



2026:DHC:236



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

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Judgment Delivered on: 12.01.2026+ **BAIL APPLN. 4133/2025**

SONU HALDER

.....Petitioner

Through: Mr. Madhav Suri and Ms. Akanksha Singh, Advs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Ajay Vikram Singh, APP for State with SI Reena Kumari and SI Ritu, PS. Budh Vihar.
Mr. Abhishek Shrivastava, Adv. for victim.**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J**

1. The present petition has been filed seeking regular bail in connection with FIR No. 495/2023 under Sections 344/363/366/376/506/34 IPC and Sections 6/21 of the POCSO Act, registered at Police Station Budh Vihar.
2. The case of the prosecution is that the present FIR was registered by the victim's mother, wherein she stated that her daughter i.e. the victim, was kidnapped on 26.11.2023. She was later recovered from Murshidabad, West Bengal, and after being brought back, the victim was medically examined. Thereafter, the victim was produced before the learned Metropolitan Magistrate, where her statement u/s 164 Cr.P.C. were recorded.

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Page 1 of 11



2026:DHC:236



3. As per the statement made by the victim under Section 164 Cr.P.C. before the learned Metropolitan Magistrate, the accused, who is the brother of the victim's friend, allegedly took the victim to West Bengal against her will and had a forceful sexual encounter with her, as a result of which the victim became two months pregnant. It is further stated that the accused solemnized a marriage with the victim.
4. Initially, FIR No. 495/2023 was registered under Section 363 IPC. However, after the victim's statement, Section 376 IPC and Section 6 of the POCSO Act were added. During the course of investigation, Sections 344/366/506/34 IPC, Section 21 of the POCSO Act, and Section 10 of the Prevention of Child Marriage Act were also invoked. The accused was arrested on 07.02.2024.
5. Mr. Madhav Suri, learned counsel for the petitioner, submits that the Petitioner/accused and the victim were in a romantic relationship when both were minors. He states that at the time of arrest, the accused was of 19 years, whereas the victim was 17 years of age.
6. He contends that the accused had solemnized marriage with the victim, with the knowledge and consent of both families. He further asserts that the victim cohabited with the accused in Kolkata by mutual consent, and this fact was known to her parents.
7. He submits that pursuant to the FIR lodged by the victim's mother, the victim was brought back from Kolkata by the Delhi Police, and thereafter the petitioner was arrested.
8. He submits that the petitioner is in custody since 07.02.2024 and that the trial is progressing at a tardy pace.



9. Elaborating further, he submits that the victim was partly examined-in-chief on 30.11.2024, but her further examination could not be conducted despite several opportunities.
10. He has drawn the Court's attention to various orders of the learned trial court to demonstrate that the delay in trial is not attributable to the petitioner.
11. *Per contra*, Mr. Ajay Vikram Singh, learned APP for the State, has argued on lines of Status Report.
12. He submits that the accused committed the entire act with the assistance of his parents, who have also been charged in the case.
13. He submits that the offences alleged against the accused are grave in nature and that the examination-in-chief of the victim remains incomplete.
14. I have heard Mr. Madhav Suri, learned counsel for the petitioner, as well as, Mr. Ajay Vikram Singh, learned APP for the State, duly assisted by Mr. Abhishek Srivastava, learned counsel for the victim, and have perused the record.
15. A perusal of the chargesheet reveals that earlier also the victim had gone missing, which led to the registration of another FIR No.365/2023 under Section 363 IPC at P.S. Kanjhawala on 19.09.2023. However, the victim had returned to her home on 25.09.2023 safely. After returning, she informed that she was at her friend Anupama's house.
16. The chargesheet further reveals that the victim had gone along with her mother to appear before CWC on 17.10.2023 in connection with the aforesaid FIR No.365/2023 and while returning when they were waiting for a bus bound for Bhawana, at Rajiv Gandhi Cancer Hospital, Sector-5,



2026:DHC:236



Rohini bus stand, the victim ran and boarded a blue colour bus with unknown number and victim's mother was left behind at the bus stand. Again, at the instance of the victim's mother, the present FIR No.495/2023 was registered under Section 363 IPC.

17. As per the status report filed by the State in the present petition, the victim was recovered on 26.11.2023 from Ward No.24, Gandhi Colony, Berhampore, Murshidabad, West Bengal, and was brought back to Delhi. Thereafter, she was medically examined.

18. From the statement of the victim recorded under Section 161 CrPC, it appears that the victim was known to the petitioner since 2019, as the petitioner is the cousin of her friend Riya. They became good friends and started talking on the phone and meeting regularly.

19. It is also the case of the prosecution that on 18.09.2025, the victim went with the petitioner to Haryana on her own and there, marriage between the parties took place, though it is alleged that the victim was got married forcibly to the petitioner. This was the time when the victim's mother lodged first FIR No.365/2023. However, the manner in which the victim voluntarily ran and boarded a bus leaving her mother behind at the bus stand, which incident became the reason for registration of present FIR, *prima facie* suggests that she voluntarily left her home and later joined the company of the petitioner.

20. As per the prosecution case, the age of the victim at the time of the incident was about 17 years, whereas the petitioner was aged about 19 years. This Court is cognizant of the fact that though the prosecutrix was minor at the time of incident but at the same time, it cannot be overlooked that she



2026:DHC:236



was of sufficient maturity and intellectual capacity and she apparently joined the company of the petitioner at her own will.

21. As per the prosecution version, the victim for the second time left on 17.10.2023 and was recovered from West Bengal on 26.11.2023. Therefore, for over more than one month, she had stayed with the petitioner. It is not the case of the prosecution that the victim was kept captive and had no opportunity to run and come back to her parents or to contact local police. Thus, it, *prima facie*, appears to be the case of romantic relationship between the petitioner and victim at an age of innocence.

