



2024:DHC:8111



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

Judgment delivered on: 21.10.2024

+ **BAIL APPLN. 3148/2024 & CRL.M.A. 26359/2024**

**VIVEK GOSWAMI**

.....Applicant

versus

**STATE (GNCT OF DELHI)  
AND ANR.**

.....Respondents

**Advocates who appeared in this case:**

For the Applicant : Mr. Lokesh Kumar Sharma, Mr.  
Sumit Kumar & Mr. Nikhil,  
Advs.

For the Respondents : Mr. Naresh Kumar Chahar, APP  
for the State.  
SI Seema, PS- Dwarka South  
Mr. Aaditya, Adv. for child  
victim

**CORAM:  
HON'BLE MR. JUSTICE AMIT MAHAJAN**

**JUDGMENT**

1. The present application is filed seeking regular bail in FIR No. 186/2024 dated 15.05.2024 registered at Police Station Dwarka South for offences under Sections 376/506 of the Indian Penal Code ('IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').
2. Chargesheet in the present case is filed under Sections 376/506 of the IPC and Section 6 of the POCSO Act.

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3. The FIR was registered on a complaint given by the prosecutrix alleging that she met the applicant for the first time in the marriage of her cousin in the year 2022. It is alleged that thereafter from December 2023 the applicant and the prosecutrix regularly started talking to each other on mobile phone. It is alleged that the applicant, on several occasions, asked the prosecutrix to meet. It is alleged that on 14.05.2024, the applicant asked the prosecutrix to reach Sector – 10, Dwarka and thereafter took her to a hotel named Royal Orbit, Sector 9 Dwarka. It is alleged that thereafter, the applicant booked a room in the said hotel, took the prosecutrix to the said room without her consent, and forcefully established physical relations with her.

4. The statement of the prosecutrix under Section 164 of the Code of Criminal Procedure, 1973 ('CrPC') was recorded on 18.05.2024. In her written statement, the prosecutrix stated that she and the applicant were known to each other. She stated that upon learning her friendship with the applicant, her parents had on an earlier occasion also threatened the applicant. She stated that on 12.05.2024, she called the applicant to Sector 10 Dwarka since her birthday was on 17.05.2024. She stated that the applicant and herself mutually decided to meet each other on 14.05.2024 to celebrate her birthday. She stated that on the said date, the prosecutrix left her home on the pretext of going to school, and thereafter the prosecutrix and the applicant mutually decided to celebrate her birthday in a hotel. She then stated that the applicant asked around for a good hotel, and that the prosecutrix thereafter went to the said hotel of her own free will.

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She stated that at the hotel, the applicant and the prosecutrix only celebrated her birthday. She further stated that she was pressurised to give a complaint, and was also threatened to give a false complaint that the applicant forcefully established physical relations with her. The prosecutrix also stated that she went to the hotel of her own will, and that no physical relations were made.

5. Subsequently, on 22.05.2024, the prosecutrix gave a complaint stating that she gave her statement under pressure, and requested that she be allowed to give a fresh statement under Section 164 of the CrPC.

6. The applicant in the present case was arrested on 16.05.2024.

7. The learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. He submitted that the applicant and the prosecutrix were on friendly terms and were known to each other. He submitted that as per the statement of the victim under Section 164 of the CrPC, which was given in her own handwriting, she herself stated that the complaint was given under pressure of her parents, and that the allegation that any physical relationship was forcefully established by the applicant was false.

8. He submitted that the victim in her statement herself stated that she went to the hotel of her own free will, and only to celebrate her birthday. He submitted that once the statement under Section 164 of the CrPC was recorded, the police should not have entertained any further complaint.



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9. The learned Additional Public Prosecutor for the State vehemently opposed the grant of any relief to the applicant. He submitted that the allegations against the applicant are serious in nature. He submitted that the prosecutrix was 16 years old, and in such cases consent of the victim is of no relevance.

10. He submitted that the victim, after giving her statement gave a subsequent complaint on 22.05.2024, wherein she stated that her statement under Section 164 of the CrPC was given under pressure. He submitted that the victim requested that her statement under Section 164 of the CrPC be recorded again.

11. The learned Trial Court *vide* order dated 16.08.2024 dismissed the application filed by the applicant seeking grant of regular bail.

12. While considering the application for bail, the Court has to consider the nature of the offence, severity of the punishment and *prima facie*, involvement of the accused. The Court, at this stage, is not required to enter into the detailed analysis of the evidence to establish beyond the reasonable doubt whether the accused has committed the offence. However, the Court is definitely required to examine whether *prima facie* case for bail is made out on the basis of the evidence on record. Charges are yet to be framed in the present case.

