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

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Reserved on: 02.05.2024
Pronounced on: 06.05.2024+ **BAIL APPLN. 216/2024****KAMLESH DEVI**

..... Petitioner

Through: Mr.Amit Prasad, Mr. Rajeev Ranjan, Mr. Rishikesh Kumar, Mr. Ayodhya Prasad, Mr. Arpit Tripathi, Ms. ChanyaJaitley, Ms. Niaz Baldawala and Ms. Kavya Agarwal, Advs.

versus

STATE OF DELHI NCT & ANR.

..... Respondents

Through: Mr.Manoj Pant, APP for the State with Mr. Saurabh Das, Mr.Paramveer, Mr.Lalit Kumar and Mr.Ashok Kumar Shukla, Advocates along with SI Rajat Khaiwal, P.S. Ranhola.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C') has been filed on behalf of the applicant seeking regular bail in case arising out of FIR bearing No.



335/2021, registered at Police Station Ranhola, Delhi for offence punishable under Section 363 of the Indian Penal Code, 1860 ('IPC').

2. Briefly stated, it is the case of the prosecution that on 30.05.2021, the present FIR was lodged by the complainant i.e., Smt. 'X', who had reported that her daughter i.e., 'S', aged approximately 16 years was missing. Thereafter, the present FIR was lodged under Section 363 of IPC. On 23.07.2021, the mother of the prosecutrix, accompanied by the prosecutrix herself, had visited the police station stating that the minor victim/prosecutrix had been recovered from Bhind, Madhya Pradesh. Further, alleging that the prosecutrix had been subsequently found at the residence of one Rammohan i.e., the co-accused herein. The statement of prosecutrix had been recorded wherein she had stated that the accused, Rajiv, whom she had met through social media, had abducted her. She had further alleged that she had been administered an intoxicating substance in a beverage during her encounter with the accused at Madhuban Chowk on 29.07.2021. It is further alleged that upon regaining consciousness, the prosecutrix had found herself in Bhind, Madhya Pradesh, where allegedly she had been confined in a room by the co-accused for a period of approximately 20-25 days. It is further alleged that she had been subjected to sexual assault, her educational certificates, identification documents, and personal belongings were allegedly withheld by the co-accused. The prosecutrix further stated that the family of the co-accused, including the present applicant/accused had played a vital role in the commission of the offense. It is specifically



stated by the prosecutrix/victim that the present applicant/accused, who is the mother of the co-accused i.e., Rajiv was also involved in commission of the present offence. During Investigation, it had been revealed that the present applicant/accused being the mother of the co-accused Rajiv, had allegedly abetted the offence. It is further specifically asserted by the prosecutrix that upon an attempt to escape from the custody of co-accused Rajiv, the present applicant/accused had caught her escaping and thereafter, she along with co-accused Rajiv, she had physically assaulted and confined the prosecutrix to a room. Furthermore, the present applicant/accused and the co-accused Rajiv had compelled the victim to enter into marriage with one Ram Mohan i.e., the co-accused, aged approximately 45 years, who had sexually assaulted the victim both before and after the marriage. The present applicant/accused had informed the prosecutrix that the accused persons would get her married to obtain monetary gains. Additionally, it is alleged that the accused persons used to bring various males to the premises when she was confined. The prosecutrix had been instructed to dress appropriately and subsequently present herself to the said individuals for sexual gratification. Thereafter, the chargesheet in the said case was filed for offences punishable under Sections 363/365/372/376(2)(n)/344/346/34 of the IPC and Sections 06/17 of the Protection of Children from Sexual Offences Act, 2012 (*POCSO Act*). Further, supplementary chargesheet qua the present applicant/accused was filed on 31.05.2022



3. Learned counsel appearing on behalf of the present applicant/accused argues that the present applicant/accused has been falsely implicated in the present case and that the FIR does not disclose the role of the present applicant/accused in any manner and further the statement of the prosecutrix recorded under Section 164 Cr.P.C. does not assign any specific role to the applicant/accused. It is further argued that there are material inconsistencies in the statement of the prosecutrix recorded under Section 161 and 164 of the Cr.P.C meaning thereby, that the prosecutrix is falsely implicating the present applicant/accused. It is further argued that the prosecutrix was recovered from the house of other co-accused i.e., Rammohan and not from the house of the present applicant/accused. It is further submitted that the present applicant/accused is in Judicial Custody for approximately 19 months and that the present applicant/accused is a housewife and is dependent on her family for her livelihood. It is further submitted that the present applicant/accused is a resident of Madhya Pradesh whereas the prosecutrix is a resident of Delhi and therefore there is no chance of her influencing the witness or tampering with the evidence. It is also submitted that most of the witnesses in the present case are police personnel and there is no possibility therefore of tampering with evidence or influencing witnesses. It is submitted that the Trial in the present case will take long time to conclude thus, the present applicant/accused be enlarged on bail.

4. *Per contra*, learned APP appearing on behalf of the State opposes the present bail application and argues that as per allegations



and supporting material on record, there are serious allegations against the accused for abetment of kidnapping and rape. It is further submitted that 4 witnesses have been examined out of 18 witnesses and that the prosecutrix has also been examined who has supported the case of the prosecution. It is further argued that if the applicant/accused is enlarged on bail there is a strong possibility that the applicant/accused may threaten or influence the remaining witnesses. It is argued therefore, that the present bail application be dismissed.

