SPECIAL LAW, REGULAR BAIL, PERVERSE OUTCOME? ASSESSING JUDICIAL PREJUDICE IN BAIL PROCEEDINGS UNDER THE POCSO ACT: RAJBALLAV PRASAD, DHARMANDER SINGH, AND THE DELHI HIGH COURT

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The presumption of innocence is foundational to criminal law and must operate as a safeguard against prejudice during bail proceedings. However, the Indian Supreme Court has historically been inconsistent in clarifying the presumption's status as a right at bail, and has violated it in its bail jurisprudence, notably by prejudicially considering the seriousness of the alleged offence. Prejudice influenced by considerations of seriousness has also been explicitly legislated into the bail provisions of several of India's 'special criminal laws', further compromising the presumption. In this regard, The Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') stands out, as it is a stringent special criminal law but with regular bail provisions. This paper undertakes to examine whether courts have nonetheless been prejudicial in bail adjudication under the POCSO Act. It finds that decisions of the Supreme Court, Kerala High Court and Delhi High Court (DHC) have erroneously applied the POCSO Act's 'reverse-onus' clause to bail proceedings. The most detailed among these judgements — the DHC's 2020 judgement in Dharmander Singh v. State (NCT of Delhi) — prompts this paper to undertake a detailed examination of the DHC's POCSO bail jurisprudence in 2022 and 2023 to gauge the precedential/persuasive effect of Dharmander Singh, as well as general evidence of special prejudice at scale. However, the paper argues that the record reveals no significant special prejudice due to Dharmander Singh, the reverse-onus clause in §29 of the POCSO Act, or the 'seriousness' of POCSO

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offences. Since the presence of such prejudice under a statute with regular bail provisions would aggravate the threat to the proper operation of the presumption of innocence in Indian jurisprudence, the finding of its absence in the DHC's judgements is welcomed.

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I. INTRODUCTION

The presumption of innocence is pre-eminent among established foundations of modern criminal law.[1] If this principle is applied throughout the criminal process, it would mean that bail proceedings would have to refrain from pre-judging the guilt of the accused in any form.[2] However, there exist special criminal laws in India that statutorily violate the presumption by mandating preliminary determinations of guilt at the stage of bail.[3]

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1 Andrew Ashworth, Principles of Criminal Law, 21 (Jeremy Horder, 7th edn., Oxford University Press, 2013).

2 Andrew Ashworth, *Four Threats to the Presumption of Innocence*, Vol. 4, IJE & P., 243 (2006).

3 The Narcotic Drugs and Psychotropic Substances Act, 1985, §37; The Unlawful Activities (Prevention) Act, 1967, §43D(5); The Prevention of Money-Laundering Act, 2002, §45(1).

In this context, the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') stands out. It is a special criminal law that enhances scales of punishment and subverts the presumption of innocence as a standard of proof at trial, but yet contains regular provisions on bail. While this is *prima facie* better than having punitive bail provisions,[4] further examination is needed to determine the extent to which the presumption of innocence is left untrammeled during bail proceedings under the POCSO Act.

Given that Indian jurisprudence has subverted the presumption of innocence even in regular bail proceedings by considering the seriousness of the offence and the penalties involved (if convicted),[5] it is possible that courts use the punitive design of the POCSO Act and the seriousness of child sexual offences as an explicit or implicit justification for demonstrating greater prejudice at the stage of bail.

Therefore, this paper seeks to assess whether Indian courts have demonstrated such added prejudice in their approach to bail applications under the POCSO Act. The answer to this question has important implications for whether the presumption of innocence has been further compromised by considerations of seriousness, especially in a statute that does not explicitly have punitive bail provisions, but rather has regular provisions on bail.

Accordingly, in Part II, this paper will argue that the presumption of innocence must operate as a safeguard against prejudice during bail proceedings. Subsequently, in Part III, the paper will show that the approach to the Supreme Court of India ('SC') to the presumption as a 'right' at bail has been inconsistent. In Part IV, this paper explains that such inconsistency can be reconciled with the SC violating the presumption in its jurisprudence on bail, especially through considering the seriousness of the offence and penalties. Part

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[4] For details on punitive bail provisions, their rationale and significance, *see supra* note Part V on "The POCSO Paradox: Special Criminal Law, Regular Bail".

[5] Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598, ¶2; Panchanan Mishra v. Digambar Mishra, (2005) 3 SCC 143, ¶13 ('Panchanan Mishra').

V introduces punitive bail provisions in special criminal laws, and explains the paradox between the stringency of the POCSO Act and the design of its regular bail provisions.

Given this context, Parts VI and VII attempt to assess whether there has nonetheless been evidence of added judicial prejudice in bail proceedings under the POCSO Act. In doing so, this paper will first assess whether there has been any general doctrinal evidence of such prejudice, and then critically examine whether the Delhi High Court ('DHC') over a two-year period (2022 and 2023) demonstrated such prejudice motivated by considerations of seriousness, the punitive design of the Act, and its own precedents. Part VIII concludes.

II. THE PRESUMPTION OF INNOCENCE AT BAIL

While the presumption of innocence is foundational to criminal law, the precise scope of its application is less clear, with the pertinent question being whether it is solely applicable to the criminal trial, or to the criminal process as a whole.[6] Proponents of the former view subscribe to a narrow interpretation of the applicability of the presumption. According to the narrow view, the presumption of innocence is applicable solely during the trial process.

During trial, the presumption operates to place the burden of proving guilt beyond reasonable doubt on the prosecution. However, this would mean that a number of pre-trial processes such as bail hearings and hearings on charge may be conducted without necessarily assuming the innocence of the accused. As such, this opens up the possibility that prejudicial rulings in such processes may be considered legally sound.

