

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

+ **BAIL APPLN. 3406/2021**

Judgment reserved on : 30.09.2021

Date of decision: 01.10.2021

ROHIT KUMAR JHA

..... Petitioner

Through: **Mr. V. Govinda Ramanan, Adv.**

versus

THE STATE

..... Respondent

Through: **Ms. Asha Tiwari, APP for State with
W/SI Athine, SV Rohit Kumar Jha.**

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J

1. The applicant, vide the present application seeks the grant of bail under Section 439 of the Cr.P.C., 1973 in relation to FIR No.275/2021, PS Jafrabad under Sections 366/376/506 of the Indian Penal Code, 1860 and Section 6 of the POCSO Act, 2012 submitting to the effect that he has been falsely implicated in the instant case and that the relations between the applicant and the prosecutrix were wholly consensual. *Inter alia* it has been submitted on behalf of the applicant that no offence whatsoever in terms of the POCSO enactment is made out against the applicant, in as much as, the

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prosecutrix was a major as per her documents with her date of birth being 10.10.2002.

2. *Inter alia* it is submitted on behalf of the applicant that the photographs of the prosecutrix which show the marriage between the prosecutrix and the applicant which have been placed on record reflect clearly the happy state of mind of the prosecutrix when she married the applicant and that the documents do not lie and clearly show that none of the alleged commission of the offences under Sections 366/376/506 of the Indian Penal Code, 1860 and Section 6 of the POCSO Act, 2012 are made out in any manner.

3. Notice of the application was issued to the State. The status report dated 26.09.2021 under the signatures of the SHO, PS Jafrabad has been submitted whereby, it has been submitted that the FIR was registered at PS Jafrabad on a written complaint of Ms.R in which she stated that Rohit (the present applicant) who was the friend of her brother, used to visit their residence and had forced her to accept the friend request on the Facebook one year ago. This FIR is indicated to have been registered on 17.07.2021 and the date of occurrence through the FIR having been put forth as being 10.04.2021.

4. It has been submitted through the status report that thereafter, the applicant and the prosecutrix exchanged their phone numbers and started contacting each other and that the applicant took the victim to Connaught Place and took their photographs together and threatened her that he would make her photographs viral and threatened to kill her father and brother if she did not marry him and on 08.04.2021, the applicant allegedly forcibly took the prosecutrix to the Arya Samaj

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Mandir, Kashmere Gate, Delhi and married her and on the same day she was sent to her parents' home.

5. As per the averments made in the FIR, on the date 10.04.2021, the applicant called her and took her to House no. C-117, Room No.15, Third Floor, Gali no.20, Khajuri Khas, Delhi and had made forcible physical relations with her without her consent and after two-three days again, the applicant took her to the same place and again had physical relations with her without her consent. As per the status report, on inquiry in relation thereto is indicated to have been conducted by the CIC, Counsellor and the victim was counselled and her statement was recorded in the presence of her mother. The prosecutrix is indicated to have been sent to the JPC Hospital, Shastri Park, Delhi in the custody of W/HC Sunita, No.1868/NE along with the counsellor and her parents and her medical examination was conducted vide MLC No.137/2021 wherein, she and her mother declined to get any internal medical examination conducted.

6. As per the said status report, during the course of the investigation, the statement of the prosecutrix was recorded under Section 164 of the Cr.P.C., 1973 by the learned MM (Reliever), KKD Courts, Delhi wherein she supported her initial statement and the prosecutrix also provided her birth certificate issued by the East Delhi Municipal Corporation in which her date of birth was put forth as being 07.07.2004 which was verified by the issuing authority and the marriage certificate of the applicant and the prosecutrix in relation to their marriage solemnized on 08.04.2021 at the Arya Samaj Mandir, Kashmere Gate, Delhi was also verified from the concerned authority.

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It has been submitted through the status report that the date of birth of the prosecutrix as per her school records of the Pandit Nityanand Memorial Public School for the sessions 2012-13 & 2013-14 is 10.10.2004 as also recorded likewise in the records of the C.R.G.SKV No.2 School, Ghonda, Delhi wherein the prosecutrix was admitted on 05.05.2014 with admission number 2905.

