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

+ **BAIL APPLN. 603/2025**

NEERAJ KUMAR

.....Petitioner

Through: Mr. Mohd. Shariq and Mr. Satish
Kumar, Advocates.

versus

THE STATE NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Digam Singh Dagar, APP for the
State.
Ms. Inderjeet Sidhu, Advocate for
Prosecutrix with Prosecutrix in
person.
SI Sonu Kumar, PS: Ranhola.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

16.04.2025

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1. The present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly Section 439 of the Code of Criminal Procedure, 1973¹) seeks regular bail in proceedings arising from FIR No. 0883/2021 registered under Section 363 of the Indian Penal Code, 1860² at P.S. Ranhola. Subsequently, a chargesheet was filed including the offences under Section 376 of IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012³.

2. The case of the Prosecution is as follows:

2.1 On 16th December, 2021, an FIR was registered pursuant to a

¹ "CrPC"

² "IPC"



complaint lodged by the father of the prosecutrix. According to the complainant, the prosecutrix left for school on 14th December, 2021 but failed to reach her destination and did not return home thereafter. The family of the prosecutrix kept searching for her and finally on 16th December, 2021 officially registered the complaint stating that she had been missing since 14th December, 2021.

2.2 During the course of investigation, IO/ASI Devender Kumar discovered that the Applicant, who is a cousin of the Prosecutrix, had also been missing since 13th December, 2021.

2.3 Nearly nine months later, on 11th September, 2022, the prosecutrix was recovered. A medical examination conducted at Sanjay Gandhi Memorial Hospital, Mangolpuri, Delhi (MLC No. 293/2021), confirmed that she was pregnant at the time.

2.4 The Prosecutrix recorded her statement before the Mahila Court, West, Tis Hazari Courts, Delhi under Section 164 of the CrPC. Her age was verified to be approximately 15 years at the time she went missing. Accordingly, additional charges under Section 376 of IPC and Section 6 of POCSO Act were included in the chargesheet. Following this, the Applicant, who was an adult at the time of the incident, was arrested. The exhibits collected during Applicant's medical examination were sent to FSL, Rohini which confirmed that he had sexual contact with the prosecutrix.

3. Counsel for the Applicant urges the following grounds in support of the plea for bail:

3.1. The Applicant has been falsely implicated in the present case. The relationship between the Applicant and the prosecutrix was consensual and

³ "POCSO"



romantic in nature, and she had voluntarily accompanied him of her own volition.

3.2. In her statement under section 164 CrPC, the Prosecutrix categorically stated that the Applicant had not coerced or forced her into any act. She affirmed that she left her home willingly and that the present proceedings were being pursued at the behest of her parents, against her wishes.

3.3. During cross-examination, the Prosecutrix stood by her earlier account. She stated that she had ample opportunities to contact her family or seek assistance during the time she lived with the Applicant but chose not to do so. In fact, the Prosecutrix stayed with the Applicant for nearly nine months and only returned to her parental home following certain differences with the Applicant. Despite the estrangement, she has consistently maintained that the relationship was consensual throughout. This fully substantiates the voluntary and consensual nature of the relationship between the Prosecutrix and the Applicant.

3.4. As per the nominal roll, the Applicant has undergone incarceration for a period of 2 years, 5 months, and 27 days as on 8th March, 2025. The continued incarceration would serve no purpose, particularly when the prosecutrix herself has not supported the prosecution's version of force or coercion.

3.5. Reliance is placed on the judgment in **XXX v. State Govt. of NCT of Delhi & Anr.**,⁴ wherein this Court observed that POCSO was enacted with the objective of safeguarding minors from sexual exploitation, and not with the intent to criminalize consensual romantic relationships between adolescents.



3.6. The Applicant has strong roots in the society and has clean antecedents and there is no likelihood of the Applicant absconding.

