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

Date of decision: 12th SEPTEMBER, 2024

IN THE MATTER OF:

+ BAIL APPLN. 3137/2024

SHUBHAM

.....Petitioner

Through: Mr. Kriti Ranjan, Mr. Kumar Gaurav,
Ms. Niharika Punn, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Shoaib Haider, APP for the State.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The Petitioner has approached this Court for grant of regular bail in FIR No.28/2022 dated 05.01.2022, registered at Police Station Mundka for an offence punishable under Section 363 IPC.
2. Material on record discloses that on 31.12.2021, a missing complaint was made by the father of the victim stating that his eldest daughter aged about 19 years left her home on 31.12.2021 and since then she is missing. FIR was got registered on 05.01.2022 by the father of the victim stating that his daughter went out from home on 31.12.2021. It is stated that though the age of the victim was given as 19 years on 31.12.2021 but she was actually about 17.5 years of age at the time when the complaint was lodged on 05.01.2022. The complaint records that the victim went out of the residence at 02:00 PM for school related activities at a friend's house. It is stated that



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the victim was a student of 9th Standard in a school in Delhi. It is stated that the father of the victim tried to search the victim but she could not be traced. It is stated that later on the father of the victim came to know that his daughter/victim has been misled by the Petitioner herein who took his daughter along with him. On the statement of the father of the victim, the present FIR was registered against the Petitioner.

3. Material on record indicates that the Petitioner and the victim were recovered on 03.03.2022 from Peeragarhi Chowk, Delhi. On the very same day i.e., 03.03.2022, the statement of the victim was recorded under Section 164 Cr.P.C. In the statement, the victim has stated that she went to the house of her friend after informing her mother where she had called the Petitioner for a meeting. It is stated that they were planning for a New Year Party and decided to go to Metro Walk but it was later cancelled. It is stated that she wanted to meet the Aunt of the Petitioner and then they went to the house of the Petitioner's Aunt at Laxmi Nagar by Metro but by the time they reached there, it was evening. It is stated that she was receiving phone calls from her parents but out of fear she switched off her mobile phone. It is stated that the Petitioner was from Madhya Pradesh and, therefore, they purchased tickets from Kashmiri Gate and they went to Madhya Pradesh and started residing there in a rented accommodation which was arranged by a person who was Senior to the Petitioner in his office. It is stated that they resided in Madhya Pradesh for 15 days and, thereafter, they went to Hajipur, Patna. It is stated that on coming to know that the father of the victim had filed a case, they took a train from Hajipur, Patna to New Delhi and, thereafter, a call was made to the police. Medical examination of the victim was conducted before



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the Doctor and before the Doctor the victim stated that she had eloped with the Petitioner and no complaints were given by the victim against the Petitioner.

4. Material on record further indicates that after about 23 days i.e., on 26.03.2024, another statement of the victim was recorded under Section 164 Cr.P.C. In her statement, the victim stated that she lied to her mother that she had gone to the house of her friend. It is stated that the Petitioner wanted to meet her and wanted to celebrate New Year with her but later on the Petitioner cancelled the program. It is stated that the Petitioner told her that he would take her to his Aunt/Bua's house at Laxmi Nagar and drop her at home by 05:00 PM. It is stated that by the time they reached the Aunt's house of the Petitioner and had tea & snacks, it was already 06:00 PM. It is stated that the victim was receiving phone calls from her parents and out of fear she switched off her mobile phone. It is stated that when the Petitioner was accompanying the victim outside his bua's house, he told the victim that that her parents are searching for her and if she goes back, they would kill her. It is stated that the Petitioner, thereafter, took the victim to Madhya Pradesh and they started residing there in an accommodation arranged by the Petitioner's employer/owner. It is stated that after four days, the victim asked the Petitioner to take her to her parents in Delhi for which the Petitioner told the victim that he would take her back to Delhi after his training gets over. It is stated that after 04 days, i.e., on 05.01.2022, the Petitioner's father and uncle came to Madhya Pradesh from Bihar and they took the Petitioner and the victim from Madhya Pradesh to Hajipur, Bihar. It is stated that the father and uncle of the Petitioner confined the victim at



