

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

% **Reserved on : 04.02.2022**
Pronounced on : 29.04.2022

+ **BAIL APPLN 2587/2021**

RAGHAV YADAV @ MANOJ @ ANURAG Petitioner

Through: Mr. Durgesh Pal and Mr. Manoj
Kumar, Advocates.

Versus

THE STATE NCT OF DELHI Respondent

Through: Mr. K. K. Ghei, APP for the State
with SI Sonia Khokhar, P.S.
Ghazipur.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. This is a petition filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in FIR No. 241/2018 under Section 363/366/368/376 IPC and Section 6 of the POCSO Act registered at Police Station Gazi Pur.

2. In brief the facts of the case are that on 19.06.2018, complainant who is the father of the victim, visited the Police Station Ghazipur, regarding missing of his 16 and half year-old daughter 'N' and got recorded his

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statement stating that his 16 and half year old daughter namely 'N', whose height is 5'2, complexion fair, built medium, face round, hair black, wearing white colour T-shirt, black colour pajayami and blue colored slippers has been missing since 16.06.2018. On the basis of statement of complainant (Father of the victim), the present case was registered vide FIR No. 241/2018, and the investigation went underway.

3. During the course of investigation, the missing information was lodged on WT Message, MPS, DMPU, NCRB, Akashwani, PRO Delhi Police for publication to trace out the missing girl child. Subsequently, during further investigation, the complainant stated that he has strong suspicion over one boy namely Raghav @ Manoj @ Anurag (Petitioner herein) who used to come to his house and raised apprehension that Raghav would have coaxed away his daughter "N". Search for the missing girl child was made at the residence of accused/petitioner Raghav @ Manoj @ Anurag but no clue was found regarding the victim as well as accused/petitioner.

4. On 23.03.2019, A PCR Call vide DD No- 60 A was received in police station regarding quarrel and the same was marked to ASI Vinod Pal and on receipt of said call ASI Vinod Pal reached there. Complainant (father of the victim) stated that the petitioner was having an argument with his neighbours and also stated that the petitioner had taken away his daughter. Thereafter, the petitioner was arrested by ASI Shivom (I.O of the case) and recovered the victim girl from the custody of the petitioner. On the same day

i.e., 23.03.2019, statement of victim 'N' under Section 161 Cr.P.C. was recorded.

5. Thereafter, the medical examination of the victim was conducted vide MLC No. 152/2019 at LBS Hospital and she was counselled at LBS Hospital by NGO. After recovering the victim Sections 376 IPC and 6 POCSO Act were added and the investigation went underway. On 25.03.2019, statement under Section 164 Cr.P.C. of victim 'N' was recorded. The victim was sent to observation home by CWC members and subsequently, Sections 368/366 IPC were also added.

6. I have heard the learned counsel for the petitioner, learned APP for the State and perused the status report filed by the state.

7. It is submitted by the learned counsel for the petitioner that petitioner is a young boy of 24 years and is in judicial custody since 23.03.2019 and has undergone more than two years and ten months. It is further submitted that the petitioner has been falsely implicated in this case and the relationship between the victim and petitioner was consensual and the victim was a consenting party as the victim in her statement recorded under Section 164 Cr.P.C. has not made any allegations against the petitioner. It is further submitted that the victim and the petitioner neither lived together nor did they visit any places as alleged by the victim. It is further submitted that the victim was not recovered at the instance of petitioner and the petitioner has no role to play. Lastly, it is submitted by the Ld. counsel for the petitioner

that petitioner is the sole bread earner of the family and no purpose will be served by keeping him in judicial custody.

8. On the other hand, learned APP for the State has vehemently opposed the bail application and has argued on the lines of the status report. It is submitted by the learned APP for the State that the allegations against the petitioner are grave and serious in nature and the victim was minor on the date of the incident. It is further submitted by the learned APP for the State that the statement of the victim under Section 161 Cr.P.C. was recorded on 23.03.2019, wherein she has made allegations of forceful sexual relationship established by the petitioner on the pretext of marriage. It is further submitted by the learned APP for the State that though in the statement recorded under Section 164 Cr.P.C. the victim has denied to the forceful establishment of the physical relationship by the petitioner and stated that the physical relations were made with her consent but the consent of the minor is of no consequence and such a consent is not a consent in the eyes of law.

9. It is further submitted by the learned APP for the State that the victim in her examination-in-chief recorded before the Court as PW-1 has made specific allegations against the petitioner. It is further submitted by the learned APP for the State that the victim in her testimony recorded in the Court has totally supported the case of the prosecution and minor deviation and inconsistency in her statement, cannot make her entire testimony unreliable. It is further submitted that as per the date of birth certificate of the victim, she was minor on the date of the incident.

10. In the present case, according to the date of birth certificate relied upon by the prosecution, the victim was minor on the date of the incident, therefore, her consent to any sexual relationship has no value. Even otherwise, the victim in her first statement recorded under Section 161 Cr.P.C. dated 23.03.2019 has made specific allegations against the petitioner, though in her statement recorded under Section 164 Cr.P.C. she has not made allegations against the petitioner but she has stated that physical relations were established with her consent, however, when she deposed before the Court as PW -1, she again made specific allegations in regard to forceful establishment of physical relations by the petitioner on the pretext of marriage.

11. There is no denial to the fact that physical relations were established between the petitioner and the victim who was minor on the date of the incident as per the prosecution. However, the victim has categorically deposed before the Court about the forceful establishment of physical relationship with her, though in her statement recorded under Section 164 Cr.P.C., she stated that physical relations between her and the petitioner were consensual and she wanted to marry the petitioner, but this is of no consequence in view of *X (Minor) vs. The State of Jharkhand & Anr., Criminal Appeal No 263 of 2022 (Arising out of SLP(Crl) No 9317 of 2021)* decided by the Hon'ble Supreme Court on February 21, 2022, wherein, it is observed and held as under:

“...The reason that from the statement under Section 164 and the averments in the FIR, it appears that “there was a love affair”

between the appellant and the second respondent and that the case was instituted on the refusal of the second respondent to marry the appellant, is specious. Once, prima facie, it appears from the material before the Court that the appellant was barely thirteen years of age on the date when the alleged offence took place, both the grounds, namely that “there was a love affair” between the appellant and the second respondent as well as the alleged refusal to marry, are circumstances which will have no bearing on the grant of bail. Having regard to the age of the prosecutrix and the nature and gravity of the crime, no case for the grant of bail was established..”

12. Keeping in view, the categorical statement of PW-1, the victim, and in view of the fact that the victim was a minor on the date of the incident, at this stage, it will not be proper for this Court to deeply analyze the testimony of the victim recorded in the Court as PW-1 and contradictions in her statement recorded under Section 161 Cr.P.C. with the statement recorded under Section 164 Cr.P.C. Though in her statement recorded under Section 161 Cr.P.C. the victim has given the version which she has stated in the Court, but what would be the cumulative effect of all the above statements of the victim will be seen during the course of the trial as analyzing the contradictions and discrepancies in the above statements, at this stage, might prejudice the case of the prosecution or the petitioner but one cannot lose sight of the fact that the victim was a minor on the date of incident. Therefore, in view of the discussions mentioned hereinabove and also

relying upon the judgment supra, no ground for bail is made out. The bail application is, therefore, dismissed.

RAJNISH BHATNAGAR, J

APRIL 29, 2022/P

