
(2021) 02 DEL CK 0242
In the Delhi High Court
Case No : Bail Application No. 2525 Of 2019

Vicky

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 15-02-2021

Acts Referred:

Indian Penal Code, 1860 — Section 363, 366, 376, 376(2)(i)
Protection Of Children From Sexual Offences (POCSO) Act, 2012 — Section 4, 5(1), 6, 8, 27
Code Of Criminal Procedure, 1973 — Section 161, 164

Citation : (2021) 02 DEL CK 0242

Hon'ble Judges : Anu Malhotra, J

Bench : Single Bench

Advocate : Dhruv Gupta, Ashok Kumar. Garg, Vrinda Kapoor

Judgement

Anu Malhotra, J

1. The applicant, vide the present application seeks the grant of bail in relation to FIR no. 91/2019 Police Station Vasant Kunj (South) registered under

Sections 363/376 of the Indian Penal Code, 1860 and Sections 4 and 8 of the POCSO Act, 2012.

2. Notice of the application was issued to the State as well as to the prosecutrix in terms of the practice directions dated 24.9.2019 of this Court

bearing No.67/Rules/DHC.

3. The status report dated 16.10.2019 had been submitted by the State under signatures of the SHO Police Station Vasant Kunj (South) and the reply

on behalf of the prosecutrix through her learned counsel was submitted on 13.1.2020 supported with an affidavit on which the name of prosecutrix is

given but signed by the mother of the prosecutrix as well as with an affidavit of the mother of the prosecutrix.

4. The prosecutrix on the date of submission of her affidavit is indicated to be 18 years. The FIR in the instant case is indicated to have been

registered on 31.1.2019 at Police Station Vasant Kunj (South) under Section 363 of the Indian Penal Code, 1860.

5. The mother of the prosecutrix in the FIR stated to the effect that her daughter aged 17 years had left home on 31.1.2019 around 1600 hours, that

she studied in New Green-Field School, Saket and had been missing since the afternoon. As per the status report, after registration of the FIR during

investigation, the victim was searched at various places and all known places but was not traceable and her school records were verified to give forth

her date of birth as being 4.2.2001. As on date thus the age of the prosecutrix is 20 years 11 days. Thus on the date of the registration of the FIR on

31.1.2019, the prosecutrix was aged 17 years 11 months and 26 days and just four days short of being an adult. As per the status report submitted by

the State the prosecutrix was traced at Mathura, U.P. with the petitioner/applicant herein and thereafter the victim and the petitioner were both

brought to Delhi and the petitioner was arrested and his disclosure statement was recorded and his medical examination was conducted and he was

produced before the Court and remanded to judicial custody. As per the status report it was recorded to the effect:

â??That during investigation, statements U/S 164 CrPC of the Victim was recorded on 24.02.2018 wherein the Victim has stated that

accused took her to his uncle house in Badarpur and thereafter the accused made physical relationship with her. That again after leaving

from there the accused made physical relations with her in Mathura.â??

6. Charges are indicated to have been framed and the matter is pending trial at the stage of prosecution evidence. The State through its status report

and through oral submissions made had submitted that in as much as the petitioner had made physical relations with the minor girl of the age of 17

years and could tamper with the evidence and influence the victim and other witnesses, and thus he be not granted bail.

7. As per the statement of the prosecutrix under Section 161 of the Cr.P.C., 1973, dated 3.2.2019, the prosecutrix is alleged to have stated that she is

a student, that on 31.1.2019 due to there being a lot of pressure because of her examinations, she had gone to her friend, i.e., the present petitioner a

resident of Meethapur, Badarpur, New Delhi and there the petitioner had taken her to his uncle's house at Meethapur and at night at his

uncle's house whose name she did not know, the petitioner had had forcible physical relations with her and that on 1.2.2019, the petitioner at about

7:30 p.m. took her from the Tughlaqabad Railway Station to Agra and on the way he had thrown the cloth used at the time of the incident in a canal

and they reached Agra by train in the midnight whereafter the petitioner took her to the Shirdi Sai Maharashtra Dharamshala at Mathura where too

the petitioner had physical relations with her and the police had tracked them there and had brought them to the police station and had made enquiries

from her and that she affirmed the correctness of that statement.

