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

+ **BAIL APPLN. 4330/2024, CRL.M.A. 35430/2024**

MOHD. RAFAYAT ALI

.....Petitioner

Through: **Ms. Tanya Agarwal, Advocate.**

versus

STATE NCT OF DELHI AND ANR. & ANR.Respondents

Through: **Mr. Mukesh Kumar, APP for State with Ms. Akanksha, SI, PS-Bh. Dairy. Mr. Archit Upadhayay and Ms. Shradha Mewati, Advocates for R-2 with Prosecutrix-in-person and her Father.**

Mr. Karandeep Singh, Advocate for Complainant.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

03.02.2025

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1. The present application filed under Section 483 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (erstwhile Section 439 and Section 482 of the Code of Criminal Procedure, 1973² respectively) seeks regular bail in proceedings arising from FIR No. 0415/2024 dated 17th May, 2024, registered at P.S. Bhalswa Dairy, under Sections 376 and 313 of the Indian Penal Code, 1860³ and Section 6 of the Protection of Children from Sexual Offences Act, 2012⁴.

¹ "BNSS"

² "CrPC"

³ "IPC"

⁴ "POCSO Act"



2. Briefly, the case of the prosecution is as follows:

2.1 On 16th May, 2024, Ms. 'X', age 16 years, appeared at P.S. Bhalswa Dairy along with her parents. Her parents informed the police that she had recently undergone an ultrasound examination, which confirmed a pregnancy. In view of the circumstances, the IO arranged for counselling by a CIC counsellor.

2.2 After receiving counselling, the Prosecutrix recorded her statement, alleging that the Applicant, who resided across from her house with his wife and children, had developed acquaintance with her over the past three to four months. She claimed that during this period, the Applicant engaged in physical relations with her on multiple occasions under the pretext of marriage.

2.3. The Prosecutrix stated that on 10th May, 2024, upon noticing a delay in her menstrual cycle, she took a pregnancy test, which returned positive. When she informed the Applicant of this development, he provided her with some medication. After consuming the said medicine, her menstrual cycle resumed; however, she began experiencing severe abdominal pain. On 16th May, 2024, she disclosed her condition to her father, who subsequently took her to Sant Soham Hospital, where the Doctor conducted an ultrasound test. On the basis of ultrasound examination, parents were informed that Prosecutrix had been pregnant.

2.4 After recording of the above statement, the Investigating Officer escorted the Prosecutrix to BJRM Hospital for a medical examination, which was conducted and documented under MLC No. 251335 dated 16th May, 2024. Subsequently, on 17th May, 2024, the present FIR No. 415/2024 was registered, and the investigation commenced.



2.5 During the course of investigation, the Applicant was arrested on 17th May, 2024 and remanded to Judicial custody. The Prosecutrix's statement was recorded under Section 164 of the CrPC, wherein she reiterated the facts stated in the FIR. Additionally, her date of birth was verified from her school records, confirming that she was born on 3rd August, 2008. Accordingly, the investigation established that the Prosecutrix is a minor.

2.6 During the course of further investigation, exhibits from the Prosecutrix and the Applicant were collected and sent for forensic examination. Upon completion of the investigation, a chargesheet was filed against the Applicant, and the trial proceedings commenced. Subsequently, the FSL results were obtained and duly submitted before the Trial Court.

2.7 Charges were framed against the Applicant on 5th September, 2024, for offences under Sections 376(2)(n) and 313 of the IPC, along with Section 6 of the POCSO Act. So far, the Prosecutrix, along with her mother and father, have been examined as prosecution witnesses before the Trial Court and the matter is now listed for 13th February, 2025, for the recording of evidence of the School Principal (PW-16).

3. Counsel for the Applicant seeks grant of bail on the following grounds:

3.1 The FIR was registered six days after the alleged incident when the Prosecutrix allegedly took the medicine at the behest of the Applicant. The FIR is based on a complaint signed by the Prosecutrix's mother rather than the Prosecutrix herself. This delay is significant as it raises questions about the voluntary nature of the complaint. The Prosecutrix was in a consensual relationship with the Applicant and was subsequently pressured by her parents into filing the complaint.



3.2 The counselling report signed by the CIC Counsellor-DCW district explicitly mentions 'relation with the accused: boyfriend'. Further, in her statement under Section 164 of the CrPC, the Prosecutrix stated that she had been in a relationship with the Applicant since February 2024 and that their physical relationship began in March 2024. Additionally, during her interaction with the Child Welfare Committee, the Prosecutrix reiterated that her relationship with the Applicant was consensual.

3.3. Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015⁵, relates to presumption and determination of age of minors and provides for the mode of such determination. In the present case, no documentary proof of age has been annexed to the chargesheet, and there is no explanation regarding the basis on which the date of birth of the Prosecutrix was recorded in the school admission register. Pertinently, the Principal of the concerned school has stated that no document is available with the institution to verify the date of birth of the Prosecutrix.

