



\$~18

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

+ **BAIL APPLN. 315/2024**

ALOK @MANISH

.....Petitioner

Through: Mr. Nitin Saluja, (DHCLSC) with
Mr. Nischal Tripathi and Ms.
Sanskriti Bansal, Advocates.

versus

THE STATE (GOVT OF NCT DELHI) & ANR.Respondents

Through: Ms. Priyanka Dalal, APP for the State
SI Lovleen, PS Moti Nagar, SI Nikhil
Sharma, PS Kotla Mubarak Pur.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

%

15.07.2024

1. The present application under Section 439 Cr.P.C has been filed by the Petitioner for grant of regular bail in FIR No.403/2022 dated 05.06.2022, registered at Police Station Moti Nagar for offences punishable under Sections 377 IPC and Section 6 of POCSO Act.
2. The allegation against the Petitioner is that Petitioner is 19 years of age and has committed an offence under Section 377 IPC on his younger brother (cousin). The statement of the victim recorded under Section 164 Cr.P.C reveals that on 07.06.2022, the parents of the victim left him at the house of his bua and the victim and the accused were sleeping on the roof and the accused committed the offence under Section 377 of IPC on the victim. In the statement recorded under Section 164 and in his testimony



before the Court, the victim has stuck to his version.

3. This Court in Dharmander Singh vs. State (Govt. of NCT of Delhi), **2020 SCC OnLine Del 1267** has laid down the parameters for grant of bail in an offence under Section 6 of POCSO Act. Paragraph No.77 of the said Judgment reads as under:

“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.”*

4. The age of the victim at the time of commission of offence was 9 years whereas the Petitioner who was the victim's elder brother and cousin and was in the position of a guardian of the victim was 19 years of age. The Petitioner is accused of a very serious offence and the possibility of the Petitioner to tamper the witnesses, if enlarged on bail, is high. In view of the parameters laid down by this Court in the aforesaid Judgment and looking at the nature of the offence committed by the Petitioner, this Court is not



inclined to grant bail to the Petitioner at this juncture.

5. The application is dismissed.

6. However, liberty is granted to the Petitioner to approach the Competent Court for grant of bail if there is any change in circumstances.

7. Needless to state that observations made in this Order is limited to fact that they have been made only for deciding the bail application of the Petitioner and the observations made in this Order cannot be considered at the time of trial.

SUBRAMONIUM PRASAD, J

JULY 15, 2024

S. Zakir