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

% *Date of decision: 23<sup>rd</sup> September, 2025*

+ BAIL APPLN. 2867/2025

HAMID RAZA

.....Petitioner

Through: Mr.Furkan Ali Mirza, Mr. Asim Kirmani, Mr. Haris Ahmad and Mr. Abdul Wasih, Advocates.

Petitioner in person on interim bail;  
Prosecutrix in person with her infant son.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr.Sanjeev Sabharwal, APP for State with ASI Rakesh.

Ms. Nandita Rao, Senior Advocate (Amicus Curiae) with Mr. Amit Peswani, Advocate.

Professor Faizan Mustafa, Vice Chancellor, Chanakya National Law University (Expert Islamic Law).

Dr. Mohd. Khalid Khan, Dept. Of Islami Studies, Jamia Milia Islamia, New Delhi.

Mr. Nehal Ahmed, Assistant Professor of Law, Woxsen University Hyderabad, Islamic Law Expert.

**CORAM:**

**HON'BLE MR. JUSTICE ARUN MONGA**

### **J U D G M E N T**

1. Barely 14 years child herself, when the mother in her was born as the prosecutrix bore her first child, forced by the heinous sexual assault of her



stepfather, her supposed protector turned predator. Later the infant was given in adoption. Shattered, she found solace and dignity when the applicant herein accepted her as his lawful bride. Both got married on 04.06.2024 under Islamic law. The couple is now also blessed with another child born from their wedlock. Stepfather is in judicial custody and facing trial in FIR No. 513/2024 dated 13.08.2024 under Sections 376(2)(n) of IPC & 6 of POCSO Act.

2. In this backdrop, the stepfather of prosecutrix had earlier lodged an FIR against the applicant herein i.e. F.I.R. No. 390/2024 dated 15.06.2024 under Sections 363 registered at P.S. Khyala. Subsequently, Section 376 of IPC and 6 of POCSO Act was added in the chargesheet. The applicant was arrested on 06.10.2024, whereas the prosecutrix herself beseeches bail for him (her husband/the applicant). Applicant before this court, has thus been under incarceration for over 11 months, as an under-trial/accused. His alleged crime being that he married a minor. Husband's age (24 years) is not disputed. Prosecutrix claims herself to be 20 years, whereas prosecution case is that even as on today she is a minor being 15-16 years old. More of it in greater details, at appropriate stage.

3. Case as per the charge-sheet, in *verbatim*, reproduced hereinbelow is under :

*“Brief facts of the present case are that on date 15.06.2024 during Emergency duty, on receiving DD No 40A, ASI Subhash Chand No.2880-D along with HC Vikram No. 1683/W reached the spot \*\*\*\*\* Ravi Nagar khayala where complainant K M\*\*\*\*\* w/o S\*\*\* M\*\*\*\*\*age: 38 years met ASI Subhash, whose statement was recorded which is as follows: "Statement of K M\*\*\*\*\* W/o S\*\*\* M\*\*\*\*\* R/o \*\*\*\*\* Ravi Nagar Khyala, Delhi Age 38 Yrs. Mob No 97\*\*\*\*\*7 Stated that I live at the above address with my*



family on rent. This is my second marriage. From my first husband I have 2 children, one boy and one girl. For quite some time I have been unwell; my husband Shri Mohan took me to Sanjay Gandhi Hospital, Mangol Puri where my treatment is going on. My husband used to come home after every two-three days. On 26-05-24 my husband came home, then my daughter A\*\*\*\*\*, age 14-15 years, colour-fair, height-5'2", body-medium, hair-black, eyes-black, wearing grey kurti and blue jeans with wide belt of 5 buttons, went from home at 5 AM on 26/05/24 without telling anyone. Since then I am searching but have not found my daughter. I suspect that some unknown person has lured and taken my daughter A\*\*\*\*\*. Search for my daughter be done." On basis of complainant's statement, present case vide FIR No-390/2024 U/S 363 IPC was registered.

During investigation complainant produced her daughter victim "A"'s birth certificate which was verified, according to which victim's DOB is 05/02/2011 (13 years 7 months). During investigation ASI Subhash Chand No-2880-D checked CCTV cameras installed near missing girl's house and made lot of efforts to trace victim "A" but no clue of victim "A" was found.

During investigation on date 22.07.2024 ASI Subhash Chand No-2880-D traced victim "A" at Tis Hazari Court, Delhi. After which medical examination of victim was done. During medical examination, victim did not put any allegation of any kind against anyone and victim's UPT test also came negative. After which victim was deposited at CHG, Nirmal Chhaya. In the supervision of CWC-1 Nirmal Chhaya Complex, Hari Nagar, during a short stay at CHG-1, Nirmal Chhaya Complex, Hari Nagar, the victim told about sexual intercourse happening with her. On receiving telephonic information from CWC about this, investigation of the above case was handed over to W/SI Aarushi Rajput No-D6208.

During investigation on receiving telephonic information from CWC, victim "A" was again medically examined vide MLC No-82881/2024 dated 27/07/2024 from GGSG Hospital, Raghubir Nagar. That victim A\*\*\*\*'s UPT test came positive and victim refused for further internal examination and sampling, and told that she wants to continue her pregnancy. After which section 376 IPC & 6 POCSO Act were added in the present case.