4. The Court has perused the record and considered the rival submissions. The allegation against the Applicant is that he kidnapped the prosecutrix and established physical relationship with her. However, in her statement recorded under Section 164 of the CrPC, the prosecutrix unequivocally stated that she voluntarily left her home on 14th December, 2021 and accompanied the Applicant of her own accord. She further disclosed that they lived together in Gujarat for nearly nine months before returning to Ghaziabad with the intention of persuading their respective families to accept their relationship. The prosecutrix described the relationship as consensual. She categorically stated that whatever transpired between them was with her full consent, and at no point was she forced or coerced by the Applicant. She also expressed that she is happy with him and does not wish to pursue any criminal proceedings against him. She stated that the FIR was lodged solely at the behest of her parents. Although she alleged, in her deposition before court, that the Applicant had administered an intoxicant and forcibly taken her to Gujarat, this version did not withstand scrutiny during cross-examination. She admitted that while the Applicant was at work, she remained alone and had occasional access to a mobile phone. Despite this, she neither attempted to contact her family nor sought help from anyone during the extended period, spanning nearly nine months, when they resided in Gujarat, Aligarh, and Firozabad. Her conduct during this period does not *prima facie* suggest that she was being unlawfully restrained or held against her will.

⁴ Bail Appln 2729 of 2022, decided on 20th October, 2022.



5. In view of the above facts, in the opinion of the court, the present case *prima facie* involves a romantic relationship between the Prosecutrix and the Applicant. It is settled law that under POCSO, the consent of a minor is not recognised as valid in the eyes of law. Nevertheless, the facts emerging from the record, including the prosecutrix's account of voluntary companionship and the absence of any credible allegation of coercion, places this case in a grey area, where consensual relationships, between adolescents are criminalised under the existing legal framework, notwithstanding the apparent voluntariness of the relationship. This calls for a balanced consideration of the legislative intent and the specific factual matrix at hand.

6. At this juncture, the court is not required to adjudicate upon the guilt or innocence of the Applicant with respect to the offences alleged under Sections 363, 376 of the IPC and Section 6 of the POCSO Act. The limited question before this Court is whether the Applicant, who is now 24 years of age, ought to be enlarged on bail, particularly in light of the fact that all material witnesses, including the prosecutrix, have been examined. It would be apposite to refer to the decision of a co-ordinate Bench of this Court in ***Dharmander Singh v. State***,⁵ wherein the guiding principles for consideration of bail under the POCSO Act, were articulated as follows:

“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*

⁵ (2020) SCC Online Del 1267



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.

78. 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.”

(emphasis supplied)”

7. Keeping the above in view, in the present matter, the prosecutrix, in her statement under Section 164 Cr.P.C., clearly stated that she had gone with the Applicant voluntarily and that he had not forced himself upon her. At the relevant time, the Applicant was approximately 22 years old, narrowing the age gap between the two. The prosecutrix not only resided with the Applicant for a considerable duration, nearly nine months, but also



described the relationship as voluntary. Considering the totality of circumstances, while the legal position that the consent of a minor is immaterial, remains firmly in place, the surrounding circumstances, particularly the narrow age gap and the prosecutrix's account of voluntary relationship, may mitigate, to some extent, the element of exploitation that typically characterises such offences.

8. The trial is presently at the stage of prosecution evidence and all the material witnesses, including the prosecutrix, have been examined. There is no assertion that the Applicant attempted to tamper with evidence or influence witnesses. The Applicant has deep roots in society and there is nothing on record to suggest that he is likely to abscond, if released on bail. As per the nominal roll dated 8th March, 2025, the Applicant has been in custody for over 2 years and 5 months. This raises concern not only from the standpoint of personal liberty but also in relation to rehabilitation and the long-term impact of institutionalisation, on a young adult with clean antecedents. Accordingly, this Court is of the view that the balance tilts in favour of the Applicant for the grant of bail.

9. The Applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/Duty MM, on the following conditions:

- a. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The Applicant shall not contact the Prosecutrix or any of her family members;



- c. The Applicant shall under no circumstance leave the country without the permission of the Trial Court;
- d. The Applicant shall appear before the Trial Court as and when directed;
- e. The Applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- f. The Applicant shall not reside within 3 km radius of the residence of the Prosecutrix and shall also furnish proof of his residence to the concerned IO. The Applicant shall also not move in the vicinity of the Prosecutrix in any manner.
- g. The Applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.
- h. The Applicant shall report to the concerned PS on first Friday of every month;
- 10. 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.
- 11. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application 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.
- 12. The bail application is allowed in the afore-mentioned terms.

SANJEEV NARULA, J

APRIL 16, 2025/d.negi