On the contrary, a wider view of the presumption would prescribe that all pre-trial processes should also be conducted as if the accused were innocent.[7] This wider view implies that prejudice can never be entertained during the criminal process, and that

[6] Ashworth, *supra* note 2, 243.

[7] *Id*.

assumptions of the guilt of the accused in bail proceedings is always impermissible. The evolution of the presumption flowed from the gradual understanding of the debilitating effects of conviction at trial.

Legal systems recognised that conviction directly implied public censure, as well as other attendant legal and social consequences. For instance, such consequences include disqualification from employment, registration with the State as an offender, and social stigma that may affect employment, housing, and everyday relationships.[8] Indeed, these consequences are most potent where conviction results in the deprivation of an individual's liberty through incarceration.

It is in this context that the justification for restricting the presumption solely to an evidentiary standard at trial is unclear. This is because the consequences described above are a feature of pre-trial detainment as well. Incarceration before trial results in imprisonment under similar conditions as exist post-conviction. Further, the deprivation of personal liberty before trial is complete since it restricts the accused's mobility, and causes loss of autonomy, isolation from social relationships, and stigma that could affect participation in social and economic life even after being released.[9]

Another justification for the presumption at trial is that it is necessary to protect the defendant from the imbalance of power and resources vis-à-vis the State.[10] Indeed, the same power differential exists during pre-trial proceedings as well. Therefore, if a legal system recognises the presumption of innocence at trial because of the rights, liberties, dignity, and autonomy of the defendant, as well as the overwhelming power of the State apparatus, it must also logically recognise that the same factors exist before trial. Thus, the system must demonstrate the same care in ensuring that such consequences do not fall on people whose guilt has yet to be established. Therefore, the presumption of innocence must operate pre-trial as well.

[8] Andrew Ashworth, *Negotiating the Fundamental Right to Personal Liberty: Four Problem Cases*, Vol. 13, OLR., 19 (2006).

[9] *Id*; Una Ni Raifeartaigh, *Reconciling Bail Law with the Presumption of Innocence*, Vol. 17, OJLS., 18 (1997).

[10] Ashworth, *supra* note 2, 246-251.

Article 11 of the Universal Declaration of Human Rights, 1948 ('UDHR') provides, to everyone charged with a penal offence, a right to be presumed innocent until proven guilty at trial. This is a perfect formulation of the wider view of the presumption, since it is unqualified and unfettered. In contrast, Indian statutory law is less clear about the scope of operation of the presumption. §101 of the Indian Evidence Act, 1872 ('IEA') provides that the burden of proof at a criminal trial is placed on the prosecution.[11]

However, there is no clear statement in statutory law that either limits the scope of the presumption to an evidentiary standard at trial, or widens it to include the entire criminal process. Part III of the paper will examine whether, in the absence of statutory prescription, whether the SC of has clarified the scope of the presumption's application, and its status as a 'right' in the Indian legal system.

III. THE SUPREME COURT: IS THERE A RIGHT TO BE PRESUMED INNOCENT AT BAIL?

The SC has historically been unclear about the precise scope and ambit of the presumption of innocence under the Constitution, and as a part of the criminal process. The questions that this section considers are twofold — how the SC has ruled on the presumption as a right (constitutional right, human right, etc.), and how the SC has ruled on whether the presumption exists at the stage of bail, or solely at trial. In an early case — *Gurbaksh Singh Sibbia* v. *State of Punjab* ('Gurbaksh Singh')[12] — the SC held that §438 of the Code of Criminal Procedure, 1973 ('CrPC') (on anticipatory bail) was designed to protect and apply the presumption, which was in turn "salutary and deep-grained in our criminal jurisprudence." Although the holding clearly supported the application of the presumption at a pre-trial stage because of the link to anticipatory bail, the SC did not specify whether it was a right and if so, of what type. Subsequent cases were clearer in their opinions about its status as a right. For instance, a division bench of the SC in *Narendra Singh* v. *State of M.P.*[13]

[11] The Indian Evidence Act, 1872, §101 read with Illustration (a) to §101.

[12] Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565, ¶12.

[13] Narendra Singh v. State of M.P., (2004) 10 SCC 699, ¶31.

held that the "presumption of innocence is a human right." However, unlike Gurbaksh Singh, this ruling was clearly made in the context of evidentiary requirements at trial.

Another case that followed the 'human right' characterisation was *Ranjitsing Brahmajeetsing Sharma* v. *State of Maharashtra* ('Ranjitsing'),[14] which involved a question of bail under the Maharashtra Control of Organised Crime Act, 1999 ('MCOCA'). The MCOCA is an Act that provides punitive conditions for the grant of bail. The Court held as follows - "Presumption of innocence is a human right … Article 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor." The SC was thus confusingly non-committal about whether the presumption is a fundamental right. The invocation of Article 21, liberty, fair procedure, and the requirement of 'cogent grounds' right after discussing the presumption, suggests some implicit link between the two, but the SC never concretely established this link. At the same time, this was another case that recognised the presumption in the context of bail.

Soon after Ranjitsing, a division bench of the SC in *Vaman Narain Ghiya* v. *State of Rajasthan*,[15] reverted to the Gurbaksh Singh line of recognising the presumption, but not explicitly as a right. In the context of a bail application, the SC held that the presumption was a "fundamental cannon of criminal jurisprudence," leaving the precise force and ambit of the presumption unclear. However, subsequent decisions have been clearer about the exact standing of the presumption, although they differ in their approach.

For instance, a division bench of the SC in *Noor Aga* v. *State of Punjab*,[16] held that the presumption of innocence "is a human right as envisaged under Article 14(2) of the International Covenant on Civil and Political Rights." ('ICCPR') However, in the same breath,

[14] Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294, ¶35.

