

Bail Application No. 290/2022
FIR No. 554/2021
Under Sections 363/376 IPC
PS Kalyanpuri
State Vs. Deepak

25.02.2022

In view of the order no. 627-636/Pr.D&SJ(East)/KKD/Delhi, dated 31.01.2022 passed by Id. Principal District & Sessions Judge (East), present matter has been put up before the undersigned.

In pursuance to order no. 996-1016/Judl.Br./East/KKD/Delhi 2022, dated 11.02.2022 passed by Ld. Principal District & Sessions Judge (East), Delhi, proceedings of the present matter are being conducted through VC.

Present: Ld. proxy counsel for the applicant/accused.

Sh. Sukhbeer Singh, Id. Addl. P.P. for the State.

Arguments have already been heard on the present application seeking regular bail moved for the applicant/ accused.

No clarification is required.

Present case has been registered on the complaint dated 06.10.2021 vide GD No. 98A and 99A of Smt. Idullishah regarding missing of her daughter namely "Ph" (name withheld), aged about 15 years further suspecting upon the applicant/ accused in the present matter. It is further the case of prosecution that later on, on 17.11.2021, applicant/ accused has been brought before the police station, statement of prosecutrix "Ph" was recorded and on the basis of said statement, Section 376 IPC and POCSO Act were added and then, on the identification of victim, present applicant/ accused has been arrested in the present matter. During the investigations of present matter, statement under Section 164 Cr.P.C. of the prosecutrix was recorded, wherein, she levelled her allegations against the present applicant/

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accused.

During the course of arguments, ld. counsel for the applicant/ accused has submitted that first of all, it is to be seen that now, in the present matter, no offence under POCSO Act is made out vide order 18.01.2022 passed by ld. ASJ of Special Court. It is also submitted that now, Sections 363/ 376 IPC remains. Ld. counsel further argued that there is doubt on the age of the prosecutrix itself as somewhere, it is stated of 15 years and as per the report LBSH/DFMT/BA/2021/28, dated 08.12.2021, age of the prosecutrix was estimated between 18 to 19 years and this itself is sufficient to create a doubt on the prosecution story.

Apart from that, ld. counsel argued that if allegations of the prosecutrix are taken as gospel truth, it is to be seen that same have been levelled under the pressure of her family members as there were various and number of opportunities with the prosecutrix to disclose the factum of commission of crime, if it was so as she roamed at various places including relatives and also even hospital itself. Ld. counsel drew the attention of the Court towards medical record dated 06.11.2021, wherein, prosecutrix herself disclosed her particulars as of aged 18 years and wife of Deepak. One of the contentions of ld. counsel is that prosecutrix herself left her house and sat on the two wheeler of the accused and both of them physical relations were developed between prosecutrix and applicant/ accused of their own consent without any pressure and coercion of any side. Ld. counsel further submitted that now, prosecutrix is with the custody of the complainant and as per his information, complainant solemnized her marriage with another

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person of same religion. Ld. counsel further submitted that there is no likelihood of any threat or tampering with the evidence. Besides the above, it is also submitted by ld. counsel for the applicant/ accused that applicant/ accused is behind the bars since the day of his arrest and is no more required for the purpose of any investigation and thus, prayed for regular bail to the applicant/ accused further submitting that applicant/ accused has clean antecedents and is ready to abide by the term(s) and condition(s), if imposed while granting bail.

Per contra, Ld. Addl. PP for the State strongly opposed the present application stating that allegations in the present matter are serious in nature. It is also submitted that prosecutrix has reiterated her allegations in her statement recorded under Section 164 Cr.P.C. and thus, prayed for dismissal of the present application.

Rival submissions considered and record also perused.

There is no dispute to the fact that though, charge-sheet has been filed with Sections of POCSO Act also but now, present charge-sheet is only under Section 363/376 IPC.

It is also undisputed fact that applicant/ accused has clean antecedents and prosecutrix is now out of station and not in Delhi and there is no likelihood of his coming to Delhi. As per the prosecution case, prosecutrix and applicant/ accused remained for around 1¼ months and during that period, prosecutrix also visited at various places including hospital. During the pendency of the present application IO has verified the medical documents. Prosecutrix has every opportunity to disclose the factum of commission of crime, if committed so, to any person available to her. Applicant/ accused is behind the bars since the

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date of his arrest and is not required for the purposes of any investigation. Trial of the case will take sometime. Truth will elicit out during the examination of prosecutrix/ other material witnesses.

In view of the above observation, this Court is of the view that ends of justice would be met, if applicant/accused be released on regular bail. As such, applicant/accused namely Deepak is ordered to be released on bail on furnishing personal bond in the sum of Rs. 50,000/- with one surety of the like amount to the satisfaction of ld. MM concerned/Link MM/Duty MM ***subject to the conditions that*** applicant/accused will not try to influence any of the prosecution witnesses in any manner and will provide his active mobile phone number with undertaking that same shall not be switched off till conclusion of the trial of the present case.

It is made clear that any observation made hereinabove shall have no bearing on the merits of the present case.

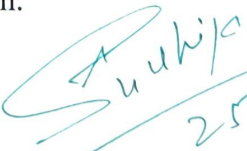
A copy of this order be sent to Suptd. Jail for information and another copy of this order be sent to Court of ld. MM concerned.

At request, a copy of this order be given dasti to ld. counsel for the applicant/ accused and IO concerned.

With these observations, present application stands disposed of.

TCR be sent back to Court concerned.

Application be consigned to record room.


25/02/2022

(Arun Sukhija)

ASJ (East)-03: KKD Courts:

Delhi: 25.02.2022