



2024:DHC:1727



\$~5

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

%

Judgment delivered on: 01.03.2024

+ **BAIL APPLN. 97/2023**

ANIL KUMAR

..... Petitioner

Through: **Mr. M.K. Perwez, Adv.**

Versus

STATE OF NCT OF DELHI AND ANR

..... Respondents

Through: **Mr. Hemant Mehla, APP for State.**

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J. (ORAL)

1. The present petition has been filed under Section 439 CrPC seeking regular bail in connection with FIR No.21/2021 under Section 376 IPC and Section 4/6 of POCSO Act registered at Police Station Ranjit Nagar.
2. The brief facts of the case are that a statement was made by the prosecutrix wherein she alleged that she was in a relationship with the petitioner for the past two years. The petitioner called her and took her to a room in East Patel Nagar at his friend's house and established physical relationship with the victim against her wishes. The prosecutrix, who was minor at that time became pregnant and the child had to be aborted, this led to the registration of the aforesaid FIR.
3. The learned counsel for the petitioner invites the attention of the Court to the statement of the victim dated 23.01.2021 recorded under Section 164

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 02.03.2024
17:11:06

BAIL APPLN. 97/2023

Page 1 of 7



2024:DHC:1727



CrPC to contend that the victim has clearly stated in her statement that she had voluntarily established physical relationship with the petitioner. He submits that in yet another statement of the victim recorded under Section 164 CrPC, she has stated that she does not want any case against the petitioner and wishes to marry the petitioner.

4. He submits that it is a case of consensual romantic relationship between two young persons and the provisions of POCSO Act ought not to have been invoked in the present case.

5. The learned counsel for the petitioner invites the attention of the Court to the statement of the victim, who was examined as PW-1, to contend that the victim in her examination-in-chief has stated that her date of birth is 05.04.2003 and she has reiterated the same even when she was cross-examined by the learned APP. Further, she has also stated that her date of birth in the school certificate i.e. 24.06.2005 is incorrect.

6. He submits that in case the date of birth of the prosecutrix is taken as 05.04.2003 as stated by her in her testimony, it clearly shows that the prosecutrix was above 17 years of age at the time of alleged incident on 12.12.2020.

7. He submits that the petitioner is in custody since 24.08.2021 and the testimony of the victim has already been recorded, therefore, there is no possibility of the petitioner influencing the victim in the event he is enlarged on bail. He submits that the petitioner has clean antecedents and he does not have criminal record.

8. In the backdrop of the aforesaid circumstances, he urges the Court that the petitioner may be enlarged on bail.

9. *Per contra*, the learned APP has argued on the lines of the Status

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 02/03/2024
17:11:06

BAIL APPLN. 97/2023

Page 2 of 7



2024:DHC:1727



Report. He further submits that since the victim was a minor, therefore her consent was immaterial.

10. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the record.

11. A perusal of victim's statements under Section 164 CrPC shows that she has clearly stated that the physical relationship established between her and the petitioner was consensual and she does not want any case to be registered against the present petitioner, rather she is interested in marrying the petitioner.

12. Undoubtedly, there is material on record to *prima facie* indicate that the age of the prosecutrix was about 17 years of age. This Court is cognizant of the fact that though the prosecutrix was minor at the time of incident but at the same time it cannot be overlooked that she was of sufficient maturity and intellectual capacity and she joined the company of the petitioner at her own will.

13. This Court in "*Ajay Kumar vs State Govt. of NCT and Anr*" in Bail Application 2729/2022 observed that the intention of POCSO Act was to protect the children below the age of 18 years from sexual exploitation. It was never meant to criminalise consensual romantic relationships between young individuals.

