

**Court No. - 47**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 29298 of 2024

**Applicant :-** Saleem

**Opposite Party :-** State Of Up And 3 Others

**Counsel for Applicant :-** Sarve Nazir,Zafar Abbas

**Counsel for Opposite Party :-** Adil Jamal,G.A.,Shabeh Jamal

**Hon'ble Siddharth,J.**

Heard learned counsel for the applicant; Sri Abdul Saleem Ahmad, Advocate holding brief of Sri Adil Jamal, learned counsel for the informant and learned A.G.A for the State.

There are allegations against the applicant of abduction of minor girl with intent to marry, commission of offences of rape and penetrative sexual assault and implication under Section SC/ST Act has also been made.

Counsel for the applicant submits that the victim is aged about 17 years. From her statement recorded under Section 164 Cr.P.C., it appears that she was a consenting party and willingly eloped with the applicant and was involved in a voluntary physical relationship. The applicant is in jail since 10.03.2024 and has no criminal history to his credit.

On the other hand learned A.G.A has opposed the prayer for bail.

This court had to consider whether the implication under POCSO Act would be justified where the victim appears of have consented to her relationship with an accused despite being minor in the case of **Atul Mishra vs. State of U.P and 3 others in Criminal Misc. Bail Application No. 53947 of 2021**. The relevant paragraphs nos. 11 to 14 are as follows :-

*" 11. As mentioned above, undisputedly on the date of incident i.e. 06.11.2019, the victim Ms. 'A' was a minor girl and her 'consent' as contemplated u/s 375/376 I.P.C. has got no value in the eyes of law. This seems to be conservative approach to deal and decide the instant issue and rightly so. But as I have stated in the opening part of the order, that applicability of any statutory penal provision is not a mathematical exposition or theorem. It contains inherent flexibility to cope up an extraordinary situation and to have more meaningful and larger good.*

*12. There can be no second thought as to the seriousness of the offence under the POCSO Act and the object to achieve. Enactment of POCSO*

Act was to effectively address the heinous crime of sexual abuse and sexual exploitation of children. The Act was introduced to provide protection of children from the offences of sexual assault and harassment etc. This Act also provides for safeguarding the interest of the child at every stage of judicial process. But this laudable object must have some genuine and inherent exceptions too. It is imperative for the Court of law to draw thin line that demarcates the nature of acts that should not be made to fall within the scope of this enactment. There are certain gray areas, where the severity of the sentences provided under the Act, rightly so be diluted keeping in view the facts of each case. If these rigors of the enactment is pasted hastily or irresponsibly, it could lead to irreparable damage to the reputation and future of young whose actions would have been only innocuous and may lead to spoiling the future life of that innocent lovers or couple who out of sheer innocence have initially developed and thereafter established that relationship, which if seen through the bioscope of these penal provisions of Act of 2012, would fall within the realm of offence.

13. Growing incidences where teenagers and young adults fall victim of the offences under the POCSO Act, being slapped by the penal provisions of POCSO Act without understanding the far reaching implication of the severity of the enactment, is an issue that brings much concern to the conscience of this Court. A reading of the statement of objects and reasons of POCSO Act would show that, as mentioned, to protect the child from the offences of sexual abuse, sexual assault and harassment, pornography, pursuant to the Article-15 of the Constitution of India, 1950 and the Conservation on the Rights of the children. However, a large array of the cases filed under the POCSO Act seems to be those arising on the basis of the complaints/F.I.Rs. lodged by the families of adolescents and teenagers who are involved in romantic relationship with each other. The scheme of the Act clearly shows that it did not intend to bring within its scope or limits, the cases of the nature where the adolescents or teenagers involved in the dense romantic affair.

14. This Court deems it fit and necessary to take a moment to delve into an important aspect, the awareness of which is crucial in understanding and appreciating with the cases of instant nature. It is crucial to accept the science and psychology of an adolescent and young adulthood at this juncture. This is because social and biological phenomenons are widely recognised as determinates of human development, health and socio-economic attainment across the life course, but our understanding of the underlying pathways and processes remains limited. Therefore, a "bio-social approach" needs to be adopted and appreciated i.e. one that conceptualizes the biological and social requirements of two teenagers, who on account of mutual infatuation are attracted and decide for their future. Their decision could be impulsive, immature but certainly not sinful or tainted as branded in the F.I.R. or complaint of the informant. "

The Bombay High Court in the case of **Faizan Wahid Baig vs. The State of Maharashtra in Bail Application No. 3372 of 2021** in about similar situation held in paragraph nos. 6 and 7 are as follows :-

"6. Taking an overall view of the material compiled in the charge-sheet, it appears that the applicant though minor, was capable of understanding the consequences of her act and she voluntarily accompanied the applicant to he aunt's place. Though she is minor and he consent become

*immaterial, in a case like this, where she voluntarily joined the company of the applicant, and she had categorically admitted that she was in love with the applicant, whether that she consented for the sexual intercourse or not, is the matter of evidence. Till what point of time, she accompanied the applicant and whether she resisted the actual physical indulgence, when according to her, the applicant forcibly committed sexual intercourse with her against her wishes, will have to be determined. In any case, the prosecuterix / victim kept quite till her whatsapp chat with the applicant was objected to, by the family members and then she narrated the incident which was alleged to have taken place on 06.04.2020. The time gap between these two eventws is also crucial as it was always open for the prosecuterix to disclose the aunt about the forcible act if it was committed in her house, but she continued to remain silent and disclosed the incident only when an objection was taken for she establishing contact with the applicant.*

*7. In the aforesaid circumstances and particularly, when the applicant is also a young boy, the possibility of he also smitten by infatuation, cannot be ruled out and though he may take the consequences of the accusations levelled against him, at present, he need not be further incarcerated being arrested on 29.04.2021, when the trial may consume considerable time.*

*This is however, subject to the stipulation that he shall, in no way establish contact with the prosecutrix and shall move himself along with the family from the area where the prosecutrix is residing and shall not enter in no way make any attempt to establish contact with him, either physically or virtually.*

*Observations made above the prima facie in nature and limited for the purpose of adjudication of the present application, and shall in no way, bind the Sessions Judge while he is trying the applicant for the offence with which he is charged."*

In view of the above considerations, applicant deserves to be enlarged on bail keeping in view the consent of victim by her behaviour.

Keeping in view the nature of the offence, evidence, complicity of the accused, submissions of the learned counsel for the parties noted above, finding force in the submissions made by the learned counsel for the applicant, larger mandate of the Article 21 of the Constitution of India, considering the dictum of Apex Court in the case of **Manish Sisodia vs. Directorate of Enforcement, 2024 LawSuit (SC) 677** and considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

Let the applicant, Saleem, involved in Case Crime No. 48 of 2024, under Sections- 363, 366, 376 IPC and Section 5/6 of POCSO Act and Section 3(2)(V) of SC/ST (P.A.) Act, Police Station- Chhajlet, District- Moradabad, be released on bail on

his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in Court. In case of default of this condition, it shall be open for the Trial Court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuses the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the Court on the date fixed in such proclamation then the Trial Court shall initiate proceedings against him in accordance with law under Section 174-A of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the Trial Court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

**Order Date :- 30.5.2025**

Rohit