[15] Vaman Narain Ghiya v. State of Rajasthan, (2009) 2 SCC 281, ¶7.

[16] Noor Aga v. State of Punjab, (2008) 16 SCC 417, ¶33.

it clarified that it "cannot *per se* be equated with the fundamental right and liberty adumbrated in Article 21 of the Constitution of India." Although it did not clarify whether the presumption was applicable throughout the criminal process, this holding was made in the context of a challenge to §35 of the Narcotic Drugs and Psychotropic Substances Act, 1985 which reverses the presumption as an evidentiary standard at trial. It would thus be appropriate to limit Noor Aga's conception of the weight of the presumption to the trial process itself.

In subsequent decisions, the SC has demonstrated similar clarity, but more favourable to recognising the presumption as a fundamental right. In *Sidhartha Vashisht* v. *State (NCT of Delhi)*,[17] a division bench held that the "presumption of innocence … should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. In that event, it will be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21 of the Constitution." Clearly, the SC considered the presumption to be a facet of the right to life and liberty under Article 21. Further, by upholding the presumption 'at the very threshold', before investigation and the actual trial, the Court was also clearly of the opinion that the presumption is applicable pre-trial. In a similar case involving questions about a media trial, a four-judge bench went even further, and held that the presumption continues "till date not only as part of rule of law under Article 14 but also as an Article 21 right."[18]

Finally, in a significant judgment in 2022 on the law on bail, a division bench of the SC in *Satender Kumar Antil* v. *CBI* ('Satendar Kumar Antil')[19] first recognised the presumption as a "cardinal principle of law" in the ICCPR and the UDHR, and subsequently held that the presumption is a "facet of Article 21."[20] However, it proceeded to state that "Resultantly burden is placed on the prosecution to prove the charges to the court of law. The weightage of the evidence has to be assessed on the principle of beyond reasonable

[17] Sidhartha Vashisht v. State (NCT of Delhi), (2010) 6 SCC 1, ¶301.
[18] Sahara India Real Estate Corpn. Ltd. v. SEBI, (2012) 10 SCC 603, ¶42.
[19] Satender Kumar Antil v. CBI, (2022) 10 SCC 51, ¶15.
[20] *Id*., ¶19.

doubt."[21] This makes the precise import of Satender Kumar Antil relatively unclear. While the judgement as a whole was entirely focused on bail, the SC seemed to directly connect the presumption to evidentiary burdens and standards at trial.[22]

The examination of judgements by the SC in Part III shows us that the SC has been unclear and non-committal, not merely about whether the presumption is a fundamental right, but more importantly about whether the presumption applies as a right throughout the criminal process (including bail proceedings), and not merely as an evidentiary standard at trial. This uncertainty is significant, as it is in consonance with the analysis in Part IV — that the SC's jurisprudence on bail has often considered factors that belie the presumption of innocence.

IV. BAIL AND NOT JAIL, 'EXCEPT WHEN': SERIOUSNESS AND SUBVERTING THE PRESUMPTION

This inability of the SC to commit to protecting the presumption of innocence as a fundamental right throughout the criminal process can be better understood when viewed in conjunction with Indian bail jurisprudence. The SC has consistently allowed for the adjudication of factors that contravene the presumption of

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[21] *Id*.

[22] An excellent chronological account of most of the cases examined in Part III has previously been made in the following piece – Shrutanjaya Bhardwaj, *A Fundamental Right to be Presumed Innocent*, The P39A Criminal Law Blog, April 5, 2022, available at https://p39ablog.com/2022/04/a-fundamental-right-to-be-presumed-innocent/ (Last visited on July 25, 2024). Bhardwaj's piece analyses the judgments chronologically in terms of their opinions on whether the presumption of innocence is a fundamental right under the Constitution. This paper has referred to Bhardwaj's piece, and used the judgments it cites, in building its analysis in Part III; at the same time, there is an added element to the analysis of the judgments in this paper – the author has primarily highlighted the inconsistency in how the SC has (explicitly or implicitly) dealt with whether the presumption of innocence exists at a pre-trial stage. As such, the focus is not majorly on its status as a fundamental right (as in Bhardwaj's piece), but rather on the question of at what stage the presumption applies, given the overall focus of the paper.

innocence at the stage of bail proceedings. For instance, in *State of Maharashtra* v. *Sitaram Popat Vetal*, the SC held that apart from apprehensions of witness tampering, courts must also consider the 'nature of accusation', 'severity of punishment', 'nature of supporting evidence', and 'prima facie satisfaction of the Court in support of the charge'.[23] The latter two factors combine in a way that explicitly pre-judges guilt and estimates whether the accused is likely to have committed the offence as charged. In this way, they undermine the presumption of innocence. This is also written into Indian law, since §437(1)(i) of the CrPC provides that a person accused of an offence punishable with death or imprisonment for life shall not be released if there are "reasonable grounds" for believing that he is guilty. The result is that deprivation of liberty at the stage of bail happens at a far lower standard of proof than at trial, where the accused is granted liberty unless the prosecution's case is proved 'beyond reasonable doubt'.[24]

The former two factors – 'nature of accusation' and 'severity of punishment' - underlie another consideration that weighs against the accused at trial - the 'seriousness', 'heinousness' or 'graveness' of the offence. Weighing the seriousness of the offence in US jurisprudence initially evolved as a method of determining whether the accused was more likely to flee trial.[25] The SC too has held that considering the gravity/heinousness of the offence is a way of determining whether the bail applicant is likely to flee and "avoid the course of justice."[26] If evaluated in this manner, there is no pre-judgement of guilt, and hence no transgression of the presumption of innocence. However, the SC has also equally considered the seriousness of the offence in an unqualified manner (without relating it to possible impacts on the judicial process and trial), and has used it as a basis for denying bail. This is questionable.