*During investigation, statements of complainant u/s 164 CrPC were recorded before Hon'ble Court MsAneez Bishnoi, JMFC. After that copy of victim's statement u/s 164 CrPC was obtained from court. In her statement u/s 164 CrPC, complainant made allegations against her step father. That victim told about sexual assault by her step father around two years back; which is a separate incident, for which separate case vide FIR No-513/2024 u/s 376(2)(n) IPC & 6 POCSO Act was registered against victim's step father, copy of which is attached in file. During investigation under order of SHO, present case file was handed over for further investigation to me PSI.*

*During investigation under order of SHO, one raiding team was formed and HC Anand No-1903/W, Ct Gurmeet No-1064/W left to Jaipur Rajasthan in search of accused person. After that when I PSI was present in PS, then HC Anand No-1903/W, Ct Gurmeet No-1064/W produced the accused Hamid Raza to me PSI in present case and told that with help of technical surveillance they brought accused person from Jaipur. After that I PSI interrogated above accused person Hamid Raza, whose name and address was found to be Hamid Raza S/o Badrul Hasan R/o Village Methaura, Post Paigambarpur, PS Bariyarpur, Distt Muzaffarpur, Bihar, Age 24 years after interrogation. After interrogation, understanding the situation of the arrest, accused above was arrested and at the time of arrest, guidelines of Hon'ble High Court were followed. All documents related to arrest were completed and information of arrest was given to brother of accused above, Ahmed on his phone number 7858943578. Medical examination of accused Hamid Raza was done vide MLC No. 74137/24 GGS Hospital, Raghubir Nagar, Delhi. That during medical examination, doctor handed over sealed blood sample of accused person which was seized and deposited in malkhana. Sealed blood sample of accused person was sent to FSL Rohini, Delhi for DNA Profile preservation; result is pending, result will be filed with supplementary chargesheet. Victim "A" of present case wants to continue her pregnancy; after victim's delivery, baby's blood sample will be sent to FSL Rohini, Delhi.*

*During investigation, request sent for accused person and victim's CDR, CAF and location, result is pending, will be filed with*



*supplementary chargesheet.*

*During investigation, accused's family produced a marriage document of victim and accused made in Bihar, which was verified. Regarding marriage certificate and witnesses and age documents given during marriage, investigation is pending, after completion separate supplementary chargesheet will be filed before Hon'ble Court.*

*So far by investigation and completion, statements of witnesses, accused Hamid Raza S/o Badrul Hasan R/o Village Methaura, Post Paigambarpur, PS Bariyarpur, Distt Muzaffarpur, Bihar, Age 24 years against whom sufficient evidence for challan u/s 363/376 IPC & 6 POCSO Act is available; accused Hamid Raza is in judicial custody. Chargesheet u/s 363/376 IPC & 6 POCSO Act is prepared, accused be summoned through notice and witnesses be summoned through summon and present case be decided."*

4. During investigation, on 22.07.2025 the police official traced victim at Tis Hazari Court and her medical examination was conducted and she was sent to Nirmal Chaya. There after the victim informed about the sexual intercourse to CWC and then on receiving the said information the victim was again medically examined on 27.07.2024 and UPT test of the Victim came Positive and subsequently section 376 IPC and 6 POCSO were added in the present FIR.

4.1 On 01.08.2024 the minor's statement under section 183 BNSS in connection to FIR No. 390/2024 (wherein the applicant/prosecutrix's husband is arrayed as an accused) was recorded in which she has stated that she left her home on account of cruelty and sexual abuse by her step father which resulted in a girl child being born to her. On 14.08.2024, statement of the minor under section 183 BNSS was recorded in connection with FIR No. 513/2024, wherein the step father of the prosecutrix is arrayed as an accused.





Therein, she stated that she has met and married the Applicant by her own free will and wishes to live with her husband. The Applicant was arrested on 06.10.2024 and has been in custody for over 11 months.

5. In the aforesaid backdrop, matter was earlier heard by me on 18.09.2025, when the following order was passed:

- “1. After hearing the submissions of the learned counsel for the applicant at some length, and considering the nature of the controversy involved in the present bail application, I am in agreement with the suggestion of the learned APP for the State that he would arrange for an Islamic Law expert to be consulted by this court. Post it for hearing tomorrow and in the meanwhile learned APP may do the needful as per his suggestion.*
- 2. This Court also appoints Ms. Nandita Rao, Senior Advocate as Amicus Curiae, to assist on the adjudication of the lis in hand. The Registry to supply a digital copy of the paper book to the learned Amicus Curiae.*
- 3. Further, the prosecutrix, who is present in Court, has stated that she is not being permitted to meet the applicant-her husband, with whom she is legally married and also has been blessed with a son, born out of their wedlock.*
- 4. In view of the above, and also again on the suggestion of the learned APP for the State, with which I concur, a copy of this order shall be conveyed through e-mail to the Jail Superintendent who shall ensure that the applicant is produced in police custody before this Court tomorrow, i.e., on 19.09.2025 at 10:30 A.M.*
- 5. The learned APP shall also convey this order telephonically to the Jail Superintendent, in addition to the communication being sent through the Registry of this Court via e-mail.*
- 6. List on 19.09.2025 at 10.30 A.M.”*

6. Apropos, on 19.09.2025, arguments were heard at length and the following order was passed:

- “1.It is indeed a most peculiar case herein. One, where there is neither a victim, nor a victimizer, nor even a complainant, yet the petitioner (24 year old) is alleged to be in conflict with law. The*



prosecution's case rests solely on the assertion that the prosecutrix (claiming herself now to be 20 year old), admittedly his prosecutrix, was since a minor at the time of their consensual relationship, thereby rendering her consent legally irrelevant.

2. What makes the matter more conspicuous is that the two of them, subsequent to the consensual relationship, married under Islamic Law, a valid marriage certificate issued by the Qazi has been placed on record, and the couple has even been blessed with a son.

3. The prosecutrix herself, present before this Court along with her infant son, is forcibly confined in a Child Welfare Centre (Nirmal Chhaya), describing it as nothing short of imprisonment without any fault of her own.

4. Simultaneously, the petitioner languishes in jail during the pendency of trial arising from the FIR No. 390/2024 dated 15.06.2024 under Section 363/376 of the IPC and 6 of the POCSO Act. Thus, both husband and prosecutrix find themselves deprived of liberty in a case where neither considers the other a victim.

5. Having heard the arguments on some length, I am of the view that the petitioner, who is present in Court, deserves to be set free forthwith on an interim bail pending the final view to be taken by this Court for which the matter is adjourned for 23.09.2025.

