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

Date of decision: 14th November, 2025

+ CRL.M.C. 7145/2025 & CRL.M.As. 30024-30025/2025

PRINCE KUMAR SHARMA AND OTHERSPetitioners

Through: Mr. Vishal Kumar, Mr. Pawan Kapoor and Ms. Shubhangi Singh, Advocates with Petitioners (in-Persons).

versus

THE STATE NCT OF DELHI AND ANOTHERRespondents

Through: Mr. Hemant Mehla, APP for State. SI Pooja, P.S. Bhalswa Dairy. Respondent No. 2 (in-Person).

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023,¹ seeks quashing of FIR No. 696/2023 registered at P.S. Bhalswa Dairy, Delhi, for offences under Section 376 of the Indian Penal Code, 1860,² Section 6 of the Protection of Children from Sexual Offences Act, 2012,³ and Sections 9 and 10 of the Prohibition of Child Marriage Act, 2006.

2. The FIR has its genesis in a call relating to domestic violence received on helpline number 181, which was recorded as DD No. 36A at P.S.

¹ "BNSS"

² "IPC"



Bhalswa Dairy. During the inquiry into this call, the police found that Petitioner No. 1 and Respondent No. 2 were living together as husband and wife. They claimed to have married on 1st March, 2023 with the consent of their respective parents. Respondent No. 2 was produced before the Child Welfare Committee, Alipur, which directed that her age be verified and that further investigation be carried out in accordance with law.

3. Pursuant to these directions, the age of Respondent No. 2 was verified and her date of birth was found to be 2nd October, 2006, indicating that she was a minor at the relevant time.

4. During investigation, the statement of Respondent No. 2 (the victim) was recorded under Section 164 of the Code of Criminal Procedure, 1973⁴. In this statement, she neither made any allegation of sexual assault against Petitioner No. 1, nor attribute any coercion or violence to him, and expressly stated that she did not wish any legal action to be taken against her husband or her in-laws. Respondent No. 2 was also medically examined, which revealed that she was pregnant, with a gestational age of approximately two and a half months. On this basis, FIR No. 696/2023 came to be registered on 19th July, 2023 for the aforesaid offences under the IPC, the POCSO Act and the Prohibition of Child Marriage Act, 2006.

5. In this background, the Petitioners, which include the accused, Petitioner No. 1 (purported husband) and in-laws of Respondent No. 2, have approached this Court seeking quashing of the FIR.

6. Respondent No. 2, who is the victim and is now a major, is present in Court along with her infant child, born on 26th January, 2024. The Court has

³ “POCSO”

⁴ “Cr.P.C.”



interacted with her at some length to satisfy itself that she is speaking of her own volition and that she understands the nature of the allegations, the offences involved, and the consequences of continuing or bringing to an end the present proceedings. She states that she resides with Petitioner No. 1 and his family, that she is living with them peacefully, and that she regards Petitioner No. 1 as her husband. She affirms that she has never physically or sexually assaulted her and that the relationship was, in her understanding, voluntary. She repeatedly and unequivocally conveys that she does not wish to pursue the case. Her demeanour in Court is composed, she answers questions without hesitation, and there is nothing on record or in her interaction with the Court to suggest pressure or coercion. In substance, she does not support the prosecution version and seeks closure of the present proceedings.

7. Seeing the victim with her infant child brings home that these proceedings are tied to the stability of a young family. At the same time, this is precisely the kind of matter in which the statutory framework of the POCSO Act sits uneasily with lived reality and the tension between the two is stark.

8. The material on record suggests a purported marriage of the victim at the age of about 16 years and 5 months, and that the sexual relationship between her and Petitioner No. 1 also commenced when she was certainly a child. She became pregnant; the paternity of the child is not in dispute; and the parties are now living together with their baby as a family unit. On a purely human plane, therefore, the instinctive response is to ask: if the relationship has stabilised into a family, the child has been born, and the victim herself does not seek to criminalise the man, why not quash the FIR?



9. The difficulty is that the legal position is not ambivalent. At the time of the incident, the victim was indisputably a child as per the definition under the POCSO Act. The statutory scheme of the Act proceeds on a clear and deliberate premise. Section 2(1)(d) defines a ‘child’ as any person below the age of 18 years. The offence-creating provisions, such as Sections 3 and 7, criminalise specified sexual acts ‘with a child’. Unlike Section 375 of the IPC, these provisions do not employ expressions such as ‘without her consent’ or ‘against her will’ as ingredients of the offence. Once it is shown that the victim was below 18 years of age on the date of the occurrence and that the physical acts described in the charge fall within the contours of Sections 3 or 7, the offence is, in principle, complete.