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[23] State of Maharashtra v. Sitaram Popat Vetal, (2004) 7 SCC 521, ¶6.

[24] Shima Baradaran, *Restoring the Presumption of Innocence*, Vol. 72, Ohio SLJ., 771 (2011).

[25] *Id*., 771.

[26] State of Rajasthan v. Balchand, (1977) 4 SCC 308, ¶3.

For instance, the SC observed, in *Ram Govind Upadhyay* v. *Sudarshan Singh*,[27] that the commission of a serious crime means that society needs "protection from these elements." This is a direct affront to the presumption of innocence, insofar as it assumes a measure of the accused's guilt that threatens society if granted liberty. Another such instance is the SC's opinion in *Panchanan Mishra* v. *Digambar Mishra*.[28] It held that in cases where the accused faces the threat of a stringent punishment, it is 'hardly required to be stated' that such an accused will threaten witnesses, tamper with evidence, and "create problems of law-and-order situation". The question of the permissibility of restricting liberty to prevent further 'offending' while on bail is a common one, and has important implications for the presumption. Allowing a mere charge/accusation to dictate predictions about behaviour while on bail, even if done on grounds of community interest, safety, or protection, violates the accused's right to be presumed innocent of that charge/accusation.

The first objection is that the accused's liberty is sacrificed based on uncertain predictions.[29] At trial, an accused is (most often) granted the presumption of innocence. However, the same unproven charge at a pre-trial stage is used to predict his actions post-release and incarcerate him, thereby negating the presumption. However, even if one assumes that a prediction of culpability based on a charge is accurate, one must still assume that the State has a responsibility to prevent offences by people 'within the system.'[30] This assumption is not firmly grounded. The only trigger for this responsibility seems to be a charge levelled by the State against a person. Liberty is thus mischaracterized as a privilege that only those who are fortunate to have not been accused by the State can enjoy. This is untenable with liberty as a 'right,' let alone a fundamental right under Article 21 (as in Satender Kumar Antil).

Conflating the fact that the State has an 'opportunity' to take punitive pre-trial action in serious cases with a 'responsibility'

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[27] Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598, ¶2.
[28] Panchanan Mishra, ¶13.
[29] Ashworth, *supra* note 8, 21.
[30] *Id*., 18.

ignores the rights of the accused.[31] The US Second Circuit had the opportunity to reason on this very question in *United States* v. *Melendez-Carrion*.[32] The Government argued that the absence of an explicit 'right to bail' in the Eighth Amendment to the US Constitution meant that there existed broad authority to determine when bail may be denied, including denial on the ground that the accused is "thought to be a danger to the community" if released. The Court rejected this contention, holding that despite the absence of an explicit right to bail, denying bail because of a prediction of dangerousness would violate the 'due-process' clause under the Fifth Amendment to the US Constitution. According to the Court, predictions of dangerousness upon release will, in some circumstances, be correct; in this way, there is always some sense of risk associated with releasing someone accused of an offence. However, it compellingly framed the issue of whether this risk may be allowed to impinge upon the constitutional guarantee of liberty as follows – "all guarantees of liberty entail risks, and under our Constitution those guarantees may not be abolished whenever government prefers that a risk not be taken."[33]

This provides us with a very useful framework to conceptualise the question in the Indian context as well. The right to personal liberty under Article 21 of the Indian Constitution is directly affected by prejudicial bail proceedings; the underlying principle is that if one is serious about the rights to liberty, and to be presumed innocent, that risk must be absorbed by the system. Constitutional guarantees under Article 21 should not be a function of the State's pre-trial estimation of the guilt of the accused. Though this may seem uncomfortable for States and citizens alike,[34] this is the necessary consequence of considering liberty and the presumption of innocence to be rights, and not privileges. The importance of personal liberty is apparent upon examining the consequences of its deprivation, outlined in Part II. Considerations of seriousness at the stage of bail can

[31] *Id*., 20.
[32] United States v. Melendez-Carrion, 790 F 2d 984 (2nd Cir., 1986) ¶31.
[33] *Id*., ¶32.
[34] Ashworth, *supra* note 2, 17-21.

thus be prejudicial, if not clarified, and such prejudice has found expression in the SC's rulings.[35]

V. THE POCSO PARADOX: SPECIAL CRIMINAL LAW, REGULAR BAIL

Over the years, the affront to the presumption of innocence on the grounds of 'seriousness' has moved beyond mere prejudicial conditions in the regular law on bail. There now exists a set of laws that create distinct classes of offences for certain acts, colloquially known as the 'special criminal laws', that modify procedural provisions and guarantees.[36] One such common procedural modification is of the law on bail, with many special laws explicitly contradicting the 'bail not jail' principle through punitively designed bail provisions in the statute itself.

For instance, The Prevention of Money Laundering Act, 2002 ('PMLA') allows for the grant of bail only if two conditions are fulfilled. The court must be satisfied that there are 'reasonable' grounds for believing that the accused is not guilty of the offence, and that he is not likely to commit any offence while on bail.[37] Previously, this applied only to scheduled offences punishable with more than three years' imprisonment under the PMLA.

In *Nikesh Tarachand Shah* v. *Union of India* ('Nikesh Tarachand Shah'), the SC famously declared that this was arbitrary and violative of Article 14, and that it was harsh, burdensome, wrongful, and in violation of Article 21.[38] Subsequently, §45 was amended to remove this 'arbitrary' differentiation, and was made applicable to all offences under the PMLA.