6. Accordingly, the petitioner is directed to furnish a personal bond for a sum of Rs.10,000/- before the Jail Superintendent and in compliance thereof, he shall be set free till next date of hearing, as above. The police personnel who has brought him in Court shall ensure his presence on the next date of hearing as well.

7. Likewise his prosecutrix, i.e., the prosecutrix, who is present in Court, shall also remain present on the next date of hearing for which Child Welfare Centre shall make adequate arrangement.

8. In the meanwhile, the petitioner shall be allowed to meet the prosecutrix and his minor son between 3 PM to 5 PM two hours everyday at the Child Welfare Centre (Nirmal Chhaya).

9. A copy of the order be conveyed through e mail to the Jail Superintendent to carry out the compliance. The Jail Superintendent shall ensure that the petitioner is released on interim bail before 5 PM today.

10. This Court also deeply appreciates the assistance rendered by



*the experts on the Islamic Law, as noted in the presence sheet of the instant order. I must also place on record sincere appreciation for the able assistance being rendered by Amicus Curie, Ms. Nandita Rao, Senior Advocate, in striving to adjudicate the controversy in hand.*

*11. List for further orders on 23.09.2025.”*

7. Professor Faizan Mustafa, Vice Chancellor of Chanakya National Law University, Patna and an expert in Islamic Law, points out that during the British Raj, in somewhat similar circumstances, Governor General Sir Warren Hastings used to consult Hindu law experts, since Hindu law at that time was uncodified and based largely on customs. It was in this context that the British government enacted the *Indian Majority Act, 1875*.

7.1 He submits that the position of Islamic law at present is similar, as there is still no comprehensive legislative enactment governing inter-personal relationships of Muslims in matters such as marriage and inheritance.

7.2 He further submits that while the *Indian Majority Act, 1875* was enacted primarily to determine the legal age of majority for the validity of marriages, the legislature being conscious of Muslim customs and practices specifically made an exemption under Section 2 of the Act regarding the age of marriage for Muslims.

Section 2 thereof is reproduced hereinbelow:

**“2. Savings.**

*- Nothing herein contained shall affect-*

*(a) the capacity of any person to act in the following matters (namely),-marriage, dower, divorce and adoption;*

*(b) the religion or religious rites and usages of any class of [citizens of India] [Substituted by the A.O. 1950 for "His Majesty's subjects in India"].; or*





(c) *the capacity of any person who before this Act comes into force has attained majority under the law applicable to him.”*

7.3 He further submits that, unfortunately, even today in India, every fifth marriage is statistically a child marriage. It was for this reason that the Prohibition of Child Marriage Act, 2006 was enacted, to specifically address marriages where either or both parties are under-aged. He submits that great visionary and social reformer, Shri Bal Gangadhar Tilak, while examining the validity of child marriages in light of Hindu customs and practices, which then permitted child marriages, was also opposed to criminalising the personal law and had opined that such marriages, at the very least, ought to be made voidable at the instance of either party upon attaining the age of majority. He would submit that Tilak did not actively support child marriage, but he strongly opposed the British government's attempts to legislate against it. He believed reform of such customs should emerge organically from Indian society, not be imposed by colonial rulers.

7.4 Likewise, he submits that under Islamic law too, validity of a marriage is not to be determined by declaring the marriage void *per se*. In any case, penal consequences under other applicable enactments cannot be visited on the couple professing Islam and validly married as per Islamic law.

7.5 He further submits that even under the *Special Marriage Act*, 1954 if either party to the marriage is below the prescribed age, what is restricted is only the *registration* of such a marriage, not the marriage itself.

7.6 Referring to the Quran, he submits that the religious scripture does not prescribe any specific age for marriage among Muslims. The only requirements are that, the contracting parties must give free consent, must



have attained puberty and must understand the consequences of marriage.

8. Similarly, Professor Mohammad Khalid of Jamia Millia Islamia University, also an expert in Islamic law, states that no textbook or religious scripture under Islamic law provides a definition of puberty.

8.1 However, he submits that puberty, under no circumstances, can be treated as less than 9 years for a girl and 12 years for a boy. On all other points already discussed above, he expresses his agreement with the submissions of Professor Faizan Mustafa. Mr. Nehal Ahmed, Assistant Professor of Law at Woxsen University, Hyderabad, also concurs.

9. Thus, the sum and substance of the matter is that all three Islamic law experts are in unison on the position that Islamic law does not prescribe any specific age for marriage among Muslims. The only requirements are that the parties must have attained puberty, must understand the consequences of marriage and contracting parties must give free consent and that minors who have not attained puberty may be validly contracted in marriage by their respective guardian.

10. Ms. Nandita Rao, learned *Amicus* would submit that Courts have repeatedly recognized that where Muslim personal law permits marriage on attaining puberty, such unions, even if involving minors under 18, cannot per se be treated as exploitation. Further, in POCSO prosecutions arising out of consensual adolescent relationships, Courts (Delhi High Court, Rajasthan High Court and even Apex Court) have leaned towards granting bail, particularly where the prosecutrix supports the accused or the relationship reflects love rather than exploitation.

10.1 She would cite judgment rendered in *Gulam Deen and another vs.*



*State of Punjab and others*<sup>1</sup> by Punjab and Haryana High Court, wherein Article 195 of *Mulla's Principles of Mohammedan Law* is also referred. It is reiterated by the High Court that:

- A Muslim girl who has attained puberty can marry without parental consent.
- Even if under 18, such marriage is valid and she has the right to reside with her husband.
- Where parties are in love, married under Muslim law, and physical relationship is post-marriage, it cannot be treated as exploitation.
- Separation by the State would cause trauma and violate the couple's personal space.

10.2 She pointed out that an SLP filed against the above view taken by High Court was dismissed by Supreme Court *vide* an order dated 19.08.2025, although on the ground of a third party lacking locus, but regardless the opinion of the High Court was not interfered with. She submitted that the Punjab and Haryana High Court's view was even followed by the Coordinate Bench of this court also in *Fija and Another Vs. State of NCT of Delhi*<sup>2</sup>.

