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

**Reserved on: 24<sup>th</sup> January, 2023**

**Pronounced on: 7<sup>th</sup> February, 2023**

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**BAIL APPLN. 1177/2022**

**VIPIN SINGH**

..... Petitioner

Through: Mr. Lav Kumar Agrawal, Mr. Gajendra  
Singh & Ms. Usha Garg, Advocates.

versus

**STATE AND ANR.**

..... Respondents

Through: Mr. Utkarsh, APP for State with SI  
Maneeta, PS Neb Sarai.  
Mr. Abhishek Saket, CGSC with Ms.  
Sanna Harta, Advocate for UIDAI.  
Mr. Shiv Chopra, Ms. Aadhyaa  
Khanna, Mr. Siddharth Arora & Ms.  
Nikhil Srivastava, Advocates for  
victim/prosecutrix.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT SHARMA**

**JUDGMENT**

**AMIT SHARMA J.**

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeks grant of regular bail in case FIR No. 118/2021 dated 10.04.2021, under Sections 363/366/376/506 of the Indian Penal Code,

1860 ('IPC') & Section 6 of the Protection of Children From Sexual Offences Act, 2012 ('POCSO'), registered with PS Neb Sarai.

2. The brief facts of the present case are as follows:

- i. The father of the victim/prosecutrix made a complaint on 10.04.2021 at PS Neb Sarai, stating that his daughter had been abducted from the house on the morning of 07.04.2021 at about 07:20 AM. It was further stated that he suspected the present applicant had abducted his daughter and was afraid that he will marry his daughter, who was a minor. On the basis of the aforesaid complaint, FIR No. 118/2021, under Section 363 of the IPC was registered at PS Neb Sarai.
- ii. On 02.07.2021, a Special Team of the PS Neb Sarai received a communication and reached Badmalik Road, Vishwamil Rai, Sonapat, from where the victim/prosecutrix was recovered alongwith the present applicant.
- iii. The victim/prosecutrix was taken to All India Institute of Medical Sciences, New Delhi for her medical examination. However, she refused to undergo internal examination.
- iv. During the course of investigation, on 02.07.2021, the statement of victim/prosecutrix under Section 164 of the CrPC was recorded, wherein she stated as follows:

“Papa scolded me one day. Out of anger, I left my house and went to Sonipat to my friends place. I went to him on 10 June and came back today. Nothing wrong happened with doing this stay. That’s all I want to say.”
- v. Apart from the above, the statement of victim/prosecutrix was also recorded under Section 161 of the CrPC, wherein she again stated that on account of her quarrel with her father, she had gone with her school

friend, i.e., the present applicant to his house in Sonapat. It is also recorded that the parents of applicant were also in Sonapat and that the applicant did not do anything wrong with her.

- vi. Thereafter, she was produced before the concerned Child Welfare Committee ('CWC') on 03.07.2021. Before the CWC, she stated that nothing wrong was done with her, and on directions of the CWC, she was released into the care and custody of her father.
- vii. The applicant was arrested in the present FIR on 02.07.2021 under Section 363 of the IPC and since the same is a bailable offence, he was released on bail.
- viii. On 05.07.2021, the victim/prosecutrix came along with her brother to the Police Station and made a request for her statement under Section 164 of the CrPC to be recorded again and to undergo a medical examination.
- ix. On 06.07.2021, the statement of victim/prosecutrix under Section 164 of the CrPC was recorded, wherein she stated as under:

“I left my house on 7 April 2021 without informing my family and went to Rai, Sonapat to meet my friend Vipin. After staying there for 2 days, he managed a job for me in a company. I stayed with him for 3 months. I loved him, so I ran away. Now I do not love him. He had talked to me regarding our marriage. He had told me regarding his household and family and said that he would give me everything. He made physical relations with me for 10-12 times. He used to beat me, used to drink. My elder mummy Kamini Devi, her husband Satinder, their children Divya, Priya, Ashu and maternal uncle of Vipin, Avinash had told me that boy is nice and I should go with him, so I went with him.

After 2 minutes again said,

Vipin used to threaten me that he would not spare me in case I disclose any thing about him to instigate him. When

my statement was recorded in the Court last time, I was feeling paniky and I was not feeling well.”