5. This Court has heard arguments addressed by both the parties and has perused the material placed on record.

6. The record reveals that the victim was medically examined and her statement under Section 164 Cr.P.C. was recorded before the learned magistrate wherein she has stated that she had come in contact with the co-accused namely Rajiv through social media in the year 2021. After some time, on 29.07.2021 she had gone to meet co-accused Rajiv at Madhuban Chowk, Delhi, where co-accused Rajiv had given her some intoxicating drink and had further kidnapped her and had taken her to Bhind, Madhya Pradesh. It is further stated that when she had regained her consciousness, she had found herself in a room which had been kept locked. Further, as alleged by the prosecutrix co-accused Rajiv had kept her locked for 20-25 days and had sexually assaulted her. The prosecutrix/minor victim has further stated that Rajiv had kept all her important documents like ID card, school documents with himself, Rajiv had used the said documents to show it to different people for the purpose of prostitution. The



prosecutrix/minor victim has specifically alleged that all the family members of co-accused Rajiv were involved in the commission of the present offence. It is also specifically stated by the prosecutrix/minor victim that once she had got a chance to run away from the illegal detention of the co-accused persons, Rajiv's mother i.e., the present applicant/accused had caught her. After that, both Rajiv and his mother i.e., the present applicant/accused had beaten her and had locked her in a room again. Thereafter, on 19.07.2021, Rajiv and his mother i.e., the present applicant/accused had got the prosecutrix/minor victim married to other co-accused herein namely Ram Mohan in lieu of some money. It is also alleged that Ram Mohan had also made physical relations with her before and after the marriage. After that police had brought her to Delhi. Further, on the basis of MLC and statement of the prosecutrix, Sections 363/365/372/376(2)(n)/344/346/34 of the IPC and Sections 06/17 of the POCSO Act were added.

7. This Court notes that the allegations levelled by the prosecutrix/minor victim in her statement recorded under Section 164 Cr.P.C are grave & serious in nature. Record *prima facie* reveals that the present applicant/accused is directly involved in the commission of the offence and that she had also helped the main accused Rajiv in commission of offence of sexual assault and forcing victim for prostitution, as well as confining her to a room. Moreover, the prosecutrix/minor victim has supported the case of the prosecution in Court and statement under Section 164 of Cr.P.C.



8. It is noted that the present case is one where a 16 year girl was allegedly kidnapped by a person who she met on a social media application, and kept in a room and was sexually assaulted for around 20-25 days. The narrative of suffering takes a darker turn as she was subsequently coerced into marriage with a 45-year-old man against her will, in exchange for a sum of money.

9. While adjudicating this case, this Court is constrained to note that in today's **virtual modern world where virtual space has also become a priding ground of alleged virtual affections between teenagers, the teenagers are not equipped to deal with the potential dangers of human trafficking for prostitution and other side of crimes which exists in the virtual world.**

10. This Court notes that this case is also one which makes this Court bring to focus emergent need in view of multiple cases of such nature where cyberspace has been used by the criminals to target innocent unsuspecting victims for their nefarious activities and purposes.

11. Traditionally, efforts to protect minors from harm have focused on teaching them about '**good touch**' and '**bad touch**' in the physical realm. **However, in today's virtual world, it is crucial to extend this education to encompass the concept of 'Virtual Touch.'** Minors must be equipped with the knowledge and tools to navigate online interactions safely and recognize potential risks lurking in cyberspace.

12. Educating minors about '**Virtual Touch**' involves teaching them about appropriate online behavior, recognizing warning signs of



predatory behavior, and understanding the importance of privacy settings and online boundaries. **Just as children are taught to exercise caution in the physical world, efforts must be made taken to teach them to develop critical thinking skills to assess the credibility of online contacts and safeguard their personal information.**

13. Moreover, parents, guardians, and educators play a crucial role in fostering digital literacy and promoting responsible online conduct among minors. By fostering open communication channels and providing guidance on navigating the digital landscape, adults can empower children to make informed decisions and protect themselves from online threats.

14. The need of the hour in this case is also to send a message through this order/judgment to the concerned stakeholders such as schools and colleges, Delhi State Legal Services Authority as well as Delhi Judicial Academy to hold programs, workshops, and conferences focusing not only on the traditional concepts of ‘Good’ and ‘Bad Touch’ but also on the emerging concept of ‘Virtual Touch’ and its potential dangers. This Court, therefore, emphasizes that the concerned stakeholders should include in their curriculum apart from the education about good touch and bad touch the virtual touch and its repercussions and danger.

15. Thus, considering the overall facts and circumstances and that the prosecutrix has supported her case, and that the some of the material witnesses are yet to be examined, this Court is not inclined to grant bail to the present applicant/accused at this stage.



16. Accordingly, the present application stands dismissed.
17. It is however, clarified that nothing expressed herein above shall tantamount to opinion expressed on the merits of the case before the learned Trial Court.
18. Copy of this judgment be forwarded to (i) Delhi Judicial Academy and (ii) Delhi State Legal Services Authority for information and compliance.
19. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 6, 2024/ns

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