7. It is submitted through the status report that as per the investigation conducted, the prosecutrix had informed that the applicant had got her Aadhaar Card updated to show her date of birth as being 10.10.2004 and that the type of update is demographic in which the date of birth of the prosecutrix is shown to be 10.10.2002.

8. A notice under Section 91 of the Cr.P.C., 1973 is indicated to have been issued to S.K. Computers, Add-110, Main Chowk Gautam Vihar, Kaddhe wali Masjid, Delhi pursuant to which Mr.Sikander, the owner of the said shop is stated to have provided the Aadhaar update history of the victim's Aadhaar Card in the year 01.09.2011 in which her date of birth is shown to be 10.10.2004.

9. As per the status report, the applicant on rejection of his prayer for grant of anticipatory bail had himself surrendered on 22.07.2021 and was thereafter interrogated and arrested. The mobile phone of the applicant is stated to have been handed over by his brother-in-law Sh.Keshav S/o Ramesh Jha to the Investigating Agency which was seized by the Investigating Officer and deposited at the Police Station Malkhana and as per the status report, a person named Shivam S/o Mahender Singh who was also a roommate and landlord of R/o H.no. V-260, Khajoor wali Gall, Arvind Nagar Ghonda, was examined and a

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search of his room was conducted where one Aadhaar card photocopy of 'R' (victim), one photocopy of marriage certificate of R'(victim) and Rohit (the present applicant), and one faded and half spoiled school identity card of 'R'(victim) in which the name of the school was partly visible for the session 2013-2014, was recovered in the room and all these articles were seized.

10. As per the status report, a notice under Section 91 of the Cr.P.C., 1973 was also issued to the NSDL-e Governance Infrastructure limited to verify the authenticity of Pan Card of Ms. 'R' bearing Permanent Account No. NZAPS8992B and to provide the documents which the applicant had submitted at the time of applying Pan card and the concerned authority had provided the related documents in which the date of application was 27.02.2021 and the date of birth of the prosecutrix was 10.10.2002 which was also informed on behalf of the State that during the course of the investigations, the prosecutrix had stated that the accused/applicant had fraudulently got her Aadhaar card updated and also got her signature and had got made her Pan Card in her name and thus, Section 465 of the Indian Penal Code, 1860 was also invoked in the instant case.

11. The learned MM (Reliever), KKD Courts, New Delhi on 17.07.2021, found the victim competent to depose and she was thus administered oath on which date, she give her age to be 17 years and corroborated the version put forth through the FIR, wherein she stated categorically that the applicant forcibly took her to Connaught Place and at that time took her photographs and that on 08.04.2021, the

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applicant took her forcibly to the Arya Samaj Mandir, Kashmere Gate, Delhi and forcibly got married to her and she was made to pretend that she was marrying him of her own accord. The prosecutrix states that the applicant made a video at that time and thereafter on 10.04.2021, threatened her and took her to his friend's house where she was raped and thereafter again she was called by the applicant to his friend's house where again the prosecutrix was raped by the applicant. The prosecutrix however stated through her statement under Section under Section 164 of the Cr.P.C., 1973 that she did not know the name of the friend of the applicant. Though, the MLC of the prosecutrix states that she stated that she did not want any internal examination, the medical opinion thereon is to the effect:- ***“sexual assault cannot be ruled out.”***

12. The applicant has also placed reliance on a conversation between him and the prosecutrix wherein, she allegedly asked the applicant to come and to take her to his house. *Inter alia* reliance was placed on behalf of the applicant on a catena of verdicts to contend to the effect that the prosecutrix had put forth her date of birth as being 10.10.2002 and that is why the applicant was not aware of her being a minor and that even if her date of birth is accepted as being 10.10.2004, she was not at an age where she could be termed to be naive and gullible; and rather all relations between the applicant and the prosecutrix were consensual.