In 2022, the matter came up once more before the Supreme Court in *Vijay Madanlal Choudhary* v. *Union of India*

[35] Panchanan Mishra, *supra* note 28.

[36] Kunal Ambasta, *Designed for Abuse: Special Criminal Laws and Rights of the Accused*, Vol. 14, NLR., 1 (2020).

[37] The Prevention of Money-Laundering Act, 2002, §45.

[38] Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1, ¶46 ('Nikesh Tarachand Shah').

('Vijay Madanlal Choudhary'), where the petitioners contended that the defect of arbitrariness and hence unconstitutionality, had been cured. However, the respondents argued that the SC in Nikesh Tarachand Shah had also assailed §45 on the grounds that it subverted the presumption of innocence and ran contrary to Article 21; this defect persisted in the amended statute, thus continuing to make it unconstitutional. The SC sided with the petitioners and upheld the constitutionality of §45, while disagreeing with the observations in Nikesh Tarachand Shah that the offences under the PMLA are not so heinous as to merit prejudicial treatment at the stage of bail. On the contrary, the SC in Vijay Madanlal Choudhary held that there was a compelling state interest in tackling money laundering; prominent among the reasons for this verdict was the SC's view that "international bodies … strongly recommend enactment of strict legislation" for preventing money laundering,[39] and that India had enacted the PMLA in 2002 owing to the "commitment made to the international bodies and on their recommendations."[40]

Indeed, the propriety of this view is questionable; the Financial Action Task Force ('FATF'), which is one of the 'international bodies' that the SC referred to, itself is of the position that the presumption of innocence, if a fundamental principle of a country's domestic law, should not be subverted in prosecuting the offence of terror financing.[41] Nevertheless, the legal position continues to be that §45 is constitutional and in line with the State's 'compelling interest' in prosecuting the offence of money laundering. In fact, a 2024 ruling of the Madras High Court ('MHC') held that under the PMLA regime, "jail is the rule and bail is the exception,"[42] while the converse is true in regular bail proceedings. Further, the MHC held that the expression 'reasonable grounds for believing' means a *prima facie* examination

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[39] Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 : (2023) 21 ITR-OL 1, ¶129.

[40] *Id*., ¶126.

[41] Financial Action Task Force, *Guidance on the Criminalisation of Terrorist Financing (Recommendation 5)* available at https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Guidance-Criminalising-Terrorist-Financing.pdf (Last visited on July 25, 2024).

[42] V. Senthil Balaji v. Enforcement Directorate, 2024 SCC OnLine Mad 284, ¶34.

of the materials collected during investigation.[43] Practically, this makes bail a near-impossibility, since defendants will have to effectively prove their innocence before being allowed to adduce evidence, while the materials that the Court will consider are those that favour the prosecution (materials collected during investigation).

Another special law - the Unlawful Activities (Prevention) Act, 1967 ('UAPA') contains even more stringent grounds for bail applications. The Act provides that no accused person is to be released if the court, on perusing the case diary or the report under §173, opines that there are reasonable grounds for believing that the accusation is '*prima faci*e' true.[44] In effect, this also means that bail becomes an impossibility once a mere accusation has been made.

The scopes of these punitive bail provisions are not consistent across the various special laws. While §37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') is limited to offences under §19, 24 and 27 of the NDPS Act, as well as to offences involving commercial quantities of drugs, the subsequent transfer of the exact same bail provision into the PMLA has been made exceptionless after the amendment post Nikesh Tarachand Shah. Therefore, any violation under the NDPS Act, from the offence of money laundering, to the offence of giving false information, is subject to the stringent bail provisions under §45(1), leaving much scope to debate and question the legitimacy of this over inclusiveness.

Nonetheless, these punitive bail provisions, among other dubious procedural transgressions, have been defended on the grounds that the offences regulated under these laws are serious and extraordinary. Indeed, the SC has held that such provisions are justified on the ground that there exists a "compelling state interest in tackling crimes of an extremely heinous nature."[45] In this context of special laws and special bail provisions, one particular special law stands out – the POCSO Act.

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[43] *Id*.

[44] The Unlawful Activities (Prevention) Act, 1967, §43D(5).

[45] Nikesh Tarachand Shah, *supra* note 38.

Governments across the world have historically tended to appear tough on crime in the aftermath of prominent tragedy, seeking to assuage public fear, and to capitalise on popular support for sometimes draconian measures.[46] Indeed, some features of India's special laws, such as the UAPA amendment in 2008, arose in a similar background. The POCSO Act was the culmination of a more protracted and gradual effort to increase legal safeguards for children against the threat of sexual assault.

Although there had been previous reports by the Law Commission on the matter, a seminal moment in the evolution of the POCSO Act was the discovery of a child sexual abuse racket in Goa in 1991.[47] The shock and attention following the discovery led to a dedicated law on children's rights in Goa, as well as a special committee formed under Justice Krishna Iyer that presented a draft Children's Code Bill, collectively providing the foundations for comprehensive child sexual abuse legislation in India.[48] Several years later, the process culminated with the Ministry of Women and Child Development, Government of India presenting a draft Protection of Children from Sexual Offences Bill before Parliament in 2011, which was passed and came into force in November 2012.[49]

The legislative history of the Act shows that all the deliberative bodies involved were fully convinced of the necessity of a special law for regulating sexual offences against minors, for reasons including the (then) low rates of conviction coupled with the high rates of sexual crimes against children.[50] Given that the Act admits of a similar legislative intent as previously mentioned special criminal laws (the regulation of an 'extraordinary offence'), its design is particularly interesting.

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[46] Ashworth, *supra* note 2, 276.

