

### X v. State of Rajasthan

- ❖ **TOPIC** : Bail should Not Be Granted Ordinarily In Serious Offences Like Rape & Murder Once Trial starts : Supreme court
- ❖ **BENCH** : Justice JB Pardiwala and Justice R Mahadevan
- ❖ **FORUM**: Supreme Court
- ❖ **MAIN ISSUE**
  - Regarding serious offences like murder, rape, dacoity etc., bail applications of the accused should not be ordinarily entertained by the Trial Courts and the High Courts
- ❖ **OBSERVATIONS**
  - The Supreme Court has observed that in serious offences like murder, rape, dacoity etc., bail applications of the accused should not be ordinarily entertained by the Trial Courts and the High Courts.
  - "Ordinarily in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused," observed a bench comprising Justice JB Pardiwala and Justice R Mahadevan.
  - "It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that the right of the accused to have a speedy trial has been infringed," the bench added.
  - The Court was deciding an appeal filed by a victim in a rape case challenging the High Court's order granting bail to an accused. The High Court granted him bail citing certain discrepancies in the FIR and the Section 164 CrPC statement of the victim.
  - Disapproving of the High Court's approach and also the general trend followed by the Courts in such cases, the Supreme Court observed :
  - "Over a period of time, we have noticed two things, i.e.,
  - (i) either bail is granted after the charge is framed and just before the victim is to be examined by the prosecution before the trial court, or
  - (ii) bail is granted once the recording of the oral evidence of the victim is complete by looking into some discrepancies here or there in the deposition and thereby testing the credibility of the victim.
  - We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once

the trial commences, it should be allowed to reach its final conclusion which may either result in the conviction of the accused or acquittal of the accused.

- The moment the High Court exercises its discretion in favour of the accused and orders release of the accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim."
- The Supreme Court observed that the alleged discrepancies in the victim's statements could not have been a ground to grant bail especially when the victim was yet to be examined.
- At the same time, the Court refrained from disturbing the bail granted by the High Court. Instead, it chose to impose additional conditions. It directed the accused not to enter the village of the victim and her mother till the completion of the trial. The accused was directed to furnish his new residential address to the police.
- The Court also asked the trial court to prioritise this case and try to complete the trial within a period of three months

### Irfan Khan v. STATE (NCT OF DELHI)

- ❖ **Topic** : Arms Act, Prohibition On Buttondar Knife Applies Only If knife was For 'Manufacture Sale Or Possession for Sale or Test' : Supreme court
- ❖ **BENCH** : Justices PS Narasimha and Sandeep Mehta
- ❖ **FORUM**: Supreme Court
- ❖ **MAIN ISSUE**
  - Regarding the Arms Act case against the person accused of possessing a buttandar knife.
- ❖ **OBSERVATIONS**
  - The Supreme Court quashed the Arms Act case against the person accused of possessing a buttandar knife.
  - The bench comprising Justices PS Narasimha and Sandeep Mehta heard the case, in which the appellant was accused of possessing a buttandar knife (having dimensions 31.5 cms in length (blade length of 14.5 cms and handle of 17 cms) and width of 3 cms), violating the Arms Act, 1959, and a 1980 DAD Notification.
  - The FIR and charge sheet were challenged because the knife did not meet the specifications for violation.
  - Delhi Government's DAD Notification dated 29th October, 1980 mandates that 'no person in the

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Union Territory of Delhi shall “manufacture, sale or possess for sale or test” spring actuated knives, gararidar knives, buttondar knives and other knives which open or close with any other mechanical device with a sharp edge blade of 7.62 cms, or more in length and 1.72 cms or more in breadth in the Union Territory of Delhi.’

- The High Court refused to quash the criminal case punishable under Sections 25, 54, and 59 of the Arms Act, 1959. Following this, an appeal was preferred before the Supreme Court.
- Setting aside the High Court's decision, Mehta J. in the judgment observed that "the notification whereby, a buttondar knife having blade dimensions of 7.62 cms or more in length and 1.72 cms or more in breadth has been brought under the mischief of the Arms Act, Would be applicable only when the recovered knife is meant for the specified reasons i.e., 'manufacture, sale or possession for sale or test' as indicated in the DAD notification.”
- “Manifestly, on going through the report under Section 173 CrPC, there is not even a whisper that the appellant's possession of the said buttondar knife was for any of the prohibited categories as indicated in the DAD Notification.
- Hence, the totality of the evidence collected by the investigation officer is not sufficient to draw even a remote inference that by simply being found in possession of the buttondar knife, the appellant acted in violation of the DAD Notification.”, the Court added.
- Accordingly, the Court held that the proceedings sought to be undertaken against the appellant in pursuance of the impugned charge sheet for the offence under Sections 25, 54, and 59 of the Arms Act, tantamount to an abuse of the process of law and deserve to be quashed.
- Accordingly, the pending case was quashed and the appeal was allowed.

