

2022 LiveLaw (SC) 194

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
Dr. Dhananjaya Y. Chandrachud; Surya Kant; JJ.
February 21, 2022**

**Criminal Appeal No 263 of 2022
(Arising out of SLP(Crl) No 9317 of 2021)**

X (Minor) *Versus* The State of Jharkhand & Anr.

Protection of Children from Sexual Offences (POCSO) Act, 2012, Section 6-Once, prima facie, it appears from the material before the Court that the appellant was barely thirteen years of age on the date when the alleged offence took place, both the grounds, namely that "there was a love affair" between the appellant and the second respondent as well as the alleged refusal to marry, are circumstances which will have no bearing on the grant of bail. Having regard to the age of the prosecutrix and the nature and gravity of the crime, no case for the grant of bail was established. The order of the High Court granting bail has to be interfered with since the circumstances which prevailed with the High Court are extraneous in view of the age of the prosecutrix, having regard to the provisions of Section 376 of IPC and Section 6 of POCSO.

(Arising out of impugned final judgment and order dated 03-08-2021 in BA No. 6701/2021 passed by the High Court of Jharkhand at Ranchi)

For Petitioner(s) Mr. Anand Grover, Sr. Adv. Ms. Fauzia Shakil, AOR Ms. Tripti Tandon, Adv.

For Respondent(s) Mr. Rajiv Singh, AAG Mr. Vishnu Sharma, Adv. Ms. Adyashree Dutta, Adv. Mr. Jayant Mohan, AOR Mr. Rajesh Ranjan, Adv.

ORDER

1. Leave granted.
2. This appeal arises from a judgment of a Single Judge of the High Court of Jharkhand, by which the application for bail of the second respondent – accused has been allowed, subject to conditions.
3. On 27 January 2021, a First Information Report ("FIR"), FIR No 23/2021, was registered at PS Kanke, District Ranchi, *inter alia*, for offences punishable under Section 376 of the Indian Penal Code 1860 ("IPC") and Section 6 of the Protection of Children from Sexual Offences Act 2012 ("POCSO"). The complaint of the petitioner alleges that, at the material time, when she was a minor, the second respondent had taken her to a residential hotel and had entered into a sexual relationship on the assurance of marrying her. The complaint further recites that the second respondent

was refusing to marry her and that he had sent certain obscene videos to her father. The application for anticipatory bail filed by the second respondent was rejected by the Special Judge, POCSO, Ranchi on 18 February 2021. The second respondent surrendered on 3 April 2021 and sought bail. The charge-sheet was submitted before the Special Judge on 24 May 2021. The application for bail has been allowed by the Single Judge of the High Court of Jharkhand. The reasons which weighed with the Single Judge are contained in the following paragraph of the impugned order dated 2/3 August 2021:

“It appears from the statement under Section 164 Cr.P.C. as well as the averments made in the FIR that there was a love affair between the petitioner and the informant and the case appears to have been instituted only on the point of refusal of the petitioner to solemnize marriage with the informant.”

4. Mr Anand Grover, senior counsel appearing on behalf of the appellant, submits that:

- (i) The date of birth of the appellant, as recorded in the Aadhar card, is 1 January 2005;
- (ii) At the time of the alleged offence, she was just about thirteen years of age; and
- (iii) Having regard to the provisions of Section 376 IPC and POCSO, the reasons which weighed with the High Court are, *ex facie*, specious and the application for bail ought not to have been allowed.

5. On the other hand, Mr Rajesh Ranjan, counsel appearing on behalf of the second respondent, has placed reliance on the statement of the prosecutrix recorded under Section 164 of the Code of Criminal Procedure 1973. Counsel submitted that though the charge-sheet has been submitted, there has been no recovery of the allegedly obscene videos nor is there any medical evidence to indicate that the second respondent had any sexual contact with the appellant.

6. The High Court was manifestly in error in allowing the application for bail. The reason that from the statement under Section 164 and the averments in the FIR, it appears that “there was a love affair” between the appellant and the second respondent and that the case was instituted on the refusal of the second respondent to marry the appellant, is specious. Once, *prima facie*, it appears from the material before the Court that the appellant was barely thirteen years of age on the date when the alleged offence took place, both the grounds, namely that “there was a love affair” between the appellant and the second respondent as well as the alleged refusal to marry, are circumstances which will have no bearing on the grant of bail. Having regard to the age of the prosecutrix and the nature and gravity of the crime, no case for the grant of bail was established. The order of the High Court granting bail has to be interfered with since the circumstances which prevailed with the High Court are

extraneous in view of the age of the prosecutrix, having regard to the provisions of Section 376 of IPC and Section 6 of POCSO.

7. We accordingly set aside the impugned order of the High Court dated 2/3 August 2021 allowing BA No 6701 of 2021. Consequent upon the setting aside of the impugned order of the High Court, the second respondent shall surrender forthwith to custody.

8. In the facts and circumstances, we request the Special Judge, POCSO, who is incharge of the trial, to complete the trial within a period of six months from the date of receipt of a certified copy of this order.

9 The appeal is accordingly disposed of.

10. Pending application, if any, stands disposed of.

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