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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2732/2024**
SONU

.....Petitioner

Through: Mr. Sameer Sidhar, Adv.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Manoj Pant, APP with SI
Ravindra, PS Aman Vihar
Mr Anil Dagar, Adv. for complainant

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

19.02.2025

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CRL.M.A. 22834/2024-EX.

Allowed subject to all just exceptions.

The application stands disposed of.

BAIL APPLN. 2732/2024

1. This is a petition seeking regular bail in the FIR No. 0406/2022 dated 27.04.2022 registered at PS Aman Vihar under Sections 363/366/376(2)(n) of IPC and Section 6 POCSO Act, 2012.
2. Brief facts, as the minor daughter (hereinafter referred as "*prosecutrix*") of the complainant/father was missing, the father lodged an FIR. During investigation, the prosecutrix was traced in Noida on 03.08.2022 along with the petitioner. The petitioner was arrested on the same day.
3. The statement of the prosecutrix under section 164 of CrPC was also recorded on 03.08.2022.



4. Further, it transpired that the prosecutrix was pregnant with child of the petitioner and the child was delivered on 24.09.2022.
5. After competition of investigation, a chargesheet was filed against the petitioner and charges were framed under section 363, 366, 376(2)(n) IPC and 6 POCSO Act, 2012.
6. Mr Sidhar, learned counsel for the petitioner states that the petitioner is in custody since 03.08.2022 and further states that prosecutrix had got married with the petitioner on 26.04.2022 out of her own will.
7. Learned counsel for the petitioner further argues that prosecutrix and her parents have relied upon documents in support of the age of the prosecutrix and in all such documents, the date of birth of the prosecutrix/her age has been reflected differently. Hence, there is no concrete evidence to show that the prosecutrix was minor at the time of marriage.
8. Mr. Pant, learned APP as well as Mr. Dagar, learned counsel for the prosecutrix opposes the petition and state that even though the prosecutrix had gone with the petitioner out of her free consent, the consent of a minor has no meaning in law and hence, the petitioner is guilty of the charged offences.
9. I have heard learned counsel for the parties.
10. A Co-ordinate bench of this Court in ***BAIL APPL. 1559/2020*** titled as ***Dharmander Singh @ Saheb v. The State (Govt. of Nct. Delhi), 2020:DHC:2838*** while relying on several judicial pronouncements has laid down several parameters to decide bail application in POCSO case which read as under:-

“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.

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.”



11. In the present case, on perusal, the statement of the prosecutrix recorded under section 161 of Cr.PC shows that the prosecutrix and the petitioner were in love with each other and in January, 2022 the prosecutrix became pregnant. In April 2022, when the prosecutrix informed the petitioner about her pregnancy, they both decided to run away and thereafter got married in Mandir and were living in Noida in rented accommodation.
12. The same has also been stated in her statement recorded under section 164 of Cr.PC. However, in her Section 164 Cr.PC statement, she further stated that now she wishes to reside with her parents as the petitioner is not working and also suffering from Tuberculosis (TB).
13. Further, the prosecutrix in her testimony before the Court has stated that her date of birth is 04.10.2004. Hence, at the time of incident, the prosecutrix was above 17 years of age.
14. From the above, it is clear that the petitioner and the prosecutrix were in love with each other and established physical relations out of their own free consent. Even though, a consent of 17 years old is no consent in the eyes of law, but the fact cannot be overlooked by the Court that the age gap between the prosecutrix and the petitioner (19 years) was less than 2 years and *prima facie*, it appears that the present case in hand is of adolescent love. The rigors of POCSO Act applicable to 19 years old person and a person much senior in age cannot be the same.
15. In somewhat similar circumstances, I have already taken a view in ***CRL.L.P. 10/2022*** titled as ***State v. Hitesh, 2025:DHC:944*** and the relevant paragraphs are extracted below:-

“30. Furthermore, I believe that societal and legal views on



adolescent love should emphasize the rights of young individuals to engage in romantic relationships that are free from exploitation and abuse. Love is a fundamental human experience, and adolescents have the right to form emotional connections. The law should evolve to acknowledge and respect these relationships, as long as they are consensual and free from coercion.

31. While the legal age of consent is important for protecting minors, I feel that adolescents should be allowed to express their feelings and engage in relationships without fear of criminalization. The focus of the law should be on preventing exploitation and abuse rather than punishing love. I affirm that consensual and respectful adolescent love is a natural part of human development.

32. The legal system must safeguard the rights of young individuals to love while ensuring their safety and well-being. I advocate for a compassionate approach that prioritizes understanding over punishment in cases involving adolescent love.

33. Herein, reliance is placed on the decision of this Hon'ble Court in the case of Mahesh Kumar v. State (NCT of Delhi), Bail Application No. 3922/2023 which had also held a similar view.

34. The POCSO Act was promulgated for the protection of children. The Act, however, did not choose to draw any distinction as to a girl of less than 18 who chooses a partner



out of her own choice and volition. Therefore, any sexual act or intercourse by a man with such a girl would constitute an offence under various provisions of the POCSO Act of 2012.”

16. Further, the Hon’ble Supreme Court in ***Union of India v. K.A. Najeeb, (2021) 3 SCC 713*** has observed that if the Court is of the view that the trial is not likely to be concluded in near future and the accused person has undergone substantial period of incarceration, the accused should be released on bail in order to protect the fundamental right of speedy trial of the accused which flows from Article 21.
17. In addition, the accused cannot be put in jail for an indefinite period. The accused till the time is an undertrial prisoner, there is a presumption of innocence in his favour.
18. It is also pertinent to note that in the present case, the petitioner has been in custody since 03.08.2022, i.e. more than two and a half years. Further, the prosecution has cited total 23 witnesses. In addition, the petitioner has no other criminal case pending against him.
19. For the said reasons, I am inclined to allow the present petition for bail and the petitioner is directed to be released on bail on 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 or any of the prosecution witnesses, or tamper with the evidence of the case.
20. Nothing stated hereinabove shall tantamount to an expression of opinion on the merits of the case.
21. A copy of this order be communicated to the concerned jail authorities for necessary compliance.
22. The petition stands disposed of in the aforesaid terms.

JASMEET SINGH, J

FEBRUARY 19, 2025 / (MS)

Click here to check corrigendum, if any