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

% *Reserved on: 28th November, 2023*
Date of Decision: 07th December, 2023

+ **BAILAPPLN. 958/2023**

ADITYA RAJ

..... Petitioner

**Through: Ms. Vagisha Kochar and
 Mr. Jujhar Singh, Advocates**

V

STATE & ANOTHER

....Respondents

**Through: Mr. Utkarsh, APP for
 State/R-1 with SI Manisha,
 P.S. Punjabi Bagh.
 Mr. Kartik Gudi, Mr. Robin
 Singh and Ms. Tanisha Jain,
 Advocates for complainant.**

CORAM

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

1. The present bail application is filed under section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “**the Code**”) on behalf of the petitioner for grant of regular bail in FIR bearing no. 0653/2022 dated 18.10.2022 registered under sections



354C/354D/506/34 of the Indian Penal Code, 1860 (hereinafter referred to as “**IPC**”) at P.S. Punjabi Bagh.

2. The present FIR was got registered under sections 354C/354D/506/34 IPC at P.S. Punjabi Bagh on the basis of complaint made by the complainant/prosecutrix/respondent no. 2 (hereinafter referred to as “**the complainant/prosecutrix**”) wherein it was alleged that the complainant/prosecutrix in 2016 was studying in Ganga International School, Hirkundna and met the petitioner being her senior. The petitioner and the complainant/prosecutrix became friends. The complainant/prosecutrix in 2017 took admission in Amity International School, Saket, Delhi for pursuing higher studies and was staying in the school campus hostel. The petitioner in 2016 proposed the complainant/prosecutrix for a relationship with her. The complainant/prosecutrix initially refused for relationship with the petitioner as she wanted to focus on her studies. The petitioner continued to follow the complainant/prosecutrix and the complainant/prosecutrix subsequently accepted the proposal of the petitioner. The petitioner and the complainant/prosecutrix used to talk with each other on social media. The petitioner became over possessive and insecure towards the



complainant/prosecutrix which was affecting studies of the complainant/prosecutrix and due to this reason, the complainant/prosecutrix did not want to continue with her relationship with the petitioner. The petitioner also once threatened the complainant/prosecutrix outside the library in her college. The petitioner also started to call and message classmates of the complainant/prosecutrix and other people in her college. The petitioner sent a suicide note addressed to the parents of the complainant/prosecutrix on 23.06.2022. The petitioner also sent a video on 06.07.2022 depicting attempt to suicide by him. Pushpanjali, sister of the petitioner also used to call the complainant/prosecutrix and threatened the complainant/prosecutrix to come back in a relationship with the petitioner. The petitioner on 07.08.2022 called the father of the complainant/prosecutrix and threatened him and also abused the complainant/prosecutrix. The petitioner also hacked social media account of the complainant/prosecutrix. The petitioner also retrieved contacts of the complainant/prosecutrix and texted them various troublesome and obscene messages and pictures of the complainant/prosecutrix. The petitioner also asked the complainant/prosecutrix for sexual favour for



him. The petitioner also uploaded indecent pictures of the complainant/prosecutrix on social media. The complainant/prosecutrix also made other allegations in her complaint which resulted into registration of FIR.

2.1 The statement of the complainant/prosecutrix was also recorded under section 164 of the Code on 19.10.2022 by the court of Ms. Akansha Gautam, Metropolitan Magistrate, West, Tis Hazari Courts, Delhi. The complainant/prosecutrix in her statement under section 164 of the Code alleged that the petitioner established and did sexual intercourse with her after he made to her to drink an intoxicating drink despite her refusal and without her consent. The petitioner did sexual intercourse with the complainant/prosecutrix many times at various places and also made her videos and clicked her obscene pictures. The charge sheet was filed after conclusion of investigation for offences punishable under sections 354C/354D/506/34 IPC, section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “**POCSO Act**”) and section 67/67(A)/66E of the Information Technology Act, 2000 (hereinafter referred to as “**IT Act**”).



The trial is stated to be pending in the court of Ms. Harleen Singh, Additional Sessions Judge-01, West, Tis Hazari Courts, Delhi.

2.2 The petitioner was arrested on 12.11.2022. The petitioner filed an application under section 439 of the Code for grant of regular bail which was dismissed vide order dated 04.03.2023 passed by the court of Ms. Harleen Singh, Additional Sessions Judge-01, West, Tis Hazari Courts, Delhi. The relevant portion of the impugned order is reproduced as under-

14. As per the chargesheet, various social media records of the accused Aditya Raj, including IP addresses, records from Facebook, Hathway, Google etc. have been obtained. Certain records mention the name of the Subscriber as 'Aditya Raj'. The allegations against the accused are very grave. The matter is still at the initial stage. The prosecutrix/victim is yet to depose before the court, as charges are yet to be framed against the accused persons. In case the accused Aditya Raj is enlarged on bail, there is every possibility of him trying to intimidate or influence the prosecutrix/victim and she may not be able to depose freely in the court.

