



2026:DHC:896



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

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*Judgment reserved on: 24.12.2025**Judgment Delivered on: 03.02.2026*+ **BAIL APPLN. 3015/2025****VARUN KUMAR SINGH**

.....Petitioner

Through: **Mr. Neeraj Kumar Jha and Mr. Rohit Kumar, Advs.**

versus

STATE (SHO RAJINDER NAGAR)

.....Respondent

Through: **Mr. Tarang Srivastava, APP for State with S.I. Dharmendra, P.S. Rajinder Nagar, Delhi.****Ms. Vrinda Bhandari and Ms. Nitya Jain, Advs. for Prosecutrix.****CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J**

1. The present petition has been filed on behalf of the petitioner under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeking regular bail in connection with FIR No. 357/2023 dated 12.08.2023 registered under Sections 363/366A/376 of the Indian Penal Code, 1860 (IPC) and Section 4 of the POCSO Act, 2012.

2. The case of the prosecution, as borne out from the chargesheet dated 10.10.2023 and the status report dated 22.08.2025, is that on 12.08.2023, a PCR call vide DD No. 38 was received from the complainant. Thereafter, a case was registered upon the statement of the complainant, who alleged that his daughter (hereinafter, 'the prosecutrix'), aged about 14¹/₂ years, at

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BAIL APPLN. 3015/2025*Page 1 of 11*



2026:DHC:896



around 11:00 AM went behind the Ganga Ram City Hospital to get tea, from where she was taken away by the petitioner, who also happens to be a friend of the prosecutrix.

3. During the course of investigation, the prosecutrix and the petitioner were traced to Hotel Taj King Residency, Agra, Uttar Pradesh on 18.08.2023. Subsequently, both the prosecutrix as well as the petitioner were brought back from Agra to PS Rajinder Nagar, Delhi.

4. During interrogation, the prosecutrix disclosed that she had gone with the petitioner to visit Agra, stayed there for 4-5 days and that the petitioner is her family friend. Afterwards, the prosecutrix along with her mother was taken to RML Hospital for medical examination. Further, counselling of the victim was also conducted through the counsellor of the DCW. The statement of the prosecutrix under Section 164 CrPC was recorded on 19.08.2023.

5. During further investigation on 20.08.2023, the petitioner was arrested from his residence and a potency test was conducted of the petitioner, the result of which came positive. Further, during investigation, efforts were made to collect the age proof of the prosecutrix, but as the prosecutrix never went to school, the same became difficult. Consequently, a Bone Ossification Test was conducted on 21.09.2023, the report of which was received on 06.10.2023, wherein the estimated age of the prosecutrix was mentioned to be more than 14 years but less than 17 years.

6. Mr. Neeraj Kumar Jha, learned counsel appearing on behalf of the petitioner, submits that admittedly the prosecutrix and the petitioner were in a love relationship. He contends that the same is borne out from



2026:DHC:896



prosecutrix's statement under Section 164 CrPC, wherein she has stated that she loves the petitioner and the petitioner also loves her.

7. He submits that the prosecutrix, in her statement under Section 161 CrPC given to the police, has accepted that nothing wrong happened to her while she was with the petitioner and that she had voluntarily, on her own free will, accompanied the petitioner to Agra.

8. Furthermore, in her cross-examination, the prosecutrix admitted, that she went with the petitioner to Agra of her own will.

9. He further submits that the petitioner was arrested on 20.08.2023 and since then he is in judicial custody. All material prosecution witnesses have been examined, therefore, there is no apprehension that the petitioner will tamper with the evidence.

10. *Per Contra*, Mr. Tarang Srivastava the learned APP appearing on behalf of the state submits that the prosecutrix in her statement under section 164 CrPC has stated that the petitioner had taken the prosecutrix forcefully to Agra. In her examination-in-chief she has testified that petitioner had sexual relations with her.

11. Ms. Vrinda Bhandari, learned counsel appearing on behalf of the prosecutrix supports the contention of the learned APP for State. She has placed reliance on the decisions in *X v. State of Rajasthan and Anr., (2024) SCC Online SC 353; Raju Yadav v. the State of NCT of Delhi [Crl.A.570/2020; dated 16.05.2023]* and *Prince Kumar Sharma and Anr. v. The State NCT of Delhi and Anr. [Crl. M.C. 7145/2025; dated 14.11.2025]*.



2026:DHC:896



12. I have heard learned counsel for the petitioner, learned APP for State as well as learned counsel for the prosecutrix and have perused the material on record.

13. The case of the prosecution is that the prosecutrix was minor, when she was forcefully taken by the petitioner to Agra, where petitioner established physical relations with her.

14. The age of prosecutrix could not become available as she never went to School. Accordingly, a bone ossification test was conducted on 21.09.2023. The report of said test, which became available on 06.10.2023, mentions the age of the prosecutrix as more than 14 years but less than 17 years.

15. The Division Bench of our own High Court in the decision *Court on its Own Motion v. State of NCT of Delhi; 2024 SCC Online Del 4484*, has held that in case of sexual assault under the POCSO Act, wherever the Court is called upon to determine the age of victim based on 'bone age ossification test' the upper age given in 'reference range' be considered as age of the victim. Thus, going by the said dictum, the age of the prosecutrix will have to be taken as 17 years.

16. Though the probative value of the evidence and the credibility of the witness is not to be examined by this Court while considering the bail application of the petitioner/accused, but this Court has perused the FIR, statements of prosecutrix under Section 161 as well as 164 CrPC, and the cross-examination of the prosecutrix only for the limited purpose of deciding this bail application.