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Hajipur, Bihar and gagged her mouth. It is stated on 19.01.2022, forged documents of the victim were prepared for court marriage. The victim refused to marry the Petitioner stating that she is a minor. It is stated that on this the bua and aunty of the Petitioner gave beatings to the victim and burned her leg using a heated knife. It is stated that after that the marriage of the victim was solemnized with the Petitioner. It is stated that, thereafter, the father of the Petitioner brought the victim to Delhi and handed her over to the Police.

5. The Petitioner has been in custody since 19.04.2022. Chargesheet has been filed for offences punishable under Sections 363, 366, 368, 323, 344, 376, 506, 120B and 34 IPC and Sections 6, 17 and 21 of the POCSO Act.

6. Learned Counsel appearing for the Petitioner states that it is a case of a love affair wherein the Petitioner and the Prosecutrix were in love with each other. He states that the Prosecutrix willingly went to Madhya Pradesh with the Petitioner and they were staying together there, and only when they came to know that the father of the Prosecutrix has filed a case, they came to Delhi as advised by the father of the Petitioner and relatives. He states that since the chargesheet has been filed, the Petitioner may be released on bail.

7. Learned APP for the State and learned Counsel for the Victim vehemently oppose the bail application of the Petitioner by contending that the Petitioner has committed a very serious and heinous offence. It is stated that, if convicted, the Petitioner can be sentenced upto imprisonment for a minimum period of 20 years and, therefore, the chances of the Petitioner fleeing away from justice cannot be ruled out. It is also stated that if the Petitioner would come out on bail, he may also threaten the victim and



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influence the witnesses.

8. Heard learned Counsel appearing for the Parties and perused the material on record.

9. Material on record discloses that when the victim left the house, she was 17 years and 02 months which is about 10 months short of her attaining the age of majority. This Court is coming across a number of cases where girls who are more than about 17 years of age elope with boys of their choice and when they are caught, the parents of the victim force the victim to change the statement of the victim before the police. The police also records such statements at a later stage which is completely contrary to the earlier statements. Majority of the statements recorded under Section 164 Cr.P.C also do not conform with the victim's earlier statements given by the victim under Section 161 Cr.P.C which is contradictory. The present case is a classic example where the victim in the first instance had come out with a story that she had gone to her friend's house after informing her mother where she had called the Petitioner for meeting and, thereafter, they went to Madhya Pradesh with the Petitioner and after that Bihar and when they came to know that the father of the victim has filed a case, they came to Delhi. There is a material improvement in her second statement recorded under Section 164 Cr.P.C which was recorded after 23 days after her first statement stating that though she went to Madhya Pradesh with the Petitioner on her own accord but she was kept confined in Bihar and was forced to marry the Petitioner.

10. This Court in Sahil v. State of NCT of Delhi, **2024 SCC OnLine Del 5523**, has observed as under:-



“13. In Anant Janardhan Sunatkari v. State of Maharashtra, 2021 SCC OnLine Bom 136, the Bombay High Court, while dealing with a case involving a 19 year old boy who had been convicted of rape of a 15 year old girl, released the accused on bail and has observed as follows:

“11. I have perused the impugned judgment; evidence of victim, mother of victim and of PW-6 (Classmate of the victim) as well the evidence of Medical Officer.

12. I am conscious of the fact that the passing of POCSO has been significant and progressive step in securing children's rights and furthering the cause of protecting children against sexual abuse. The letter and spirit of the law, which defines a child as anyone less than 18 years of age, is to protect children from sexual abuse.

13. I am also conscious of the fact that consensual sex between minors has been in a legal grey area because the consent given by minor is not considered to be a valid consent in eyes of law.