- x. During investigation, in her statement recorded under Section 161 of the CrPC, she stated that she was introduced to the applicant in October, 2020. It was further recorded that physical relations were made between the applicant and the victim/prosecutrix on 05.03.2021 at the residence of applicant’s maternal uncle. It was further recorded that on 07.04.2021, she left the house alongwith the applicant, without informing her family, at the instance of the latter. As per the said statement, on 09.04.2021, marriage was performed between the victim/prosecutrix and the applicant, in the room of the latter. The marriage was performed by the applicant putting *sindoor* in her *mang* and making her wear a *mangalsutra*.
  - xi. During the course of investigation, as per allegations made by the victim/prosecutrix, offences under Sections 376/506 of the IPC and Section 6, POCSO Act were added.
  - xii. During investigation, the proof of age of the victim/prosecutrix was taken from SDMC, Nigam Pratibha Kanya Vidyalala, Neb Sarai and the date of birth of the victim/prosecutrix was stated to be 07.03.2004, making her a minor at the date of the incident.
  - xiii. The present applicant was re-arrested in the present FIR on 16.10.2021.
  - xiv. After completion of the investigation, chargesheet was filed under Sections 363/366/376/506 of the IPC and Section 6 of the POCSO Act.
3. Learned counsel appearing on behalf of the applicant submits that the present applicant and the victim/prosecutrix lived in the same locality and knew each other since September, 2020. It is further stated that the

victim/prosecutrix was a major on the date of FIR, i.e., 10.04.2021, as her date of birth is 07.03.2001 as per her Voter ID Card bearing no. YRI3204575 and PAN Card No. KBHPK5369G issued to her by the Income Tax Department on 28.10.2020. It is submitted that the victim/prosecutrix had shown the said Voter ID Card and PAN Card as proof of her age when physical relations were established between her and the applicant for the first time, consensually.

4. It is further stated that the victim/prosecutrix, in her statement under Section 161 and 164 of the CrPC, stated that applicant was her friend, and she was living with him, at Sonapat, Haryana of her own free will, as the applicant's wife. It is pointed out that this fact is also corroborated from the recovery memo dated 02.07.2021 and also from the statement of the landlord of the property from where the victim/prosecutrix and the applicant were recovered.

5. It is also urged on behalf of the applicant that the first MLC of the victim/prosecutrix conducted on 02.07.2021, immediately after recovery, showed no external injuries. However, in her MLC conducted on 05.07.2021, the injuries recorded in therein are - “multiple cut marks on the left forearms, old, healed”. It is the case of the learned counsel that these injuries will be attributed to the period when the victim/prosecutrix was in the custody of her father.

6. In the statement of the victim/prosecutrix dated 06.07.2021, recorded under Section 161 of the CrPC which was recorded in question/answer form, learned counsel for the applicant draws attention of this Court to answer to question no. 17, wherein upon asking if she had started loving the applicant, the victim/prosecutrix stated that she had started loving the present applicant

and they had physical relations, about which she did not tell anyone.

7. In support of his submissions, learned counsel for the applicant relies upon the following judgments:

- i. Mahabir Mehto v. State, 2019 SCC OnLine Del 8757.
- ii. Hanzia Iqbal v. The State & Anr., BAIL APPLN. 1926/2022
- iii. Vicky v. State of NCT of Delhi, MANU/DE/0290/2021
- iv. Dharmender Singh v. The State (Govt. of NCT, Delhi), MANU/DE/1775/2020

8. *Per contra*, learned APP for the State has submitted that the victim/prosecutrix has made very categorical allegations against the present applicant. The initial statement made by the victim/prosecutrix was on account of the fact that she was in fear from the present applicant, which is also recorded in her statement under Section 161 of the CrPC. It has been stated that the applicant used to threaten her if she disclosed his conduct to anyone. It is further stated that the applicant forcefully locked her in the house in Sonapat and did not allow her to leave and she was rescued by the police on 02.07.2021. It is further submitted that as far as the age of the victim/prosecutrix is concerned, the matriculation certificate of Central Board of Secondary Education should be considered as proof of age as Voter ID Card and PAN Card are not proof of age as per law. It was also urged that Section 29 of the POCSO Act will apply. Section 29 of the POCSO Act provides as follows:

**“29. Presumption as to certain offences.—**Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.”

9. Learned counsel appearing on behalf of the victim/prosecutrix from Delhi High Court Legal Services Committee also argued along similar lines as learned APP for the State. Learned counsel for the victim/prosecutrix submitted that the determination of the age of the victim in a POCSO case would be on the same parameters as provided for under the Juvenile Justice (Care and Protection of Children) Act, 2015. It is submitted that as per Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, the primary document to be considered as proof of age is the Matriculation Certificate and in absence of that certificate, other documents would be taken into consideration. Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 reads as under:

“(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence

whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.”