### XXXXX v. State of Haryana

- ❖ **TOPIC :** Child's Testimony can't Be Brushed Aside, Punjab & Haryana HC Upholds Teacher's Conviction For sexually Assaulting Student in School
- ❖ **BENCH :** Justice Amarjot Bhatti
- ❖ **FORUM:** Punjab and Haryana High Court

### ❖ MAIN ISSUE

- Regarding the conviction of a school teacher for sexually assaulting a class 8th student under Protection of Children from Sexual Offences Act, 2012 (POCSO Act), while noting that the "occurrence took place in school premises."

### ❖ OBSERVATIONS

- The Punjab and Haryana High Court has upheld the conviction of a school teacher for sexually assaulting a class 8th student under Protection of Children from Sexual Offences Act, 2012 (POCSO Act), while noting that the "occurrence took place in school premises."
- Justice Amarjot Bhatti said, "as per facts of the case, it is fully covered under the provisions of Section 9 (f) of POCSO Act as victim was sexually assaulted by appellant/convict Sanjay Kumar while he was posted as Hindi Teacher and the victim was studying in the same school in 8th standard. Occurrence took place in the school premises. Therefore, considering the facts of the case, it is a case of aggravated sexual assault and he was rightly held guilty under Section 10 of the POCSO Act."
- The Court was hearing an appeal against conviction passed by the trial court where the teacher was convicted under Section 10 of the POCSO Act, and sentenced to rigorous imprisonment of 5 years.
- The victim was studying in 8th class in a Haryana's Government School and on the day of incident the teacher asked the victim to hold his private part in school and tried to force him to do so.
- It was alleged by the victim's mother that the teacher was in a habit of indulging in such activities in the school earlier and he remained under suspension for a long time.
- After examining the submissions, the Court noted that the victim narrated the entire occurrence as he disclosed to his mother.
- The court rejected the argument that the sole testimony of the victim cannot be safely relied upon and there is no independent corroboration to his version.
- "It cannot be ignored that such incidents take place in isolation. Therefore, no eye witness is expected. Even the mother of the victim examined as PW-7 is not eye witness to the occurrence. She has filed a complaint on the basis of facts disclosed to her by the victim," noted the judge. Justice Bhatti also highlighted that the delay of two days in lodging FIR is insignificant.

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- "Usually it is seen when such an incident takes place with a child, firstly it takes time for the child to disclose about such like incident to family member and secondly, it further takes time for the family to ponder about such like incident for lodging a report to the authorities," observed the judge.
- The Court noted that in the present case, when the victim came out of the room, he informed the Principal of the school but instead of taking any action, the child was told to keep silent and was warned not to disclose about the occurrence to his family.
- In the light of the above, the Court did not find any infirmity in the conviction order and dismissed the appeal.

### XXXX v. State of Punjab

❖ **TOPIC :** [Kidnapping] Accused cannot Be Held Guilty If Minor Girl voluntarily Leaves Her Guardian : P & H High court

❖ **BENCH :** Justice Sumeet Goel

❖ **FORUM:** Punjab and Haryana High Court

❖ **MAIN ISSUE**

- Regarding the offence of kidnapping a minor from their lawful guardian.

❖ **OBSERVATIONS**

- The Punjab and Haryana High Court has made it clear that merely accompanying the minor after her departure or passive association is not sufficient to constitute the offence of kidnapping a minor from their lawful guardian.
- The Court upheld the acquittal of the accused in the case of kidnapping a minor girl, observing that it was a case of "consensual elopement, rather than kidnapping as alleged by the prosecution."
- Referring to the Supreme Court's decision in S Varadarajan v/s State of Madras (1965), Justice Sumeet Goel said, "it can be safely deduced that in cases where a minor girl voluntarily leaves her lawful guardianship without any evidence of active enticement or taking by the accused, the accused cannot be held liable under Section 363 IPC. The law requires the prosecution to establish a direct act by the accused that prompted the minor's departure from lawful custody. If there is no material on record demonstrating that the accused actively influenced, persuaded, or physically removed the minor, the essential ingredients of the offense remain unfulfilled."
- The Court clarified that "merely accompanying the

minor after her departure or passive association does not suffice to constitute kidnapping under this provision."

