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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2336/2025**

MOHD IRSHAD

.....Petitioner

Through: **Mr. I. M.Khan and Mr. Chandransh
Yadav, Advocates**

versus

THE STATE OF N.C.T. OF DELHI & ANR.Respondents

Through: **Ms.Priyanka Dalal, APP for the State
alongwith SI Sharanayas, P.S.-Jamia
Nagar
Ms.Anushkaa Arora (DHCLSC), and
Mr.Taranpreet Singh, Advocates for
R-2/prosecutrix**

**CORAM:
HON'BLE MR. JUSTICE ARUN MONGA**

**ORDER
18.09.2025**

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1. The applicant herein is before this Court seeking regular bail, having remained under incarceration since 21.11.2023 in a criminal case arising out of FIR No.530/2023 dated 20.11.2023 for the offences punishable under Section 376 of the IPC and Section 6 of POCSO Act registered at Police Station Jamia Nagar, Delhi and charge sheet filed under Sections 376/313 of the IPC and Section 6 of POCSO Act.
2. Briefly speaking, *per* FIR, the complainant/victim was a 16-year-old girl at the time of incidence. She alleges that a boy named Irshad, who used to live in the same building as her family, forced her into a physical



relationship. The complainant states that after she became pregnant, Irshad took her for an ultrasound, confirmed the pregnancy, and then took the report and blocked all contact with her. She also mentions that Irshad's friend, Kadir, was involved and that Irshad had taken her to his house.

2.1 The victim's mother, after learning about the situation, took her to a Mahila Panchayat and then to the police station. Investigation ensued and applicant was arrested.

3. In view of the aforesaid, I have heard the rival contentions and perused the case file.

4. Learned counsel for the applicant would argue on lines of grounds pleaded in the petition *inter alia* urging as below:-

4.1 That the petitioner is a young individual, aged 19 years at the relevant time, and has been falsely implicated in the present matter. The allegations arise out of a consensual romantic relationship between the petitioner and the prosecutrix, which has been wrongly projected as an offence under the POCSO Act.

4.2 That the age of the prosecutrix is highly disputed and remains a matter of serious contradiction. Various documents give different dates of birth: the CBSE Class X certificate shows her date of birth as 04.03.2008; an affidavit submitted by her mother at the time of school admission reflects another date; in her own medical statement dated 11.11.2023, the prosecutrix declared herself to be 21 years old and described herself as the wife of the petitioner; and PW-2, the prosecutrix's mother, admitted in her testimony that the Aadhaar card contains an incorrect date of birth. These inconsistencies raise grave doubt as to whether the prosecutrix was in fact a minor at the relevant time. If she was above 18 years in August 2023, when



the alleged incident occurred, then the stringent provisions of the POCSO Act would not apply.

4.3 That the charge sheet confirms no repetition of the alleged offence. The petitioner is a first-time accused with no criminal history. Both parties come from similar socio-economic backgrounds, eliminating any dominance. Overall facts indicate tacit consent of the prosecutrix, though the prosecution has invoked POCSO due to conflicting age records.

4.4 That the petitioner has been in custody since 21.11.2023. The investigation is complete, the charge sheet has already been filed, and several prosecution witnesses have been examined. The trial is expected to take a considerable amount of time, given the pendency of cases. Continued incarceration of the petitioner, a young individual, serves no useful purpose at this stage.

4.5 That the petitioner has strong family roots in Delhi and is neither a flight risk nor in any position to tamper with evidence or influence witnesses. He is ready and willing to furnish sound sureties and abide by any conditions that this Court may impose to ensure his presence during the trial.

5. The learned APP for the State has opposed the bail application on the ground that if bail is granted, there exists a strong apprehension that the petitioner may threaten, influence, or intimidate the victim or other witnesses, thereby hampering the course of a fair trial. Although the petitioner does not have any prior criminal antecedents, the nature and gravity of the present allegations are serious and sensitive in nature.

6. I have heard the submissions of both sides and perused the case file. While certain arguments raised by the learned counsel for the applicant regarding his non-culpability may have some merit, those issues can only be



adjudicated during the trial. However, at this stage, I am of the considered view that the applicant deserves to be released on bail during the pendency of the proceedings, for the following reasons.