[47] Vidhi Centre for Legal Policy, A Decade of POCSO: Developments, Challenges and Insights from Judicial Data, 6, available at https://vidhilegalpolicy.in/research/a-decade-of-pocso-developments-challenges-and-insights-from-judicial-data/ (Last visited on June 14, 2024).

[48] *Id*.

[49] *Id*., 7.

[50] *Id*., 7-8.

Relevant to this paper are three factors. The first is that the POCSO Act prescribes more severe minimum punishments for corresponding acts than the IPC. For instance, while the offence of "aggravated penetrative sexual assault" under the POCSO Act has a minimum sentence of twenty years with the option of the death sentence,[51] the corresponding crime under §376(2) of the IPC carries a sentence of ten years to life imprisonment. It is only in even more aggravating circumstances — rape resulting in death or permanent vegetative state, and rape/gang rape of a woman under the age of twelve — that the death sentence is prescribed as a possibility under the IPC.[52]

The enhanced scale of punishment under the POCSO Act indicates that the offences under it are considered particularly serious and grave. Indeed, the SC has affirmed this by holding that the "POCSO Act was enacted to provide more stringent punishments for the offences of child abuse of various kinds," and that trial courts cannot prescribe less than the minimum sentence under the Act.[53]

The second is §29 of the Act (the 'reverse-onus' clause), which controversially reverses the burden of proof and presumption of innocence in cases under §§3, 5, 7 and 9. It provides that where a person is accused of an offence under any of these provisions, the Special Court shall presume that the accused is guilty, unless proven otherwise. The third is §31 of the Act, which provides that the regular provisions on bail in the CrPC are applicable to proceedings before a Special Court, which shall be deemed to be a court of Sessions for such purpose. This is an interesting provision when viewed in conjunction with the above two factors.

The increased penalties along with the increased difficulty for the accused to prove innocence show that the POCSO Act has been deliberately made more punitive. However, this punitive design does not find expression in the provisions of bail, which is in marked contrast to other special criminal laws as explained earlier. In

[51] The Protection of Children from Sexual Offences Act, 2012, §6.
[52] The Indian Penal Code, 1860, §§376A, 376AB, 376DB.
[53] State of U.P. v. Sonu Kushwaha, (2023) 7 SCC 475.

fact, akin to §29 of the POCSO Act, the NDPS Act provides similar 'reverse-onus' clauses in §35 and 54. The SC has, in the past, upheld the constitutionality of reverse-onus clauses, with the caveat that the prosecution has to prove the 'foundational facts' of the case before the burden of proof is reversed.[54]

Nonetheless, such clauses are significant in terms of their consequences; the statutory burden of proof under §101 of the IEA is turned on its head, making it far harder to gain an acquittal. In this one regard, the punitive design of the NDPS Act is replicated in the POCSO Act. However, at the same time, the NDPS Act also mandates that in prosecutions under §§19, 24 and 27A, no accused shall be granted bail unless, *inter alia*, he shows the court 'reasonable grounds' that he did not commit the offence.[55] In contrast, the POCSO Act contains no such special provisions on bail.

It is thus surprising that unlike a range of special criminal laws, all of which are predicated on stringently penalising their respective categories of offences, and one of which has similar 'reverse-onus' clauses, the POCSO Act leaves the provisions on bail untouched. Indeed, given the argument earlier regarding how statutory punitive bail provisions are a violation of the presumption of innocence, the absence of such provisions in the POCSO Act is positive.

However, as explained earlier, regular bail proceedings also involve affronts to the presumption of innocence through considerations of the seriousness of the offence and stringency of penalties. The POCSO Act is a special law that otherwise prescribes harsher penalties and standards of proof, since the class of offences it regulates is seen as serious and deserving of more punitive treatment. Therefore, it is entirely conceivable that regular bail proceedings involving charges under the POCSO Act may nonetheless employ significantly high standards for the grant of bail, using the punitive design of the Act as a justification for being prejudicial. The presumption of

[54] See the judgment of the Supreme Court of India in Noor Aga v. State of Punjab, (2008) 16 SCC 417 in the context of the Narcotic Drugs and Psychotropic Substances Act, 1985.

[55] The Narcotic Drugs and Psychotropic Substances Act, 1985, §37(1)(b).

innocence in bail proceedings under the POCSO Act, though not under statutory threat, may nonetheless be threatened in practice by its status as a special law.

The subsequent sections of this paper shall attempt to answer this question by looking for evidence of such a trend in adjudication. If there is indeed evidence of such prejudice, it would further strengthen the claim that the presumption of innocence is under threat in bail proceedings that are ostensibly regular, and not deliberately punitive. At the same time, special criminal laws are noted for subverting principles of criminal justice. If prejudice is established in bail proceedings under the POCSO Act, it would demonstrate that this subversion happens even when not explicitly provided for in the law itself. Both these conclusions would be troubling, and prompt an examination of whether they are in fact true.

