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

+ W.P.(CRL) 1622/2025 & CRL.M.A. 15268/2025

MOHD. DILSAD @ ADIL

.....Petitioner

Through: Mr. Vishnu Dutt Sharma, Advocate
with Petitioner in person.

versus

STATE AND ORS

.....Respondent

Through: Mr. Rahul Tyagi, ASC for the State
with Mr. Sangeet Sibou, Mr.
Shubham Goyal, Mr. Anikait Kumar
Singh, Mr. Harsh Kumar, Advocates
along with SI Ravi Yadav, PS
Govindpuri.

Respondent No. 2 in person.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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03.12.2025

1. This petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (earlier Section 482 of the Code of Criminal Procedure, 1973²) seeks quashing of FIR No. 91/2019 dated 15th March, 2019,³ registered initially under Section 363 of the Indian Penal Code, 1860⁴ at P.S. Govindpuri, and all proceedings arising therefrom. During investigation, Sections 376 IPC and 6 of the Protection of Children from Sexual Offences Act, 2012⁵ were invoked, and a chargesheet now stands filed for offences under Sections 363/376 IPC and Section 6 of the POCSO Act.

2. The case of the prosecution is that on 15th March, 2019, Respondent

¹ "BNSS"

² "CrPC"

³ "impugned FIR"

⁴ "IPC"

⁵ "POCSO"



No. 3/Complainant, father of the prosecutrix “A” (Respondent No. 2), lodged a complaint that his daughter, aged about 16 years, had left home without informing the family, along with her friend “P”, who resided in the same neighbourhood. On the basis of this missing report, the impugned FIR was registered under Section 363 IPC.

3. The investigation initially proceeded as a missing persons case. The police circulated photographs of A and P through ZIPNET, issued wireless messages, and sent notices to NCRB, Missing Persons Cell and media agencies. On 15th April, 2019, acting on information provided by the complainant, the investigating officer reached Hafizganj, District Bareilly, Uttar Pradesh, where A was found at the house of the Petitioner, Mohd Dilshad @ Adil. The complainant identified her as his daughter. Upon inquiry, A disclosed that P was in Moradabad, near Hathi Wala Mandir, where P was also located. Both girls were then brought back to Delhi.

4. “A” and “P” were produced before the competent authorities and medically examined at AIIMS, Delhi. Both declined internal examination. As recorded in the MLC of A, she stated that she had left home after a quarrel with her parents and had gone to Bareilly to the house of the Petitioner, where she had sexual relations with him “with her consent”. She further stated that she did not wish to lodge any complaint of sexual assault against him. At that point she refused pregnancy testing. P also denied any sexual assault and declined internal examination. The two girls were thereafter produced before the Child Welfare Committee and placed in institutional care.

5. Subsequent medical evaluation revealed that A was pregnant, with gestational age of about three to four weeks. In the history given to the



doctor, she stated that she had sexual relations with the Petitioner. She also disclosed before the Child Welfare Committee that she had married him according to Muslim rites at Bareilly. In view of the pregnancy of a minor girl and her disclosure regarding sexual relations with the Petitioner, Section 376 IPC and Section 6 of the POCSO Act were added. The Petitioner was apprehended, medically examined, and arrested. During interrogation he stated that he had married A according to Muslim customs and had cohabited with her as husband and wife, as a result of which she had conceived.

6. For age determination, the investigating officer collected A's school record from SDMC Pratibha Kanya Vidyalaya, Tughlakabad Extension, which records her date of birth as 10th May, 2003. On this basis, A was approximately 15 years and 10 months old when she left home on 14th March, 2019 and when the sexual relationship with the Petitioner commenced. The chargesheet thus proceeds on the footing that A was a child in terms of the POCSO Act at the relevant time and that the Petitioner had physical relations with her in that period.

7. A's statement under Section 164 CrPC was recorded before the Magistrate, wherein she did not allege force or coercion by the Petitioner. She stated that she had gone with him of her own volition and referred to a *nikah* having taken place at Bareilly. During trial, A has deposed as PW-1. The material on record shows that, in both her chief and cross-examination, she did not support the prosecution's allegation of rape. She consistently stated that she went with the Petitioner willingly and does not want him to be punished.

8. The case has travelled far beyond the FIR stage. A chargesheet was



filed on 7th June, 2019 before the jurisdictional Magistrate, the matter was committed to the Court of the Special Judge (POCSO), Saket Courts, evidence has been recorded, and the trial has substantially concluded. It is stated that the case now stands at the stage of final arguments and judgment.

