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

+ **CRL.REV.P. 359/2022**

PRADEEP

..... Petitioner

Through: Mr. Archit Upadhayay, Mr. Charu
Sharma, Advocates

Versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Hirein Sharma, Ld. APP

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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02.06.2022

CRL.M.A. 11450/2022-EX.

Allowed subject to all just exceptions.

The application stands disposed of.

CRL.REV.P. 359/2022

This is petition filed seeking to challenge the order dated 28.09.2021 passed by the learned ASJ, POCSO, North-West, Rohini Courts, Delhi where the petitioner has been charged for the offences punishable under Section 6 of POCSO Act and under Section 363/366/376 IPC and subsequently the discharge of the petitioner for the same.

Mr. Archit Upadhayay, learned counsel appearing for the petitioner states that admittedly the petitioner is younger in age to the prosecutrix. If the incident has taken place during the time when the petitioner and the prosecutrix had not attained majority, then the petitioner also should be



entitled to the protection under the Juvenile Justice (Care and Protection Act), 2015.

In case, the prosecution is relying on incidents post the petitioner and the prosecutrix having attained majority, then the provisions of POCSO Act would not be applicable.

Mr. Archit Upadhayay, learned counsel also states that he cannot be tried both under IPC and POCSO Act.

Mr. Archit Upadhayay, learned counsel further submits that it is a continuing offence, and hence, the petitioner is entitled to get benefit under Juvenile Justice Act.

Issue notice. Mr. Hirein Sharma, learned APP for the State accepts notice, seeks and is granted 4 weeks to file a response.

Since the charges have been framed under Section 376 IPC and Section 6 POCSO Act in terms of the High Court practice directions, issue notice to the prosecutrix.

The complainant/ respondent be also informed in writing regarding the present appeal within a week from today. Since this is a matter inter alia under section 376 IPC, let intimation under section 439(1-A) Cr.P.C. read with Delhi High Court Practice Directions dated 24.09.2019 in form Annexure-A attached to the Practice Directions, be sent by the Investigating Officer to the complainant/prosecutrix, informing her that her presence is required via video-conferencing at the hearing of this bail application on the next date. In case the complainant/respondent seeks and requires assistance of an Advocate from DHCLSC, the same shall be so provided.



List on 16.09.2022.

JASMEET SINGH, J
JUNE 2, 2022 / (MS) *Click here to check corrigendum, if any*