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

+ **BAIL APPLN. 2799/2020**

ASHU

..... Petitioner

Through Ms Manika Tripathy Pandey, Advocate.

versus

STATE

..... Respondent

Through Mr Ravi Nayak, APP for the State with
Insp. Pankaj PS Malviya Nagar.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **13.10.2020**

[Hearing held through videoconferencing]

1. The petitioner has filed the present petition, *inter alia*, praying for bail in FIR No. 1091/2014 under Sections 376/370/34 of the IPC registered with PS Malviya Nagar.
2. The said FIR was registered at the instance of Ms 'K' (name withheld). She had stated that she was aged twenty years and had studied till 6th standard. She was a resident of Imphal. She stated that about one month ago she along with her friend (Ms 'A') had gone to Imphal where they had met one woman named Munao, from Nagaland. Munao had promised them that she could secure jobs from them with a beauty parlour in Delhi. She had also introduced them to one boy named Jimmy who hailed from Assam. Ms 'K' stated that Jimmy had brought her and her friend Ms 'A' to Delhi and

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had handed them over to the petitioner. The petitioner had put them up in a flat. The petitioner did not get them any job, but he raped her as well as Ms 'A'. She stated that thereafter, on two/three occasions he had sent other boys for sexually exploiting them (*sharirik shoshan*). She stated that the petitioner would sometimes pay them some money and he continued to sexually exploit them. She alleged that they had been brought to Delhi on the pretext of getting them jobs but were sexually exploited and also raped.

3. Ms Tripathi, learned counsel appearing for the petitioner referred to the statement of Ms 'K' recorded under Section 164 Cr.PC. In her statement, she stated that the petitioner had not done anything with her but had brought boys and she had slept with those boys. She stated that she had slept with two of them. She further alleged that neither the said boys nor the petitioner gave them any money. She alleged that on 26.08.2014, the petitioner had brought three boys who had asked her and Ms 'A' to drink with them and after consuming the said drinks, she left the house and sat in a park where one girl had seen her and had called the police.

4. It is the prosecution's case that both the victims Ms 'K' and Ms 'A' were found in an inebriated condition in a park.

5. Ms Tripathi further drew the attention of this Court to the MLCs of Ms 'K' and Ms 'A' which record that they were brought in a drunk condition and there was no history of any physical or sexual assault.

6. The petitioner is being prosecuted under the provisions of Protection of Children from Sexual Offences Act, 2012 as the age of the victims is stated to be under eighteen years. Ms Tripathi further submitted that the same cannot be accepted as it is premised on the basis of an eighth standard school leaving certificate of Ms 'K'. However, Ms 'K' had disclosed that

she had only studied up to sixth standard. She further submitted that the bone ossification test of Ms 'K' indicates that her age was between twenty and twenty-two years. She further pointed out that in the FIR, as well as in her statement recorded under Section 164 Cr.PC, Ms 'K' had disclosed her age as twenty years.

7. Ms 'K' has been examined, however, the other victim, Ms 'A' is stated to be untraceable.

8. The petitioner has been in custody for over six years and it is unlikely that the trial will be completed shortly.

9. In the given circumstances, this Court considers it apposite to allow the present petition. The petitioner shall be released on bail on his furnishing a personal bond in the sum of ₹10,000/- with one surety of the like amount to the satisfaction of the concerned Trial Court/Duty Magistrate. This is also subject to the following further conditions:-

- (a) that the petitioner shall not leave the National Capital Territory of Delhi;
- (b) that the petitioner shall provide a contact number to the concerned SHO PS Malviya Nagar and ensure the he is reachable at all times;
- (c) that the petitioner shall not try to contact the victims (Ms 'K' and Ms 'A') or any of their family members, either directly or indirectly;
- (d) that the petitioner shall mark his presence before the Duty Officer at PS Malviya Nagar on first Monday of each calendar Month;
- (e) that the petitioner shall be present before the Trial Court on all dates of hearings;
- (f) that the petitioner shall give his complete residential

address to the SHO PS Malviya Nagar and also give prior intimation about any change in the said address.

10. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

OCTOBER 13, 2020

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