14. In the case at hand, facts are distinctive in the sense, victim is first cousin sister of the appellant. At the relevant time, she was 15 year old and appellant was 19 year old. Both were students and living in one house. A fact cannot be overlooked that the victim had resiled from her statement and further disowned the contents of portion marked B of her statement recorded under Section 164. Even her mother was unfriendly to prosecution. Opinions of doctor that victim was subjected to sexual assault was subject to FSL report. The FSL report was not obtained till the conclusion of the trial. Victim said, her statement to the police and narrative in



statement under Section 164 was at the instance of Class teacher. Therefore, in the proceedings, wherein suspension of sentence is sought, this Court cannot ignore the 'evidence of victim' and 'her mother'. At the same time, the age of the victim and of appellant their relations also cannot be overlooked. Though the prosecution vehemently argued and relied on Section 29 and 30, which provides for presumption of culpable, mental state as to certain offences, in my considered opinion, this submission and argument of the prosecution is to be gone into, when appeal is to heard finally."

14. *A similar view has been taken by the Gujarat High Court in Jayantibhai Babulbhai Alani v. State of Gujarat, 2018 SCC OnLine Guj 1223, wherein the High Court has observed as under:*

"6. This is an unusual case of boy and girl having affair. As the prosecutrix was minor, the applicant is sent behind prison because of the complaint lodged by the father of the prosecutrix. Undoubtedly, a minor girl is to be protected under law as there are number of instances of sexual abuses of minor girls and therefore, there is a special legislation of POCSO in the year 2012 and amendment in sections 375 and 376 of the IPC in 2014. The judiciary takes a very serious note of sexual offences against women and specially against minor girls. Upon reading of the statement of the prosecutrix, they both eloped. Further, the trial Court rejected bail application mainly on the ground that the girl is minor and her consent is immaterial.

7. In the present case, the prosecutrix is 17 years 11 months old and the accused is 18 years old. It appears from the record and the statement of the prosecutrix dated 07.04.2018 that the prosecutrix



was in love with the applicant and left the home of her own and moved with the applicant at various places. These are the mitigating factors and therefore, present application deserves consideration.”

(emphasis supplied)

15. *A co-ordinate Bench of this Court in Dharmander Singh v. State, 2020 SCC OnLine Del 1267, has laid down the parameters that are to be followed when considering bail of a person accused under the POCSO Act, and the same 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)”

11. Teenage love and such offences fall in a legal grey area and it is debatable if that can be actually categorized as an offence. This Court at the moment is not commenting as to whether the offence has been committed by the Petitioner or not. This Court at the moment is only considering that the Petitioner, who at the time of incident was about 20 years of age and, as of today, he is 22 years of age, should be further kept in custody or not. The Petitioner has been in custody since 19.04.2022. Chargesheet has been filed. Conditions can be imposed restraining the Petitioner from making contact to the victim. Keeping the Petitioner further in custody will be detrimental to the future of the Petitioner who is about 22 years of age. Considering the facts and circumstances of the case, this Court is inclined to grant regular bail to the Petitioner on the following conditions:

- a) The Petitioner shall furnish security in the sum of Rs.25,000/- with two sureties of the like amount to the satisfaction of the Trial Court/Magistrate/Duty Magistrate.



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- b) The Petitioner shall not leave NCT of Delhi without prior permission of the concerned Court.
 - c) The Petitioner is directed to attend all the proceedings before the Trial Court.
 - d) The Petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
 - e) The Petitioner shall not, directly or indirectly, contact the Prosecutrix or try to influence the witnesses in any manner.
 - f) The Petitioner shall surrender his passport, if any, with the Trial Court.
 - g) Violation of any of these conditions will result in the cancellation of the bail given to the Petitioner.
12. It is made clear that the observations made in this Order are only for the purpose of grant of bail and not on the merits of the case.
13. With these directions, the bail application is disposed of along, with the pending applications, if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 12, 2024

S. Zakir