8. In her statement under Section 164 of the Cr.P.C., 1973, recorded on solemn affirmation on 4.2.2019 by the learned Metropolitan Magistrate-01,

Patiala House Courts, New Delhi, in terms of the provisions of Section 27 of the POCSO Act, wherein it had been observed by the learned

Metropolitan Magistrate that the deponent appeared to be normal without any fear, force or pressure and had made her to sit in front of her and that

the mother of the prosecutrix was also present and all others were asked to wait outside the chamber and camera proceedings were conducted whilst

recording of the statement of the prosecutrix when none except the learned Metropolitan Magistrate, the deponent and her mother were present.

9. The prosecutrix through her statement under Section 164 of the Cr.P.C. stated that she studied in standard XII in the New Green Fields School,

Saket and had come to the Court with her mother and father to give her statement and that she was under no pressure and would give her statement

willingly. The prosecutrix thereafter stated that 1½ years ago she met him, i.e., the petitioner at Instagram and thereafter there was a relationship

between them but the petitioner had a girlfriend and that she had also spoken to that girlfriend whereafter the petitioner and she, i.e., the prosecutrix

had separated but that the petitioner kept pressurizing her sometimes by drinking and sometimes by cutting his hand and thus she had made the

petitioner talk to a boy, a brother living in the society, so that the petitioner did not harass her but the petitioner did not agree and thus they both entered

into a relationship again whereafter three friends of the petitioner used to keep calling her and gave her different numbers and asked to call on those

different numbers to inform her that the petitioner had relations with all these persons but that the prosecutrix did not call on any of the numbers

because relations between her and the petitioner were alright and she the prosecutrix also stopped talking to the friends of the petitioner.

10. As per her statement under Section 164 of the Cr.P.C. on 31.1.2019 she had left her house because she had a lot of pressure of the exams and

she did not want to give the exams and thus she went out and called the petitioner and thus the petitioner asked her to meet at the Tughlaqabad Metro

Station where she went and she told the petitioner that she had come out of the house and she wanted space to live for one day on which the

petitioner stated that he could not take her home because his parents were at home and thus he took her to an uncle's house at Badarpur and on

31.1.2019 they reached the uncle's house at about 5:30/6:00 p.m. and that the uncle of the petitioner did not know that the prosecutrix had run

away from her house. It has been stated through the statement under Section 164 Cr.P.C. by the prosecutrix that on 31.1.2019 at night she and the

petitioner were in physical relations and that on 1.2.2019 at 7:30 p.m. they came out from the house of the uncle and went to the Tughlaqabad Railway

Station from where they took a train at 8:30 p.m. for Agra Cantt. where they reached at night and the petitioner contacted his friend who called them

to Achmera where the petitioner had two friends who gave Rs.400/- to the petitioner and also apprised him of a place to live but that was far so they,

i.e., the petitioner and the prosecutrix, decided not to stay there and on 3.2.2019, they would go back to their respective homes and thus the two

friends of the petitioner had got them the train for Mathura and they both, i.e. the petitioner and the prosecutrix came to Mathura and after Mathura,

the petitioner told the prosecutrix that they would go back home on the morning of the 3rd that they did not have any space to stay on the night of the

2nd and thus they stayed at the Dharamshala and in the night they had again become physically intimate and on the 3rd morning the police tracked

them. The prosecutrix further stated that she did not want to say anything else, 'mujhey aur kuch nahi batana.'

11. This statement has been certified by the learned Metropolitan Magistrate to be a true narration of the facts disclosed by the deponent which had

been explained to her in simple Hindi and admitted by her to be correct.