9. The Petitioner's narrative is that he and A, who resided in the same locality, developed a relationship of affection over time. Both wished to marry but faced opposition from their families. It is stated that they left Delhi for Bareilly, the Petitioner's native place, where a *nikah* was solemnised on 23rd March, 2019 at a mosque in Hafizganj, evidenced by a *Nikahnama* placed on record. The Petitioner relies on A's Aadhaar card, which, according to him, showed her year of birth as 2002 and that she represented herself as being 20 years old at the time of the Nikah. It is further asserted that two daughters have been born out of this relationship, the first on 7th December, 2019 and the second on 25th May, 2024, and that the couple now lives with their children at Tughlakabad Extension, New Delhi. Birth certificates and photographs of the family have been filed to support this claim of a settled matrimonial life.

10. Counsel for the Petitioner submits that A has never accused the Petitioner of rape in the sense of non-consensual intercourse. He points to her Section 164 statement, the history recorded in the MLC, and her testimony as PW-1, where she has consistently described the relationship as voluntary and has disclaimed any grievance against him. It is emphasised that the Complainant, A's father, has also reconciled with the situation and now accepts the Petitioner as his son-in-law. A compromise deed dated 4th May, 2025 has been placed on record. In this document, A and her father have recorded that they wish to put the matter behind them and that they



have no objection to quashing of the impugned FIR and the proceedings. A and her father are present in Court and reaffirm that they do not wish the prosecution to continue, that the Petitioner and A are living as husband and wife, and that the continuance of the case would be detrimental to the welfare of the minor children.

11. On this foundation, the Petitioner argues that the possibility of conviction is remote, that the burden of continued proceedings will fall most heavily on A and the children, and that the “ends of justice” require that this Court exercise its inherent jurisdiction under Section 528 BNSS to quash the impugned FIR and bring the prosecution to an end. Reliance is placed on decisions of this Court where, in similar circumstances, relief was moulded and criminal proceedings were concluded in order to protect a settled family unit.

12. The State opposes the petition. It is submitted that this is not a case of vague allegations. The ages are clear on the basis of school records; pregnancy is admitted; and chargesheet discloses offences under Section 376 IPC and Section 6 of POCSO Act. The prosecution has already been taken to trial. It is argued that the High Court cannot, in the exercise of jurisdiction under Section 528 BNSS or Article 226, neutralise the legislative intent that any sexual act with a girl under 18 is punishable as rape and as a POCSO offence, irrespective of her consent.

Analysis:

13. The Court is conscious that, in cases of this kind, the human and legal dimensions pull in different directions. On one hand, the Court sees before it a young couple with two children, the victim now an adult, expressing a desire to move on, asking that the criminal case be closed so that their



family is not fractured. On the other hand lies a statutory framework that was consciously designed to draw a bright line at 18, that treats sexual contact with a person below that age as inherently exploitative, whether the same is coercive or “romantic”.

14. The legal position is well established. Under Section 2(1)(d) of the POCSO Act, a “child” is any person below 18 years of age. Section 3 defines “penetrative sexual assault” as certain specified sexual acts “with a child”. Section 5 lists circumstances in which such assault is aggravated and Section 6 provides for punishment of aggravated penetrative sexual assault. These provisions do not incorporate “consent” as an ingredient when the victim is a child. Once the prosecution establishes that the victim was below 18 at the relevant time and that the proscribed act occurred, the offence is, in principle, complete.

15. The general law of rape under the IPC has, post the Criminal Law (Amendment) Act, 2013, been brought into the same frame of reference. Clause Sixthly of Section 375 IPC now stipulates that a man is said to commit rape if he has sexual intercourse with a woman “with or without her consent, when she is under eighteen years of age”. The phrase “with or without her consent” in this clause is not ornamental. It is a legislative declaration that, in cases involving a girl under 18, her consent or apparent willingness is of no legal consequence in determining whether the act amounts to rape. The age of the girl is determinative. In effect, Parliament has elevated the age of consent to 18 and has removed the possibility of treating sexual intercourse with a girl below that age as lawful, no matter how it is described by the parties.

16. The Supreme Court has repeatedly held that courts cannot reintroduce



consent as a defence when the law has expressly made it immaterial for a given age group. The underlying rationale is that children and adolescents below 18 are vulnerable and more susceptible to pressure, grooming, or emotional manipulation, and that the law must err on the side of protection rather than neutrality. That object may sit uncomfortably with the facts of some individual cases, but this is the clear intent and mandate of the statute.