15. Further, the judgments relied upon by the Ld. Counsel for the applicant/accused do not help his case, as they are based upon different factual matrixes. For instance, in the case of Dharmender Singh @ Saheb (Supra), charges had already been framed and the testimony of the complainant was also underway, with the court observing that due to the restricted functioning of the courts due to Covid, the trial was not likely to be completed any time soon. Further, in Praduman's case (supra), the prosecutrix did not object to the grant of bail to the accused in that case. Furthermore, in



Ajay Kumar's case (supra), the prosecutrix had stated that she got married to the accused therein out of her own free will.

16. For the foregoing reasons, no ground is made out to grant bail to the accused Aditya Raj. The present bail application of the accused Aditya Raj accordingly stands dismissed.

3. The petitioner prayed for grant of bail on grounds that the petitioner is a young boy aged about 24 years with clean antecedents. The petitioner is preparing for Civil Services and is having deep roots in the society and belongs to a family of government servants. There is no likelihood for the petitioner either fleeing from justice or absconding if granted bail. The petitioner and the complainant/prosecutrix became friends in school and after completing school, they started to meet each other on regular intervals. The petitioner and the complainant/prosecutrix entered into a relationship only after the complainant/prosecutrix attained the age of 18 years. The complainant/prosecutrix also sent love letters to the petitioner. The complainant/prosecutrix wanted to marry the petitioner and even proposed the petitioner for marriage but the petitioner was preparing for civil services and asked the complainant/prosecutrix to wait for some time. The complainant/ prosecutrix along with family members started to threaten the petitioner to marry her otherwise the



petitioner would be implicated in a false case. The present FIR was lodged on the basis of false, frivolous and baseless allegations. The complainant/prosecutrix made false and fabricated allegations in her statement under section 164 of the Code only to falsely implicate the petitioner in the present case. The complainant/prosecutrix made different statements in complaint, statement under section 164 of the Code and MLC. The complainant/prosecutrix also refused for internal examination. The complainant/prosecutrix along with her family members in a pre-planned manner gave criminal colour to a consented, loving friendship and misused the provisions of POCSO Act. It is not established that the complainant/prosecutrix was below the age of 18 years at the time of incident. There is delay of more than 5 years in registration of the FIR and as such is afterthought. The petitioner is in judicial custody since 13.11.2022. The charge sheet has already been filed after conclusion of investigation. The petitioner is ready to submit himself to any condition/conditions to be imposed if bail is granted and the petitioner shall not misuse the liberty to be granted to him. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts



of the case and shall not tamper with the evidence. The petitioner raised other pleas for grant of bail.

4. The respondent no.1/State filed Status Report wherein it was mentioned that present FIR was got registered initially under sections 354C/354D/506/34 IPC on complaint made by the complainant/prosecutrix on allegations as stated hereinabove. The statement of the complainant/prosecutrix was also recorded under section 164 of the Code wherein the complainant/prosecutrix made allegations of sexual intercourse by the petitioner against her will and thereafter, offences under section 376 IPC and under section 6 of the POCSO Act were also added.

4.1 The complainant/prosecutrix during further investigation produced a pen drive containing screenshots of Instagram account created by the petitioner which he used to make photos of the complainant/prosecutrix viral. The Investigating Officer during further investigation issued and served notices under section 91 of the Code to Facebook, Hathway and Google regarding records of e-mail ID and it was found that IP address of said ID matched the devices being used by the petitioner and the subscriber of Hathway subscription was



found to be of the petitioner using which the petitioner had made all fake accounts and circulated the obscene photographs and videos of the complainant/prosecutrix. It was also found as per reply of the Google records that the recovery ID and 2-step verification mobile number of the e-mail ID of the complainant/prosecutrix were also attributed to the petitioner.

4.2 During investigation of the petitioner after arrest, two mobile phones, one laptop and one tablet were recovered at his instance. One Hathwaycable and Datacom Ltd. router were also found installed in the house of the petitioner which were also seized. Two mobile phones, one laptop and one tablet which were recovered at instance of the petitioner were analysed and on analysis, nude pictures and videos of the complainant/prosecutrix were found in those devices and fake accounts of the complainant/prosecutrix were also created from using the same Hathways connection and the fake IDs were also found logged in at time of seizure. It was also found that the WhatsApp account used by the petitioner to share nude pictures and videos of the complainant/prosecutrix was also used by the petitioner in a separate mobile phone and the same account was used by the petitioner to share



those obscene pictures and videos with the mother and father of the complainant/prosecutrix and also on Instagram accounts created by the petitioner.

