Jhajjar, Haryana it is informed that the records pertaining to issuance of the date of birth certificate were burnt in a fire incident in the year 2016. On the strength of the above, it is submitted that the prosecution has not conclusively established the prosecutrix's date of birth as 16.01.2004. In this regard, it is submitted that the relations between prosecutrix and the applicant were romantic and consensual as even on the date of incident, the prosecutrix allegedly was about 17 ½ years old and being of sufficient maturity and in the age of discretion. Reference in this regard is made to the decision in S. Varadarajan V. State of Madras



reported as **(1965) SC 942**.

4. It is next contended that the incidents spread over a period of more than one year and though initially, the prosecutrix was alleged to be a minor on the date of filing of the FIR, she turned major on 16.01.2022 after which she had voluntarily accompanied the applicant to Hotel Florence Residency, Sector-8, Rohini, Delhi on 10.03.2022, 17.03.2022, 28.03.2022, 13.04.2022, 03.05.2022 and 24.06.2022. The prosecutrix has used identity of one *M* R** while visiting the said hotel. The Investigating officer has seized the admission register and CCTV footage of the hotel. In this regard, learned Senior Counsel has also drawn the attention of the Court to the statement recorded under Section 161 Cr.P.C. of one *Sandeep*, who stated that being the Manager at Hotel Florence Residency, he had seen the prosecutrix and the applicant coming to the hotel. He identified the prosecutrix as the one who used to get food from Zomato from the hotel staff with the ID of *M*R**. Further, the prosecutrix also used to make bookings in the name of *M*R**.

5. While referring to the testimony of the prosecutrix recorded before the Court, it is stated that she was confronted with photos of various letters written by her in which she has confessed her love for the applicant. She was also confronted with the photographs which showed intimacy between the two. It is also pointed out that between 01.05.2021 and 24.06.2022, the prosecutrix had made about 1510 calls to the applicant which belies the allegations of forcible or coercive sexual intercourse.

6. It is also submitted that the applicant was released thrice on interim bail, a concession which he has not misused and all the material witnesses having been examined, there is no possibility of tampering or threatening the prosecutrix.



7. Learned APP for the State, duly assisted by learned Senior Counsel for the complainant, has opposed the present bail application. It is contended that at the time of the incident, the applicant was a teacher in the same school in which the prosecutrix was studying. The prosecutrix has consistently stated that the relations were established forcefully and against her will. As per the FSL Report dated 01.09.2022, the DNA found on the vulva swabs and underwear of the prosecutrix has matched with the DNA of the applicant. While entering the aforesaid hotel, ID of one M*R* was used so as to conceal the identity of the prosecutrix. The CDR locations of the prosecutrix and the applicant also show them to be together at the same location at multiple dates. Learned Senior Counsel for the complainant additionally contended that the applicant being a teacher and twice the age of the prosecutrix has violated the trust bestowed upon him and the presumption under Section 29 of the POCSO Act is applicable.

8. I have heard learned Senior Counsels for the parties as well as learned APP for the State and also gone through the material placed on record. The first incident is stated alleged to have been committed somewhere in April, 2021. The prosecution has sought to explain the delay in reporting the incident by contending that the applicant by showing and sharing the objectionable video continued to commit the offence that was stated to be last committed on 24.06.2022. Though learned APP for the State submits that the prosecutrix never had a mobile phone, however, on the contrary, a reading of her testimony would show that she has claimed to have received calls on her mobile phone from the applicant forcing her to come to various places. She had categorically stated that the objectionable video was also shared with her on her mobile phone. The prosecution itself has filed the



CDR details showing 1510 calls made by the prosecutrix to the applicant. In fact, the prosecution has relied on the CDR locations to establish the presence of both on the same location at the same time.

9. As noted above, though the applicant handed over his mobile phone, the same on FSL examination did not yield any result of any objectionable video so far. Concededly, mobile phone of the prosecutrix was not seized during the investigation. As such there is no material in the form of objectionable video on record of the Trial Court. The applicant, however, has placed photos of various handwritten letters of the prosecutrix wherein she has confessed her love for the applicant. The prosecutrix was also confronted with two photographs which rather show intimacy between them. During the course of submissions, a reference was also made to the statement of the prosecutrix wherein she had stated that on 24.06.2022, she had visited a Burger Club in Rohini alone to which she was confronted with the receipt of the restaurant showing service for two persons thereby indicating that all the relations between the two were consensual.

10. The contentions on the aspect of age of prosecutrix, the absence of any viral video, the photos of various handwritten letters by the prosecutrix, the CDR connectivity between the two would be evaluated by the trial court at the appropriate stage, however, this Court considering the totality of the facts and circumstances especially the fact that the prosecutrix already stands examined and discharged, the applicant having been released thrice on interim bail, it is directed that the applicant be released on regular bail, subject to his furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/ concerned Court/Duty J.M./Link J.M. and subject to the



following further conditions :-

- i) The applicant shall not leave the NCR without prior permission of the concerned Court.
 - ii) The applicant shall provide his mobile number to the Investigating Officer on which he will remain available during the pendency of the trial.
 - iii) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.
 - iv) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.
 - v) The applicant shall regularly appear before the concerned Court during the pendency of the trial.
11. The bail application is disposed of in the above terms.
 12. Copy of the order be communicated to the concerned Jail Superintendent electronically for information and necessary compliance.
 13. Copy of the order be uploaded on the website forthwith.
 14. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same has been expressed only for the purpose of the disposal of the present bail application.

MANOJ KUMAR OHRI, J

DECEMBER 20, 2024

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