3.4 Supreme Court and various High Courts, have held that an entry in the school admission register is admissible as evidence under Section 94 of the JJ Act, however, its probative value is subject to scrutiny based on the facts and circumstances of each case. Given the lack of supporting documents, the school register entry alone should not be considered conclusive proof of age in the present case.

3.5 In the present case, the chargesheet had already been filed against the accused and the testimony of the Prosecutrix and her mother and father have already been recorded. The Applicant, aged 26 years, has been in custody for a substantial period, and with the prosecution's main witnesses having



testified, there is no justifiable reason to prolong his incarceration. Therefore, the Applicant's continued detention serves no purpose and as such, he prays for his release on bail.

4. On the other hand, Mr. Mukesh Kumar, APP for the State, strongly opposes the present application contending that the age of the Prosecutrix has been duly established based on her school records. As per the school register, the Prosecutrix was 16 years old at the time of the alleged incidents, making her a minor under the POCSO Act. Mr. Kumar argues that the Applicant, aged 26 years, is a married man with a wife and children. Despite this, he engaged in a relationship with a minor girl, misleading her with false promises of marriage and having physical relations with her on multiple occasions. Given the nature of the allegations, which include sexual assault and administration of medication leading to the termination of pregnancy, the case warrants stringent consideration before granting bail. Mr. Kumar further argues that the Applicant resides in the same vicinity as the Prosecutrix, raising a serious apprehension that, if released on bail, he may attempt to influence or intimidate the victim or her family. He emphasizes that protection of the victim, particularly in cases involving sexual offences against minors, is paramount and releasing the Applicant at this stage could jeopardize the ongoing trial.

5. The Court has carefully examined the submissions of both parties. The primary argument advanced by the Applicant in support of bail revolves around the alleged discrepancy in the age of the Prosecutrix at the time of the incident. The Applicant contends that she was 18 years old and that their relationship was consensual, thereby negating the offence under Section 6 of

⁵ "JJ Act"



the POCSO Act. In this regard, the Applicant has placed strong reliance on the recorded statement of the Prosecutrix before the Trial Court, where it was noted:

*“PW-1: Statement of Victim ‘G’ D/o ‘AH’ (identity withheld), Witness mentioned at Serial No. 1 as per list of witnesses annexed with the charge sheet, **aged about 18 years (as told by the witness)**”*

[Emphasis added]

6. The impact of this statement, wherein the Prosecutrix herself purportedly stated that she was 18 years old, will have to be tested at trial once the parties have led evidence. However, at this stage, the Court cannot disregard the school records, which categorically mention the date of birth of the Prosecutrix as 03rd August, 2008. The school admission register is the legally accepted document for determining age under Section 94 of the JJ Act read with Rule 12 of the JJ Rules, 2007, unless rebutted by cogent evidence. In the absence of any conclusive proof to contradict the school records, the mere oral assertion of the Prosecutrix during trial cannot be given overriding weight at this stage.

7. The father of the Prosecutrix, who is present in Court, has strongly opposed the present bail application. He states that the Prosecutrix was born at home, and, as a result, no hospital records exist to establish her date of birth. However, he asserts that the date of birth recorded in the school register was provided by the parents themselves at the time of her admission and is factually correct. Given this assertion, the Applicant’s claim that the Prosecutrix was a major at the time of the alleged incident remains unsubstantiated and is a matter that can only be tested during trial. In view of this, the case laws relied upon by the Applicant regarding discrepancies in school records for determining age do not hold relevance at this stage. Such



contentions should be raised before the Trial Court on the basis of evidence led by both the parties. Moreover, *prima facie*, on the basis of the cross-examination of the Prosecutrix before the Trial Court, nothing has emerged to discredit the school record relied upon by the prosecution to verify the date of birth of the Prosecutrix.

8. This plea of consensual relationship is legally immaterial. Under the POCSO Act, the age of the victim is the decisive factor, and if the victim is below 18 years of age, the law presumes that she is incapable of giving valid consent. The alleged consensual nature of the relationship is, therefore, *prima facie* irrelevant for the purpose of prosecution under the POCSO Act.

9. Moreover, it is pertinent to note that the medical record dated 06th May, 2024, which allegedly pertains to the ultrasound conducted by the Doctor after the Prosecutrix was taken to the hospital by her father with complaints of abdominal pain, records the presence of “Retained Products of Conception” (RPC) in the uterus. This medical finding *prima facie* corroborates the prosecution’s case regarding the allegations against the Applicant.

10. At the time of the alleged incident, the Applicant was 26 years old, a married man with a daughter, who allegedly engaged in physical relations with the Prosecutrix, who would be 15 years and 7 months old as per her date of birth being 3rd August, 2008 and who was also his neighbour. The nature of the offence, the age disparity between the parties, and the fact that the trial is still ongoing with key public witnesses yet to be examined are factors that cannot be overlooked. Thus, considering the gravity of the offence, the potential for influencing the witness, and the stage of the trial proceedings, the Court is not inclined to grant bail to the Applicant.



11. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

12. Accordingly, the application is dismissed, along with pending application(s).

SANJEEV NARULA, J

FEBRUARY 3, 2025

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