

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

**SUBJECT : INDIAN PENAL CODE**

Date of hearing and order: December 05, 2008

Bail Application No.1870 /2008

Ram Bachan Sha Gaur ... Petitioner  
Through: Mr.S.K. Tandon, Advocates

Versus

State of N.C.T. of Delhi and Anr. ... Respondents  
Through: Mr. R.N. Vats, Additional Public Prosecutor.

SUNIL GAUR, J.

1. Petitioner claims to have married the prosecutrix of this case on 1st January, 2008. According to the petitioner he was aged about 22 years and the prosecutrix was aged about 20 years. Some photographs have been placed on record to show that the prosecutrix had married the petitioner. However, regarding this incident FIR No.116/06 under Section 376 of the Indian Penal Code was registered at PS Aman Vihar, Delhi at the instance of the relatives of the prosecutrix. Bail has been declined to the petitioner by the learned Additional Sessions Judge by observing that the prosecutrix was aged about fourteen years on the day of the occurrence and obviously so her consent was immaterial.

2. Learned counsel for the petitioner points out that the prosecutrix had given her age as fifteen years to the police and there is a delay in lodging of the FIR in this case and the bone age of the prosecutrix has not been deliberately done in this case. It is pointed out that petitioner's application for getting the bone age examination of the prosecutrix is pending before the trial court. Learned counsel for the petitioner claims protection of exception of (II) to Section 376 of the Indian Penal Code by urging that sexual

intercourse by husband with wife aged fifteen years is not rape. Lastly, it is stated that petitioner is in custody since 1st April, 2008 and the trial will take time and so he deserves bail.

3. This petition is opposed by the state on the ground that as per the school certificate, the prosecutrix was aged fourteen years and the bone age examination of the prosecutrix could not be got done because she was pregnant as a result of this incident. It is submitted that the evidence of the prosecutrix is to be recorded on 22nd December, 2008 by the trial court and if petitioner is granted bail, then he will tamper with the evidence.

4. Prima facie, the case of the petitioner does not stand covered by exception (II) to Section 376 of the Indian Penal Code as the prosecutrix in her statement under Section 164 Cr.PC, has supported the prosecution case and not the stand of the petitioner. In any case, I am not inclined to grant bail to the petitioner, at this stage, as the evidence of the prosecutrix is to be recorded on 22nd December, 2008 by the trial court. Application of the petitioner for getting the bone age examination of the prosecutrix is said to be pending before the trial court and it is expected that the trial court would decide the same expeditiously, so that the petitioner is able to apply for bail afresh before the trial court who is expected to decide, if any such application is filed, uninfluenced by this order.

5. With the above-said directions, this petition as well as pending application(s), if any stand disposed of.

Sd/-  
SUNIL GAUR, J