

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2036/2021 & CRL.M.(BAIL) 809/2021**

Date of decision: 18th AUGUST, 2021

IN THE MATTER OF:
PRAFULLA KUMAR SAHU

..... Petitioner

Through Mr. Siddharth Aggarwal, Senior
Advocate with Mr. Gautam
Khazanchi, Ms. Sowjanya Shankaran,
Ms. Arshiya Ghose, Mr. Vaibhav
Dubey and Ms. Sukanya Joshi,
Advocates

versus

STATE OF NCT OF DELHI

..... Respondent

Through Ms. Meenakshi Chauhan, APP for the
State
Ms. Rakhi Dubey, Advocate with
Mr. Himanshu Gera, Advocate for the
prosecutrix

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No. 112/2021 dated 10.04.2021, registered at PS Hauz Khas, South District, Delhi for offences punishable under Section 354-B of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) and Section 10 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter hereinafter referred to as “POCSO Act”).

2. In the complaint the prosecutrix has stated that the petitioner provides her basketball coaching at Sirifort Sports Complex. It is stated that the Petitioner's wife is a Physical Education Teacher in the school where the prosecutrix studies. It is stated that on 10.04.2021, the prosecutrix, who is a 13-year-old girl, reached Sirifort at 06:15 AM for her basketball coaching. It

is stated that after warming up, the petitioner herein asked the Prosecutrix to do an exercise. It is stated that when the prosecutrix was exercising, the petitioner wrapped his arms around her stomach. It is stated that the petitioner then put his hand under her T-shirt, lifted her bra up and held her breasts with both his hands. It is stated that the petitioner asked the Prosecutrix if she had any problem with the act as her parents were known to him. It is stated that the Prosecutrix felt very uncomfortable and asked the petitioner to stop. It is stated that the Prosecutrix went back and narrated the incident to her parents. On the complaint of the prosecutrix FIR No. 112/2021 was registered at Police Station Hauz Khas, South District, Delhi for offences punishable under Section 354-B IPC and Section 10 of the POCSO Act.

3. The investigation related to FIR No. 112/2021 is complete, and the charge-sheet has been filed on 08.06.2021. On the basis of the investigation conducted in pursuance of FIR No. 112/2021, it was stated in the charge-sheet that there is sufficient material to proceed against the accused, i.e. the Petitioner herein for offences under Section 354 of the IPC and Sections 8 and 10 of the POCSO Act.

4. Heard Mr. Siddharth Aggarwal, learned Senior Advocate, appearing on behalf of the Petitioner, and Ms. Meenakshi Chauhan, learned APP appearing for the State, Ms. Rakhi Dubey, learned Counsel for the prosecutrix and perused the material available on record.

5. The learned Senior Counsel for the Petitioner submits that the petitioner is 57 years old. He states that the petitioner is currently employed as Chief Coach Basketball and is a Group-A rank officer working with the Sports Authority of India, Government of India. It has been submitted that

the Petitioner was promoted to his current position as the Chief Coach on 07.04.2021 by the Director General, Sports Authority of India in recognition of the Petitioner's service, and that he has had a spotless record in his coaching career spanning three decades. The learned Senior Counsel appearing for the petitioner submits that there is an unexplained delay of 12 hours in filing of the FIR. He further states that subsequent to the filing of FIR No. 112/2021, on 10.04.2021, without any prior notice/summons/intimation, police officials arrived at the residence of the Petitioner and took him to the police station. He, therefore, contends that the arrest of the Petitioner was contrary to the directions laid down by the Supreme Court in Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273. The learned Senior Counsel appearing for the petitioner further contends that the Petitioner is suffering from Diabetes Mellitus, High Blood Pressure and Hypertension, and therefore, he falls within the category of high-risk persons who are vulnerable to getting infected with the COVID-19 virus. It has been submitted that the sudden arrest of the Petitioner led to the worsening of his health and, as a result, he was made to receive treatment at AIIMS Emergency. It has been submitted that the Petitioner has been receiving medical treatment in custody since then.

6. The learned Senior Counsel appearing for the petitioner submits that an application was filed before the Sessions Court for grant of interim bail contending that the petitioner was covered under the High-Powered Committee (hereinafter, "HPC") guidelines. He submits that the learned Additional Sessions Judge vide order dated 10.05.2021 had directed the concerned Jail Superintendent to verify whether the petitioner's case falls under the 'Exclusion Clause' of the HPC guidelines. He submits that the

Superintendent of Prisons, Tihar Jail, filed a report on 11.05.2021 stating that the Petitioner was not covered by the Exclusion Clause mentioned in the Minutes of Meeting dated 04.05.2021 of the HPC guidelines. The learned Senior Counsel appearing for the petitioner submits that despite being eligible for grant of interim bail, the Sessions Court dismissed the interim bail application of the Petitioner on 12.05.2021.

7. The learned Senior Counsel further submits that on 24.05.2021, another interim bail application was filed by the Petitioner. However, the same was withdrawn subsequently. He submits that an application for regular bail was then filed on 05.06.2021 before the Sessions Court, which was dismissed on 09.06.2021.