VI. RAJBALLAV PRASAD TO DHARMANDER SINGH: EVIDENCE OF PREJUDICE IN COURT DOCTRINES

From a doctrinal perspective, there have indeed been Court judgements that have used §29 of the POCSO Act in determining the threshold of proof required in bail adjudication. The Supreme Court, in *State of Bihar* v. *Rajballav Prasad* ('Rajballav Prasad'), held that while granting bail, the provisions of §29 have to be "taken into consideration."[56] Indeed, this line of reasoning was followed in a subsequent judgement of the Kerala High Court — *Joy V.S.* v. *State of Kerala* ('Joy') — where it held that the "legislative mandate" of §29 must be taken into consideration by courts in dealing with bail applications under those specific sub-sections, while citing Rajballav Prasad.[57]

However, it then expanded on this to say that for the presumption under §29 to apply at the stage of bail, the prosecution would have to prove "essential basic facts" that form the "foundation" for the presumption, and that courts must remain on guard to see that

[56] State of Bihar v. Rajballav Prasad, (2017) 2 SCC 178, ¶22 ('Rajballav Prasad').
[57] Joy V.S. v. State of Kerala, 2019 SCC OnLine Ker 783, ¶10 ('Joy').

the prosecution version is not accepted as "gospel truth", in order to avoid injustice to the accused.[58] The propriety of such observations at the stage of bail proceedings is questionable, as will be explained further on. The judgement with the most detailed and explicit link between §29 and the grant of bail was by the DHC in *Dharmander Singh* v. *State (NCT of Delhi)* ('Dharmander Singh').[59] A single-judge bench of Anup Jairam Bhambhani J. considered the effect of §29, reasoning as under.

Bhambhani J. characterised the 'trial' process as beginning only when charges are framed, since it is only then that the court applies its "judicial mind" to frame a precise allegation to which the accused is answerable. He then clarified that the accused can be asked to disprove his guilt only when allegations with "supporting evidence" are brought by the prosecution. At the stage of framing charges, evidence is sufficient, and 'proof' of such evidence is not required.[60]

With this framework in mind, Bhambhani J. opined that §29 cannot be applied before charges are framed since this would throw the presumption of innocence "to the winds" and violate Article 21 as the procedure would not be reasonable, just and fair. In effect, applying §29 to bail proceedings would mean that the accused must prove that he has not committed the offence, even before being told the offence he is charged with, which would "do violence to all legal rationality." However, §29 is to be applied once the trial begins, i.e., once charges are framed since the accused is then being 'prosecuted' rather than merely 'investigated'.

A pre-charge bail hearing is to be decided on the "usual and ordinary settled principles."[61] As a matter of law, this distinction is dubious. Chapter XXXIII of the CrPC (dealing with bails and bonds) does not make any such separation between the law on bail pre and post the framing of charges. Indeed, it consistently uses

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[58] *Id*., ¶11.
[59] Dharmander Singh v. State (NCT of Delhi), 2020 SCC OnLine Del 1267.
[60] *Id*., ¶64-67.
[61] *Id*.

the term 'accused', which is inherently indifferent to whether charges have been framed in a court of law or not. Therefore, the soundness of the separation that Bhambhani J. expounded in order to create space for the operation of §29 is itself questionable.

Nonetheless, Bhambhani J. proceeded to explain the precise role of §29 in bail proceedings, took note of Rajballav Prasad, and then opined that §29 cannot be applied in "absolute terms" to bail proceedings without "doing violence" to Article 21 of the Constitution. This was because, under §29, the accused is afforded an opportunity to disprove the presumption, which cannot occur before prosecution evidence is concluded. Therefore, for the purpose of bail applications, courts cannot fully apply §29 because it would be unfair to the accused, who has had no reasonable opportunity to rebut the presumption of guilt under §29.[62]

This part of Bhambhani J.'s reasoning is fairly sound. However, instead of holding that §29 has no application at the stage of bail, he held that the impact of §29 was to "raise the threshold of satisfaction required before a court grants bail." This would mean that courts should consider the prosecution's evidence "more favourably for the prosecution" and evaluate whether it is credible. If, however, it appears that the evidence, even if proved eventually, will not be able to sustain a finding of guilt, courts may decide to grant bail. This diluted application of §29 to bail proceedings was made after Bhambhani J. held that when a penal provision can be interpreted in two ways, courts must choose the narrower interpretation in a manner that is "favourable to the accused."[63]

This view, however, is founded on an erroneous premise — that §29 applies at the stage of bail and is required to be interpreted. This is not legally or principally justifiable. §29 provides that a person being prosecuted under specific offences shall be presumed to be guilty of them unless the contrary is 'proved'. This last phrase limits its application to an evidentiary standard at trial, where the accused is in a position to prove the contrary before the Court. Bhambhani J.

[62] *Id.*, ¶70-71.
[63] *Id.*

was right in saying that it would be absurd to expect the accused to prove his innocence before prosecution evidence is completed.

However, it is equally absurd to hold that a provision that operates as an evidentiary standard of proof, applies in some form at a stage where the Court is not concerned with proving/disproving the allegations. If the provision were drafted in a way that explicitly included bail proceedings, Bhambhani J.'s reasoning would be a sound way to water down its application. However, to *suo motu* expand its scope (by reading 'prosecuted' as any stage after the framing of charge, including bail), and to then water it down is not sound. Indeed, the allowance in §29 for the contrary to be 'proved' should itself militate against attempts to expand §29 to stages where the Court is unconcerned with proof.

Therefore, Bhambhani J.'s reasoning, although compelling in parts, appears incorrect in its conclusion. To expand §29's application to allow courts to consider prosecution evidence 'more favourably', in effect, allows courts to detain people at a far lower standard of proof, exacerbating the problem described earlier. It also affects the presumption of innocence at the stage of bail proceedings since it allows the reversal of the burden of proof to influence the way courts evaluate the guilt of the accused at bail.

Although Bhambhani J. was careful to caution against throwing the presumption of innocence 'to the winds', his ultimate judgement arguably does so. Indeed, in his final remarks on the issue, he admits as such, holding that if the accused decides not to disclose his evidence at the stage of bail, "he would suffer the consequences of the presumption of guilt engrafted in § 29."[64] As a matter of legal interpretation and of principle (upholding the presumption of innocence), the judgement in Dharmander Singh is flawed.

