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

+ **CRL.M.C. 9652/2024**

SHARUN

.....Petitioner

Through: Mr. Pavitra Veer Singh Chikara, Ms.
Shinu Gupta, Mr. Shiv Kumar,
Advocates

Versus

THE STATE GOVT. OF NCT OF DELHI & ANR.Respondents

Through: Mr. Aman Usman, APP for State with
SI Bhawna PS Gandhi Nagar.
R-2 in person

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER
16.01.2025

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1. The present petition has been filed seeking quashing of the FIR no.161/2023 under Sections 366A/376(2)(n)(3) IPC & Section 6 and 9 of POCSO Act, registered at P.S. Gandhi Nagar [*subsequently chargesheet was filed under Sections 366A/376(2)(n)(3) IPC & Section 6 and 9 of POCSO Act and Sections 9 of Prohibition of Child Marriage Act, 2006*], on the ground that the parties have married and they have also been blessed with a child.
2. Notice in the petition was issued on 09.12.2024.
3. Respondent no.2/victim is present in Court and she has been identified by the I.O. SI Bhawna PS Gandhi Nagar.



4. The brief facts of the case are that the aforesaid FIR was registered at the instance of the respondent no.2/victim alleging that petitioner made physical relations with her by making false promise of marriage.

5. The learned counsel appearing on behalf of the petitioner submits that quashing of the present FIR is being sought on the peculiar facts and circumstances of the present case where the petitioner no.1, as well as, the respondent no.2/victim have married and they have also been blessed with a child, who is stated to be of one and a half year.

6. He submits that the petitioner was arrested after the marriage was solemnized in the month of May, 2023. He submits that during the trial also the respondent no.2/victim has not supported the case of the prosecution.

7. He further submits that in case the FIR is not quashed and the petitioner no.1 is allowed to languish in jail, the life of the respondent no.2, as well as, their child will be adversely affected.

8. At this stage apt would it be to refer to the judgment dated 19.09.2024 passed by the Coordinate Bench of this court in CrI.M.C. 7406/2024 titled ***Sujit Kumar v. State (Govt. of NCT of Delhi) &Anr.***, wherein relying upon a decision of Rajasthan High Court in ***Tarun Vaishnav v. State of Rajasthan through PP &Anr., 2022 SCC OnLine Raj 2237***, this court had quashed FIR under Sections 363/366/376/506 IPC and Section 6 POCSO Act regard being had to the peculiar circumstances of the case as the petitioner therein was 19 years of age while the victim/respondent no.2 was 17 years of age and they had also married of their own free will and were blessed with a child. The relevant part of the said decision reads as under:

“8. Additionally, it may be noted that various High Courts have quashed FIRs in similar such circumstances, one such decision



being Tarun Vaishnav v. State of Rajasthan through PP &Anr. 2022 SCC OnLine Raj 2237 by the Jodhpur Bench of the Rajasthan High Court. Said decision has attained finality as a Special Leave Petition against the same was dismissed by the Apex Court on 03rd March 2023 vide SLP (Crl.) No. 1890/2023. Decision of the Rajasthan High Court was rendered in a case where prosecutrix delivered a baby in the hospital and the FIR was lodged pursuant to statement of the minor girl. Statement recorded by IO revealed a romantic relationship between the 16 year old prosecutrix and 22 year old accused. Court, in that case, took into consideration the facts and circumstances of that case and noted that there was a love affair involving a physical relationship out of immaturity, and quashed the FIR against the accused/petitioner therein. Relevant portions of this decision are extracted as under:

“13. This Court is not oblivious of the legal position that in cases concerning sexual act with a minor, consent, if any, has no legal sanctity and it cannot be used as a defence. Needless to mention that this Court cannot and does not accord any approval or sanction to the sexual act of petitioner with the prosecutrix but then, it is a hard reality that their love affair has traversed beyond the legal and moral bounds, consequence whereof has begotten a child.