4.3 It was also found during further investigation that iPhone 11 used by the petitioner was analysed and a folder named “Hidden” was found in the photo gallery consisting 1170 items which included nude photographs of the complainant which were shared on Instagram by making fake accounts by the petitioner. The father of the complainant/prosecutrix also submitted iPhone 12 pro wherein on analysis it was found that that videos and screenshots were sent from mobile number used by the petitioner on his number.

4.4 It was also surfaced during investigation that the petitioner sent a parcel containing Face Serum, Durex Condom and Durex Lubricants to the father of the complainant/prosecutrix through Nykaa order.

4.5 That multiple calls were exchanged between the petitioner and the complainant/prosecutrix and between co-accused Pushpanjali and the complainant/prosecutrix. The date of birth of the complainant/prosecutrix was also found to be 30.06.2001. The charge sheet has already been filed after completion of investigation. FSL



report in respect of exhibits collected during investigation is already received which has already been filed by supplementary charge sheet. It is stated that bail application be dismissed.

5. The counsel for the petitioner argued that the petitioner has been falsely implicated in the present FIR on the basis of false, frivolous and baseless allegations. The complainant/prosecutrix gave a detailed written complaint dated 18.10.2022 against the petitioner which is the basis of registration of present FIR under sections 354C/354D/506/34 IPC and thereafter in her statement under section 164 of the Code, the complainant/prosecutrix added allegations of rape committed by the petitioner on her 16th birthday i.e. on 30.06.2017 to add the provisions of POCSO Act. The complainant/prosecutrix in MLC mentioned the date of incident as February 2018 and with alleged history of **‘Patient got raped multiple times on context of getting married’**. The complainant/prosecutrix as such gave three different dates and versions of incident within a period of 24 hours which is highly improbable. The complainant/prosecutrix also refused for internal examination.



5.1 The counsel for the petitioner further argued that there was delay of more than 5 years in lodging the present FIR which is afterthought. The petitioner is a young boy with clean antecedents and having deep roots in the society with a family of government servants. There is no likelihood of the petitioner either fleeing from justice or absconding if granted bail.

5.2 The petitioner and the complainant/prosecutrix became friends in the school and continued to meet each other regularly even after completing education in school and entered into relationship after attaining the age of majority of 18 years by the complainant/prosecutrix. The complainant/prosecutrix also sent love letters to the petitioner and wanted to marry the petitioner. Now the complainant/prosecutrix does not want to proceed further against the petitioner. The counsel for the petitioner state that the petitioner is in judicial custody since 12.11.2022 and trial would take time to conclude. The counsel for the petitioner relied upon judgments of the Supreme Court in **Praduman V The State (Govt. of NCT, Delhi) &Anr.**, Bail App. no. 2380/2021; **Dharmander Singh @ Saheb V. The State (Govt. of NCT, Delhi)**, Bail App. no. 1559/2020;



Jayantibhai Babubhai Alani V. State of Gujarat, CrI. M.C. 8476/2018; **Rahul Chandel Jatav V. The State of Madhya Pradesh**, CrI. M.C. 24691/2023 and prayed that the petitioner be released on bail.

6. The Additional Public Prosecutor argued that the petitioner committed rape with a minor girl which is a serious offence. If there is any discrepancy in the complaint and statement of the complainant/prosecutrix under section 164 of the Code, it can be explained during trial. The delay in registration of FIR if any, can be explained during trial after giving an opportunity to the prosecution to lead evidence. The bail application is liable to be dismissed.

7. It is reflecting that the complainant/prosecutrix in the year 2016 was studying Ganga International School where he met the petitioner who was her senior. The petitioner and the complainant/prosecutrix developed relationship with each other and have become friends. The complainant/prosecutrix in the year 2017 has taken the admission in Amity International School, Saket to pursue higher studies and was studying in the school campus. The complainant/prosecutrix continued their relationship. The petitioner has also taken obscene photos/videos



of the complainant which is alleged to have been put on social media. The petitioner filed a complaint on 09.08.2022 wherein implicated the petitioner and his sister i.e. co-accused Pushpanjali on the allegations as stated in the FIR. Thereafter on the basis of the complaint, the present FIR bearing no.0653/2022 was got registered under sections 354C/354D/506/34 IPC and the said complainant/prosecutrix did not make any allegation regarding the committal of rape or sexual harassment against the petitioner. During the investigation on 19.10.2022 i.e. the statement of complainant/prosecutrix was recorded wherein the complainant/prosecutrix for the first time has levelled of allegations of rape or committal of sexual assault by the petitioner wherein he stated that on the day of her 16th birthday, the petitioner took her to his flat where he offered the complainant/prosecutrix to drink beer and committed sexual intercourse with her and also continued this act subsequently also. The complainant/prosecutrix was also taken to Acharya Shree Bhikshu Government Hospital, Moti Nagar, New Delhi on 19.10.2012 at about 11:00 P.M. for medical examination where the complainant/prosecutrix has complained/alleged about the sexual assault in the month of February,



2018 by the petitioner and subsequently also on the assurance of marriage.