**10.** This Court, *vide* order dated 01.11.2022, directed the Unique Identification Authority of India ('UIDAI') to furnish details of the date of birth of the victim/prosecutrix, as per records relating to Aadhar Card maintained by the said department. In response to the aforesaid direction, the UIDAI placed on record, a report wherein it was mentioned that initially date of birth of the victim/prosecutrix, as per their record was 07.03.2004. Further on 13.10.2020, a request was made to change her date of birth from 07.03.2004 to 07.03.2001 on the basis of PAN Card. On the basis of said request, the date of birth was altered and changed to 07.03.2001. It has also been submitted that subsequently, there have been attempts to change the date of birth again on the basis of school leaving certificate/marksheet and birth certificate. It is pointed out that date of birth in the matriculation certificate is 07.03.2004. Even as per the birth certificate issued by NCT of Delhi, it is 07.03.2004.

**11.** It is pertinent to note that the Juvenile Justice (Care and Protection of Children) Rules, 2007 stand repealed by the Juvenile Justice (Care and Protection of Children) Model Rules, 2016. The procedure for determining age is now part of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which reads as under:

**“94. Presumption and determination of age.—**(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under Section

14 or Section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

**12.** Be that as it may, the enquiry with respect to the date of birth of the victim/prosecutrix would be in the jurisdiction of the learned trial Court, who shall determine, by way of necessary and relevant evidence, the correct date of birth. For the purpose of the present application, this Court cannot agree with the submissions made by the counsel for the applicant that the age of the victim/prosecutrix should be taken as per her Aadhar Card and PAN Card. While disposing of this bail application, the date of birth is being taken as per the case of the prosecution, i.e., 07.03.2004. This is without prejudice to the right of the applicant to demonstrate otherwise before the learned Trial Court.

**13.** In view of the above, the age of the victim/prosecutrix at the time of the

incident comes to about 17 years and therefore, Section 29 of the POCSO Act would require consideration. The learned counsel for the applicant relies upon a judgment of coordinate Bench of this Court in Dharmender Singh v. The State (Govt. of NCT, Delhi) (*supra*), wherein it has been held that if an application for bail is being considered before the charges have been framed, Section 29 of the POCSO Act will have no application and that the grant or refusal of bail would be considered according to the usual and ordinary settled principles. It is pointed out that in the present case, charges are yet to be framed.

**14.** Coming to the facts of the present case, it is an admitted position that in all the statements given by the victim/prosecutrix, she has not alleged that the present applicant had made any physical relations with her on the pretext of a promise to marry. It is pertinent to note that even after the change in her stance, in her second statement recorded under Section 164 of the CrPC, she admits the fact that she loved the applicant and ran away with him. She has further stated that the marriage was performed between the applicant and herself on 09.04.2021 by the applicant putting *sindoor* in her *mang* and making her wear a *mangalsutra*.

**15.** No doubt that the victim/prosecutrix, in her subsequent statement had stated that the applicant used to threaten her not to disclose anything to anyone and that her first statement under Section 164 of the CrPC was recorded when she was panicking and not feeling well, the fact remains that the victim/prosecutrix accompanied the applicant without any force or coercion. At the time of incident, i.e., on 02.07.2021, the victim/prosecutrix was aged around 17 years and the applicant was aged around 25 years. In view thereof, it can be stated that though there is no consent in law, there was

no force or coercion applied on the victim/prosecutrix either. It is a categorical assertion on behalf of the applicant that the said Aadhar Card and PAN Card were provided by the victim/prosecutrix herself to the present applicant and therefore there was no reason for the present applicant to believe that the victim/prosecutrix was minor.

**16.** The fact that the applicant and the victim/prosecutrix intended to marry each other is also reflected from the FIR registered at the instance of the father of the victim/prosecutrix. In the FIR, it is recorded that the father of the victim/prosecutrix suspected that the present applicant had abducted his daughter and was apprehensive that he will marry her. As far as the allegations of beating are concerned, the first MLC of the victim/prosecutrix conducted on 02.07.2021, immediately after her recovery from Sonapat, Haryana, showed no external injuries.