- These observations were made while hearing the appeal against the Trial Court's acquittal order from the charges under Sections 363 (Kidnapping) and 366-A (Procuration of minor girl) of the IPC by granting him the benefit of doubt.
- A complaint was filed by the father of the minor girl that she was kidnapped on her way to school by the accused man.
- After examining the submissions, the Court noted that the offence of kidnapping of a minor girl under Section 363 of the Indian Penal Code (IPC), the prosecution must demonstrate specific elements, supported by evidence, as prescribed under the law. The crux of the offence lies in the act of "taking" or "enticement" by the accused.
- Justice Goel explained that the act must be intentional and direct, resulting in the minor girl being removed from the lawful guardianship of her custodian, typically her parents or legal guardian.
- The term "taking" implies a deliberate act of physically moving or transporting the minor out of lawful custody.
- The Court elucidated that the prosecution must prove that the accused person's conduct directly caused the minor to step outside the control or protection of her lawful guardian. Furthermore, the law does not require coercion or force; mere enticement suffices, provided it is shown that the accused person's actions influenced the minor's departure.
- It also highlighted that the consent of the minor girl under eighteen is immaterial, as the law presumes that a minor lacks the capacity to consent independently in such cases.
- The Court concluded that in cases where a minor girl voluntarily leaves her lawful guardianship without any evidence of active enticement or taking by the accused, the accused cannot be held liable under Section 363 IPC.
- Examining the offence of "Procuration of minor girl", under Section 366-A IPC the Court said that, to establish the offence, the prosecution must prove a direct causal connection between the accused person's act of inducement and the intended outcome of illicit intercourse.
- The Court added that inducement is a pivotal element of the offence and involves persuading, enticing, or influencing a minor girl to leave her place or perform a specific act.
- However, the act of inducement alone is insufficient to constitute an offence under Section

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366-A.

- "It must be demonstrated that this inducement was aimed at achieving a particular outcome: the minor girl being forced or seduced into illicit intercourse with another person," said the judge.
- In the present case the Court found that prosecution has failed to satisfactorily discharge its burden of proof by presenting credible and reliable evidence or witnesses.
- Stating that in cases involving offences under Section 363 and Section 366 - A IPC, the testimony of the prosecutrix holds paramount importance in determining the culpability of the accused, the Court noted inconsistencies in her testimony.
- In light of the prosecutrix's age, her willingness to accompany the accused, and the absence of any credible evidence of coercion or inducement,
- The Court opined that the elements necessary to establish offence under Sections 363 and 366-A of IPC have not been met and the victim had made a conscious decision to join the accused's company.
- Consequently, the acquittal was upheld.

### Ismail Valumathige v. Union Territory of Lakshadweep and Another

- ❖ **TOPIC :** Court must Be Liberal in Giving NOC for Issuance of Passport When Applicant is Accused of Matrimonial Trivial offence : Kerala HC
- ❖ **BENCH :** Justice A. Badharudeen
- ❖ **FORUM:** Kerala High Court
- ❖ **MAIN ISSUE**
  - Regarding issuing a No Objection of Certificate for passports
- ❖ **OBSERVATIONS**
  - The Kerala High Court has said that Courts have to be liberal while considering issuing a No Objection Certificate for passports when the case pending against the applicant is a matrimonial issue or a trivial/ simple offence.
  - In doing so the court said that if a liberal approach is not adopted in such cases, the applicant's right to go abroad to carry out their employment, without obstructing the trial, "would be in peril".
  - Justice A. Badharudeen held that the Court has to uphold the right of life of the accused. In the case before it, the high court noted that it was the petitioner's grievance that the pendency of a criminal case is a matter which would negate the issuance/re-issuance of passport, unless No Objection Certificate from the concerned Court is produced. It then said:

- "Therefore, when an accused applies for No Objection Certificate in the matter of issuance/re-issuance of passport, the Court shall consider various aspects, viz., the seriousness of the offence/offences, the possibility of stalling trial by abscondence etc. When matrimonial dispute is the base where from the criminal case arose, the court shall be so liberal in the matter of issuance of No Objection Certificate, Otherwise the right to go abroad, with the permission of the court to do some employment therein without obstructing the trial would be in peril. Similar is the principle to be followed while considering issuance of No Objection Certificate in cases involving trivial and simple offences."
- The Court held that in such cases, even if there is some omission in part of the accused, it should not be a hindrance for granting NOC, "to ensure the right to life of the accused".
- It however said that in cases concerning murder, attempt to commit murder, rape, offences under the Protection of Children from Sexual Offences Act and Narcotic Drugs and Psychotropic Substances Act, while issuing No Objection Certificate, the court must ensure that on the strength of the passport, the accused would not abscond and stall the trial.
- "In such cases, after imposing necessary conditions to secure the presence of the accused for trial, No Objection Certificate or Emergency Certificate in the case of persons, who are already abroad and their passport expired has to be considered favourably," the court underscored.
- In the case before the high court, the Immigration Department had seized the passport of the petitioner saying that the petitioner obtained the passport suppressing the criminal case that was pending against him and is therefore facing prosecution under Section 12 of the Passports Act. The petitioner is the second accused in the complaint filed by his brother's wife. She complained that her husband compelled her to co-operate with his brother for his sexual desires. She alleged that when she refused, her husband and husband's brother mentally and physically harassed her. Both the accused men are booked for various IPC offences including Sections 498A(cruelty), 354B(Assault or use of criminal force to woman with intent to disrobe), 376 (rape) r/w Section 34.
- His application for NOC for obtaining the passport was rejected by the Sessions Court noting that he suppressed details about his pending criminal trial while applying for passport. Against this order, the

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petitioner approached the High Court.