10.3 Relying on *Imamudin @ D vs. State of Rajasthan*<sup>3</sup>, she would point out that Supreme Court also recognized live-in relationship agreement between an inter-faith couple and granted bail.

10.4 She also cited *Riyaz vs. State (Govt. of NCT of Delhi)*<sup>4</sup>, where the case arose out of a love affair and this Court noted that POCSO is often

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<sup>1</sup> 2022 SCC OnLine P&H 1485.

<sup>2</sup> 2022 SCC OnLine Del 2527.

<sup>3</sup> Criminal Appeal No. 1745/2023.

<sup>4</sup> 2024 SCC OnLine Del 5918.



misapplied at behest of girl's family. Prosecutrix in that case also stated she went with applicant voluntarily and bail was granted as continued incarceration risked hardening the young applicant/accused. In another case i.e. **Anil Kumar vs. State (Govt. of NCT of Delhi)**<sup>5</sup>, victim was about 17 years and in her statement under Section 164 CrPC admitted consensual relationship and desire to marry the accused. She submitted that though minor, but prosecutrix was mature and joined the accused voluntarily. Relationship by this court was characterized as romantic at "age of innocence" and bail was granted.

### **SUBMISSIONS BY APPLICANT'S COUNSEL ON FACTS**

11. On factual aspect, learned counsel for the applicant submits that the stepfather of the prosecutrix used to forcibly have sexual intercourse with her without her consent. On her refusal, the stepfather used to beat and threaten to kill her. The prosecutrix who was impregnated by her step father, gave birth to a female child "K" on 16.06.2023. It is also pointed out by the learned counsel for the applicant that as per the analysis report on record, the DNA sample of the female child delivered by the prosecutrix on 16.06.2023 matches with that of her step-father.

11.1 The Applicant used to reside in a rented accommodation on the fourth floor, while the prosecutrix and her family resided on the third floor of the same building in Delhi, where the Applicant and the prosecutrix fell in love with each other and developed intimacy.

11.2 Due to continuous physical, emotional, and sexual abuse by her stepfather, the prosecutrix left her home and phoned to the applicant and asked, 'Where are you?' The Applicant replied, 'I am in Muzaffarpur, Bihar.'

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<sup>5</sup> Bail Application No. 97/2024.



The Victim then asked, 'May I come there?' to which the Applicant replied, 'Yes, you may come'.

11.3 The prosecutrix reached Muzaffarpur in Bihar and having assured that her age was 23 years, proposed to marry with the applicant. The prosecutrix also gave an affidavit affirming that her age was 23 years and had voluntarily married the Applicant. Relying on this assurance, the applicant, in good faith married with the prosecutrix on 04.06.2024. Thereafter, the Applicant and the prosecutrix started living together happily.

11.4 The age of the prosecutrix was above 18 years at the time of her marriage with the applicant. The appearance of the prosecutrix itself suggests that she is above 20 years of age. However, as per the Birth Reporting Form/Birth Application Form, on the basis of which the birth certificate was issued by the MCD, the date of birth of the prosecutrix is mentioned as 05.02.2010 (14 years and 4 months), whereas in the birth certificate the date of birth is recorded as 05.02.2011 (13 years and 4 months). Thus, there exists a variation between the date of birth mentioned in the Birth Reporting Form/Birth Application Form and the date of birth recorded in the birth certificate issued on the basis of the said forms.

11.5 That the birth certificate was issued on the basis of information given by one Umavati, who is not a family member of the prosecutrix. The statement of the prosecutrix dated 01.08.2024 was recorded by the Ld. Judicial Magistrate under Section 183 BNSS, wherein upon being asked her age, the prosecutrix responded that she was 20 years old.

11.6 As per the FIR, the age of the prosecutrix is stated to be 14–15 years. The prosecutrix had given birth to a female child “K” in Guru Govind Singh Hospital on 16.06.2023, wherein her age was recorded as 17 years.





Consequently, after the lapse of one year, on the date of marriage, the age of the prosecutrix was 18 years.

12. In light of the aforesaid, the learned counsel for the applicant has vehemently argued that the marriage of the applicant with the prosecutrix, both Muslims, is valid and legal under their personal law and this being the position, they have the legal right to reside together and entire proceedings are vitiated from the very inception and thus bail be granted.

### **SUBMISSIONS BY APPLICANT'S COUNSEL ON LAW**

13. Elaborating his submission on valid marriage as per Islamic Law, learned counsel for the applicant would argue as below:

#### **MARRIAGE UNDER MUSLIM LAW**

13.1 Muslims in India are governed by Muslim Personal Law (Shariat). Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 gives pre-eminence to Muslim Personal Law (Shariat), notwithstanding any customs or usage to the contrary. This Section reads as under:

***“2. Application of Personal Law to Muslims.—***

*Notwithstanding any customs or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat).”*

13.2 As such, the marriage of a Muslim girl continues to be governed by



the personal law of Muslims. In this regard, it would be useful to reproduce what is stated in the Principles of Mohammedan Law by **Sir Dinshah Fardunji Mulla**, in Article 195 thereof, (10th Edition of 1933) : -

***“195. Capacity for marriage.- (1) Every Mahomedan of sound mind, who has attained puberty, may enter into a contract of marriage.***

***(2) Lunatics and minors who have not attained puberty may be validly contracted in marriage by their respective guardians.***

***(3) A marriage of a Mahomedan who is sound mind and has attained puberty, is void, if it is brought about without his consent.***

***Explanation.- Puberty is presumed, in the absence of evidence, on completion of the age of fifteen years.***

(This Article is shown as Article 251 in Mulla's Principles of Mahomedan Law, 19th Edition, by M. Hidayatullah).