17. In the present case, *prima facie* there is no serious dispute about the foundational facts. A's date of birth, as per her school record, is 10th May, 2003. The defence does not suggest any alternative date based on reliable documentary material. On this basis, she was about 15 years and 10 months old in March 2019, when she left home and when the sexual relationship with the Petitioner commenced. A's pregnancy soon thereafter, and her admission that she had sexual relations with the Petitioner, leave no real doubt that sexual intercourse took place between them while she was a minor. These are the very circumstances that, under POCSO and Section 375 IPC, bring the conduct within the zone of criminality, irrespective of her subjective willingness.

18. A has consistently described the relationship as voluntary and that she has not, in her statement under Section 164 CrPC or as PW-1, supported the allegation of coercive sexual assault. The record also shows that she has, in the meantime, married the Petitioner according to personal law, two children have been born from this union and that both families have now accepted the marriage. Yet, these developments cannot retrospectively erase the statutory ingredients of the offence or justify terminating the prosecution case.

19. POCSO Act contains presumptions in Sections 29 and 30, which require that once the prosecution proves that the accused committed the acts



attracting the relevant offence with a “child”, the court shall presume that the accused committed the offence and that the requisite mental element was present, unless the contrary is proved. Whether the Petitioner has succeeded in rebutting these presumptions in the light of A’s testimony is a matter that now lies squarely within the domain of the trial court.

20. The jurisdiction of the High Court under Section 528 BNSS (erstwhile Section 482 CrPC) and Article 226 to quash criminal proceedings is extraordinary in nature and must be exercised sparingly. The present case does not fit any of those categories. On the contrary, once A’s age and pregnancy and the admitted sexual relationship are taken together, the FIR and the chargesheet plainly disclose offences under Section 376 IPC read with clause Sixthly of Section 375 and Section 6 of POCSO Act. In fact, the grievance of the Petitioner is not that the ingredients are absent, but that the Court should, in view of the subsequent reconciliation between the parties, their marriage, and the birth of children, interdict the trial.

21. The reliance on decisions of the Supreme Court where proceedings have been brought to an end in somewhat similar situations also does not carry the Petitioner far. Those cases, as cited at the bar, were decided in exercise of the Supreme Court’s powers under Article 142 of the Constitution, for doing complete justice between the parties. The Supreme Court has, on more than one occasion, made it clear that orders under Article 142 are not to be read as laying down general propositions of law that expand or contract statutory provisions. The High Court does not possess an Article 142 jurisdiction. Its powers under Section 528 BNSS and Article 226, though wide, are bounded by statute and by binding precedent. They cannot be used to create new exceptions to the substantive criminal law,



especially in an area where Parliament has spoken in clear terms.

22. There is, beyond the individual facts, a broader pattern which the Court cannot ignore. In recent years, a stream of petitions has been filed before this Court seeking quashing of POCSO and rape prosecutions in cases where a minor girl has eloped or entered into a relationship with an adult, later married him, and now appears before the Court with one or more children, asking that the criminal case be closed to protect the family. Each case has its own texture, yet the essential elements repeat themselves. If such prosecutions were routinely quashed on the basis of subsequent marriage and settlement, the underlying message would be that the statutory bar against sexual activity with a girl under 18 can be effectively neutralised by the passage of time and the birth of children. That would be against the very object of POCSO and the prescribed age of consent under the IPC, which is to deter early sexual contact and child marriages, not to accommodate them.

23. This Court does not doubt that A's present wish is genuine. She appears to be speaking for herself, conscious that the fate of the prosecution may affect her children and household. The Court is not indifferent to that reality. The difficulty is that the High Court cannot, on that basis alone, rewrite the statute. This is one of those difficult cases where the equities of the individual situation appeal strongly, but the language and purpose of the law leave little discretion. The remedy for any perceived harshness of the statutory scheme lies either with Parliament or, in an appropriate case, with the Supreme Court acting under Article 142. It does not lie in stretching the inherent powers of the High Court beyond their constitutional bounds.

24. A further factor weighs in the balance. The trial has almost run its



course. Evidence has been led. To interdict the process now, at the threshold of judgment, would amount to bypassing the adjudicatory mechanism that the law has set up.

25. For these reasons, this Court is unable to accept the Petitioner's plea. The petition is accordingly dismissed, along with all pending applications.

26. It is clarified that the observations in this judgment are confined to the limited question of quashing under Section 528 BNSS. The trial court shall decide the case on the evidence before it and in accordance with law, without being influenced by any expression in this order.

SANJEEV NARULA, J

DECEMBER 3, 2025/ab