14. This Court is also conscious of the fact that a Coordinate Bench in "*Dharmander Singh vs. State*" 2020 SCC OnLine Del 1267, has observed that after the charges are framed, because of the impact of Section 29 of the POSCO Act, the threshold for granting the bail will be higher. In the said case, the Court has laid down the contours within which bail application of an accused person under the POCSO Act is to be considered. The relevant part of

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 02/03/2024
17:11:06

BAIL APPLN. 97/2023

Page 3 of 7



the decision reads as under:-

*“74. As always, when faced with such dilemma, the court must apply the golden principle of balancing rights. In the opinion of this court therefore, at the stage of considering a bail plea **after charges have been framed, the impact of section 29 would only be to raise the threshold of satisfaction required before a court grants bail.** What this means is that the court would consider the evidence placed by the prosecution along with the charge-sheet, provided it is admissible in law, **more favorably for the prosecution and evaluate,** though without requiring proof of evidence, **whether the evidence so placed is credible or whether it ex facie appears that the evidence will not sustain the weight of guilt.***

XXXX

XXXX

XXXX

XXXX

*“77. Though the heinousness of the offence alleged will beget the length of sentence after trial, in order to give due weightage to the intent and purpose of the Legislature in engrafting section 29 in this special statute to protect children from sexual offences, while deciding a bail plea at the post-charge stage, in addition to the nature and quality of the evidence before it, **the court would also factor in certain real life considerations,** illustrated below, which **would tilt the balance against or in favour of the accused:***

- a. the age of the minor victim : the younger the victim, the more heinous the offence alleged;*
- b. the age of the accused : the older the accused, the more heinous the offence alleged;*
- c. the comparative age of the victim and the accused : the more their age difference, the more the element of perversion in the offence alleged;*
- d. the familial relationship, if any, between the victim and the accused : the closer such relationship, the more odious the offence alleged;*
- e. whether the offence alleged involved threat, intimidation, violence and/or brutality;*
- f. the conduct of the accused after the offence, as alleged;*
- g. whether the offence was repeated against the victim; or whether*



the accused is a repeat offender under the POCSO Act or otherwise;
h. whether the victim and the accused are so placed that the accused would have easy access to the victim, if enlarged on bail : the more the access, greater the reservation in granting bail;
i. the comparative social standing of the victim and the accused : this would give insight into whether the accused is in a dominating position to subvert the trial;
j. whether the offence alleged was perpetrated when the victim and the accused were at an age of innocence : an innocent, though unholy, physical alliance may be looked at with less severity;
k. whether it appears there was tacit approval-in-fact, though not consent-in-law, for the offence alleged;
l. whether the offence alleged was committed alone or along with other persons, acting in a group or otherwise; m. other similar real-life considerations.

78. The above factors are some cardinal considerations, though far from exhaustive, that would guide the court in assessing the egregiousness of the offence alleged; and in deciding which way the balance would tilt. At the end of the day however, considering the myriad facets and nuances of real-life situations, it is impossible to cast in stone all considerations for grant or refusal of bail in light of section 29. The grant or denial of bail will remain, as always, in the subjective satisfaction of a court; except that in view of section 29, when a bail plea is being considered after charges have been framed, the above additional factors should be considered.”

15. However, at this stage, it is relevant to note that both the petitioner and the victim were unmarried and were almost of marriageable age. Further, they were also known to each other since both belong to Bihar.

16. Though the consent of the victim for the physical relation cannot be construed as consent-in-law but the statements of the victim recorded under Section 164 CrPC shows there was an express or tacit approval-in-fact for such physical relation. Thus, it appears to be a case of a romantic relationship between the petitioner and the victim at an age of innocence.



2024:DHC:1727



17. Further the petitioner is in custody since 24.08.2021 and his custody is no more required. The testimony of the victim has already been recorded, therefore, there is no basis for any apprehension that in the event the petitioner is enlarged on bail, he will try to influence the victim.

18. It is also not the case of the prosecution that the petitioner is a flight risk or he has criminal record.

19. The object of judicial custody is to secure the presence of the accused during the trial which can be ensured by putting appropriate conditions.

20. Considering the aforesaid circumstances in entirety, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs. 20,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- b) Petitioner shall provide his permanent address, as well as, his mobile number to the IO concerned. The mobile shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
- c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

21. The petition stands disposed of.

22. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case.

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 02/03/2024
17:11:06

BAIL APPLN. 97/2023

Page 6 of 7



2024:DHC:1727



23. It is made clear that nothing stated above is to be construed as an expression of opinion on the merits of the case.
24. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
25. Order *dasti* under signatures of the Court Master.
26. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

MARCH 01, 2024/dss

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 02/03/2024
17:11:06

BAIL APPLN. 97/2023

Page 7 of 7