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

+ **BAIL APPLN. 2762/2025**

RAJESH @ GOLU

.....Petitioner

Through: Mr. Santosh Kumar Pandey,
Advocate.

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Hitesh Vali, APP for State
with PSI Varsha Chaudhary, PS
Mehrauli.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **12.01.2026**

1. The applicant seeks regular bail in proceedings arising out of FIR No. 263/2024 dated 14.04.2024, registered at P.S. Mehrauli, New Delhi, under Sections 363/376 of the Indian Penal Code, 1860 ["IPC"], and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ["POCSO Act"].

2. The FIR was originally registered under Section 363 of the IPC, at the instance of the brother-in-law of the prosecutrix. The allegations, as emerging therefrom, were that the prosecutrix disappeared from her house at 11:30 PM on 11.04.2024. The prosecutrix's age was stated to be about 15 years; her date of birth taken from the records of her school – Delhi Nagar Nigam Pratibha Vidyalaya (Kanya), Ward No. 4, Mehrauli, New Delhi, was 31.12.2008. However, the school stated that no birth



certificate or prior school records were produced at the time of her admission.

3. In the course of investigation, on 10.06.2024, the prosecutrix and her parents visited the police station and stated that she had returned to the house on 09.06.2024 at night. Her medical examination was conducted on 10.06.2024, in which she stated that she had run away with the applicant, and had multiple sexual contacts with him, the last being 15 days prior to the recording of the Medico-Legal Certificate. In her statement under Section 164 of the Criminal Procedure Code, 1973, [“CrPC”], the same narrative was maintained. The prosecutrix stated that the applicant was a friend of her father and a relative of her mother, and that he was residing on the upper floor of her house as a tenant. She further stated that she had known the applicant for the past two to three years, and he had persuaded her to leave her house with him on 10.04.2024. They stayed in Gurgaon for a period of 5 to 10 days, after which she was taken to Dehradun. She stated that the applicant had sexual intercourse with her on multiple occasions, against her will, and that when she expressed her desire to return to her home, he persuaded her not to do so; however, she ultimately left on her own. Further medical investigation showed that the prosecutrix had conceived. Medical termination of pregnancy was carried out on 29.06.2024, after obtaining the orders of the Court.

4. The applicant did not initially join the investigation, but surrendered during the pendency of an application under Section 82 of the CrPC. He was arrested on 27.09.2024, and has remained in custody since.



5. On the basis of the above, a chargesheet has been filed under Sections 363/376 of the IPC, read with Section 6 of the POCSO Act, on 16.11.2024.

6. In support of the present application, Mr. Santosh Kumar Pandey, learned counsel for the applicant, submits as follows:

- a. The applicant has been in custody for approximately 18 months.
- b. That the allegation under the POCSO Act is itself contested, as the age of the prosecutrix is disputed. In this connection, he draws my attention to a communication dated 28.06.2024 from the prosecutrix's school, which states that no information was submitted at the time of her admission with regard to her previous school records, nor was any other documentary evidence given, with regard to the prosecutrix's age.
- c. In the course of cross-examination, the prosecutrix has, in fact, herself given evidence to suggest that she was more than 18 years of age.
- d. The statements of the prosecutrix and her parents have already been recorded by the Trial Court. In fact, out of 30 witnesses, the statements of 14 witnesses have been recorded.
- e. In cross-examination, the prosecutrix, who appeared as PW-1, did not support the case of the prosecution, to the extent that she admitted that she had become friendly with the applicant and had left the house with him voluntarily. He also points out that the prosecutrix testified that the applicant and she "*used to like each other*", and that she thereafter travelled with him from Gurgaon to Dehradun.



7. Mr. Hitesh Vali, learned Additional Public Prosecutor, on the other hand, submitted as follows:

- a. The allegations against the applicant are serious allegations under the IPC and POCSO Act.
- b. The prosecutrix has clearly stated in her evidence, that the applicant had sexual intercourse with her several times, both in Gurgaon and Dehradun, against her will, and that she was, in fact, found to be pregnant when she returned home.
- c. The adjudication with regard to the age of the prosecutrix will have to await trial on evidence. He submits that, for the present, the school's record clearly shows her date of birth to be 31.12.2008, which, in accordance with Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 ["JJ Act"], is the age which is required to be considered. The Section reads as follows:

"94. Presumption and determination of age.—(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the



Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

- d. There was a substantial age difference between the applicant and the prosecutrix, as the applicant was approximately 30 years old at the time of the incident, his date of birth being 10.07.1994.
8. While considering the question of grant of bail, particularly where the alleged offences are under the POCSO Act, this Court in *Dharmander Singh v. State (Govt. of NCT of Delhi)* [2020 SCC OnLine Del 1267] [hereinafter, “*Dharmander Singh*”] enumerated various factors by way of guidance, which the Court may consider. The relevant observations in the said decision 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.*

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.

