

IN THE HIGH COURT OF DELHI AT NEW DELHI

BAIL APPLN. 1659/2014and CRL.M.A. 11302/2014

MOHD JUYAL Petitioner

Through: Mr. Aditya Agarwal and Mr. Rahul Kumar, Advocates

versus

STATE Respondent

Through: Mr. Neeraj Kumar Singh, APP for the State with SI Neeraj

Kumar PS Welcome

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

28.07.2014

The petitioner Mohd. Juyal is brother-in-law (Jeeja) of the victim.

The petitioner is seeking regular bail in case of FIR No. 240/2013

registered at Police Station Welcome Colony under Sections 363/367 of IPC

and Section 4 POCSO Act claiming that he is in custody in the above noted

case since for the last one year i.e. from 26th July, 2013. The

petitioner is seeking bail on the ground that in the statement under

Section 164 Cr. P.C. of the prosecutrix, the petitioner was not named to

be the person who sexually assaulted her. Despite that on the basis of

the statement subsequently recorded by the police under Section 161 Cr.

P.C. of victim, he had been arrested and charge-sheeted.

I have heard learned counsel for the parties.

Perusal of the record shows that FIR no. 240/2013 was registered on

the statement of Smt. Taslima, mother of the victim. In the FIR she has

mentioned that on 16th July, 2013 at about 3.30 p.m. her daughter who was

aged about 15 years and a student of 10th standard, left home for going

to the tuition and had not returned thereafter.

During investigation, after the victim was recovered, she was produced before the learned M.M. for getting her statement recorded. In her statement before the court she specifically stated that she was in love with Faizan. She had physical relationship with the above named person of her own free will and was pregnant having pregnancy of 45 days. She also stated before the learned M.M. that she left the house of her own and though the accused wanted to drop her back to her house on the same day, she insisted to stay with him. She was dropped near her house on the next date. She was categorical in making statement that nobody had kidnapped or enticed her away.

Learned APP has submitted that subsequently her statement under

Section 161 Cr. P.C. has been recorded by the police wherein she named her Jeeja, the petitioner, to be the person with whom she had physical relationship and became pregnant. In view of the age of the victim at the time of entering into physical relationship, the consent is immaterial and hence prayer for bail is strongly opposed.

In the instant case the prosecutrix has returned home of her own.

She did not name the petitioner when she was produced for getting her statement recorded under Section 164 Cr. P.C. In her subsequent statement

under Section 161 Cr. P.C. recorded on 25th July, 2013 she had named her brother-in-law to be the person with

whom she had physical relations.

Looking into the entire facts and circumstances specially that in the statement under Section 164 Cr. P.C. she had not named the petitioner to be the person with whom she had entered into physical relationship and became pregnant, it would be a subject matter of trial and as to which of her statement is correct. It may be noted that when she was produced for medical examination she refused for that. She and her parents also refused to go for abortion but subsequently some medicine was given by her mother which caused abortion. From the record or the status report it cannot be gathered whether the aborted foetus could be preserved and sent for DNA testing.

Looking into the nature of the allegations made against the petitioner he is directed to be released on bail subject to his furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount to the satisfaction of the trial Court.

This application stands disposed of.

Order dasti.

PRATIBHA RANI, J

JULY 28, 2014

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