

16-Yr-Old's Consent Immaterial: Delhi High Court Denies Bail To 23-Yr-Old Married Man, Says Facts Specially Disentitle Him From Bail In POCSO Case

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IN THE HIGH COURT OF DELHI AT NEW DELHI

JASMEET SINGH; J.

BAIL APPLN. 4129/2021; 23.11.2022

JAVED versus STATE NCT OF DELHI

Petitioner Through: Mr. Sharan Mehta, Advocate; Respondent Through: Mr. Y.S. Chauhan, APP for State with ASI Raghuraj Singh, PS Sangam Vihar, New Delhi Ms. Gunjan Sinha Jain, Adv. for complainant

ORDER

This is an application seeking bail in FIR No. 199/2019 under Sections 363IPC. On the basis of the statement made under Section 164 Cr.P.C, sections 366/376 IPC and section 6 POCSO Act were added. As per the FIR, the father of the minor girl registered an FIR on the ground that his daughter was missing from 10.06.2019. Subsequently, the status report has been filed wherein it has been stated that the missing girl was traced and rescued from District Sambhal, Uttar Pradesh and was brought back. She was found in the company of the applicant.

The statement of the prosecutrix has been recorded under Section 164 Cr.P.C., wherein she has stated that the applicant is her boyfriend and she stayed with him for about one and a half month. She further states that she established physical relationships with the applicant with her consent. It is further state that she wants to stay with the applicant.

Mr. Mehta, learned counsel states that in view of the statement made under Section 164 Cr.P.C, the applicant must be granted bail. He further states that he has been in custody since 2019 and charge-sheet has already been filed.

In the present case, I am of the view that the applicant was merely 16 years from the date of incident. The applicant was 23 years old and was already married. It is stated by Ms. Jain, learned counsel appearing for the complainant that she has interacted with the complainant and the complainant has informed her that it was the applicant who took her to the office of SDM and got her date of birth changed in the Aadhar Card from the year 2002 to 05.03.2000 only for the purpose of showing that the date of the establishing physical relationship she was not a minor.

The conduct of the applicant of getting the date of birth changed in the Aadhar card of the complainant is a serious offence. It seems that the applicant wanted to take advantage by getting the Date of Birth on the Aadhar Card changed so that when the applicant established physical relationship with the complainant, she was not a minor.

The consent of the minor at the age of 16 years, specially, when the applicant was 23 years old and already married also disentitles the applicant for grant of bail. Consent of a minor is no consent in the eyes of law.

The observations made in this order are only for the purpose of deciding the bail application and shall not affect the trial and the final outcome of the case.

With these observations, the bail application is dismissed.