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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 21st August, 2020
+ **BAIL APPLN. 1631/2020 & CRL.M.A. 8982/2020**
BISHAMBER Petitioner

Through: Mr. Vikas Bhatia, Advocate
(M:9999440419)

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Raghuvinder Verma, APP.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been held through video-conferencing.
2. The Petitioner in the present case seeks regular bail. The Petitioner has been charged with offences under Sections 376/354-D IPC and Section 12 POCSO. The main stand of the Petitioner is that the Complainant was more than 18 years of age on the date of the alleged incident i.e., 17th April, 2019 and hence the provisions of POCSO would not apply. Mr. Bhatia, Id. Counsel for the Petitioner submits that the Complainant herself has given no objection before the Id. Sessions Judge for grant of bail.
3. The Complainant, had in fact, joined the video-conferencing proceedings on the previous two hearings and confirmed that her date of birth is 13th March, 2001. At that stage, Id. APP had expressed an apprehension that the Complainant may be giving the no objection under some coercion or duress. Accordingly, on 29th July, 2020, this Court appointed Ms. Gulshan Jahan, Support Person, South District to visit the Complainant and her family

and submit a report.

4. The Support Person has filed the report in a sealed cover. The same has been unsealed and the Court has perused the report. The crux of the report is that the Complainant is not under any coercion or duress. The Support Person has interacted with the Complainant as well as her mother. Considering the family circumstances of the Petitioner, whose wife and children are suffering during the pandemic, the Complainant has stated that she does not have any objection to the Petitioner being granted bail.

5. There are various legal issues which arise, especially the question as to whether the Complainant was more than 18 years of age on the date of the incident and hence, whether the provisions of POCSO would apply. The question as to whether the Complainant is more than 18 years of age would be decided on trial. At this stage, considering the report of the Support Person and the interaction of the Court with the Complainant during the course of the video-conferencing hearing, the Court is satisfied that the Petitioner is entitled to regular bail. Accordingly, the Petitioner is admitted to bail on the following terms and conditions:-

- (i) The Petitioner or his family members, relatives or friends shall not contact the Complainant or her family in any manner whatsoever;
- (ii) The Petitioner shall not approach any of the witnesses in the trial of the suit or otherwise cause any impediment in the trial;
- (iii) The Petitioner shall appear on every date of hearing, whenever the Trial Court directs him to so appear, including through video-conferencing.
- (iv) The Petitioner shall be in touch with the Investigating Officer at least once a week for the first six months and give his live mobile

number to the Investigating Officer;

(v) The Petitioner shall not leave Delhi without the permission of the Investigating Officer.

(vi) The Petitioner shall furnish a personal bond to the tune of Rs. 25,000/- to the satisfaction of the Id. Trial Court/Duty Magistrate along with a like surety from his wife or a close family member.

6. The present order shall not influence the Id. Trial Court in the final adjudication of the matter.

7. The Court records its appreciation for the Support Person – Ms. Gulshan Jahan who has made special efforts to visit the complainant during the pandemic and interact with her and her family and submit the report in a timely manner. The Delhi State Legal Services Authority is directed to make her a payment of Rs. 10,000/-.

8. The report of the Support Person may be de-sealed and retained in the Court record.

9. The petition is disposed of in the above terms. All pending applications are also disposed of. Copy of this order be sent by the Registry to the Secretary, DSLSA for compliance and payment to be made to the support person within a period of four weeks.

PRATHIBA M. SINGH
JUDGE

AUGUST 21, 2020

Rahul/C