13. The said verdicts relied upon on behalf of the applicant are to the effect:-

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“1. **"S Varadarajan versus State of Madras' AIR 1965 SC 942,** with specific reference to observations in paragraph 8, which reads to the effect:-

“8. It will thus be seen that taking or enticing away a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping. Here, we are not concerned with enticement but what, we have to find out is whether the part played by the appellant amounts to "taking", out of the keeping of the lawful guardian, of Savitri. We have no doubt that though Savitri had been left by S. Natarajan at the house of his relative K. Natarajan she still continued to be in the lawful keeping of the former but then the question remains as to what is it which the appellant did that constitutes in law "taking". There is not a word in the deposition of Savitri from which an inference could be drawn that she left the house of K. Natarajan at the instance or even a suggestion of the appellant. In fact she candidly admits that on the morning of October 1st, she herself telephoned to the appellant to meet her in his car at a certain place, went up to that place and finding him waiting in the car got into that car of her own accord. No doubt, she says that she did not tell the appellant where to go and that it was the appellant himself who drove the car to Guindy and then to Mylapore and other places. Further, Savitri has stated that she had decided to marry the appellant. There is no suggestion that the appellant took her to the Sub-Registrar's office and got the agreement of marriage registered there (thinking that this was sufficient in law to make them man and wife) by force or blandishment or anything like that. On the other hand the evidence of the girl leaves no doubt that the insistence of marriage came from her own side. The appellant, by complying with her wishes can by no stretch of imagination be said to have taken her out of the keeping of her lawful guardian. After the registration of the agreement both the appellant and Savitri lived as man and wife and visited different places. There is no suggestion in Savitri's evidence, who, it may be

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mentioned had attained the age of discretion and was on the verge of attaining majority that she was made by the appellant to accompany him by administering any threat to her or by any blandishments. The fact of her accompanying the appellant all along is quite consistent with Savitri's own desire to be the wife of the appellant in which the desire of accompanying him wherever he went was of course implicit. In these circumstances we find nothing from which an inference could be drawn that the appellant had been guilty of taking away Savitri out of the keeping of her father. She willingly accompanied him and the law did not cast upon him the duty of taking her back to her father's house or even of telling her not to accompany him. She was not a child of tender years who was unable to think for herself but, as already stated, was on the verge of attaining majority and was capable of knowing what was bad for her. She was no uneducated or unsophisticated village girl but a senior college student who had probably all her life lived in a modern city and was thus far more capable of thinking for herself and acting on her own than perhaps an unlettered girl hailing from a rural area. The learned Judge of the High Court has referred to the decision In re : Abdul Sathar 54 M.L.J. 456 in which it was held that where the evidence disclosed that, but for something which the accused consented to do and ultimately did, a minor girl would not have left her husband's house, or would not have been able to leave her husband's house, there was sufficient taking in law for the purpose of s. 363 and expressing agreement with this statement of the law observed : "In this case the minor, P.W. 4, would not have left the house but for the promise of the appellant that he would marry her." Quite apart from the question whether this amounts to blandishment we may point out that this is not based upon any evidence direct or otherwise. In Abdul Sathar's case 54 M.L.J. 456 Srinivasa Aiyangar J., found that the girl whom the accused was charged with having kidnapped was desperately anxious to leave her husband's house and even threatened to commit suicide if she was not taken away from there and observed:-

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"If a girl should have been wound up to such a pitch of hatred of her husband and of his house or household and she is found afterwards to have gone out of the keeping of her husband, her guardian, there must undoubtedly be clear and cogent evidence to show that she did not leave her husband's house herself and that her leaving was in some manner caused or brought about by something that the accused did."

2. "Ranjit Rajbanshi versus The State of West Bengal and Others" a verdict of the Hon'ble High Court of Calcutta in C.R.A No. 458 of 2018 dated 17.09.2021 with specific reference to observations in paragraphs 17, 33, 37, 39, 44, 45, 46, 47,48,49, 51, 54, 55, 56,57 and 58, which read to the effect:-

"17. In case of offences under Section 376, IPC, in the light of Section 154 of the Code of Civil Procedure, 1973 (CrPC), delay in lodging FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay, it was held by the Supreme Court, has the effect of putting the court on its guard to search if any explanation has been offered for the delay and, if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, by itself, the delay cannot be as a ground for disbelieving and discarding the entire prosecution case.