8. The learned Senior Counsel appearing for the petitioner states that the charge-sheet has been filed against the Petitioner under Sections 354 IPC, and Sections 8 and 10 of the POCSO Act. He contends that the independent witnesses present at the spot of the incident have not concurred with the version of the Prosecutrix. He, therefore, states that the allegations recorded in the FIR and the charge-sheet are false, frivolous and a figment of the Prosecutrix's imagination, and that the FIR is *malafide* as it is a means to play out a personal vendetta which exists between the wife of the Petitioner and the mother of Prosecutrix, both of whom work in the same school.

9. The learned Senior Counsel appearing for the petitioner relies on the judgment of the Supreme Court in Dharmender Singh v. State of NCT of Delhi, (2020) 275 DLT 49, to contend that the presumption as to certain offences under Section 29 of the POCSO Act is not applicable at the stage of consideration of regular bail.

10. The learned Senior Counsel has also brought attention to the note of

I.O. Kamlesh which was inserted at the end of the disclosure statement of the petitioner stating that:-

"From the investigation conducted so far and from the examination of victim, it can't be said exactly regarding the commission of above stated offences."

11. With regard to interim bail as per CRL. M. (Bail) 809/2021, it has been submitted that the Petitioner falls squarely within Category (ii) provided on Page 14 of the guidelines of the aforementioned HPC pertaining to release of under-trial prisoners who are facing trial in cases which prescribe a maximum sentence of 7 years or less and who have been in custody for a period of 15 days or more. On this ground, it has been submitted that the Petitioner is entitled to interim bail.

12. The learned Senior Counsel appearing for the petitioner contends that that the Petitioner has no criminal antecedents and has deep roots in the society. He further states that the charge-sheet has been filed and the custodial interrogation of the Petitioner is not required as there is nothing to be recovered from the Petitioner. He further states there is no possibility of the trial commencing in the near future and, therefore, the petitioner be released on bail.

13. *Per contra*, Ms. Meenakshi Chouhan, learned APP for the State, submits that the petitioner is accused of a very serious offence. She has also pointed out to the Court that the Petitioner was present in a fiduciary capacity when the alleged incident occurred, and that there is a possibility of the Prosecutrix being influenced or the matter being delayed if the Petitioner absconds on being granted bail. She further states that at the time of the institution of the FIR, the Prosecutrix and her family had been approached,

and were requested not to take legal action. She, therefore, submits that in light of the facts and circumstances of the instant matter, the Bail Application of the Petitioner must be rejected.

14. A perusal of the Status Report dated 12.07.2021 highlights that the Petitioner was thoroughly interrogated and arrested in compliance with the guidelines of the Supreme Court as laid down in Arnesh Kumar (supra). It further states that the Prosecutrix's statement was recorded under Section 164 Cr.P.C wherein she reiterated her version of events. The Status Report further states that no video footage was recovered from the place of incident at the Sports Complex as cameras had not been installed in the basketball court, and that despite Gate No.1 being covered by a CCTV, the same could not be provided due to the lead time elapse. However, it is stated that the DVR from the place of incident has been seized and the same has been sent to FSL, Rohini for examination for expert opinion. It has been stated in the Status Report that the guards on duty on the morning of alleged incident were examined and they said that they did not have any knowledge of the alleged incident as the Prosecutrix had not revealed it to anyone inside the Sports Complex. The Status Report concludes on the note that investigation of the case has been completed in all aspects, and there is sufficient evidence against the Petitioner herein. Furthermore, it is stated that the bail application of the Petitioner is strongly opposed on the ground that offences enlisted against the Petitioner are serious in nature and were committed after taking the Prosecutrix into confidence at the pretext of basketball training.

15. Having heard the learned Senior Counsel on behalf of the Petitioner, and the learned APP, and having perused the material on record, this Court would first like to note that the prosecution has proceeded against the

Petitioner under Sections 8 and 10 of POCSO, along with Section 354 of the IPC.

16. In the instant case, the allegations levelled against the petitioner falls squarely within the ambit of Section 7 (which defines ‘sexual assault’) and Section 9 (which defines aggravated sexual assault). Furthermore, Section 8 of the POCSO Act stipulates the punishment for sexual assault and it reads as follows:

“Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine”.

Section 10 of the POCSO Act stipulates the punishment for aggravated sexual assault and it reads as follows:

“Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.”

17. The Petitioner, being the Basketball Coach of the prosecutrix and also known to the parents of the prosecutrix, can be stated to be in a position of trust or authority of a child, as per Section 9(p) of the POCSO Act. The relationship between the Prosecutrix and the Petitioner is, therefore fiduciary in nature. In such cases, betrayal of trust at an early stage of life may inhibit the child from developing healthy interpersonal relationships in the future. This compounds the severity of the matter.

