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

+ BAIL APPLN. 1778/2023

KULDEEP KUMAR

S/O. LATE RAMBILAS

..... Petitioner

Through: Mr Nipun Katyal, Ms Anam Siddiqui,
Mr Naved Ahmed and Ms Tanya
Chowdhary, Advs.

versus

STATE OF NCT

..... Respondent

Through: Mr Ajay Vikram Singh, APP for State
W/SI Nidhi Dahiya, PS-New Friends
Colony

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **30.05.2023**

CRL.M.A. Nos. 14466-14468/2023

Exemption allowed, subject to all just exceptions.

The applications stand disposed of.

BAIL APPLN. 1778/2023 & CRL.M.(BAIL) 753/2023

1. This is an application seeking release of the applicant on regular bail in FIR No. 319/2022 dated 14.08.2022, under Section 376 IPC & Sections 4/6 of POCSO Act, registered at Police Station-New Friends Colony.
2. As per the FIR, it is stated that the applicant had sexual relationship with the complainant/prosecutrix on the pretext of marriage. It is stated that as a result of sexual relationship, the prosecutrix became pregnant. Hence, the FIR.
3. Mr Katyal, learned counsel for applicant has drawn my attention to

the statement under Section 164 Cr.P.C of the prosecutrix wherein it has been stated that it is one Krishna who had sexual relationship with the prosecutrix. There is no allegation of any kind against the applicant in the statement under Section 164 Cr.P.C of the prosecutrix. Even the FSL report shows that the DNA of the unborn child of the prosecutrix does not match with the DNA of the applicant.

4. In view of the above two facts i.e., the applicant not named in the statement under Section 164 Cr.P.C of the prosecutrix and the DNA of the unborn child of the prosecutrix not matching with the DNA of the applicant, I am inclined to allow the application. The fact whether sexual relationship on the pretext of marriage was established with the prosecutrix or in fact there was any sexual relations at all is a question of trial which will be determined once the parties enter into the witness box.

5. In the present case, the applicant is in custody since 14.08.2022 and the custodial interrogation of the applicant is not required as the police after investigation has filed the charge-sheet and supplementary charge sheet has also been filed. The trial is also not likely to conclude in the near future and the continued incarceration of the applicant will not serve any purpose. The apprehension of the State that the applicant may flee from the course of justice or may influence the witnesses can be addressed by imposing stringent conditions upon him.

6. For the aforesaid reasons, the applicant is directed to be released on bail in FIR No. 319/2022 dated 14.08.2022, under Section 376 IPC & Sections 4/6 of POCSO Act, registered at Police Station-New Friends Colony subject to the following terms and conditions:

- (a) The applicant shall furnish a personal bond in the sum of Rs. 10,000/- (Rupees Ten Thousand Only) with 01 surety in the like amount, to the satisfaction of the Trial Court;
- (b) I am informed that the applicant is the neighbour to the prosecutrix. Mr Katyal, learned counsel for the applicant on instructions from the mother of the applicant states that they will shift from the accommodation adjoining that of the prosecutrix. The applicant or his family members/relatives/friends will not be within a radius of 1 km of the prosecutrix or any of her family members and the applicant shall not contact her through WhatsApp, mobile, telephone, SMS, etc. or any other social media;
- (c) The applicant shall not leave the country without permission of the Court;
- (d) The applicant shall furnish to the IO/SHO concerned his cellphone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- (e) The applicant shall not indulge in any act or omission that is unlawful, illegal or that would prejudice the proceedings in pending cases, if any;
- (f) The applicant or his family members/relatives/friends will not contact or try to intimidate the prosecutrix or family of the prosecutrix or influence/tamper with any of the witnesses/evidence in any way.

7. The application stands disposed of in the aforesaid terms.

8. The order shall be communicated to the concerned Jail Superintendent.

MAY 30, 2023/sr

JASMEET SINGH, J

Click here to check corrigendum, if any