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33. In the present case, both the PW1 and the PW2 admitted a previous relationship between the accused and the victim. Admittedly, the victim was a student of class

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XII, while the accused studied in the 2nd year of college at the time of the alleged incident.

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37. As regards the allegations under Section 3 and 4 of the POCSO Act are concerned, technically the victim was a “child”, as defined in Section 2(d) of the POCSO Act, which means any person below age of 18 years fulfils the definition of a child.

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39. As held in Ganesan Vs. State, reported at (2020) 10 SCC 573, conviction can be granted on the sole testimony of the victim only where such testimony is found reliable and trustworthy and unblemished. The witness of the victim is reliable by itself if she is a “sterling” witness, being of very high quality and calibre, whose version is in unassailable, as per the cited report.

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44. The POCSO Act was, rightly, introduced to offer protection to innocent children from several offences. However, a Draconian interpretation of the provisions thereof would merely convert it into a tool of abuse of the process of law, instead being a protective shield against defenceless minors.

45. Keeping in view the definition of ‘child’ in Section 2(d) of the said Act, even a person who is aged 17 years and 364 days would qualify as a child, but her maturity would not be much different from another person, who was just one day older than her, that is, 18 years old.

46. The court’s interpretation of a statute cannot be with eyes closed to practical realities and have to be construed in proper perspective, keeping in view the objects and reasons of the Act. The stated object of the Act is to protect children from offences of sexual assault, sexual harassment and pornography and to provide for

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establishment of Special Courts for trial of such offences for matters connected therewith or incidental thereto. As such, while construing the expression 'child' in appropriate perspective, the age, maturity and other circumstances also becomes relevant to clinch a case on the ground of penetrative sexual assault.

47. In the present case, the victim girl was admittedly 16 ½ years old and studied in Class XII at the relevant point of time. She was not naïve enough not to know the implication of sexual intercourse; rather, the victim admittedly had a physical relationship with the accused, who was also of a very young age, on several occasions prior to the incident. Although the consent of a minor is not a good consent in law, and cannot be taken into account as 'consent' as such, the expression 'penetration' as envisaged in the POCSO Act has to be taken to mean a positive, unilateral act on the part of the accused. Consensual participatory intercourse, in view of the passion involved, need not always make penetration, by itself, an unilateral positive act of the accused but might also be a union between two persons out of their own volition. In the latter case, the expression 'penetrates', in Section 3(a) of the POCSO Act might not always connote mere voluntary juxtaposition of the sexual organs of two persons of different genders. If the union is participatory in nature, there is no reason to indict only the male just because of the peculiar nature of anatomy of the sexual organs of different genders. The psyche of the parties and the maturity level of the victim are also relevant factors to be taken into consideration to decide whether the penetration was a unilateral and positive act on the part of the male. Hence, seen in proper perspective, the act alleged, even if proved, could not tantamount to penetration sufficient to attract Section 3 of the POCSO Act, keeping in view the admitted several prior occasions of physical union between the accused and the victim and the maturity of the victim.

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48. As such, it cannot be said that the accused was guilty of penetrative sexual assault, as such, since here the act of penetration, even if true, would have to be taken not as an unilateral act of the accused but a participatory moment of passion involving the participation of both the victim and the accused.

49. Although the question of consent does not arise in case of a minor, in order to attract Section 376(1) of the IPC, it had to be established that the alleged offence was committed against the will of the victim. Read in conjunction, the provisions of Section 376 of the IPC and Section 3 of the POCSO Act ought to be construed on a similar footing and cannot incriminate the accused for a voluntary joint act of sexual union.

