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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 3371/2022

AKASH

..... Petitioner

Through: Mr. Sunil Choudhary with Mr.
Praveen Singh, Advocates
(DHCLSC).

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Tarang Srivastava, APP for the
State with SI Murari Krishan, P.S.:
New Delhi.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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07.02.2023

By way of the present petition filed under section 439 read with section 482 of the Code of Criminal Procedure 1973 (Cr.P.C.), the petitioner who is an accused in case FIR No.365/2021 dated 04.11.2021 registered under sections 363/366/366A/376 of the Indian Penal Code 1860 (IPC) and section 6 of the POCSO Act, seeks regular bail.

2. Notice on this petition was issued on 30.11.2022; consequent whereupon, status report dated 18.01.2023 has been filed.
3. Nominal roll dated 20.01.2023 has been received from the Jail Superintendent. It shows that the petitioner has been in judicial custody for more than 01 year as on 16.01.2023.
4. Learned counsel for the petitioner submits that though on the date of the alleged commission of the offence, the prosecutrix was about 17 years of age; and the petitioner was about 19 years old, the

relationship between the two was consensual-in-fact, and there was no element of pressure or coercion, much less any violence or assault.

5. It is the admitted position, that the prosecutrix has had a child with the petitioner; having carried the pregnancy to term; and the child is now about 18 months old.
6. Learned counsel for the petitioner draws attention to the decisions of this court in at least 03 cases, viz. *Dharmander Singh @ Saheb vs. The State (Govt. of NCT of Delhi)*¹, *Bijender Mehto vs. GNCT of Delhi*² and *X vs. State (Govt. of NCT of Delhi) and Anr.*³, submitting thereby, that this court has consistently held that a lenient view may be taken even in cases under the POCSO Act, where it appears that in respect of the offence alleged, there was *approval-in-fact* though not *consent-in-law*; and the age-difference between the accused and the prosecutrix was minimal. It is further pointed-out, that since the charge has not yet been framed, the impediment of section 29 of the POCSO Act does not get triggered.
7. Furthermore, as recorded in the last order, the prosecutrix, who is present in-person alongwith her parents, has categorically stated that she is desirous of marrying the petitioner, with whom she already has a child. The prosecutrix stands by her statement even today.
8. In compliance of the last order, the petitioner has been produced from custody. His parents are also present. The petitioner states that he is

¹ 2020 SCC OnLine Del 1267

² 2022 SCC OnLine Del 4545

³ 2022 SCC OnLine Del 3705

also desirous of marrying the prosecutrix. For whatever it is worth, his parents also have no objection to the marriage.

9. In view of the above, and in light of the precedents cited, this court is of the view that the petitioner is entitled to grant of regular bail. Accordingly, the present petition is allowed; admitting the petitioner to regular bail, subject to the following conditions:
 - (a) The petitioner shall furnish a personal bond in the sum of Rs.15,000/- (Rs. Fifteen Thousand Only) with 01 surety in the like amount from a family member, to the satisfaction of the learned trial court;
 - (b) The petitioner shall furnish to the Investigating Officer/S.H.O P.S.: New Friends Colony 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;
 - (c) 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 learned trial court;
 - (d) The petitioner shall not indulge in any act or omission that is unlawful or that would prejudice the pending matter.
10. The petition stands disposed of in the above terms.
11. Other pending applications, if any, also stand disposed of.
12. A copy of this order be given *dasti* under the signatures of the Court Master.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 7, 2023/Ne