18. It is further highlighted that there does not exist any reasonable

justification as to why the Prosecutrix would be motivated to level false allegations against the Petitioner. Further, the Court is not inclined to agree with the submission that the Prosecutrix may have misread an innocuous act of the Petitioner. The Prosecutrix herein is a 13-year-old girl studying in 9th standard of a public school in New Delhi. She is well equipped to differentiate between conduct that may be inadvertent and conduct that may be deliberate. Furthermore, the allegations in the FIR as well as subsequent statements of the Prosecutrix are coherent in nature. Therefore, nothing in the submissions gives rise to the apprehension that there may have been a misinterpretation of the situation on behalf of the Prosecutrix.

19. This Court is also of the opinion that at this juncture, it is pertinent to quote the main objective of the POCSO Act and the reason for the enactment of this special legislation:

“An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment for Courts for trial of such offences and for matters connected or incidental thereto”.

In Eera through Dr. Manjula Krippendorf v. State NCT of Delhi and another, (2017) 15 SCC 133, the Supreme Court had remarked on the statement and object of the POCSO Act as follows:

“20. The purpose of referring to the Statement of Objects and Reasons and the Preamble of the POCSO Act is to appreciate that the very purpose of bringing a legislation of the present nature is to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child. On an avid and diligent discernment of the Preamble, it is manifest that it recognises the necessity of the right

to privacy and confidentiality of a child to be protected and respected by every person by all means and through all stages of a judicial process involving the child. Best interest and well-being are regarded as being of paramount importance at every stage to ensure the health physical, emotional, intellectual and social development of the child. There is also a stipulation that sexual exploitation and sexual abuse are heinous offences and need to be effectively addressed. The Statement of Objects and Reasons provides regard being had to the constitutional mandate, to direct its policy towards securing that the tender age of children is not abused and their childhood is protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. There is also a mention which is quite significant that interest of the child, both as a victim as well as a witness, needs to be protected. The stress is on providing child-friendly procedure. Dignity of the child has been laid immense emphasis in the scheme of legislation. Protection and interest occupy the seminal place in the text of the POCSO Act.”

20. Therefore, granting bail to the petitioner at this stage, i.e. before charges are framed and the Prosecutrix is examined, may lead to defeating the purpose of the objective which was kept in mind while enacting this legislation. Paramount consideration is to be given to the well-being of the child whose mental psyche is vulnerable, impressionable and in a developing stage. The long-term effects of childhood sexual abuse are, at many times, insurmountable. An act of sexual assault or sexual harassment, therefore, has the potential to cause mental trauma to the child and may dictate their thought process for the years to come. It may hinder the normal social growth of the child and lead to various psychosocial problems which could

require psychological intervention.

21. It is additionally to be noted that the wife of the Petitioner is a teacher at the school of the Prosecutrix. The submission that the wife of the Petitioner is prepared to leave the occupation and, therefore will no longer be in a position to influence the Prosecutrix cannot be countenanced at this point. It is for this reason the Court is not willing to accept the submission of the learned Senior Counsel pertaining I.O. Kamlesh's note at this stage of the matter.

22. The Supreme Court in State of Bihar v. Rajballav Prasad, (2017) 2 SCC 178 had observed as follows:

“26. We are conscious of the fact that the responded is an undertrial and his liberty is also a relevant consideration. However, equally important consideration is the interest of the society and fair trial of the case. Thus, undoubtedly the Courts have to adopt a liberal approach while considering bail applications of the accused persons. However, in a given case, if it is found that there is a possibility of interdicting fair trial by the accused if released on bail, this public interest of fair trial would outweigh the personal interest of the accused while undertaking the task of balancing liberty of the accused on the one hand and interest of the society to have a fair trial on the other hand. When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice-delivery system. It is this need for larger public interest to ensure that criminal justice-delivery system works efficiently, smoothly and in a fair manner that has to be given prime importance in such situations. After all, if there

is a threat to fair trial because of intimidation of witnesses, etc., that would happen because of the wrongdoing of the accused himself, and the consequences thereof, he has to suffer.”

23. The Petitioner was arrested on 11.04.2021, and has been in judicial custody for 4 months (as of 09.08.2021). Investigation has been completed and the charge-sheet has been filed.

24. With reference to the submission on the petitioner being entitled to bail as per the HPC guidelines, it is to be noted that in view of the falling Covid-19 cases, a Bench of three Judges of this Court is contemplating the continuance of the interim protection which had been extended to certain under-trial prisoners and, therefore, this Court is not inclined to grant interim bail to the petitioner as per the HPC guidelines.

25. In light of the facts and circumstances of this case, the Trial Court is directed to proceed further with the framing of charges within one month from the date of this order, and, if charges are framed, then examine the victim within one month thereafter. Liberty is granted to the petitioner to approach the Court for grant of bail after two months irrespective of whether victim has been examined or not.

26. For the aforesaid reasons, the bail applications of the Petitioner are rejected. Accordingly, the bail application is dismissed along with the pending application.

SUBRAMONIUM PRASAD, J.

AUGUST 18, 2021

Rahul