22. This Court in “*Ajay Kumar vs State Govt. of NCT and Anr*” in Bail Application 2729/2022 observed that the intention of POCSO Act was to protect the children below the age of 18 years from sexual exploitation. It was never meant to criminalise consensual romantic relationships between young individuals.

23. This Court is also conscious of the fact that a Coordinate Bench in “*Dharmander Singh vs. State*” 2020 SCC OnLine Del 1267, has observed that after the charges are framed, because of the impact of Section 29 of the POCSO Act, the threshold for granting the bail will be higher. In the said case, the Court has laid down the contours within which bail application of an accused person under the POCSO Act is to be considered. It is also observed that while deciding the 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, which were illustrated in para 77 of the judgment. The relevant part of the decision reads 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.

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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."

24. The chargesheet reveals that statements of co-accused namely, (i) Bubai Pramanik (ii) Sapna, and (iii) Dilkhush, who were subsequently not



chargesheeted and placed in column no.12, shows that the victim had lived in West Bengal with the petitioner as his wife and she looked very happy. Though the probative value of the statements of the said persons will be seen by the learned Trial Court at the stage of trial, however, at this stage, it tilts the balance in favour of the petitioner.

25. Further, the consent of the victim for the physical relationship though cannot be construed as consent in law, but the same has to be seen in the light of the fact that it *prima facie* seems to be the case of romantic relationship given the age of the petitioner and victim, as well as, the circumstances of the present case as noted above.

26. There is another facet to the controversy. The petitioner is in judicial custody since 07.02.2024. The victim was partly examined-in-chief on 30.11.2024 and thereafter, she has not been examined-in-chief or cross-examined.

27. Mr. Suri, learned counsel for the petitioner has placed on record the order sheets of the learned Trial Court which also supports the contention that the victim was examined-in-chief only once on 30.11.2024. The relevant excerpts from various order sheets starting from 30.11.2024 till 26.09.2025 are reproduced hereinbelow in a tabulated chart:

S.NO	DATE	EFFECTIVE PORTION OF THE ORDER
1.	30.11.2024	<i>PW2 victim partly examined in chief, Her further examination deferred as assistance of IO was required. PW2 victim to be summoned through IO. IO to file the CDR of the mobile phone of accused which was seized.</i>
2.	17.01.2025	<i>as per previous order IO had to produce the CDR</i>



		<i>of the mobile phone of the accused which is required for recording testimony of victim.</i> <i>PW 2 /victim discharged unexamined today and be summoned for NDOH.</i>
3.	24.02.2025	<i>IO Submits that within two days she will file supplementary charge Sheet regarding the FSL result.</i>
4.	28.02.2025	<i>Supplementary charge-sheet with regard to the FSL result filed. PW 2 victim and PW 3 be summoned through IO as well as SHO PS concerned for the NDOH.”</i>
5.	05.04.2025	<i>No PW present today.</i> <i>IO submits that mother of victim is unwell that is why PW2 / victim is not able to appear today.</i>
6.	06.05.2025	<i>PW 2/ victim absent despite service of summons.</i> <i>Mother of victim submits that due to ill health, victim is unable to attend the Court today and she will appear on the NDOH.</i>
7.	29.05.2025	<i>IO/SI Ritu has given the report that she could not prepare the site plan at Manesar as the victim was not available in Delhi for long time as informed by the mother of victim to her.</i> <i>No explanation given why the entire investigation has not been completed till date and only after pointing out by the Ld. Addl. PP for State it seems that the investigating agency has woken up and started further investigation. One of the accused is in JC in this case despite which such casual approach is taken by the investigating agency.</i>



		<i>All such cases pertaining to Children of the year 2023 wherein the investigating agency asked for time to file supplementary charge sheet but till date the investigation is not yet complete.</i>
8.	03.07.2025	<i>All the PWs present are discharged unexamined. PW2, whose further examination has already been deferred be noticed through IO/SHO concerned for the NDOH.</i>
9.	27.08.2025	<i>Lawyers strike</i>
10.	26.09.2025	<i>Examination of PW2 Victim was deferred on 30.11.2024 for the want of the assistance of IO. Notice be issued to PW 2,3 and IO. Put up for PE on 18.12.2025</i>

28. Mr. Suri submits that even on 18.12.2025, the victim did not appear for her further examination-in-chief and the matter has been adjourned to 07.03.2026. Clearly, more than one year has elapsed since the victim was first examined-in-chief in part and thereafter, the examination-in-chief could not be concluded for the reasons not attributable to the petitioner. The petitioner continues to languish in jail on account of delayed trial. The Hon'ble Supreme Court has repeatedly observed that prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India¹.

29. It is also not the case of the prosecution that the petitioner has any previous involvements.

¹ *Rabi Prakash v. State of Odisha, 2023 SCC OnLine SC 1109*



2026:DHC:236



30. Considering the aforesaid circumstances in entirety, this Court is of the view that the petitioner is entitled to regular bail.

31. Accordingly, the applicant/petitioner is admitted to regular bail subject to his furnishing a personal bond in the sum of Rs. 10,000/- with one surety of the like amount to the satisfaction of the learned Trial Court/JMFC/Duty JM, further subject to the following conditions:

- (a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- (b) Petitioner shall provide his permanent address, as well as, 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.
- (c) Petitioner shall not communicate with or come in contact with the victim or other witnesses.

32. It is clarified that the observations made herein above 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.

33. The petition stands disposed of.

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

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

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

VIKAS MAHAJAN, J

JANUARY 12, 2026/aj

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CRL.M.C. 8431/2023

Page 11 of 11