8. A coordinate bench of this court in **Dharmander Singh @ Saheb V. The State (Govt. of NCT, Delhi)** Bail Appl. 1559/2020 decided on 22.09.2022 has laid down the parameters that are to be followed when considering bail of an accused person under the POCSO Act. The relevant portion of the judgment reads as:

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.

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.

9. A coordinate bench of this court in **Praduman V. The State (Govt. of NCT, Delhi) & Anr.**, Bail Appl. no. 2380/2021 decided on 05.10.2021 granted bail to the accused person on the ground that the



statements of the prosecutrix has contradictions. The relevant portion of the judgment reads as:

20. A perusal of the above mentioned facts show that the prosecutrix has given three different statements. In the MLC which was conducted prior to the FIR she does not name the petitioner. The MLC was conducted because prosecutrix who was below the age of 18 years was found to be pregnant. The FIR was registered on the next day when she named the petitioner. The statement of the prosecutrix under Section 164 CrPC was recorded wherein she does not name the petitioner.

X

X

22. Consensual sex has been in legal grey area because the consent given by minor cannot be said to be a valid consent in the eyes of law. The short question which arises is as to whether the petitioner should be granted bail or not. Whereas, what has become a trite and unfortunate practice is that the Police are filing POCSO cases at the behest of the family of a girl who object to her friendship and romantic involvement with a young boy. The rigor of the law is therefore being misapplied and subsequently misused. The age of the petitioner and the prosecutrix, the photograph which categorically pointed towards a relationship between the two and the discrepancies in the statements given at the time of the recordings of the MLC, the FIR and the statement under Section 164 CrPC are all mitigating factors which tilt the balance towards the grant of bail to the accused.

10. It is reflecting that the complainant/prosecutrix has taken 03 different stands in the complaint dated 18.10.2022 and the statement under section 164 Cr.P.C. recorded on 19.10.2022 and at the time of



his medical examination on 10.10.2022 at about 11:00 P.M. The complainant/prosecutrix has also refused for internal medical examination.

11. As stated hereinabove, the counsel for the petitioner argued that the complainant/prosecutrix has taken different stands on 03 occasions within 24 hours as such the entire complaint of the complainant/prosecutrix is raising serious doubt to her version of committed of rape/sexual assault by the petitioner. The complainant/prosecutrix was aged about 16 years and as per the Status Report, her date of birth was 30.06.2001. The petitioner is aged about 24 years. It is also pertaining to mention that the present FIR was also got registered in the year 2020 and as per the allegations made by the complainant/prosecutrix, the petitioner for the first time has committed the act of rape/sexual assault in the year 2017 as such there is a delay of 05 years in the registration of FIR which the prosecution required to explain during the trial. The arguments advanced by the Additional Public Prosecutor as referred hereinabove can be considered during the trial of the case particularly, in light of the



different stands taken by the complainant/prosecutrix as mentioned hereinabove.

12. The petitioner is stated to have deep roots in the society and is not a flight risk. The investigation has already been completed and the petitioner is in judicial custody since 13.11.2022. After considering all facts, the petitioner is admitted to bail on furnishing personal bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with 02 sureties of the like amount to the satisfaction of the concerned trial court on the following conditions:-

- i. That the petitioner shall not contact the complainant/prosecutrix in any manner including social media.**
- ii. After release from the jail, the petitioner shall participate in the trial without any default unless and until his personal appearance is exempted by the trial court.**
- iii. The petitioner shall not extend threat or try to influence the witnesses in any manner.**
- iv. The petitioner shall mark his presence in the concerned local police station on 04th Friday of each English Calendar month till the conclusion of the trial.**
- v. The petitioner shall not leave the country without prior permission of the court.**
- vi. The petitioner is directed not to place any picture or any other thing relating to the complainant/prosecutrix on the social media in future.**
- vii. The petitioner shall provide his mobile/contact number to the Investigating Officer immediately after release**



from the jail so that the petitioner can be contacted in future.

- viii. The petitioner shall provide his residential address as well as contact mobile number in case, there is any change to the trial court without any delay and not later than 03 days.

13. The trial court is also expected to expedite the trial and conclude without any delay.

14. The application stands disposed of along with pending application, if any.

DR. SUDHIR KUMAR JAIN

(JUDGE)

DECEMBER 07, 2023

j/ak