

(2021) 12 DEL CK 0034
In the Delhi High Court
Case No : Bail Application No. 3259 Of 2021

Ram Sevak

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 03-12-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164, 439
Indian Penal Code, 1860 — Section 363, 366, 376
Protection Of Children From Sexual Offences Act, 2012 — Section 4, 6
Prohibition Of Child Marriage Act, 2006 — Section 10

Citation : (2021) 12 DEL CK 0034

Hon'ble Judges : Subramonium Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Subramonium Prasad, J

1. This is a petition under Section 439 CrPC praying for grant of regular bail in FIR No. 107/2017 registered at Police Station Sonia Vihar for offences under Section 363, 366, 376 IPC, Section 4 and 6 of the POCSO Act read with Section 10 of the Prohibition of Child Marriage Act.

2. Briefly stated, a missing complaint was registered on 13.05.2017 where the complaint was given by the father of the victim i.e. Lal Chandra Maurya that his minor daughter has been kidnapped and she had been missing and last seen details were given in the complaint. Investigation was completed and did not result in a fruitful outcome.

3. It is stated that on 01.12.2020, the victim telephoned her mother stating that she had delivered a baby boy who was three months old and she revealed that she had been married for the last four years. This information was passed on to the Police, who landed in Madhya Pradesh to trace the young girl/victim. The Police with the assistance of the local Police tracked down and recovered the young girl on 02.12.2020.

4. The prosecutrix was taken to the hospital for conducting medical examination which she refused. The prosecutrix was brought back to Delhi from Madhya Pradesh. Later the victim's statement under Section 161 CrPC was recorded on 03.12.2020. On 04.12.2020, the victim's statement under Section 164 CrPC was recorded by the learned Metropolitan Magistrate, Karkardooma Courts, Delhi.
5. The Section 164 CrPC statement of the victim was recorded where she stated that she lived with her parents and she ran away from home. It is stated that she met the petitioner at the Agra Railway Station whereafter she accompanied the petitioner and went to his village and got married to the petitioner. She also stated that she has a three year old daughter and a three month's old infant.
6. The Police after verifying the school records found that the date of birth of the victim was 02.03.2001 and, therefore, amended the charges against the petitioner and added offences under Section 4 and 6 of the POCSO Act and Section 10 of the Child Marriages Act.
7. Chargesheet stands filed. The petitioner approached District Court, Muraina applying for anticipatory bail. On 21.12.2020, the anticipatory bail of the petitioner was rejected. The petitioner was arrested on 22.12.2020 by the Police.
8. On 24.12.2020, the DNA test of the children of the petitioner and the victim has been conducted. The victim produced birth certificates of her daughter.
9. The bail application of the petitioner was rejected by the learned Trial Court on 08.04.2021 stating that the petitioner kidnapped the then minor victim, took her to his native village and repeatedly had sexual intercourse with her which resulted in the victim getting pregnant as a minor. The court observed that the offence was a serious one which involved the exploitation of a minor.
10. Heard Mr. Mohammad Shamikh, learned counsel for the petitioner and Ms. Meenakshi Dahiya, learned APP for the State and perused the material on record.
11. Mr. Mohammad Shamikh, learned counsel for the petitioner submitted that the victim herself in her statement before the Magistrate has recorded that she ran away from her house out of her will and that she met the petitioner at the railway station and later married to the petitioner after taking the blessing of the members of his family. He submits that the petitioner and the victim already had two children who would be rendered absolutely destitute if the petitioner is not enlarged on bail as he is the sole earning member of the family and he has already been in custody of the petitioner would serve no useful purpose for investigation as investigation stand completed.
12. Per contra, Ms. Meenakshi Dahiya, learned APP submits that the petitioner has been accused of a heinous offence where he kidnapped a minor girl and later raped her and made her pregnant. She submits that the punishments for the offences the petitioner has been charged with include life imprisonment. She states that since it is a heinous offence which has taken away the precious youth of a young girl, it deserves to be treated seriously.

13. The parameters for considerations of enlarging a person on bail are as follows:

- i. The nature of accusation and the severity of punishment in case of conviction;
- ii. The person concerned shall not tamper with evidence or influence witnesses.
- iii. The person should not flee justice.
- iv. The person shall be available as and when the trial requires into to do so;
- v. Prima facie satisfaction of the court in support of the charge.

14. The petitioner has married the victim with the blessings of his family. The victim's statements which were recorded before the Magistrate indicate that she has been peacefully living with the petitioner and their two children. She has also stated that she was not kidnapped by him and she ran away on her own accord.

15. This Court is prima facie satisfied that the petitioner and the victim were happily cohabiting with each other and raising their family. Since the charge sheet has been filed and all evidence have been collected, the petitioner's custodial interrogation is not required any further. Keeping the petitioner in custody will drive the prosecutrix and her two children to starvation. It will not be in the interest of the children to keep the petitioner in custody. There is no danger of petitioner's fleeing from justice. The petitioner and the victim are happily married and they have two children and have been raising a family together is a ground enough to release the petitioner on bail. Therefore, this Court is inclined to grant bail to the petitioner on the following conditions:-

- i. The petitioner shall furnish a personal bond in the sum of Rs.5,000/- with two sureties in the like amount one of whom shall be relative of the petitioner to the satisfaction of the Trial Court.
- ii. Memo of parties indicates that the petitioner is resident of Village-Pakkapura, District Muraina, P.S. Dimni, Madhya Pradesh. He shall continue to reside at the same address. Any change in the said address shall be intimated to the I.O.
- iii. The petitioner shall not tamper with evidence or influence any witnesses.
- iv. The petitioner shall give all his mobile numbers to the I.O. and shall keep them operational at all times.
- v. The petitioner shall attend all the court proceedings and any other condition that the Trial Court may deem fit.
- vi. The petitioner is directed to report to the concerned Police Station once every fortnight.

16. The application is allowed on the aforementioned conditions. Pending application(s), if any, stand disposed of.

17. Let a copy of the order be transmitted to the concerned Jail Superintendent.