- The petitioner submitted before the High Court that a miscommunication occurred between him and the passport agency as he only knew Mahl language. He submitted that there was no wilful omission from his part.
- The petitioner said that he was working as a bosun and a passport is absolutely necessary for his job. The Court noted that the criminal case against the petitioner was pending for the last 5 years. The Court held that this is a fit case to grant NOC.
- It directed the Regional Passport Office to consider the application of the petitioner for getting a passport afresh, if filed within one month and to consider issuance of a new passport and for which it issued 'No Objection Certificate' by setting aside the impugned order.
- "At the same time, the petitioner is directed to co-operate with the investigation as proposed without stalling the same in any manner. The learned Special Judge is directed to expedite the trial and dispose of the same within a period of three months from the date of receipt of a copy of this order," the court said.

### XXX v. State of Kerala

- ❖ **TOPIC :** POCSO Act Being Misused by certain Persons To Wreak Vengeance Against Their Rivals : Kerala HC
- ❖ **BENCH :** Justice A. Badharudeen
- ❖ **FORUM:** Kerala High Court
- ❖ **MAIN ISSUE**
  - Regarding the POCSO Act.
- ❖ **OBSERVATIONS**
  - The Kerala High Court has observed that provisions of the POCSO Act were being misused by certain persons to wreak vengeance against their rivals with ulterior motives.
  - It thus stated that the Courts must "segregate the grains from the chaff to analyse whether the allegations" make out a prima facie case or not for prosecution under the POCSO Act.
  - Justice A. Badharudeen observed that the Court shall exercise its powers to quash false and frivolous litigations filed with ulterior motives at the threshold by exercising its jurisdiction under Section 482 of CrPC or Section 528 of the BNSS.
  - It is discernible that the POCSO Act has been enacted by the legislature to protect children from sexual abuse of any mode with exhaustive penal provisions of very stringent nature.

- But nowadays, the provisions of the POCSO Act are being misused by certain groups of persons to wreak vengeance and also to make a strong case against their rivals, so as to obtain ulterior motives therefrom. When the facts of the case are scanned, If the same reveals that the allegations are levelled with ulterior motives and the same are not digestible to prudence, the courts shall exercise its power under Section 482 of Cr.P.C. or under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to quash the false and frivolous litigations at the threshold."
- In the facts of the case, the husband has been accused by the complainant-wife of committing penetrative sexual assault upon her, when she was a minor before their marriage.
- The accused is alleged to have committed offences punishable under Sections 354D, 450 and 376(2)(n) of the IPC and Section 6 read with 5(1) of the POCSO Act. He has approached the Court to quash the final report and proceedings.
- It was alleged that the petitioner and the complainant got legally married in 2017, but they had been in a love relationship since 2015 when the complainant was still a minor.
- It was alleged that the petitioner subjected the complainant to repeated sexual intercourse when she was a minor and committed offences under the IPC and POCSO Act.
- The Counsel for the petitioner submitted that the complainant and petitioner got legally married in 2017 and there was no sexual intercourse before marriage, as alleged.
- It was further stated that the complainant initially filed a case for denial of maintenance before the police station and there were no allegations of sexual molestation during the juvenile. It was argued that the complainant filed the false case following a difference of opinion in their marriage, with an intent to wreak vengeance against the petitioner by misusing the provisions of the POCSO Act.
- The Court noted that there was no sufficient explanation for the delay in filing the FIR alleging sexual molestation that allegedly took place in 2015. It noted that the FIR was registered only in 2020, whereas the parties got legally married in 2017.
- The court stated, "Here, the wife of the petitioner is the de facto complainant and she lodged a complaint after three years and one month regarding coitus between them in the year 2015 and 2016 when the marital relationship was estranged

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and they became rivals.

- Prima facie, it appears that the entire allegations are raised with ulterior motives by the wife against the husband by misusing the provisions of the PoCSO Act and the penal provisions of IPC at a much belated stage after the marriage was solemnized.”

- As such, the Court found that the allegations against the petitioner were prima facie unsustainable. It thus quashed the final report and all proceedings against the petitioner.



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