51. Moreover, the meeting of the victim's family with the accused on the same evening, not for a confrontation but with a proposal of marriage, is not compatible with the allegation of rape or penetrative sexual assault. The provisions of the POCSO Act should be given an appropriate construction, for the protection of children and not as a tool of abuse to compel a person to marry another.

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54. Although not directly relevant to the offence, the Court cannot be blind to the practical realities of life. The accused as well as the victim are at present leading marital lives with strangers to the case separately. As such, the Court ought to be doubly cautious in putting a stigma on either the accused or the victim.

55. The POCSO Act defines anyone under eighteen years of age as a 'child', but to convict a person for penetrative sexual assault, the psyche, maturity and previous conduct of the victim vis-à-vis the accused also acquires relevance. In the present case, the previous relation between the victim and the accused and their physical union on several

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occasions raise a strong presumption of the alleged incriminating act being participatory at both ends, not a unilateral act of the accused.

56. On a contextual interpretation of the expression 'penetration' as used in Section 3 of the POCSO Act and Section 376(1) of the IPC, no unilateral forcible act of penetration, solely on the part of the accused, was established on the basis of the evidence on record. On the contrary, a prior relationship between the two comparatively mature persons has been admitted in the present case, leading to the alleged incident.

57. The four days' delay in lodging complaint ought to be taken with a pinch of salt to vitiate the prosecution case, since the same might have been only for the reason of compelling the accused to marry the victim. Such, attempt, in any event, has become redundant at least in view of the present marital status of both the victim and the accused. That apart, the sequence of events show that the police were approached by the victim's family on the day of the alleged offence itself, but the same night the family had met the accused and, only on refusal to marry the victim, the complaint was lodged four days later as a back-lash.

58. Merely taking advantage of the literal definition of the term 'child', the accused/appellant cannot be proved to be guilty of an offence under Section 3 of the POCSO Act or Section 376(1) of the IPC, sufficient to convict and sentence the petitioner on such counts."

3. *"Rakesh S/o Ambaram versus State of M.P."* a verdict of the Hon'ble High Court of M.P. Bench at Indore in M.CR.C.bearing No. 41304 of 2021 dated 09.09.2021 with specific reference to observations in paragraphs 3, 4 and 6, which read to the effect:-

"3. Story of prosecution is that on 22/11/2018 report was lodged by father of the prosecutrix of her having gone missing. After registration of FIR, investigation was

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conducted during course of which the prosecutrix was recovered from the custody of the applicant alongwith a boy aged about one and half year. The statement of prosecutrix was recorded in which she has stated that the applicant had taken her with him on a false pretext and promise to Surat, where he developed physical relationship with her resulting in birth of a son. Age of the prosecutrix at the time of incident was 15 years.

4. Learned counsel for the applicant submits that the prosecutrix had gone out on her own will with the applicant and has been living with him and she has also given birth to one child. She has left her father's protection knowing what she was doing, therefore, it could not be said that applicant had taken her away from the lawful guardianship of her parents. He relied upon the judgments of Bombay High Court in criminal bail application No.2632/2019 (Anirudh Radheshyam Nagar vs. State of Maharashtra) decided on 09/01/2020 and in bail application No.1036/2015 (Shri Mahadev Patil vs. State of Maharashtra) decided on 03/08/2015. On these grounds prayer for grant of bail is made.

6. The prosecutrix though was aged about 15 years at the time when she went with the applicant but it appears that she had gone voluntarily out on her own will and continued to live with the applicant and has also given birth to a child. It cannot be said that even though she may be 15 years of age, she was not capable of knowing full impact of her act. She is also stated to be living with the applicant. In the facts of the case, I am thus of the considered view that it is a fit case for grant bail to the applicant. Accordingly, application of the applicant deserves to allowed and it is hereby allowed."