17. The FIR specifically mentions that the prosecutrix is friends with a boy named Varun Kumar (petitioner herein). Further, statements of prosecutrix under Section 161 as well as 164 CrPC, and the cross-examination of the prosecutrix suggests that she had liking for the petitioner and went with him to Agra out of her own free will. Thus, it appears to be a case of romantic relationship between the petitioner and the prosecutrix.

18. Undoubtedly, the prosecutrix was minor at the time of incident, therefore, her consent for sexual relations, if any, between them, will have no value in the eyes of law, but taking her age as 17 years, it *prima facie* appears that prosecutrix was of sufficient maturity and intellectual capacity, and her romantic involvement with the petitioner is one of the consideration which tilts the balance in favour of the petitioner for the purpose of granting bail.

19. A coordinate Bench of this Court in *Ajay Kumar v. State Govt. of NCT of Delhi and Anr.*, passed **BAIL APPLN. 2729/2022** decided on 20.10.2022 observed that the intention of POCSO was to protect children below the age of 18 years from sexual exploitation and the Act was never meant to criminalize consensual romantic relationships between young adults.

20. Yet another Coordinate Bench of this Court in *Dharmender Singh v. State, 2020 SCC OnLine Del 1267*, while considering the effect of Section 29 of the POCSO Act, when an application for bail is to be considered after framing of charges, laid down as 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.**”*

21. The Court further enumerated certain real life considerations, any one or more of which if exists in a particular case, are ought to be considered while deciding a bail plea at the post-charge stage, in addition to the nature and quality of the evidence before it. The relevant part of the decision in ***Dharmender (Supra)*** reads 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.”

(emphasis supplied)

22. Likewise, in ***Riyaz v. State & Anr., 2024 SCC OnLine Del 5918***, while dealing bail with application in the offences under Sections 363/376 IPC and Section 6 of the POCSO Act, having similar facts, observed as under:



8. *This Court is of the opinion that the present case is of love affair between the Prosecutrix and the Petitioner. Consensual sex between girls who are just below the age of 18 years and boys who are just above 20 years has been in legal grey area because the consent given by a minor girl cannot be said to be a valid consent in the eyes of law.*

9. *At this juncture, this Court is not going into the question as to whether the Petitioner has committed offences under Sections 363/376 IPC and Section 6 of the POCSO Act or not. This Court is only concerned with as to whether a youngster who is in jail for about three years now should be granted bail or not in view of the fact that all the public witnesses, including the Prosecutrix, have been examined.*

10. *This Court has been constantly seeing that POCSO cases are being filed at the behest of the girl's family who object to her friendship and romantic involvement with a young boy and the law is being misapplied in such cases which results in young boys, who have genuinely fallen in love with young adolescent girls, languishing in jails.*

23. The present is not a case where prosecutrix has been subjected to any violence or brutality, rather it is case in which the prosecutrix appears to be in romantic relationship with petitioner and willingly went with him to Agra. As noted above, even in the FIR it is alleged that prosecutrix and the petitioner were friends.

24. Further, the prosecutrix as well as the mother of the prosecutrix and other public witnesses have already been examined. Therefore, there is no question of petitioner exerting any influence on the said witness.

25. Furthermore, the petitioner is in custody since 23.08.2023 i.e. for about 2 years and 5 months. It is also not the case of the prosecution that the



petitioner has any previous involvements. The presence of the petitioner during trial can otherwise, be ensured by putting appropriate conditions.

26. The reliance placed by the learned counsel for the prosecutrix on the decision in *X v. State of Rajasthan* (supra), is misplaced inasmuch as the said case was a case of gang rape whereas the present case *prima facie* appears to be a case of love affair between the prosecutrix and the petitioner. Further, in the said case, the victim as well as her mother, who was an eye witness had not been examined, whereas in the present case, the prosecutrix, the complainant as well as other public witnesses have already been examined. Furthermore, the Court also noticed in the said case that the victim and her mother as well as both the accused persons were residing in the same village, which is not the situation in the present case.

27. Likewise, the decision in *Raju Yadav* (supra) does not advance the case of the petitioner. The said case was an appeal against the judgement of conviction and order of sentence. Further, it was not a case of romantic relationship. The home guard (appellant no. 1 therein) had raped the victim with the help of maternal aunt of the prosecutrix (appellant no. 2) who bolted the room from inside preventing the victim from running away. That apart, it was a case of repeat offence, as the same incident was repeated again on the next day.

28. Similarly, reliance placed on the decision in *Prince* (supra) is also misplaced, as the said case was for quashing of FIR, which had been registered under section 6 of the POCSO Act and Section 9 and 10 of the Prohibition of child Marriage Act, 2006. The Court refused to quash the FIR observing that the Court cannot carve out an exception to the statute



merely because the victim describes the relationship as consensual, whereas the present case is of granting of bail for which the considerations are different.

29. At this stage, reference may be had to decision of Hon'ble Supreme Court in ***Prasanta Kumar Sarkar vs. Ashis Chatterjee and Anr., (2010) 14 SCC 496***, wherein the Court laid down the following parameters for granting bail.

“9.It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.”*

30. Having regard to the aforesaid facts and circumstances, this Court is of the view that petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to regular bail, subject to his furnishing a personal bond in sum of Rs.25,000/- with one surety of the like



2026:DHC:896



amount to the satisfaction of the learned Trial Court/JMFC/Duty JM, further subject to the following conditions:

- (a) The petitioner shall not leave city/NCR region without informing the local SHO; and
- (b) The petitioner shall provide his mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.

31. It is clarified that the observations made hereinabove are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on merits of the case.

32. The petition stands disposed of.

33. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.

34. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

FEBRUARY 03, 2026/jg