14. This Court cannot be a silent spectator to or turn its back on the distressed family. If the impugned FIR is not quashed, the petitioner will have to face incarceration for at least 10 years. The mistake or blunder which otherwise constitutes an offence has been committed due to immature act and uncontrolled emotions of two persons, out of whom, one is still a minor.

15. The petitioner's prosecution and conviction will lead to pain and tears in the eyes of the family members of both the parties and future of two families, and above all, an innocent child will be at stake, whereas, if the impugned FIR is quashed, it would serve the ends of justice.

16. It is to be noted that in almost similar circumstances, different High Courts have quashed the FIR/proceedings. The following are to mention a few:-

(i) Vijayalakshmi v. State (Crl.M.P. No. 109/2021),



decided on 27.01.2021 by Hon'ble High Court of Madras;

(ii) Kundan v. State (Crl.M.C. No. 27/2022), decided on 21.02.2022 by Hon'ble High Court of Delhi;

(iii) Shri Skhemborland Suting v. State of Meghalaya (Crl. Petition No. 63/2021), decided on 23.03.2022 by Hon'ble High Court of Meghalaya.

17. Different High Courts have given different reasonings dealing with medical, psychological, social angles of the situation; analysing the statement of objects and reasons of the POCSO Act; considering practical realities including future of the newborn child involved.

(emphasis added)

9. In the present case as well, parents of the prosecutrix have expressed concern for the prosecutrix, as also her baby, and are mindful of the lack of maturity and mistake of the daughter which ultimately led to the delivery of the baby.”

9. In **Tarun Vaishnav** (*supra*) as well, the Rajasthan High Court on similar facts had quashed the FIR was under Section 376 IPC read with Sections 3 and 4 of POCSO Act though the complainant was a minor and she had married the accused and they were blessed with a child. This Court in **Sujit Kumar** (*supra*) has recorded that SLP filed against the decision in **Tarun Vaishnav** (*supra*) also came to be dismissed by the Hon'ble Supreme Court.

10. The decisions in **Sujit Kumar** (*supra*) and **Tarun Vaishnav** (*supra*) squarely apply to the facts of the present case. Like the said two decisions, the present is also a case of romantic relationship where the petitioner no.1 and respondent no.2 married despite the fact that the respondent no.2 had not attained legal age of marriage.

11. Insofar as the allegations under the Prohibition of Child Marriage Act, 2006 is concerned, undoubtedly no judicial imprimatur can be given to the validity of such marriage. However, having regard to the peculiar features of



the present case where the petitioner no.1 and the respondent no.2 have a minor child aged about one and a half year out of their consensual relationship, this Court is of the view that not only the life of the victim but the minor child will also be ruined in case the present criminal proceedings are allowed to continue and the petitioner no.1 is kept incarcerated.

12. The respondent no.2, who is present in Court, on a query posed by the Court, affirms the factum of her marriage with the petitioner and further states that they have been blessed with the one child who is aged about one and a half year. She further states that apart from the petitioner there is no one to look after her and their child and she thus, urged the Court that the FIR may be quashed.

13. Having regard to the aforesaid peculiar circumstances, this court is of the opinion that the present petition deserves to be allowed to serve the ends of justice.

14. Consequently, the petition is allowed and the FIR no.161/2023 under Sections 366A/376(2)(n)(3) IPC & Section 6 and 9 of POCSO Act, registered at P.S. Gandhi Nagar alongwith all other proceedings emanating therefrom, is quashed.

15. The petition stands disposed of in the above terms.

16. At this stage, the learned counsel for the petitioner points out that the petitioner is still in custody in the present case, therefore, necessary orders may be passed for his release.

17. Considering the fact that the FIR has been quashed by this Court, the Jail Superintendent is directed to release the petitioner forthwith, if he is not required for any purpose.

18. Copy of the order be forwarded to the concerned Jail Superintendent



for necessary compliance and information.

19. Order be uploaded on the website of this Court.

JANUARY 16, 2025/j

VIKAS MAHAJAN, J