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

+ **BAIL APPLN. 4367/2024 & CRL.M.A. 37639/2024**

MD NAWAB

.....Petitioner

Through: Mr. Manoj, Advocate

versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Naresh Kumar Chahar, APP for
the State.

Ms. Malvika Awasthi, Amicus Curiae
for the victim.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

07.01.2025

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CRL.M.A. 35695/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

BAIL APPLN. 4367/2024

3. The present bail application under Section 483 and Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereafter 'BNSS'), has been filed on behalf of the accused/applicant, seeking grant of regular bail, in case arising out of FIR bearing no. 308/2024, registered at Police Station Alipur, Delhi for offences punishable under Sections 363/376/506 of the Indian Penal Code, 1860 (hereafter 'IPC') and Section 6 of the Protection of



Children from Sexual Offences Act, 2012 (hereafter '*POCSO*').

4. Issue notice. Mr. Naresh Kumar Chahar, the learned APP accepts notice on behalf of State.

5. As disclosed from the impugned order and the Status Report, the brief facts of the case are that the present case was registered under Section 363 of IPC on the complaint of the complainant regarding kidnapping of his minor daughter, aged about 16 years. Thereafter, efforts were made to trace the victim, and the victim and the applicant were recovered from Bihar. It is stated that at the time of medical examination, the victim has mentioned about establishing of physical relations by the applicant/accused on repeated occasions. The present applicant was arrested on 02.05.2024. Thereafter, Section 376 of IPC and Section 6 of POCSO Act were also added in the FIR. The learned Trial Court dismissed the bail application of the applicant *vide* order dated 03.09.2024.

6. The learned counsel appearing on behalf of applicant argues that the present FIR was registered at the instance of the parents of the victim as they were against the relationship of the victim and the applicant. It is contended that the present applicant has been falsely implicated in the case, and that no allegation of commission of rape against the applicant has been made by the victim in her statement recorded under Section 164 of Cr.P.C. as well as in the testimony recorded before the learned Trial Court. It is, therefore, prayed that the applicant be released regular bail.

7. *Per contra*, the learned APP appearing on behalf of State opposes the grant of bail. He, however, concedes that the victim has not levelled any allegation against the applicant in her statement recorded under Section 164 of Cr.P.C. and in her testimony.



8. On a query by this Court, that the victim in the MLC stated that she had got married to the present applicant, the Investigating Officer (IO) states that though the charge-sheet was filed and the matter was investigated at length, no proof of marriage between the parties could be traced. She also states that the victim had made this statement on her own, however, no marriage in fact has taken place between her and the accused.

9. In the meantime, the attention of this Court is drawn to the fact that the victim herein did not support the prosecution case in her examination-in-chief before the learned Trial Court. In this regard, this Court has also gone through the testimony of the victim which is recorded before the learned Trial Court, and has also perused the statement of victim recorded under Section 164 of Cr.P.C. The victim has, at no stage, supported the prosecution story and has categorically stated that no physical relations between the victim and the applicant had ever been established when they were staying either in Delhi, or in Patna from where she was recovered.

10. The learned *Amicus Curiae* appearing for the victim states that despite the statement of the victim under Section 164 of Cr.P.C. and testimony before the learned Trial Court, the MLC supports the prosecution's case and since the prosecutrix herein was minor, bail cannot be granted to the accused/applicant.

11. This Court is, however, of the view that the victim, as mentioned above, has not supported the prosecution's case when she was recovered and has categorically stated, not only in her statement recorded under Section 164 of Cr.P.C. but also during her deposition before the learned Trial Court, that no physical relations had been established between her and present applicant.



12. Keeping in view all the facts and circumstances of the case and the fact that the applicant is in judicial custody since 02.05.2024 i.e. for more than eight months, this Court is inclined to grant regular bail to the applicant, on his furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the Trial Court/Successor Court/Link Court/Duty Judge concerned on the following terms and conditions:

- i. The applicant shall provide his contact details and residential address to the concerned SHO/IO, as well as to the concerned Trial Court.
- ii. The applicant shall not leave the country without prior permission of the Trial Court.
- iii. The applicant shall not directly or indirectly make an attempt to contact the victim, or influence the witnesses or tamper with the evidence in any manner.
- iv. In case of change of residential address/contact details, the applicant shall promptly inform the same to the concerned Trial Court and IO/SHO.
- v. The applicant shall appear regularly before the learned Trial Court.

13. Accordingly, the present bail application along with pending application stands disposed of.

14. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.



15. The order be uploaded on the website forthwith.

JANUARY 07, 2025/zp

SWARANA KANTA SHARMA, J

Click here to check corrigendum, if any