**17.** It is further noted that the victim, though minor, was definitely of an age where she could understand the consequences of the act involved and has stated that she was in love with the applicant at the time when she left with him for Sonapat, Haryana.

**18.** In the status report filed by the State, it is stated that if the applicant is admitted to bail, there is an apprehension of the applicant threatening the victim/prosecutrix and her family members. Apart from the aforesaid assertion, nothing has been placed on record to substantiate the said apprehension. It would be pertinent to note that the applicant was released on bail on 02.07.2021, after being recovered alongwith the victim/prosecutrix and was re-arrested in the present FIR after a period of 3 months, on 16.10.2021. There is no allegation with respect to any threat given to the victim/prosecutrix or her family members during that period of time. Even till

date, the status report does not mention any incident of any threat at the instance of the applicant to the victim/prosecutrix or her family members.

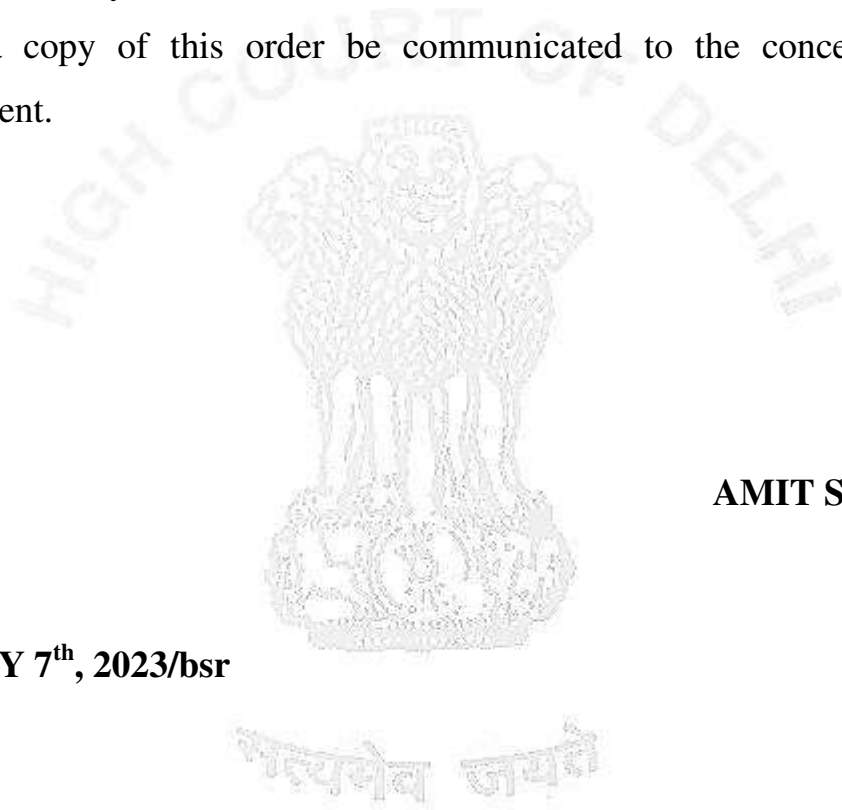
**19.** The investigation in the present case is complete and the chargesheet stands filed. The present applicant is in judicial custody since 16.1.2021 and is not required for any further investigation, therefore, no useful purpose would be served in keeping the applicant in judicial custody.

**20.** In view of the facts and circumstances of the present case, the application is allowed.

**21.** The applicant is admitted to bail upon his furnishing a personal bond in the sum of Rs. 50,000/- alongwith one surety of like amount to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions:

- i. The memo of parties shows that the applicant is residing at Village Manna Tanda, PS & PO Bhira, District Lakhimpur, Uttar Pradesh - 262901. In case of any change of address, the applicant is directed to inform the same to the learned Trial Court and the Investigating Officer.
- ii. The applicant shall not leave India without the prior permission of the learned Trial Court.
- iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
- iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner.
- v. The applicant shall join the investigation, as and when required by the Investigating Officer.

- vi. In case it is established that the applicant tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled *forthwith*.
22. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case.
23. The application stands disposed of along with all the pending application(s), if any.
24. Let a copy of this order be communicated to the concerned Jail Superintendent.



**AMIT SHARMA  
JUDGE**

**FEBRUARY 7<sup>th</sup>, 2023/bsr**