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

+ **BAIL APPLN. 2735/2021**



..... Petitioner

Represented by: Mr. Dushyant Yadav, Mr. K.P. Chauhan, Advs. with
Petitioner in person with his parents.

versus

STATE GOVT. NCT OF DELHI

..... Respondent

Represented by: Mr. G.M. Farooqui, APP for State
with ASI Vidya, PS Ranhola.
Ms. Richa Dhawan, Standing
Counsel, DHCLSC for victim/
prosecutrix.
Prosecutrix produced from Nirmal
Chhaya.
Mother & Brother of prosecutrix in
person.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
12.10.2021

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The hearing has been conducted through Physical Mode.

1. By this petition the petitioner had sought regular bail in FIR No. 166/2021 under Section 363 IPC registered at PS Ranhola. Since prosecutrix was a minor, after registration of FIR Section 376 IPC and Section 6 POCSO Act were added.
2. On 28th September, 2021 this Court passed the following order:

“1. By this petition the petitioner had sought regular bail in

case FIR No. 166/2021 under 363/376 IPC and Section 6 of POCSO Act registered at PS Ranhola.

2. *The above-noted FIR was registered under Section 363 IPC on the complaint of the mother of the prosecutrix who stated that she had three sons and one daughter. The daughter was youngest and was studying in 9th standard. On 25th March 2021, in the morning at 8.00 AM her daughter went to the school but did not reach the school and has also not come back to the house. Thus, she suspected that somebody had abducted her daughter. After registration of FIR efforts were made to trace the victim who was recovered on 15th April, 2021. The victim was medically examined when she was found to be 5 months pregnant.*

3. *Statement of the prosecutrix was recorded wherein she stated that on 25th March, 2021 she had an altercation with her sister-in-law so she left her house without telling anybody. On 15th April, 2021 she had gone to her friends place where someone saw her and told her mother. Thereafter her mother came to the lady Police and brought her to Police Station. Though in the statement under Section 161 Cr.P.C. she stated that she did not know how she became pregnant 5 months ago. Thereafter her statement was also recorded under Section 164 Cr.P.C. on the same day wherein she reiterated that on 25th March, 2021 she had an altercation with her sister-in-law and at that time her mother was in her village at [REDACTED] so she left the house and went to her friend's place. As regards pregnancy, she again reiterated that 4 – 5 months she went to her friends place and there someone gave something to drink after which she did not know what happened and she did not suspect anyone. She further stated that since she was anaemic her periods were irregular and thus she did not even know that she was pregnant. Even in the MLC the prosecutrix stated the same facts.*

4. *On a query raised by this Court as to what was the material against the petitioner to have arrested him, learned APP for the State submits that the petitioner himself surrendered to custody. The investigating officer further states*

that after investigation charge-sheet has been filed before the Court.

5. *When this petition came up before this Court on 28th July, 2021, learned counsel for the petitioner stated that the petitioner and prosecutrix knew each other and were in a consensual relationship having married pursuant thereto and the prosecutrix was now on the family way about to deliver the child. On 17th August, 2021 the prosecutrix could not appear as she had delivered a baby boy on 8th August, 2021. On 23rd September, 2021 the prosecutrix appeared before this Court and stated that she was 16 years old as on that date and her age in the certificate has been wrongly noted. She further stated that she was in love with the petitioner and even on attaining the age of the majority she would live with the petitioner. She stated that she went with the petitioner of her own free will and from the relationship of petitioner and the prosecutrix a baby boy was born on 8th August, 2021. Since all this was not to the liking of her family members, they have given away the child to her brother's friend in adoption. The prosecutrix further stated that she did not want to live with her family members nor at Children's Home Nirmal Chhaya Complex and she wanted to live with the family of the petitioner.*

6. *Faced with the situation that the prosecutrix did not want to go to her family members the prosecutrix was sent to the Children's Home Nirmal Chhaya Complex by this Court and has been called today in the Court.*

7. *On the last date of hearing this Court also directed brother of the prosecutrix to produce the child born of prosecutrix on 8th August, 2021. Today the mother and brother of the prosecutrix are present with the baby boy.*

8. *Undoubtedly, the consent of the prosecutrix for the relationship is not relevant as she is a minor. However, at the moment this Court has to also consider the well-being of both the prosecutrix but of the minor baby boy born on 8th August, 2021. Before any further orders are passed on this count, it would be in the interest of both the prosecutrix and the child that the child is handed-over to the prosecutrix. Consequently*

the baby is handed over to the prosecutrix today in Court.

9. The investigating officer will lodge the prosecutrix and the baby at Children's Home Nirmal Chhaya Complex till further orders to be passed keeping in view the welfare of the two minors. Superintendent, Nirmal Chhaya Complex is directed to provide adequate care to the prosecutrix and the baby.

10. As regards Bail Application of the petitioner is concerned, as noted above in none of the statements the prosecutrix implicates the petitioner. However, after the prosecutrix was traced and handed-over to the family members, the petitioner surrendered to custody and is in jail. The prosecutrix also states before this Court that this is the third time that she has left her home to join the company of the petitioner.

11. Considering the peculiar facts of the case and that there appears to be no coercion on the part of the petitioner and the present is a case where the prosecutrix being fed up of her family atmosphere has found solace in the company of the petitioner and that the investigation is complete, this Court deems it fit to grant bail to the petitioner. It is therefore directed that the petitioner be released on bail on his furnishing a personal bond in the sum of ₹25,000/- with one surety bond of the like amount subject to the satisfaction of the learned Trial Court/ Duty Magistrate, further subject to the condition that in case of change of residential address and/or the mobile phone the same will be intimated to the Court concerned by way of an affidavit.

12. List this petition for further directions on 8th October, 2021 at 2.15 PM.

13. On the next date of hearing the prosecutrix and the minor child will be produced from Nirmal Chhaya Complex before this Court by the Investigating Officer and the family members of both the petitioner and prosecutrix will also be present."

3. Though after hearing all the parties and in view of the peculiar facts

of the case this Court directed release of the petitioner on bail vide the order dated 28th September, 2021, however one of the major issue before the Court was the custody of the baby boy who was born on 8th August, 2021.

4. As noted above, the relationship between the petitioner and prosecutrix was not to the liking to her family members and they have given away the child to the brother's friend in adoption, which fact is though refuted by the complainant and her family members, however learned amicus curiae appearing on behalf of the complainant through DHCLSC also states that initially she was not even permitted to talk to the prosecutrix and only when the prosecutrix was able to come to this Court after running away from her parents on 23rd September, 2021 when this Court was able to talk to the prosecutrix, the facts were revealed.

5. Undoubtedly, the prosecutrix is a minor at this stage and she cannot be permitted to live in the company of the petitioner.

6. Prosecutrix who is present in Court states that the baby boy born on 8th August, 2021 be handed-over to the petitioner who is the natural father of the child and that she is willing to live in the After Care Home, Nirmal Chhaya Complex but would not like to live with her parents.

7. Considering the fact that the baby boy cannot be permitted to be languishing in the After Care Home at Nirmal Chhaya Complex along with the prosecutrix, custody of the baby boy has been handed over to the petitioner who is his natural father. The parents of the petitioner are also present who state that they will take adequate care of the child. The prosecutrix who is a minor will be lodged in the After Care Home in the Nirmal Chhaya Complex till she attains the age of majority or subject to any further orders passed by a competent Court and would be thereafter at

liberty to reside wherever she wants.

8. With these directions the petition is disposed of.

9. Order be uploaded on the website of this Court and dasti be given to the Investigating Officer.

MUKTA GUPTA, J.

OCTOBER 12, 2021

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