4. "Vaibhav Bhaskar Kole versus State of Maharashtra" a verdict of the Hon'ble High Court of Bombay in Bail Application

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bearing No. 416 of 2015 dated 25.03.2015 with specific reference to observations in paragraph 5, which reads to the effect:-

"5. It is to be noted that the Investigating officer is not present on any date of hearing of this Application. Though the prosecutrix was 15 years and 6 months and she was studying in X Std., therefore, it is to be taken into account that she has attained the age of understanding. I also rely on the judgment of the Apex Court in the case of S. Varadarajan vs. State of Madras, reported in AIR 1965 SC 942. In support of the ratio laid down in S. Varadarajan (supra) and considering the age of the applicant/accused and the period from which he is in prison, I am inclined to grant bail to the applicant/accused on the following terms and conditions:

....."

5. "Sunil Mahadev Patil versus State of Maharashtra" a verdict of the Hon'ble High Court of Bombay in Bail Application bearing No. 1036 of 2015 dated 03.08.2015 with specific reference to observations in paragraphs 5, 7, 9, 11, 12 and 13 of which paragraphs 12 & 13 read to the effect:-

"12. The overall considerations while deciding such applications can be summed up as - When a boy and a minor girl are in love with each other and chose to live together without consent of their parents, then the following factors are to be considered:

- (i) What is the age of the prosecutrix, who is minor.**
- (ii) Whether the act is violent or not.**
- (iii) Whether there are antecedents or not.**
- (iv) Whether the offender is capable of repeating the Act or not.**
- (v) Whether there is likelihood of threats or intimidation, if at all the boy is released.**
- (vi) Whether any chance of tampering with the material witnesses when their statements are recorded.**

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(vii) It is also to be taken into account in such cases that a boy in his early 20's deserves to get employment and to plan, stabilize and secure his future.

13. In the present case, the prosecutrix is 15 years old and the accused is 20 years old. It appears from the record, statement of the prosecutrix and witnesses that they were in love with each other, so they eloped and went to the temple. There they garlanded each other and according to them they performed marriage and thereafter they started residing together in the house of their relative. In between prosecutrix called her distant aunt and requested her to make arrangement of some money and she disclosed that she is married and wants to stay with applicant/accused. In this case there are many mitigating factors. Under such circumstances, I am inclined to grant bail to the applicant/accused on the following terms and conditions:
.....”

6. "Anirudha Radheshyam Yadav versus State of Maharashtra"

a verdict of the Hon'ble High Court of Bombay in Criminal Bail Application bearing No. 2632 of 2019 dated 09.01.2020 with specific reference to observations in paragraphs 3 & 4, which read to the effect:-

“3. In the case in hand, the victim was 14 years and 11 months old on the date of incident; whereas the applicant was 25 years old. It appears from the victim’s statement that, on 18.04.2019 at 01:00 am., she had left her parents’ house secretly with her belongings to go to the accused and thereafter, they had traveled from one place to another, right from Mahableshwar to Bhusawal and thereafter to Delhi. Her statement shows that on 22.04.2019, she left with the complainant for two days, to go to Gajipur, UP, the village of the applicant, where she was persuaded by the relative of the applicant to return back to home and thereafter, both had returned to Mumbai. The said description of facts do not even

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remotely suggest that the applicant had ever induced and/or forced the victim to leave her parents' house. Thus, prima facie, the ratio laid down in the S. Varadarajan's case (supra) is applicable to the case in hand. statement shows that on 22.04.2019, she left with the complainant for two days, to go to Gajipur, UP, the village of the applicant, where she was persuaded by the relative of the applicant to return back to home and thereafter, both had returned to Mumbai. The said description of facts do not even remotely suggest that the applicant had ever induced and/or forced the victim to leave her parents' house. Thus, prima facie, the ratio laid down in the S. Varadarajan's case (supra) is applicable to the case in hand.

4. So far as the offences punishable under Section 4, 6, 8 of POCSO Act (special law) is concerned, it may be stated that the provisions of this law are, though, stringent in nature, would not deter the Court to grant or refuse bail in order to secure the ends of justice. The conduct of the victim is indicative of the fact that she had left the home of her parents by her own will and that she had surrendered to the physical desires of the applicant out of her love and affection for him. It is not the case of the prosecution that the applicant had promised to marry her. Additionally, it is also not a case where under the misconception of the fact, she had served herself to the desire of the applicant for physical relations. No doubt, that the applicant, under the preview of POCSO Act, is a minor, however, the facts of the present case indicate that she had sufficient knowledge and capacity to know full import of what she was doing and had only thereafter voluntarily joined the complainant."