13.3 The same principle is also reproduced in Article 27 of Muslim Law by **Faiz Badruddin Tyabji**, which is also reproduced hereinunder : -

***27. Age of competence to marry.- With reference to the age of competence to marry, it is presumed in the absence of evidence of attainment of puberty, that males attain puberty at the age of 15 years, and females at the age of 9 years.”***

## **WHEN THE PROSECUTRIX ATTAINED PUBERTY**

14. The prosecutrix was being sexually abused by her stepfather. She gave birth to a female child K on 16.06.2023. Therefore, prosecutrix attained puberty when she was impregnated by her stepfather at least 9 months before the birth of a female child K.

14.1 It is submitted that the applicant married the prosecutrix on



04.06.2024, nearly two years after she had attained puberty.

14.2 It is also submitted that under Muslim Personal Law (Shariat), the essential requirement for a girl to marry is the attainment of puberty and not necessarily the completion of 15 years of age. In the absence of evidence to the contrary, puberty is presumed upon completion of 15 years of age. Thus, the marriage between the applicant and the prosecutrix is valid.

### **Khyar-ul-bulugh (Option of puberty)**

14.3 Under Muslim Personal Law (Shariat), a minor (who has not attained puberty) who is given in marriage by a person other than her father or grandfather, has a right to repudiate the marriage on attaining majority without showing any case. This absolute right of the minor of repudiating marriage on attaining puberty is technically called "option of puberty".

The option of puberty is subject to the following limitations;

- (a) The option should be exercised immediately on attaining puberty.
- (b) The marriage should not have been consummated.

14.4 It is submitted that under Muslim Personal Law, the marriage of a minor girl who has not attained puberty or has not completed 15 years of age is valid though voidable and she has the *option of puberty*, i.e., the right to repudiate the marriage after attaining puberty. If the minor girl does not exercise right to repudiate then marriage continues. Even if it is taken that at the time of her marriage with the applicant on 04.06.2024, the age of the prosecutrix was below 15 years, the marriage between the applicant and the prosecutrix is valid as in any case she had attained the age of puberty about nine months before giving birth to a baby daughter.

### **PROHIBITION OF CHILD MARRIAGE ACT, 2006**

15 Whether the marriage between the applicant and the prosecutrix is



void or only voidable, in terms of the Act of 2006. Sections 3 & 12 of the said Act are reproduced hereinunder: -

***“3. Child marriages to be voidable at the option of contracting party being a child.-***

*(1) Every child marriage, whether solemnised before or after commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of marriage:*

*Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of the marriage.*

*(2) If at the time of filing a petition, the petitioner is a minor, the petition may be filed through his or her guardian or next friend alongwith the Child Marriage Prohibition Officer.*

*(3) The petition under this section may be filed at any time but before the child filing the petition completes two years of attaining majority.*

*(4) While granting a decree of nullity under this section, the district court shall make an order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents or guardian, as the case may be, the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables, ornaments, other gifts and money:*

*Provided that no order under this section shall be passed unless the concerned parties have been given notices to appear before the district court and show cause why such order should not be passed.”*

15.1 It is submitted that the Prohibition of Child Marriage Act 2006 does not repeal the Muslim Personal Law (Shariat) Application Act, 1937. Further, the former is general law and latter is special law. Therefore, the Muslims continue to govern by the Muslim Personal Law (Shariat) Application Act, 1937.



15.2 It is submitted that under Section 3, the marriage is voidable only at the instance of the minor, provided that such petition for seeking nullity of the marriage is filed by the child, upto 2 years of having attained majority.

***“Marriage of a minor child to be void in certain circumstances.-***

*Where a child, being a minor*

*(a) is taken or enticed out of the keeping of the lawful guardian; or*

*(b) by force compelled, or by any deceitful means induced to go from any place; or*

*(c) is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is marriage after which the minor is sold or trafficked or used for immoral purposes, such marriage shall be null and void.”*

15.3 It is submitted that the prosecutrix was neither taken nor enticed out of the keeping of her lawful guardian, nor was she compelled by force or induced by any deceitful means to go anywhere. She herself left her matrimonial home due to continuous physical, emotional, and sexual abuse by her stepfather, went to Muzaffarpur in Bihar and voluntarily married the applicant. Therefore, the marriage between the applicant and the prosecutrix is not void under Section 12.

## **16. CASE LAW RELIED UPON BY COUNSEL FOR THE APPLICANT**

### **16.1 Md. Idris vs State of Bihar & Ors.<sup>6</sup>**

Patna High Court held that marriage of a 14-year-old Muslim girl who has attained puberty is valid. Under Mahomedan Law (Mulla, Art. 251; Tyabji, Art. 27; Mulla, Art. 268; Tyabji, Art. 90), a girl who has attained puberty (presumed at 15 years) can marry without parental consent.

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<sup>6</sup> 1980 SCC OnLine Pat 5.





### 16.2 **Mohd. Nihal vs. State**<sup>7</sup>

Delhi High Court held that a Muslim girl who has attained or is presumed to have attained puberty at 15 can marry on her own. However, since the applicant failed to prove that Ms. Afsana had attained puberty or 15 years on 31.03.2008, and as her father was alive, only he could act as wali. The marriage was held batil (*void ab initio*).

### 16.3 **Kammu vs State of Haryana & Ors.**<sup>8</sup>

Punjab & Haryana High Court reiterated that puberty and majority are the same in Muslim law, presumed at 15 years. A Muslim girl of 15 can marry without guardian's consent. Habeas corpus dismissed as 16-year-old Sarjeena had voluntarily chosen to live with her husband.

### 16.4 **Shamsuddin vs State & Ors.**<sup>9</sup>

Delhi High Court held that marriage of a girl below 15 but who has attained puberty is valid under Hanafi law. Gulshan's pregnancy proved puberty, hence the marriage with Bhura @ Furqan was valid.

### 16.5 **Yunus Khan vs State of Haryana & Ors.**<sup>10</sup>

Punjab & Haryana High Court held that the Prohibition of Child Marriage Act, 2006 does not repeal the Muslim Personal Law (Shariat) Application Act, 1937. For Muslim girls, marriageable age is puberty or 15 years (Mulla, Art. 195/251; Tyabji, Art. 27). Thus, marriage of a girl above 15 is valid even if below 18.