12. Significantly, the prosecutrix with her reply through her affidavit bearing signatures of her mother and also an affidavit of her mother, submits to the effect that the petitioner has been charged under Sections 366/376(2)(i) of the Indian Penal Code, 1860 and Section 5 (i) of the POCSO Act, which are punishable with life and taking into account the gravity and nature of the offence the bail application of the petitioner be rejected on this ground alone. This reply places reliance on observations of the learned Trial Court whilst dismissing the bail application of the applicant, which read to the effect:

“On 31.01.2019 she had an exam for which she was feeling pressure. She went to her friend, the accused herein. He took her to his

uncle's house and they stayed there for the night. That night he forcibly established physical relations with her. He then took her to Agra

and on the way he threw the cloth used in the commission of the offence. They stayed in a Dharamshala where again accused established

physical relations with the victim and from where they were recovered by the police. In her statement recorded u/s 164 Cr.P.C. she stated

that she had met the accused about one and half year back on Instagram. They were in a relationship. The accused had another girlfriend

with whom the victim also spoke. The accused and victim then broke up. However, the accused kept pressurizing her. He would drink and

at times cut his hand. Ultimately, the victim gave in and again went into a relationship with the accused.”

13. It has thus been submitted on behalf of the prosecutrix through her stated reply not signed by her that the applicant is of a passionate and

aggressive nature and there is a likelihood that he would further attempt to pressurize and harass the prosecutrix and the complainant. It has further

been submitted that the prosecutrix has just attained majority and there is reasonable apprehension that the applicant would come after her to harass,

pressurize and influence and threaten her. The reply is signed by the mother of the prosecutrix and it is sought that the bail application be dismissed

and alternatively if the Court deemed fit to enlarge the applicant on bail the applicant be imposed reasonable conditions not to contact the prosecutrix

or her family by any means or manner and not try to influence her any further.

14. Significantly, the learned Trial Court whilst dismissing the application filed by

the applicant vide order dated 31.7.2019 had observed categorically to the effect that it is correct that she had left her house of her own and therefore no charge u/s 363 IPC is maintainable against the accused, but it has been observed further that in as much as the petitioner had taken her knowing that she would likely to be forced to be seduced to illicit intercourse and he did establish physical relations with her with repeatedly, he was liable to be tried for the offences punishable under Sections 366/376(2)(i) of the Indian Penal Code, 1860, and Section 5(1) of the POCSO Act punishable under Section 6 of the POCSO Act.

15. The learned Trial Court whilst dismissing the bail application observed to the effect that the statement of the victim revealed that she was highly influenced by the accused, that despite warnings by his own friend she continued in a relationship though he was stated to be in another relationship, that she was a minor and thus susceptible to influence and that the witnesses had not till then entered the witness box.

16. Vide order dated 19.2.2020 it was directed that the learned Trial Court shall record the testimony of the prosecutrix as the first witness before commencing to record the testimonies of the other witnesses, the matter was directed to be renotified for the date 17.4.2020 whereafter the proceedings could not be taken up in view of the prevailing pandemic and were taken up on an early hearing application filed on behalf of the petitioner Crl.M.A. No. 7758/2020 on 17.6.2020 which application was allowed and the bail application was thus heard on 6.7.2020 when in view of proceedings dated 19.8.2020 the proceedings were deferred to the date 10.7.2020 so that instructions could be sought by either side that is the petitioner and the prosecutrix for the recording of the testimony of the prosecutrix through video conferencing. Though it was submitted on behalf of the State on 10.7.2020 that there was no opposition to the recording of the testimony of the prosecutrix through Video Conferencing and the prayer for recording of the testimony of the prosecutrix also through video conferencing was not opposed on behalf of the prosecutrix, the recording of the testimony of the prosecutrix through video conferencing was declined by the Pairokar of the petitioner, i.e., the elder brother of the petitioner and thus in view of the verdict of the Honâ??ble Supreme Court in Order dated 06.04.2020 in Suo Motu Writ (Civil) No. 5/2020 titled in RE: guidelines for

Court functioning through video conferencing during Covid-19 pandemic observed in paragraphs VII and VIII-.

