

\$~8

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

+ **BAIL APPLN. 2729/2022**



..... Petitioner

Through: Mr. Omkar Sharma, Adv.

versus

STATE GOVT OF NCT OF DELHI AND ANR. Respondent

Through: Mr. Ajay Vikram Singh, APP
SI Sarita, PS Baba Haridas Nagar

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

%

20.10.2022

On the last date of hearing, I had directed the petitioner to file a copy of the order of the High Court of Punjab and Haryana at Chandigarh in the present matter.

The order has been filed which shows that the Ms. 'A' i.e., the daughter of the complainant had approached the High Court of Punjab and Haryana stating that she had married the applicant out of her own will and that her parents were threatening to cause harm to her and her husband. As a result of which, the High Court of Punjab and Haryana was pleased to direct the respondent Police to provide adequate and appropriate protection to Ms. 'A' and her husband.

In the present case, the FIR has been filed by the father of Ms. 'A' stating that his daughter aged about 17 years was married on 30.06.2021 to one, . On 27.10.2021, Ms A came to the house of the Applicant and on 28.10.2021, Applicant took Ms. 'A' to Punjab and

performed marriage with her. Hence the FIR.

In my opinion the intention of POCSO was to protect children below the age of 18 years from sexual exploitation. It was never meant to criminalize consensual romantic relationships between young adults. However, this has to be seen from facts and circumstances of each case. There might be cases where the survivor of sexual offence, may under pressure or trauma be forced to settle.

The Madras High Court in Crl.O.P.No.232 of 2021 and Crl.M.P.No.109 of 2021 titled *Vijayalakshmi vs State*, has also observed that

“11. There can be no second thought as to the seriousness of offences under the POCSO Act and the object it seeks to achieve. However, it is also imperative for this Court to draw the thin line that demarcates the nature of acts that should not be made to fall within the scope of the Act, for such is the severity of the sentences provided under the Act, justifiably so, that if acted upon hastily or irresponsibly, it could lead to irreparable damage to the reputation and livelihood of youth whose actions would have been only innocuous. What came to be a law to protect and render justice to victims and survivors of child abuse, can, become a tool in the hands of certain sections of the society to abuse the process of law”

This Court in *Dharmender Singh v. State (Govt. of NCT)* BAIL APPL. 1559/2020, granted bail to the accused while taking into consideration the possibility of a reciprocal physical relationship between the accused and the minor victim. It has also laid down the parameters that are to be followed when considering bail of a person accused under the POCSO Act, it has held as follows-

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.”

In the present case, I have interacted with Ms. ‘A’ in the Chamber in the presence of learned APP.

She states that she was married to one, Mr.  but she does not wish to stay with him. At the time of marriage with the applicant on 28.10.2021, she was an adolescent and around 17 years of age (her date of birth is 01.10.2004).

She further states that she got married to the applicant out of her own

free will and without any undue influence, threat, pressure or coercion and even today wants to stay with the applicant.

Thus, this is not a case where the girl was coerced into the relationship with the boy. In fact, Ms. 'A', herself went to the applicant's house and asked him to marry her. The statement of the victim makes it clear that this is a romantic relationship between the two and that the sexual act involved between them was consensual. Although the victim is minor and hence her consent does not have any legal bearing, I am of the opinion that the factum of a consensual relationship borne out of love should be of consideration while granting bail. To ignore the statement of the victim and let the accused suffer behind jail, in the present case, would otherwise amount to perversity of justice.

I am cognizant of the fact that the proceedings before me are of grant of bail and not of quashing of FIR. It is not a case where the slate of applicant is wiped clear. In the circumstances of the present case, the applicant is entitled to bail for the reasons enumerated above.

In this view of the matter, applicant shall be released on bail on the following terms and conditions:-

- i. The applicant shall furnish a personal bond and surety bond in the sum of Rs. 10,000/- each, to the satisfaction of the Jail Superintendent;
- ii. The applicant shall appear before the Court as and when the matter is taken up for hearing;
- iii. The applicant shall join investigation as and when called by the I.O concerned;
- iv. The applicant shall provide his mobile number to the Investigating

Officer (IO) concerned, which shall be kept in working condition at all times. The applicant shall not switch off, or change the same without prior intimation to the IO concerned, during the period of bail;

- v. In case the applicant changes his address, he will inform the IO concerned and this Court also;
- vi. The applicant shall not leave the country during the bail period and surrender his passport, if any, at the time of release before the Jail Superintendent;
- vii. The applicant shall not indulge in any criminal activity during the bail period;

The application stands disposed of in the aforesaid terms.

JASMEET SINGH, J

OCTOBER 20, 2022 / (MS)

Click here to check corrigendum, if any