

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

Date of decision 16th November, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 3971/2021**

ANIL KUMAR

..... Petitioner

Through Mr. Mohit Mathur, Senior Advocate
with Mr. Vijay S Bishnoi, Mr. Harsh
Gautam, Advocates

versus

STATE

..... Respondent

Through Mr. Sanjeev Sabharwal, APP for the
State with SI Babita, Police Station
Prashant Vihar

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The petitioner seeks bail in FIR No. 558/2021 dated 30.08.2021 registered at Police Station Prashant Vihar for offences under Section 354, 354A IPC read with Section 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. The brief facts leading to the present case are as follows:-

- i. The FIR was registered on the complaint of the prosecutrix, who is 16 years of age. It is stated that the prosecutrix resides with her parents and she used to take Mathematics classes from the petitioner since 10th Standard. It is stated that she is now in 11th Standard and offline classes begun on 29.08.2021.

- ii. It is stated that on the first day of her offline class, the petitioner asked her to stay back to understand the concept taught on the previous day. He gave his notebook and went to take classes for 10th Standard. It is stated that when 10th Standard students left, the petitioner came to her to clear her doubts. He asked the prosecutrix about her 10th Standard marks and asked for a party.
- iii. It is stated that the petitioner told her that she is cute and hugged her and even pulled her cheek. It is stated that the prosecutrix thought that the petitioner was doing it as an elder but that touch felt bad and uncomfortable. It is stated that when the prosecutrix packed her bag and was leaving, the petitioner stopped her and said that she was very cute and touched her cheek, closed the door and kissed her on her right cheek and then on the left.
- iv. It is stated that the prosecutrix was scared since she was alone, so she did not scream. It is stated that she felt very uneasy and was in pain. It is also stated that she left but she was feeling extremely uncomfortable because of the manner in which the petitioner had hugged her three to four times as well as the manner in which he was talking to her.
- v. It is stated that she called her parents on her way home. Material on record reveals that after she went home, a PCR call was made and it was recorded *vide* DD Entry No. 49A. The Police reached the residence of the prosecutrix and met the prosecutrix along with her parents wherein her mother told the Police that the prosecutrix had been molested by the petitioner herein.

- vi. It is stated that an NGO was called and the victim was counselled. Medical examination was conducted *vide* MLC No.2518/2021. A written complaint was handed over to the Police and the instant FIR being FIR No. 558/2021 dated 30.08.2021 was registered at Police Station Prashant Vihar for offences under Section 354, 354A IPC read with Section 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) was lodged.
- vii. The petitioner was arrested on the same day i.e. 30.08.2021. Charge sheet stands filed. The petitioner filed an application for grant of bail which was dismissed vide order dated 04.10.2021 passed by the learned Additional Sessions Judge stating that a reading of the facts shows that an offence under Section 10 of the POCSO Act is made out which is a more serious offence than the offence under Section 8 of the POCSO Act. The petitioner has approached this Court by filing the instant bail application.
3. Mr. Mohit Mathur, learned Senior Advocate contends that a reading of the FIR shows that no offence under Section 8 of the POCSO Act against the petitioner is made out. He states that Section 7 of the POCSO Act defines sexual assault and the allegations in the FIR are not sufficient to bring the case within the ambit of Section 7 of the POCSO Act and, therefore, the petitioner cannot be punished under Section 8 of the POCSO Act. He states that assuming that there is sufficient material to proceed against the petitioner for an offence under Section 8 of the POCSO Act, for which the maximum punishment is only 5 years. He contends that the petitioner is in custody from 30.08.2021 and charge sheet stands filed and, therefore, there is no chance of the petitioner tampering with the evidence.

4. Mr. Mohit Mathur, learned Senior Advocate strenuously contends that after the incident, the prosecutrix first went to a rival coaching centre i.e. Ajay Dang's Coaching Institute at 12:53 PM. He states that, had the prosecutrix been mentally traumatised, she would not have gone to the rival coaching centre and would have instead headed straight to her home. He further states that the prosecutrix did not shout and that such a conduct indicates that the prosecutrix was not subjected to any trauma. He states that the petitioner is only a teacher in the institute and is not the owner of the institute. Learned Senior Counsel would rely on the judgement of the Supreme Court in Gurcharan Singh & Ors. v. State (Delhi Administration), **1978 (1) SCC 118** to state that the petitioner should be granted bail.

5. *Per contra*, Mr. Sanjeev Sabharwal, learned APP, contends that with the observations made by the learned Sessions Judge that an offence under Section 10 of the POCSO Act is made out in the present case does not require interference. He relies on Section 9(l) and 9(p) of the POCSO Act to contend that the prosecutrix is a victim of aggravated sexual assault for which the punishment is prescribed under Section 10 of the POCSO Act and provides for a minimum imprisonment for a period of 5 years. He states that the prosecutrix was alone in the institution from 12:30 PM to 1:12PM, and this is substantiated by the fact that in the CCTV footage, no person has been seen entering/leaving the place. He further states that in view of the seriousness of the offence and in view of the fact that the petitioner is a tutor, there is a possibility of the petitioner exerting pressure on the prosecutrix.

6. Heard Mr. Mohit Mathur, learned Senior Advocate appearing for the petitioner and Mr. Sanjeev Sabharwal, learned APP for the State and perused the material on record.

7. The POCSO Act has been enacted to protect children from offences of sexual assault, sexual harassment and pornography. This Act was introduced because child victims were not getting adequate protection because the provisions in the IPC were not sufficient to safeguard the interests of the child victims. It was found that an Act should be brought out which operates in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage to ensure healthy physical, emotional, intellectual and societal development of the child.

8. The Supreme Court has elaborated on the reason for bringing out the POCSO Act in Eera through Dr. Manjula Krippendorf v. State of NCT of Delhi & Anr, **2017 (15) SCC 133**. The relevant portion of the said judgment reads as under:-

“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 healthy

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.”

9. The fact that the petitioner went to a rival tutor's office immediately after the offence cannot be taken as relevant criterion here and it cannot be said that she has been asked to file the instant complaint. It can be said that the prosecutrix was so disturbed by the action of the petitioner that she went to the rival tutor to secure admission there. She has similarly given a call to her parents and went home and a complaint was given to the Police.

10. The prosecutrix is only a 16 year old child. It has been observed by the Supreme Court that paramount consideration is to be given to the well being of a child whose mental psyche is vulnerable. It is well known that trauma suffered by a young girl child of 16 years of age is long lasting and it take years for a child to come out of that trauma. The trauma hinders the growth of the child and also leads to various psychological problems. The petitioner is a tutor who can influence the witnesses. If charged for offence

under Section 9 of the POCSO Act, the petitioner can be sentenced for a minimum incarceration of 5 years.

11. Granting bail to the petitioner at this stage i.e. even before the charges are framed, will lead to defeating the very purpose and the object of the POCSO Act. This Court is, therefore, not inclined to grant bail to the petitioner at this stage.

12. The bail application is rejected. Pending application(s), if any stand disposed of.

13. Be it noted that this Court has not made any observations on the merits of the case.

SUBRAMONIUM PRASAD, J

NOVEMBER 16 2021

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