10. In other words, the Act does not treat absence of consent as a constituent element when the victim is a child. The law proceeds on the footing that a child lacks the legal capacity to consent to sexual activity, and that any such activity with a person below 18 is inherently exploitative. The apparent willingness of the child, howsoever genuine it may appear on facts, does not carry exculpatory value in determining guilt. The concept of ‘age of consent’ is thus built into the definition of ‘child’ itself; by fixing the age at 18, the Parliament has consciously removed the space for a defence founded on so-called consensual participation by a minor.

11. This approach is reinforced by the presumptions engrafted in Sections 29 and 30. Where the prosecution establishes the foundational facts that the accused committed the acts charged under the relevant provisions with a person who is a ‘child’, the court is required to presume that the accused has committed the offence and that the requisite culpable mental state was present, unless the contrary is proved. The child’s statement that he or she



‘went of his/her own accord’ or was in a relationship with the accused may have a bearing on issues such as bail, sentencing, or the exercise of extraordinary jurisdiction in rare and hard cases, but it does not negate the ingredients of the offence under the POCSO Act.

12. The Supreme Court, while examining allied questions under the IPC and POCSO, has consistently recognised that consent of a person below the statutory age has no legal efficacy in the context of sexual offences. The philosophy that underlines POCSO is that of heightened protection, not neutrality, in respect of adolescent sexuality. Courts may, therefore, be slow to use the language of ‘consensual sex’ where one party is a child in terms of the statute. The proper inquiry in such cases is not whether the minor consented, but whether the prosecution has established the child’s age and the occurrence of the proscribed act; once those elements stand proved, the supposed consent of the minor cannot be invoked as a defence to criminal liability.

13. The present case is not a borderline matter of age determination, nor is there any genuine doubt on this aspect emerging from the record. The pregnancy of the victim, as a result of sexual intercourse with Petitioner No. 1, leaves no real dispute about the occurrence of the sexual act. Once it is accepted that she was below 18 years of age at the relevant time, the case falls squarely within the ambit of the POCSO Act. Under the POCSO Act, read with the then prevailing provisions of the IPC, any sexual act with a person under 18 is criminalised *per se*, without importing “consent” as a constituent element once the victim is a child. Since the Parliament has fixed 18 as the age below which the law refuses to recognise sexual consent, this Court, exercising jurisdiction under Article 226 of the Constitution, cannot,



in the guise of doing equity, write in a judge-made exception for “near-majority, consensual relationships”. To do so would be to cross the line from interpretation into legislation. Subsequent developments in the relationship, however compelling in equity, the couple living together, the birth of a child, the victim’s present stance, cannot retrospectively legalise conduct which the law, at the time it occurred, treated as an offence. At this pre-trial stage, where the essential ingredients of the offence are disclosed and there is no patent abuse of process, there is no room for quashing the proceedings.

14. There is, moreover, a wider institutional concern. The present case does not involve only two young persons who chose to live together; the parents of both sides stand arraigned under the Prohibition of Child Marriage Act, 2006 on the allegation that they facilitated or condoned a marriage involving a minor girl. An order quashing the prosecution in such circumstances would almost inevitably be perceived as judicial endorsement of the notion that underage marriages can be insulated from legal consequences, so long as the parties subsequently present themselves as a settled family. Courts cannot ignore the possibility that what appears, on the surface, as voluntary acquiescence by a 16-year-old may, in fact, be the product of familial pressure or community expectations, especially once pregnancy has occurred. To snuff out the prosecution at the threshold would risk sending a message that child marriages and sexual relationships with minors can be retrospectively sanitised by arranging a ceremony and continuing cohabitation. That would sit squarely at odds with the legislative purpose of both POCSO and the child marriage law, which is to deter early marriage and sexual exploitation of children.

15. The Court is not indifferent to the victim’s wish to protect her family.



In fact, this Court is moved by the circumstances, but it is bound by the statute. This is, therefore, one of those hard cases where the pull of equity is strong, but the command of the statute is stronger. This Court, for securing the ends of justice, cannot carve out an exception to the statute merely because the victim describes the relationship as consensual.

16. The petition is, accordingly, dismissed along with pending application(s).

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

SANJEEV NARULA, J

NOVEMBER 14, 2025

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