### 16.6 **Fija & Anr. vs State of NCT of Delhi & Ors.**<sup>11</sup>

Delhi High Court reaffirmed that under Mohammedan Law, a girl who has

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<sup>7</sup> W.P.(CrI.) 591/2008.

<sup>8</sup> 2010 SCC OnLine P&H 2338.

<sup>9</sup> 2009 SCC OnLine Del 1443.

<sup>10</sup> 2014 SCC OnLine P&H 3588.

<sup>11</sup> 2022 SCC OnLine Del 2527.



attained puberty (presumed at 15) can marry without parental consent and reside with her husband even if below 18. **Supreme Court in NCW vs Fija**<sup>12</sup> dismissed challenge noting the couple was happily married with a two-year-old child.

#### 16.7 **Kalluvalappil vs Veerankutty**<sup>13</sup>

Kerala High Court held that under Muslim law, even a 7-year-old girl may be married by a guardian, but she retains the right of repudiation (*khiyar-ul-bulugh*) on attaining puberty (presumed at 15). The Dissolution of Muslim Marriages Act, 1939, allows repudiation before 18 if the marriage occurred before 15 and is unconsummated.

#### 16.8 **K. Dhandapani vs. State**<sup>14</sup>

Supreme Court set aside conviction under POCSO for sexual relations with a 14-year-old girl (later his wife with two children). In peculiar facts, Court upheld marriage in view of “happy family life,” though it clarified the decision is not a precedent.

17. Opposing the above submissions, the learned APP for the state argues that the instant bail application is *sans* merit and the applicant is not entitled to any relief at this stage as the offence committed by the applicant is heinous in nature, as there remains a genuine risk of him absconding, influencing or intimidating witnesses, and tampering with crucial evidence. He would further contend that the victim and the witness are both minors, and there is a grave possibility that the accused may exercise influence or cause intimidation and there is also a strong apprehension that the applicant/accused may abscond and jump bail if granted the same.

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<sup>12</sup> SLP (Crl.) No. 1934/2023.

<sup>13</sup> 1988 SCC OnLine Ker 457.

<sup>14</sup> 2022 SCC OnLine SC 1056.



## DISCUSSION AND ANALYSIS

18. With this background of law, as regards the defence i.e. applicant and prosecutrix being in a valid marriage, it does so appear that Under Muslim Personal Law, puberty (presumed at 15 years, unless proved otherwise) is the marriageable age for girls. In various precedents, cited as above, have upheld Islamic marriages of girls 15+ (even if under 18) as valid under Shariat. However, in cases where puberty or 15 years not established, marriages have been declared void (*Mohd. Nihal, supra*).

19. Be that as it may, whether it is a case of precocious puberty or genuinely prosecutrix was of age of consent or it is a case of valid Islamic marriage, cannot possibly be adjudicated in bail proceedings herein. Position of law clearly is that Muslim personal law cannot override POCSO Act and/or BNS. Though, Supreme Court in *K. Dhandapani (supra)*, taking a pragmatic view, due to peculiar facts therein opined to the contrary but barred it as precedent.

20. Reverting now to the limited issue at hand i.e. whether the applicant is entitled to bail in light of the stringent provisions of Section 376 of the IPC read with Section 6 of the POCSO Act; regard may be had to the relevant case law, already reproduced above as part of the arguments, which squarely applies to the present facts. I am of the opinion that, *de hors* the controversy i.e. whether it is valid marriage or not, even otherwise, taking a wholesome view, it is a fit case for bail. I shall now proceed to give reasons therefore in the succeeding part of this order.

21. First and foremost, to begin with, three things which weigh on my mind are:



**Firstly**, even for the purposes of the instant bail, if it is assumed that the marriage between the applicant and the prosecutrix is not a valid one, it cannot be denied that the relationship between them is not only consensual but also akin to that of live-in partners, and at present both of them are fully entitled to enter into such a relationship, being 24 and 20 years old, respectively, as claimed by them.

**Secondly**, it is debatable that, both of them being Muslims, they would be fully within their rights to practice their religion, which is a fundamental right under the Constitution of India, and since their religion and custom, as per the prevalent Islamic law, permits marriage, the same would be valid in their personal law, though it may be in contravention of the age of consent prescribed under the law enacted by the Legislature.

**Thirdly**, the applicant was misled into believing that the prosecutrix, already being the mother of a child born to her from her earlier relationship (albeit by virtue of a sexual assault), and also appearing physically mature enough to be 18 years of age, was of majority. Thus, he bona fide believed the marriage to be in accordance with the age of consent as prescribed by the law enacted by the Legislature.

22. Adverting further, the FIR was lodged on 15.06.2024 alleging that the prosecutrix had gone from home at 5 AM on 26/05/24 without telling anyone and that despite search, she had not been found till then. The explanation for delay in lodging the FIR is not at all convincing. Thus, the delay in lodging the FIR, per se considerably affects its credibility.

22.1 Scanned copy of the FIR is on record. Recitals in its opening part show as if the same was lodged by the mother of the prosecutrix. However, the reality is otherwise. The report to the police, though shown lodged in the



name of mother of the prosecutrix was actually signed by the latter's step-father Mohan Bhagat and not the mother. Thus, in reality the FIR was lodged by Mohan Bhagat (step-father of the prosecutrix). Given the peculiar circumstances of the case, it seems that he had his own axe to grind for lodging the FIR twisting/distorting facts. Let us see how and why.

