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

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Judgment delivered on: 28.07.2023

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BAIL APPLN. 2898/2022 & CRL.M.A. 26860/2022

SANJAY KUMAR

..... Petitioner

Through: Mr. Aditya Aggarwal, Ms.
Pooja Roy and Mr. Naveen
Panwar, Advs.

Versus

STATE GOVT. OF NCT OF DELHI
AND ANR.

..... Respondents

Through: Mr. Aashneet Singh, APP for
State.**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J. (ORAL)**

1. The present petition has been filed under Section 439 CrPC seeking regular bail in FIR No. 483/2021, under Section 376(2)(n) IPC and Section 6 of POSCO Act, registered at Police Station Naraina, New Delhi.

2. The FIR was registered at the instance of prosecutrix alleging that the petitioner was her neighbour who befriended the prosecutrix stating that he loves her. The petitioner would often call the prosecutrix on the terrace to meet her. In May 2021, when the parents



of the prosecutrix were not at home, the petitioner telephoned her at around 12:00 at midnight and asked the prosecutrix to come on the terrace. When the prosecutrix went upstairs to the terrace, the petitioner took her to an empty room, where he established sexual relations with the prosecutrix on the pretext that he will marry her.

3. The prosecutrix did not tell about the aforesaid incident to anyone in her house out of fear. However, after many days when the prosecutrix started feeling pain in her stomach, she tested herself with a Home Kit and found that she was pregnant. Mustering the courage she told everything to her mother and thereafter she was taken to Safdarjung Hospital by her parents, where it was opined by the doctors that it was too late for an abortion.

4. On the aforesaid allegations of the petitioner, the FIR was registered against the petitioner under Section 376(2)(n) and under Section 6 of the POCSO Act.

5. The learned counsel for the petitioner submits that it is a case of consensual romantic relationship. To support his contention, he draws the attention of the Court to the MLC of the prosecutrix wherein the statement of the prosecutrix as told by her to the examining doctor has been recorded.

6. It has clearly been stated by the prosecutrix that she is 18 years of age and 7 months pregnant and that she was in a relationship with the boy. She has further stated that the doctors have advised her to get a case registered but she does not want to register a police case because all this happened according to her own will and without any pressure or coercion. Further, she has stated that it will be our own



responsibility for all the risks; neither the hospital nor the doctors will be responsible.

7. The attention of the Court is also invited to the statement of the prosecutrix recorded under Section 164 CrPC, wherein again it is clearly stated by the prosecutrix that whatever has happened to her was as per her own will and that she wishes to marry the boy. She has also categorically stated that the present FIR which has been lodged at her instance has been registered under pressure and that she does not wish to pursue the case any further and wish to give quietus to the matter at this stage itself.

8. The learned counsel for the petitioner submits that the age of the petitioner at the relevant time was a about 20 years whereas the prosecutrix was aged about 17.5 years. He further submits that the petitioner is in custody since 15.10.2021 and has clean antecedents.

9. *Per contra*, Mr. Aashneet Singh, the learned APP for the State submits that the prosecutrix was a minor at the time of incident, therefore, the consent of the prosecutrix has no relevance in law. However, he concedes that the age of the petitioner at the relevant time was 20 years and that of the prosecutrix was 17.5 years. It is also not in dispute that the antecedents of the petitioner are clean.

10. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the record.

11. This Court is cognizant of the fact that the prosecutrix was minor at the time of incident but at the same time it cannot be overlooked that the prosecutrix was aged 17.5 years and was thus, of sufficient maturity and intellectual capacity. The petitioner at the



relevant time was aged about 20 years.

12. From the statement of the prosecutrix as recorded in the MLC, as well as, under Section 164 CrPC, it *prima facie* appears that the prosecutrix was in consensual romantic relationship with the petitioner and the physical relationship established between the two was out of their own free will.

13. This Court in “*XXX vs State Govt. of NCT And Anr*” in Bail Application 2729/2022 observed that the intention of POCSO 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 adults.

14. Again in “*Dharmender Singh Vs. The State (Govt. Of NCT, Delhi)*” in Bail Application 1559/2020, this Court granted bail to the accused inter alia observing that the possibility of reciprocal physical relationship between the accused and the minor victim cannot be ruled out. Further, the Court also laid down the contours within which the bail application of a person accused under the POCSO Act is to be considered. The relevant part of the said decision 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.

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.”...

15. In the present case, it appears from the statement of the prosecutrix recorded under Section 164 CrPC that she never wanted to get the case registered against the petitioner. However, it seems that the present FIR has been lodged by the prosecutrix at the insistence of her family who were perhaps embarrassed after the discovery of prosecutrix's pregnancy, which had surpassed the stage of its termination.

16. Further, at this stage, apart from the allegations, other parameters for granting the bail are also required to be considered.

17. The testimonies of the prosecutrix and her mother have already been recorded, therefore, there cannot be any apprehension about the material witnesses being influenced.

18. Further, it is not in dispute that the antecedents of the petitioner are clean. The petitioner, who is presently aged about 23 years, is already in custody since 15.10.2021. Keeping the petitioner in jail will not serve any useful purpose, rather subjecting young boy in the



company of hardened criminals would do more harm than good to him.

19. The object of judicial custody is to secure the presence of the accused during the trial. The presence of the accused at the time of trial can otherwise, be secured by putting appropriate conditions.

20. In view of the above, I am satisfied that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to regular bail subject to his furnishing personal bond in the sum of Rs.20,000/- and a Surety Bond in the like amount subject to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner/applicant will not leave the city without prior permission of the Court.
- b) Petitioner/applicant shall appear before the Court as and when the matter is taken up for hearing.
- c) Petitioner/applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the Investigating Officer concerned.
- d) Petitioner/applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses or any family members of the witnesses.

21. It is made clear that the observations made hereinabove are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on merits of the case.

22. The application stands disposed of.

23. Copy of the order be forwarded to the concerned Jail



Superintendent for necessary information and compliance.

24. Order *dasti* under the Signatures of the Court Master.
25. Order be uploaded on the website of this Court.

JULY 28, 2023/dss

VIKAS MAHAJAN, J

HIGH COURT OF DELHI



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