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

+ **BAIL APPLN. 2022/2024**

MD NIRALE

.....Petitioner

Through: Mr. Yash Prakash, Mr. Yogi Pahal,
Advvs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Sunil Kumar Gautam, APP
SI Paramjeet, PS Ranhola
Mr. Harshvardhan Jain, Ms. Tara
Narula, Mr. Anirudh Ramanathan,
Advvs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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14.02.2025

1. This is a petition seeking grant of regular bail in F.I.R. No. 594/2019 dated 17.09.2019 registered at P.S. Ranhola, Delhi under Sections 344/363/368/376(3) of the Indian Penal Code, 1860 (“IPC”) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO”).
2. The brief facts of the case are that on 17.09.2019, the father of the prosecutrix registered an F.I.R regarding the missing of his minor daughter aged about 13 years.



3. Subsequently, on 26.09.2019, the complainant expressed his doubt on the petitioner, fearing that the prosecutrix may have been kidnapped by the petitioner.
4. The petitioner is the husband of the biological mother of the prosecutrix and there is an ongoing custody dispute between the wife of the petitioner and the complainant over the custody of the prosecutrix. Complainant is the biological father of the prosecutrix.
5. On 25.10.2019, the complainant brought the prosecutrix to the police station and alleged that the petitioner forcibly took her in a car, raped her and abandoned her on the street near his home.
6. On 18.12.2019, the petitioner was arrested. The prosecutrix was medically examined and her statement under Section 161 of CrPC was recorded and thereafter, statement under Section 164 of CrPC by learned MM, Rohini, Delhi on 29.10.2019 was also recorded.
7. Thereafter, upon the investigation, a charge sheet was filed.
8. In the statement of the prosecutrix under Section 161 of CrPC, she has deposed that the petitioner kidnapped her on 16.09.2019, took her to Rewari and kept her locked in a room till 24.10.2019 and committed acts of sexual assault on her everyday.
9. The statement of the prosecutrix has been corroborated in her statement under Section 164 of CrPC as well as in her court testimony and evidence.
10. Mr. Prakash, the learned counsel appearing on behalf of the petitioner, submits that the prosecutrix has presented a false and fabricated account at the behest of the complainant.
11. It is submitted that the testimony of the prosecutrix is riddled with



inconsistencies, falsehoods and material improvements in her statements under Section 164 of CrPC and during her examination-in-chief in court. These discrepancies were thoroughly exposed during her cross-examination on 10.05.2019, leading to a lack of confidence in her statements to support the allegations against the petitioner.

12. It is further stated that there is a presumption of innocence in favour of the petitioner, who has already undergone 5 years of incarceration.
13. *Per contra*, Mr. Jain and Ms. Narula, learned counsels appearing on behalf of the prosecutrix, oppose the bail application and rely on the judgment of this Hon'ble Court in the case of ***Dayanand v. State (NCT of Delhi)*, 2024 SCC OnLine Del 6024** and more particularly, paragraph 21 of the said judgement, which reads as under:

“21. In Dharmander Singh v. State (Govt. of NCT of Delhi), 2020 : DHC : 2838, a coordinate Bench of this Court discusses a significant factor that needs to be addressed when offence alleged is under the POCSO Act. Court referred to the presumption of guilt as envisaged in Section 29 as also ‘culpable mental state’ as mentioned in Section 30 POCSO Act. Holding that while considering a bail plea after charges have been framed, presumption of guilt under Section 29 POCSO Act would get triggered and will have to be taken into consideration, this Court enlisted factors pertinent to consider while granting/refusing bail in a POCSO matter; relevant portions of the decision are extracted under:

“74. As always, when faced with such dilemma, the court must apply the golden principle of



balancing rights. In the opinion of this court therefore, at the stage of considering a bail plea after charges have been framed, the impact of section 29 would only be to raise the threshold of satisfaction required before a court grants bail. What this means is that the court would consider the evidence placed by the prosecution along with the charge-sheet, provided it is admissible in law, more favorably for the prosecution and evaluate, though without requiring proof of evidence, whether the evidence so placed is credible or whether it ex facie appears that the evidence will not sustain the weight of guilt.