22.2 The prosecutrix in her statement dated 01.08.2024 under section 183 BNSS(corresponding to section 164 Cr.PC), had stated, inter alia, that her step-father had been having forcible sexual intercourse with her and from such she had given birth to a daughter. Even thereafter, he had been beating her and that being fed up, she had herself left the house and joined the applicant. Her subsequent statement dated 14.08.2024 under the section ibid shows that the prosecutrix had already married the applicant before she left her house. As already stated, the DNA sample of the female child delivered by the prosecutrix on 16.06.2023 matches with that of her step-father. This indicates that she had been impregnated by her step-father. Naturally, therefore, he (the step-father) would have been fearing the consequences of his crime. He found an opportunity to manipulate when the prosecutrix left home on or about 14.05.2024 and himself lodged the FIR on date 15.06.2024 by camouflaging the same as if lodged by the mother of the prosecutrix. Surprisingly, this glaring fact went unnoticed by the concerned police functionaries. It is obvious that the step-father did so in order to arm-twist, keep up/ exert pressure on and deter the prosecutrix from opening her mouth against his own crime. Separate case ( FIR No-513/2024 u/s 376(2)(n) IPC & 6 POCSO Act) stands already registered against him. Thus, the step-father of the prosecutrix seems to have distorted the genesis of the FIR for saving own skin. As stated, this disturbing aspect





is apparent on record because the complaint though claimed to have been filed by the prosecutrix's mother, the FIR bears the signature of her stepfather, who, according to the prosecutrix, had subjected her to repeated sexual assault. This raises grave doubt about his bona fides for lodging the FIR, suggesting that the stepfather may have misused the criminal process to shield himself against action for own misconduct and retain control over the prosecutrix.

22.3 The applicant claims that he had married the prosecutrix on 04.06.2024. Dictionary meaning of puberty is 'sexual maturing'. As noted earlier, the female child was delivered by the prosecutrix on 16.06.2023. The prosecutrix had thus attained the age of puberty when she conceived at least about nine months before giving birth to the baby. It follows that prior to her marriage with the applicant on 04.06.2024, the prosecutrix had already attained puberty, a condition for the purpose valid marriage under Muslim law.

22.4 As per the victim's statement recorded under Section 183 BNSS, she left her house of her own accord and went to the native village of the Applicant at Muzaffarpur, Bihar. She stated that her stepfather used to sexually assault her without her consent and would beat her if she resisted. As a result of this abuse, the victim conceived and gave birth to a female child.

22.5 The victim informed the Applicant that she was 23 years old and expressed her wish to marry him, the Applicant, believing her representation to be true, married her on 04.06.2024 according to Muslim rites and customs. The victim also executed an affidavit affirming that she was 23 years of age and had voluntarily married the Applicant.



22.6 Although, it is alleged that the present complaint was filed by the mother of the victim, the FIR is in fact signed by the victim's stepfather—the very person who had been sexually abusing her. This raises a grave and disturbing issue: the abuser himself initiated the FIR, not with the object of protecting the victim, but to continue exerting control over her and concealing his own offences. This demonstrates a clear misuse of the legal process, casting serious doubt on the credibility and bona fides of the FIR.

22.7 As per the statements recorded under Sections 180 and 183 BNSS, the victim has clearly stated that she is happy after marrying the Applicant and wishes to reside with him. Subsequent to her marriage with the Applicant, the victim gave birth to a male child on 21.02.2025. It is evident that the prosecutrix is content in her marriage with the applicant and has clearly expressed her desire to continue living with him.

22.8 Pertinently, the applicant Mr. Hamid Raza, a graphic designer by profession and the prosecutrix, are both present in court. On a mere visual observation, it appears that the applicant is physically diminuer than the prosecutrix. Be that as it may, the applicant states his age to be 24 years, while the prosecutrix asserts that the prosecution has wrongly recorded her age as 15 years, whereas she is in fact 20 years old.

22.9 Even otherwise, the victim's age was in all probability above 18 years at the time of her marriage. However, her exact age is disputed, as it is recorded differently in various documents, namely:

22.9.1 As per the Birth Reporting/Application Form: DOB 05.02.2010 → Age 14 years 3 months 30 days as on 04.06.2024.

22.9.2 As per the Birth Certificate issued by MCD: DOB 05.02.2011 → Age 13 years 3 months 30 days as on 04.06.2024.



22.9.3 As per the FIR: Age 14–15 years.

22.9.4 As per the victim's statement under Section 183 BNSS before the Ld. Judicial Magistrate in FIR No. 390/2024 dated 01.08.2024: Age 20 years.

22.9.5 As per the admission form of Guru Govind Singh Hospital (when the victim was pregnant by her stepfather and gave birth to a female child K): Age recorded as 17 years. Consequently, on the date of marriage (after one year), her age would be 18 years.

22.9.6 As per the affidavit given by the victim at the time of marriage: Age 23 years.

22.10 *Prima facie*, the prosecutrix's claim on her age appears be believable, particularly since she had already given birth to a child at the time she married the applicant. That pregnancy, unfortunately, was the result of sexual assault committed by her stepfather. Nonetheless, a girl who is a mother and appears biologically more mature than her stated age could reasonably be perceived as being older than her peers. Even if the prosecution's version—that she was 14 at the time—is taken as correct, her appearance and maturity may have genuinely misled the applicant into believing that she was above 18. In any case, since the prosecutrix herself claims to have been above 18 at the relevant time, this controversy is best left to be adjudicated during the trial proceedings.

23. Be that as it may, the victim's age is a disputed fact and can only be conclusively determined upon full-fledged trial, as rightly contended by learned counsel for the applicant.

24. The material on record further discloses that the prosecutrix had been subjected to persistent physical, emotional, and sexual abuse by her stepfather, which compelled her to leave her parental home. In such



circumstances, it cannot be said the applicant's claim of having married the prosecutrix necessarily and exclusively actuated by any exploitative intent. It cannot be ruled out that he too was genuinely interested in marrying the prosecutrix and also guided by social and religious considerations, for providing protection, care and emotional security to safeguard her dignity and welfare and not any malicious or ulterior motive.

25. The prosecutrix herself has filed an affidavit stating that she has no objection to the grant of bail in favour of the applicant.