79. It goes without saying that while considering a bail plea at any stage, whether before or after framing of charges, the court would of course apply all the other well settled principles and parameters for grant or denial of bail.”

9. It may also be borne in mind that, at the stage of consideration of a bail application, the Court is not required to undertake a mini-trial, but must proceed on a holistic analysis of the available material on a *prima facie* basis [*State of Uttar Pradesh v. Anurudh and Anr.*, 2026 SCC OnLine SC 40].

10. In the present case, on consideration of the arguments of learned counsel for the parties, and applying the factors enumerated in



Dharmander Singh, I do not find it appropriate to grant bail to the applicant for the following reasons:

- a. The allegations against the applicant are grave in nature. The prosecutrix disappeared from her home for close to two months. During this period, she stayed with the applicant in Gurgaon and in Dehradun. The prosecutrix, in cross-examination, has stated that the applicant made physical relations with her forcibly on 4 to 5 occasions while they were in Gurgaon, and thereafter 6 to 7 times while they were in Dehradun. This is, therefore, a case where the offence under the POCSO Act is alleged to have been committed on multiple occasions. *Dharmander Singh* identifies such a factor as one which militates against grant of bail.
- b. The medical evidence also shows that the prosecutrix had conceived, and had to undergo a medical termination of pregnancy.
- c. As far as the date of birth of the prosecutrix is concerned, her school records reveal her date of birth to be 31.12.2008. In her examination-in-chief also, the prosecutrix maintained that her date of birth was 31.12.2008. However, in the cross-examination relied upon by Mr. Pandey, she stated as follows:

“My elder sister is 2 years older than me. (Vol. She was born in the year 2006). My elder sister got married on 28.11.2022. I know that a girl child cannot marry before 18 years of age. It is correct that when my elder sister got married she was about 20 years of age. It is wrong to suggest that I was more than 18 years of age at the time of the marriage of my elder sister.”

As far as this aspect is concerned, even the cross-examination is inconsistent. The prosecutrix volunteered that her sister was born in the year 2006, and also stated that she was 20 years of age at the



time of her marriage on 28.11.2022. Similarly, even while stating that her sister was two years older than her, she denied the suggestion that she was more than 18 years of age at the time of her sister's marriage. The evidence, even in cross-examination, is therefore equivocal on this point. For the present, particularly in view of Section 94 of the JJ Act, the Court must proceed on the basis of the aforesaid school record.

- d. Proceeding on the basis of her date of birth as 31.12.2008, the allegations pertain to the period when the prosecutrix was 15 years of age. The applicant, on the other hand, was born on 10.07.1994, and was thus almost 30 years of age at that time. According to *Dharmander Singh*, the age difference between the parties is also one of the factors to be considered. In the present case, this was very substantial, being over 14 years. The applicant was also a friend of the prosecutrix's father, and related to her mother.
- e. Even if Mr. Pandey's submission with regard to the cross-examination of the prosecutrix is correct to some extent, it only indicates that she left her home with the applicant voluntarily. However, even in such a situation, no legal conclusion can be drawn of consent on her part, to a sexual relationship, as she was *prima facie* only 15 years of age at the time. Even on facts, her cross-examination is at best ambivalent. Although she stated that she stayed with the applicant in Gurgaon voluntarily and was not forced by him, she also stated that she wanted to return from Gurgaon, but the applicant used to stop her.
- f. The applicant was served with the notice to appear for investigation



on 26.07.2024, which was received by his parents, but he did not join the investigation. Non-bailable warrants were issued for 31.08.2024, which remained unexecuted. He surrendered before the Trial Court only on 27.09.2024, during the pendency of the application under Section 82 of CrPC. His conduct after the offence is, therefore, not such as to entitle him to bail at this stage.

- g. As noted above, the applicant was a friend of the prosecutrix's father and a relative of her mother, and he was residing on the upper floor of her house as a tenant. In view of the said relationship and proximity, the applicant would have easy access to the prosecutrix, if granted bail.
- h. The trial appears to be progressing satisfactorily, with 14 out of 30 witnesses having already been examined, according to the status reports on record.
- i. The period of incarceration of the applicant, is also not unduly prolonged, so as to support his case for bail at this stage.

11. In the aforesaid circumstances, I am of the view that the applicant is not entitled to bail at this stage. The application is, therefore, dismissed.

12. Needless to say, the observations in this order are only for the purpose of deciding the present bail application, and are not intended to prejudice the applicant's case on merits.

PRATEEK JALAN, J

JANUARY 12, 2026
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