7. *"Dadu alias Sushant Sunil Kamble versus State of Maharashtra"* a verdict of the Hon'ble High Court of Bombay in Criminal Bail Application bearing No. 159 of 2014 dated 11.02.2014

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with specific reference to observations in paragraphs 6 & 7, which read to the effect:-

“6. The learned Counsel for the applicant submits that although she was a minor, she had attained the age of understanding. The learned Counsel relied upon the Judgment of the Hon'ble Apex Court in the case of S. Varadarajan vs. State of Madras AIR 1965 SC 942 and submitted that the applicant would be entitled to bail. It is further submitted that the investigation is completed and charge sheet is filed. Hence, further incarceration would be unwarranted and unjustified.

7. Taking into consideration the statement of Rohini, papers of investigation and the submissions advanced across the Bar, this Court is inclined to grant bail to the applicant.”

8. ***"Rajoo and Ors. versus State of M.P."*** AIR 2009 SC 858 with specific reference to observations in paragraph 9, which reads to the effect:-

“9. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspect and should be believed, the more so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are

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involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration. Reference has been made in Gurmit Singh's case to the amendments in 1983 to Sections 375 and 376 of the India Penal Code making the penal provisions relating to rape more stringent, and also to Section 114A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113A and 113B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two Sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualized as the presumption under Section 114A is extremely restricted in its applicability. This clearly shows that in so far as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined.

14. It has also been submitted on behalf of the applicant that there was a substantial delay in the registration of the FIR which the prosecution has been unable to account for and thus, the applicant be released on bail. It has further been submitted on behalf of the applicant that the prosecutrix who accompanied the applicant, did so

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of her own accord and thus, the allegations levelled against the applicant of having allegedly abducted her or raped her or intimidated her in any manner are wholly false.

15. The State has vehemently opposed the prayer made by the applicant and likewise the prayer made by the applicant is opposed on behalf of the prosecutrix as well who joined the Court proceedings through Video Conferencing. It has been reiterated on behalf of the State that the date of birth of the prosecutrix is 10.10.2004 and that she was below the age of giving consent and that the photographs that have been placed on record by the applicant to show that the prosecutrix was in a happy state of mind, do not aid to assist the applicant in any manner in his prayer seeking grant of bail, in as much as, the available records during the investigations conducted, establish the date of birth of the prosecutrix to be 10.10.2002 and not 10.10.2004 and thus, the prosecutrix clearly being a minor on the date of the alleged commission of the offence, the same itself negates the grant of bail to the applicant.

16. The State has also submitted through the status report as well as the submissions made on behalf of the State that the photographs that have been placed on record by the applicant are wholly manipulated that had been taken after the applicant had threatened and coerced her that he would get her father and brother killed if she did not accede to his demands.

17. The prosecutrix joined the proceedings on 30.09.2021 through Video Conferencing and reiterated emphatically that she was coerced

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into sexual relations with the applicant by the applicant who threatened to kill her father and brother if she did not give in to him.

18. The factum that the date of birth of the prosecutrix was got updated in her Aadhaar Card by putting a wrong date of birth of the prosecutrix by the applicant as being 10.10.2002 in place of 10.10.2004, cannot be overlooked.

19. Thus, the facts of the verdicts relied upon by the applicant are not in *pari materia* with the facts of the instant case.

20. In these circumstances thus, the prosecutrix being a minor at the time of the alleged offence coupled with her submissions of threats meted out to her by the applicant to compel her to indulge into sexual relations with him, it is held that there is no ground whatsoever for grant of bail to the applicant.

21. The application is declined.

22. Nothing stated hereinabove shall however amount to any expression on the merits or demerits of the trial that may take place.

ANU MALHOTRA, J.

OCTOBER 01, 2021

'Neeta Chopra'

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