26. During the hearing of the bail application before the learned Trial Court also, the prosecutrix appeared through video conferencing and categorically stated that she has no objection if bail is granted to the applicant.

27. The record reveals that the applicant was arrested by Ct. Gurmeet and HC Anand at Jaipur on 04.10.2024 (though in chargesheet, it is 06.10.2024). However, the arrest was carried out without adherence to the established guidelines governing arrest. As per the statements of Ct. Gurmeet and HC Anand recorded under Section 180 BNSS, the applicant was produced before the learned Special Judge only on 07.10.2024. This was well beyond the statutory period of 24 hours mandated under Article 22(2) of the Constitution and Section 58 BNSS. Such delay is not only illegal and arbitrary but also renders the detention of the applicant unlawful.

27.1 *Prima facie*, it appears that the applicant was not even furnished with the written grounds of arrest either at the time of arrest or immediately thereafter, in violation of Article 22(1) of the Constitution and Section 47



BNSS. The Supreme Court in *Pankaj Bansal v. Union of India*<sup>15</sup>, *Prabir Purkayastha v. State (NCT of Delhi)*<sup>16</sup>, and *Vihaan Kumar v. State of Haryana*<sup>17</sup>, has reiterated that failure to communicate written grounds of arrest vitiates the arrest and renders the detention unconstitutional.

27.2 Further, the mandatory provisions of Section 48 BNSS were violated inasmuch as no relative or friend of the applicant was informed of his arrest or place of detention. Even when the applicant requested before the learned Remand Judge that his family be informed, no such intimation was given. Neither was any entry of compliance made in police records. This constitutes a gross violation of the applicant's fundamental rights.

27.3 The written grounds of arrest were not supplied to any relative or friend of the applicant either, as mandated under Section 48 BNSS.

27.4 It also emerges that the applicant was not informed of his rights under Section 48(1) BNSS, contrary to the mandate of Section 48(2), which obligates the police to apprise the arrestee of such rights upon arrival at the police station.

28. The proceedings before the learned Trial Court are marked by repeated adjournments without valid cause, resulting in protracted delay. This is contrary to Section 346(1) BNSS, which requires day-to-day trial until all witnesses in attendance have been examined, unless reasons are specifically recorded for adjournment.

28.1 The charge-sheet was filed on 12.11.2024, and though charges have been framed, not a single witness has been examined till date. Given that the

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<sup>15</sup> (2024) 7 SCC 575.

<sup>16</sup> (2024) 8 SCC 254.

<sup>17</sup> (2025) 5 SCC 799.





alleged offence falls under Section 376 IPC (now Section 64 BNS), the proviso to Section 346(1) BNSS, which requires completion of trial within two months from the filing of chargesheet, squarely applies. Despite the expiry of more than eight months, no meaningful progress has been made. The delay is entirely attributable to prosecutorial inaction, not to the applicant. Such delay infringes the applicant's fundamental right to a speedy trial under Article 21 of the Constitution, rendering his continued detention unjustified.

29. The applicant has no previous criminal antecedents and has otherwise maintained a clean record. There is nothing on record to suggest that he poses any threat to society, is likely to abscond, or would misuse the liberty if granted bail.

30. In light of the above factors taken cumulatively; the prosecutrix's unequivocal support to the applicant; the illegalities surrounding his arrest; the prolonged delay in trial; the absence of any criminal antecedents of the applicant and the questionable bona fides of the FIR, I am of the considered opinion that further incarceration of the applicant pending trial is unwarranted.

31. Order dated 19.09.2025 was earlier passed granting interim bail to the applicant on his furnishing personal bond for a sum of Rs.10,000/- before the Jail Superintendent and in compliance thereof, he was ordered to be set free till next date of hearing and further requiring that the police personnel who had brought him in Court shall ensure his presence on the next date of hearing as well.

32. Accordingly, applicant is now ordered to be released on regular bail, subject to conditions to be imposed by the learned Trial Court. Till then, the



order dated 19.09.2025 granting interim bail to the applicant shall remain in force.

33. This Court once again places on record it's deep appreciation for the valuable assistance rendered by Ms. Nandita Rao, Senior Advocate (Amicus Curiae) with Mr.Amit Peswani, Advocate; as also by Professor Faizan Mustafa, Vice Chancellor, Chanakya National Law University (Expert Islamic Law); Dr.Mohd. Khalid Khan, Dept. Of Islami Studies, Jamia Milia Islamia, New Delhi and Mr. Nehal Ahmed, Assistant Professor of Law, Woxsen University Hyderabad, experts on the Islamic Law, in striving to adjudicate the controversy in hand.

34. Having granted bail as above, I have consciously refrained from expressing any conclusive opinion on the legality of the marriage in question, though extensive arguments were advanced on this issue by Islamic experts and learned counsel for the applicant. However, upon thoughtful consideration thereof, the recurring conflict is clear i.e. under Islamic law, a minor girl attaining puberty may lawfully marry, but under Indian criminal law such a marriage renders the husband an offender under the BNS and/or POCSO or both. This raises a stark dilemma viz. should society be criminalized for adhering to long-standing personal laws ? Is it not the time to move towards a Uniform Civil Code (UCC), ensuring a single framework where personal or customary law does not override national legislation?

35. Before parting, it would be apposite to observe that this conflict warrants legislative clarity. The Legislature must decide whether to continue criminalizing entire communities or to promote peace and harmony through legal certainty. No doubt, opponents of UCC caution that uniformity risks



eroding religious freedom guaranteed to every citizen as a fundamental right in the Constitution of India. However, such freedom cannot extend to practices that expose individuals to criminal liability. A pragmatic middle path could be to standardize core protections, such as prohibiting child marriages across board with penal consequences as they directly conflict with both BNS and POCSO. At the same time, less contentious personal matters may be allowed to evolve gradually within respective communities. The decision is best left to the wisdom of the law makers of the country. But, lasting solution must soon come from the Legislature/Parliament.

**ARUN MONGA, J**

**SEPTEMBER 23, 2025/nk/rs**