13. It is pertinent to note that certain considerations have to be kept in mind while deciding the application in relation to offences under POCSO Act such as; the age of the minor victim *vis-à-vis* the age of the accused, the relationship, if any, between the victim and the accused, whether the accused is a repeated



offender, the chances of the accused threatening the victim after being enlarged on bail etc. When a person is prosecuted for committing an offence under Sections 3, 5, 7 & 9 of the POCSO Act, the Court is to presume that such person has committed the offence unless the contrary is proved. Section 29 of the POCSO Act reads as under:

*“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.”*

14. Section 29 of the POCSO Act, therefore, raise the threshold of satisfaction required before the Court considers the release of accused on bail. The Court, therefore, at the stage of considering the application for bail has to consider the evidence and evaluate whether the same would *prima facie* sustain the guilt of the accused. Factors such as age of the victim; age of the accused, that is, the older the accused the more serious the offence; the age difference between the victim and the accused so as to consider the element of perversion; conduct of the accused after the offence; whether it is a case of consensual relationship etc., are also to be considered.

15. The issue in relation to presumption of guilt has been address by the Hon’ble Apex Court in relation to a number of statutes. The presumption of guilt is not absolute and is rebuttable. It is the duty of the prosecution to first establish facts



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on the basis of the evidence which would form the foundation for the presumption to operate.

16. In *Noor Aga v. State of Punjab* : (2008) 16 SCC 417, while dealing with the provision in relation to presumption of guilt under the NDPS Act, the Hon'ble Apex Court held that the presumption would operate only in the event the circumstances contained therein are fully satisfied. It was held that initial burden exists on the prosecution and only when it stands satisfied would the legal burden shift and even then the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. It was held that whereas the standard of proof required to prove the guilt of the accused on the prosecution is "beyond all reasonable doubt" but for the accused it is "preponderance of probability".

17. In the present case, the FIR was registered on a complaint given by the prosecutrix stating that the applicant forcefully established physical relations with her. Subsequently, in her statement under Section 164 of the CrPC, the prosecutrix stated that she accompanied the applicant to the hotel of her own free will, and that no physical relations were established. Thereafter, the prosecutrix gave a further complaint stating that her statement under Section 164 of the CrPC was recorded under pressure.

18. From a perusal of the record, it is seen that at the time of the incident, the victim was 16 years old. Further, a reading of FIR, the statement of the prosecutrix under Section 164 of the CrPC, and her subsequent complaint given to the police

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thereafter shows a marked change in the stance of the prosecutrix. In her statement before the learned Metropolitan Magistrate under Section 164 of the CrPC, the prosecutrix stated that as is evident from the CCTV footage, she went to the hotel of her own accord. She further stated that contrary to what her parents pressurised her to state, no physical relations were established, and that the prosecutrix had gone to the hotel only to celebrate her birthday.

19. From a perusal of the status report, it is seen that the opinion related to biological examination is still pending.

20. It is trite that for offences under the POCSO Act, the consent of the victim is immaterial. It is also not in doubt that for an offence under Section 376 of the IPC, mere testimony of the victim can be sufficient for the purpose of conviction of the accused as long as the same inspires confidence.

21. From a perusal of the material on record, however, it is evident that there are inconsistencies in the case of the prosecution. Whether the applicant sexually assaulted the victim, and forcefully established physical relations with her or not would be tested during the course of the trial, the benefit of the inconsistencies at this stage cannot be denied to the applicant. The applicant is a young man who is 21 years old having no criminal antecedents. This Court is of the opinion that should the applicant continue to be in jail, the same is bound to cause inexorable harm to his mental well-being. The chargesheet in the present case has already been filed.



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22. Considering the totality of facts and circumstances, and without commenting further on the merits of the case, the present bail application is allowed, and the applicant is directed to be released on bail on furnishing a bail bond for a sum of ₹20,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court/ Duty Metropolitan Magistrate, on the following terms and conditions:

- a. The applicant shall, upon his release, furnish a proof of residence where he shall reside, which should be at least 5 KM far from the locality where the victim resides, subject to the satisfaction of the IO;
- b. The applicant shall upon his release provide his mobile number to the concerned IO / SHO and keep it switched on at all times;
- c. The applicant shall not change his residence without informing the concerned IO / SHO;
- d. The applicant shall not take unwarranted adjournment and attend the Trial Court proceedings on every date;
- e. The applicant shall not contact the victim and tamper with the evidence in any manner whatsoever.

23. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

24. It is clarified that the observations made in the present order are only for the purpose of deciding the bail application

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and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

25. The bail application is allowed in the aforementioned terms. Pending application also stands disposed of.

**AMIT MAHAJAN, J**

**OCTOBER 21, 2024**

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