â??vii. Until appropriate rules are framed by the High Courts, video conferencing shall be mainly employed for hearing arguments whether

at the trial stage or at the appellate stage. In no case shall evidence be recorded without the mutual consent of both the parties by video

conferencing. If it is necessary to record evidence in a Court room the presiding officer shall ensure that appropriate distance is maintained

between any two individuals in the Court..

viii. The presiding officer shall have the power to restrict entry of persons into the court room or the points from which the arguments are

addressed by the advocates. No presiding officer shall prevent the entry of a party to the case unless such party is suffering from any

infectious illness. However, where the number of litigants are many the presiding officer shall have the power to restrict the numbers. The

presiding officer shall in his discretion adjourn the proceedings where it is not possible to restrict the number.â??

and the Rules for the Video Conferencing which since had been notified vide No.325/Rules/DHC Dated 1.6.2020, arguments were addressed on the

main application on behalf of either side.

17. It is essential to observe that even in the MLC of the prosecutrix dated 3.2.2019 placed on record of the present petition as Annexure P-4,

prepared at the Safdarjung Hospital apart from the complainant having declined to allow any internal and external examination, the alleged history put

forth was that the prosecutrix stated that she had gone willingly with her boyfriend, i.e., the petitioner herein, to Badarpur and she had come back on

3.2.2019 at 10 a.m. and that there was no physical assault that had taken place with her.

18. On behalf of the State the submissions as made through status report were reiterated.

19. Reliance was placed on behalf of the petitioner on a catena of verdicts:

i. Shweta Gulati & Ors. Vs The State Govt. of NCT; 251(2018) DLT667

ii. The NCT of Delhi vs Kuldeep and Ors.; 261(2019) DLT493

iii. State vs Hasim; MANU/DE/0288/2014

- iv. Sunil Mahadev Patil vs The State of Maharashtra; 2016(3)Bom(Cri)435
- v. Sabari vs. Inspector of Police, Belukurichi Police Station and Ors.; 2019(3) MLJ(CrI)110,
- vi. S. Varadarajan vs. State of Madras; AIR965SC942
- vii. Sushil Kumar vs State of Himachal Pradesh: 2018(3) ShimLC 1669
- viii. Sagar Tomar vs State of Himachal Pradesh; MANU/HP/1272/2015
- ix. Prashant Kumar Singh v. State; MANU/DE/2230/2018

to contend to the effect that the prosecutrix was a just four daysâ?? short of the age of majority, i.e., adulthood and had apparently left her home

with the petitioner of her own accord and thus the learned Trial Court had also vide order dated 31.7.2019 had categorically observed that no offence

under Section 363 of the Indian Penal Code, 1860 was made out against the petitioner. It was also submitted on behalf of the petitioner that relations

between the petitioner and the prosecutrix were apparently wholly consensual.

20. Without any observations on the merits or demerits of the trial that would take place, taking into account the statement under Section 164 of the

Cr.P.C. of the prosecutrix dated 4.2.2019 which is on solemn affirmation and which significantly has been made by the prosecutrix in the presence of

her mother, in which there is not a whisper of an averment in relation to any force having been exerted by the petitioner to enter into any physical

relations with the prosecutrix who was just four daysâ?? short of adulthood it is considered appropriate to release the applicant on bail on filing a bail

bond for a sum of Rs.50,000/- with two sureties of the like amount to the satisfaction of the Trial Court with directions that the petitioner,

â?¢ shall not leave the city of Delhi;

â?¢ shall appear before the Trial Court as and when directed by the Trial Court;

â?¢ shall keep his mobile phone on at all times and drop a pin on the Google map to ensure that his location is available to the Investigating Officer;

â?¢ shall make no contact whatsoever with the prosecutrix or her family members neither himself nor through any other associate or any other

person:

â?¢ shall not attempt to intimidate the prosecutrix and her family members in any manner and shall commit no offence whatsoever and;

â?¢ furthermore, the petitioner under no circumstances, shall leave the country.

The application is disposed of accordingly.