75. If the court finds that the evidence adduced by the prosecution is admissible and ex facie credible, and proving it during trial is more a matter of legal formality, it may decide not to grant bail. If, on the other hand, the court finds that the evidence before it, is either inadmissible or, is such that even if proved, it will not bring home guilt upon the accused, it would grant bail.

76. In a given case, the accused may, of his own volition, be willing to disclose his defence even while arguing for bail, to prevail upon the court; in which case, the task of the court would become easier. If however, the accused decides not to



disclose his evidence at that stage, he would suffer the consequences of the presumption of guilt engrafted in section 29.

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.

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 added)

14. I have heard learned counsel for the parties and perused the material on record.
15. In the present case, there is no doubt that the statements of the prosecutrix are clear under Sections 161 and 164 of CrPC as well as before the Court, the fact remains that she stayed with the petitioner and his wife at their house for a period of 2 months. It is further deposed by the neighbour of the petitioner that the petitioner got the prosecutrix admitted in a school and also took care of her medical needs when she was unwell.
16. Even though, a MLC report is not considered as a conclusive proof in rape cases, it is important to highlight that the MLC report of the prosecutrix does not show any injuries upon her.



17. It is pertinent to note that even though the complainant informed the police on 26.09.2019 that he suspects that the petitioner may have kidnapped the prosecutrix, the petitioner was not called for investigation till 18.12.2019. There has been no explanation furnished for the delay of this period of three months.
18. In addition, there is an ongoing custody dispute between the wife of the petitioner and the complainant over the custody of the prosecutrix. Therefore, while this is a matter for trial, it cannot be overlooked that the prosecutrix may be influenced by the complainant.
19. The Court places its reliance on the decision of this Hon'ble Court in the case of ***Dayanand v. State (NCT of Delhi), 2024 SCC OnLine Del 6024***, wherein the Court observed that even though Sections 29 and 30 of the POCSO Act provide for presumption of commission of offence and culpable mental state against the accused, however, while deciding bail applications under the POCSO Act, the Court must balance the rights of a victim and the rights of the accused. The relevant paragraph is extracted below:

“21. ...

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: ... ”

20. The fact that weighs with me is that the petitioner was detained on 18.12.2019 and has already undergone 5 years of incarceration. I am of the view that depriving someone of their freedom without providing them with a quick trial is fundamentally unlawful since it goes against the values entrenched in Article 21 of our Constitution. Additionally, the custody battle of the prosecutrix, the wife of the complainant being married to the petitioner are circumstances in favour of the petitioner.
21. For the said reasons, the present petition is allowed and the petitioner is directed to be released on bail subject to the following terms and conditions:-
- a. The petitioner shall furnish a personal bond in the sum of Rs 10,000 (Rupees ten thousand only) each with 1 surety in the like amount, to the satisfaction of the concerned trial court;
 - b. The petitioner shall not leave the country without the permission of the concerned court and if the petitioner has a passport, he shall surrender the same to the concerned trial court;
 - c. The petitioner shall furnish to the IO concerned the cell phone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched on at all times;
 - d. The petitioner will furnish his permanent address to the concerned IO and in case he changes his address, he will inform



the IO concerned;

- e. The petitioner shall not indulge in any act or omission that is unlawful, illegal or that would prejudice the proceedings in pending cases, if any;
- f. The petitioner shall appear in Court on every date of hearing unless exempted;
- g. The petitioner shall not communicate with, or come into contact with the complainant/prosecutrix or any of the prosecution witnesses/family members of the complainant/prosecutrix, or tamper with the evidence of the case.

22. Nothing stated herein above shall affect the merits of the case and the present F.I.R. would be decided on the basis of the evidence produced and the observations made herein above are only for the purpose of deciding the present bail application.
23. For the said reasons, the petition is allowed and is disposed of accordingly.

JASMEET SINGH, J

FEBRUARY 14, 2025/sp

Click here to check corrigendum, if any