7. The petitioner, aged 19 at the time, claims it to be a consensual romantic relationship. The prosecutrix's age is disputed, with multiple contradictory records: her school certificate, her mother's affidavit, her own medical statement declaring she was 21 and married to the petitioner, and her mother's admission that the Aadhaar card has an incorrect date of birth. These inconsistencies cast doubt on whether she was a minor, which is crucial since POCSO applies only if she was under 18. Prima facie, possibility of the petitioner being wrongly framed under the POCSO Act cannot be ruled out. Age of the prosecutrix couple with what appears to be consensual, creates doubt on the invocation of POCSO.

8. Moreover, in course of hearing, learned counsel for the applicant would vehemently stress on the fact that the applicant has throughout been *bona fide* and sincere in expressing his love and affection to the prosecutrix. In fact, it was in no uncertain terms that he also tried hard to convince the parents of the prosecutrix to agree on his marriage proposal to get married to the prosecutrix. He would submit that even today the applicant is willing to get married with the prosecutrix and look after the child and set up a family. Furthermore, he would submit that the prosecutrix who is otherwise major, but merely to teach the applicant a lesson is being projected as a minor by her parents. They do not approve of the relationship of the applicant and the prosecutrix since the applicant belongs to a caste which is considered lower by the parents of the prosecutrix. They claim themselves to be belonging to a higher caste. Though, both the families belong to Muslim religion. In the



premise, the possibility of the prosecutrix being under the influence of her parents and/or being tutored/ intimidated to make statements on the dotted lines, as suggested by the parents, cannot be ruled out.

9. With regard to the contradiction in the age of the prosecutrix, my attention has been drawn to an affidavit of the mother of the prosecutrix which has been made a part of the chargesheet on which the date of birth of the prosecutrix is mentioned as 27.11.2007. The said affidavit was taken from the school records by the Investigating Officer in course of the investigation. *Vis-a vis*, the same, on the other hand, when the prosecutrix went to get her ultrasound done from the gynecologist/ obstetrician (Annexure P-3), she voluntarily disclosed her age to be 21 years and at that time, she was under no duress or coercion. In these premise, a revision petition has also been filed before this Court seeking indulgence to get her an ossification report.

10. The applicant has already remained in custody since 21.11.2023, for more than 1 year and 9 months, and the trial is moving at a snail's pace. This prolonged pre-trial detention, coupled with the slow progress of proceedings, are contributory factors for bail.

11. As regards the apprehension of tampering with evidence, there is nothing on record to suggest so, rendering such apprehension is therefore illusory. The primary purpose of bail is to secure the presence of the accused during trial and the applicant has deep roots in society, no criminal antecedents, and thus is not a flight risk.

12. Adverting now to the argument of learned counsel for the prosecutrix that the Sessions Court was correct in holding the view that since the family members of the applicant have been giving threats to the family of the



victim girl in order to influence them and also coupled with the likelihood of the applicant absconding, he is not entitled to the concession of bail during trial.

13. Having perused the order, it seems that at the time when the learned Sessions Judge rejected the bail application, the decision was based solely on unsubstantiated allegations, with no supporting material on record. Though, reliance now is placed on a handwritten complaint by the victim's mother, alleging that she was/is being intimidated by the applicant's family.

14. Be that as it may, these allegations are not supported by any credible evidence beyond verbal assertions and a general complaint lacking specific details. Such omnibus allegations can be addressed by imposing strict conditions while granting bail, ensuring that neither the applicant nor his family members make any direct, indirect, covert, or overt attempt to contact the victim or her family during the pendency of the trial.

15. Furthermore, counsel for the applicant, on instructions from the applicant's mother who is present in Court, has undertaken that the applicant and his immediate family, including his brother and parents, will relocate at least 10 kilometers away from the locality where the victim and her family reside.

16. As an upshot and taking wholesome view of the matter, Accordingly, the application is allowed. The applicant is directed to be released on bail on furnishing of bail bond and surety to the satisfaction of the learned Trial Judge/Duty Judge as the case may be and subject to the usual conditions to be imposed by the learned trial Judge/Duty Judge. Apart from the other usual conditions, learned Trial Court shall ensure that an undertaking to the effect as aforesaid shall be taken from the applicant and he shall be given



two months time to relocate himself.

17. Nothing observed herein above shall amount to an expression on merits of the case and shall not have a bearing on the trial of the case as the same is only for the purpose of the disposing of the present bail application.

18. Accordingly, the bail application stands disposed of.

ARUN MONGA, J

SEPTEMBER 18, 2025/SV