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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1340/2024

HARERAM

.....Petitioner

Through: Mr. Anuj Soni, Advocate.
versus

STATE OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for State alongwith
Mr. Mayank Shekhar, Mr. Urfi
Kapoor, Mr. Dharamveer Singh
Dabas, Mr. Vaibhav Sharma, Mr.
Jayant, Mr. Avinash Kaur, Advocates
with SI Sushil, P.S.: Sarai Rohilla.
Ms. Shubhi Gupta, APP for the State
with Mr. Rajvir Singh, Rajinder
Dhawan, Ms. Ekta Kapoor and Mr.
Furkan Ali, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

30.07.2024

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By way of the present petition filed under section 439 of Cr.P.C., the petitioner seeks regular bail in case FIR No. 324/2022 registered under section 376(2)(n) of the Indian Penal Code, 1860 and section 6 of the Protection of Children from Sexual Offences Act (POCSO), 2011, registered at P.S.: Sarai Rohilla, Delhi.

2. Notice on this petition was issued on 22.04.2024.
3. Status Report dated 17.05.2024 has been filed on behalf of the State.
4. Nominal Roll dated 09.05.2024 has also been received from the Jail Superintendent.



5. Learned counsel for the petitioner has taken the court through the allegations in the FIR and has also handed-up a copy of the statement dated 09.06.2022 of the prosecutrix recorded under section 164 of the Cr.P.C. The same is taken on record.
6. Learned counsel argues, that a mere perusal of the allegations in the FIR, which is also what the prosecutrix has said in her statement under section 164 of the Cr.P.C., shows that the relationship between the prosecutrix and petitioner, both of whom were 'minor' at the relevant time, was consensual.
7. Counsel submits, as per the allegations in the FIR and the prosecutrix's statement recorded under section 164 Cr.P.C., the petitioner and the prosecutrix had met each other since they used to work in the same factory that used to make pickles. It is argued that it is also clear from the FIR and the section 164 statement that the two had developed a friendship and had indulged in physical relations as 'boyfriend-girlfriend' on various occasions, including on 02.05.2022, 16.05.2022 and 02.06.2022. Furthermore it will be seen, that even as per the allegations, the petitioner visited the home of the prosecutrix, when no one else was at home and the two had physical relations. In fact, the prosecutrix says, in so many words, that they engaged in physical relations *with her consent*, adding however that the petitioner had promised to marry her. Furthermore, it is pointed-out, that though the prosecutrix says that later she got pregnant, that turned-out to be incorrect since her medical examination at the Dr. Baba Saheb Amedkar Hosptial, Rohini, Delhi, shows that that was not the case.



8. The date of birth of the prosecutrix is stated to be 08.09.2006; and therefore in May-June 2022, when the offences are alleged to have been committed, she was about 16 years of age. The court is informed, that as per the record, the petitioner is now about 20 years old.
9. The court has heard learned counsel for the petitioner as well as Mr. Utkarsh, learned APP for the State, as well as learned counsel assigned by the DHCLSC who has been appointed to represent the prosecutrix.
10. Nominal Roll dated 09.05.2024 records that, as of that date, the petitioner has spent about 01 year and 11 months in judicial custody; that his jail conduct has been 'satisfactory'; and that he is not implicated in any other criminal case.
11. Apart from noticing the circumstances in which the petitioner and the prosecutrix's had met and the allegations in the FIR and the prosecutrix's statement under section 164 Cr.P.C., it is also observed that there is no allegation that the petitioner had used any force, violence or brutality in the commission of the alleged offences.
12. Though there is no gainsaying the fact, that technically in law, consent of the prosecutrix is immaterial since she was 'minor' at the relevant time, the court cannot completely ignore the fact that the prosecutrix herself says that the physical relations between the two happened *with her approval*. It is also to be noticed, that each time, the physical relations were made *within the confines of the prosecutrix's home*, into which she invited the petitioner of her own free will and volition, when no one else was present at home.



13. In its judgment in ***Dharmander Singh @ Saheb vs. The State (Govt. of NCT, Delhi)***,¹ this court has taken a view that though section 29 of the POCSO Act does raise the bar for grant of bail to an undertrial accused of offences under that statute, it does not create an absolute bar to grant of bail to such a person. Furthermore, in the said decision, this court has also set-out certain real-life considerations that would weigh in favour of or against the grant of bail, in a given case under the POCSO Act.
14. When tested on the touchstone of the said real-life considerations, in the present case, this court of the view that the physical relations between the petitioner and the prosecutrix appear to have happened with the prosecutrix's approval-in-fact, even though she could not have given her consent-in-law. The prosecutrix was certainly of the age of discretion, even though she was not of the age of majority.
15. This court is also of the view that being about 16 years of age and having worked in a factory, with a certain level of maturity, it cannot be ignored that the prosecutrix has, both in the FIR as well as in her statement under section 164 Cr.P.C. expressly said that she had physical relations with the petitioner voluntarily.
16. The court is informed that the deposition of the prosecutrix as well as of her mother has already been recorded before the learned trial court; and the matter is now pending for recording the statements of official and police witnesses.

¹ 2020 SCC OnLine Del 1267



17. Upon a conspectus of the aforesaid, this court is persuaded to allow the present petition, thereby admitting the petitioner **Hareram s/o Maheshwar Manjhi** to *regular bail* on the following conditions :
- 17.1. The petitioner shall furnish a personal bond in the sum of Rs. 20,000/- (Rs. Twenty Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court;
- 17.2. The petitioner shall furnish to the Investigating Officer/S.H.O a cell-phone 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;
- 17.3. 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 learned trial court;
- 17.4. 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.
- 17.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O.
18. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
19. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.



20. The petition stands disposed-of.
21. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

JULY 30, 2024/MR