The same criticism is also applicable to the SC in Rajballav Prasad and the Kerala High Court in Joy since they both erroneously held that §29 has to be 'taken into consideration' during the

[64] *Id*., ¶76.

grant of bail.[65] This amorphous phrasing is problematic, since courts may well hold that 'taking it into consideration' means requiring the accused to prove his innocence at the stage of bail. Indeed, the Kerala High Court hinted as much, insofar as it held that the prosecution must 'prove basic facts' before the burden is transferred to the accused, even at the stage of bail.[66] Although the DHC recognised the problems in the unguided discretion offered by such statements, its attempt in Dharmander Singh to water down and specify the boundaries of its application was erroneous.

Dharmander Singh is also noteworthy because it proceeded to enumerate thirteen factors that courts are supposed to consider, in order to give "due weightage to the intent and purpose of the Legislature in engrafting § 29."[67] Salient among these factors are the absolute and relative ages of the victim and the accused, the strength of the familial relationship (if any) between them, the brutality of the offence, and whether the accused is a repeat offender.[68] Only two of the factors were arguably relevant to the grant of bail — whether the accused would have close access to the victim upon being enlarged on bail, and the comparative social standings of the accused and the victim — since they both relate to the likelihood of the victim being influenced by the accused. However, two factors in particular stand out, and merit reproduction:

> "j. whether the offence alleged was perpetrated when the victim and the accused were at an age of innocence: an innocent, though unholy, physical alliance may be looked at with less severity;
>
> k. whether it appears there was tacit approval-in-fact, though not consent-in-law, for the offence alleged;"[69]

Clearly, these factors point to a greater degree of leniency to be granted to the accused where the relationship with the victim appears consensual, although the consent of a minor is irrelevant

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[65] Rajballav Prasad, *supra* note 56 at ¶22; Joy, *supra* note 57 at ¶10.

[66] Joy, *supra* note 57 at ¶10.

[67] Dharmander Singh v. State (NCT of Delhi), 2020 SCC OnLine Del 1267, ¶77.

[68] *Id*.

[69] *Id*.

to sustaining guilt under the POCSO Act. Bhambhani J. was clearly aware of this, insofar as he shrouded the matter of consent within amorphous terms like "age of innocence", and "approval-in-fact", but the judicial recognition that the trappings of a consensual relationship are relevant to determining bail under the POCSO Act is nonetheless interesting. The reasons for this become clearer upon examining the final outcome of the bail application in Dharmander Singh.

The petitioner was ultimately granted bail, with Bhambhani J. being significantly swayed by the relationship appearing consensual. This is apparent from three factors that he highlighted: *first*, that the victim and accused were at an age where a mature "reciprocal physical relationship" cannot be ruled out; *second*, that the victim returned to the accused multiple times, showing 'approval-in-fact'; and *third*, that the victim was at an age where she could understand the acts involved.[70] The propriety of such remarks is independently questionable, as they speak to the guilt of the accused at the stage of bail, despite the consent of a minor being irrelevant under the POCSO Act. However, it becomes interesting when one considers that a decision that explicitly used §29 to raise the threshold for granting bail, finally granted bail using the factor of consent, which is extraneous to guilt under the Act.

There is thus some doctrinal evidence to suggest that courts in India (specifically the Supreme Court, the DHC, and the Kerala High Court) have, in some decisions, used §29 of the POCSO Act to raise the threshold for the grant of bail, thereby demonstrating greater prejudice and weakening the presumption of innocence afforded to the accused. The judgement of the Supreme Court in Rajballav Prasad formed the basis for the Kerala High Court's decision in Joy and the decision of Bhambhani J. of the DHC in Dharmander Singh.

Of these three cases, Dharmander Singh is by far the most detailed in its explanation of the impact of §29 on bail adjudication. It takes off from the rather amorphous guidance in Rajballav Prasad (that §29 needs to be 'taken into consideration') and proposes

[70] *Id*., ¶82.

a more detailed model for its application. As argued above, the reasoning used in constructing this model is legally and principally unsound, which makes its eventual holding — that §29 raises the threshold for the grant of bail — all the more troubling. Following the analysis in Parts II-V of the paper, it is clear that there is evidence in doctrine to suggest that the punitive design of the POCSO Act has had an effect on prejudice in bail proceedings. This is despite the POCSO Act having regular provisions on bail, providing further evidence of the threat to the consistent operation of the pre-trial presumption of innocence in India.

From a more practical perspective, it will be important to observe the way Bhambhani J.'s judgement is used in the future by courts as precedential/persuasive. It has thus far received little comprehensive critical scrutiny, even though Bhambhani J. was far more detailed in his reasoning, and explicit in his conclusion (that the threshold is 'raised') than the cases that preceded him (Rajballav Prasad and Joy). As a way of determining the effect that it has thus far had, which can serve as a useful predictor of the effect it is likely have, the next section of the paper will conduct an extensive analysis of relevant judgements and doctrines of the DHC.

The data set comprises all the judgements passed by the DHC in two years, 2022 and 2023, in regular bail applications in cases involving offences under the POCSO Act. The choice of the Delhi High Court and the time period (2022–23) is deliberate and conducive to the proposed analysis, since Dharmander Singh was passed by the same court in 2020; the DHC is thus where Dharmander Singh is most likely to have made an impact as precedent. At the same time, the context set up earlier in the paper prompts a more detailed analysis of prejudice by the DHC. The sanctity of the presumption of innocence as a right that exists pre-trial is uncertain, and the presumption has come under threat in regular bail proceedings through considerations of 'seriousness'/'gravity'.

There are special laws that use 'seriousness' as a justification for statutorily transgressing the pre-trial presumption through punitive bail provisions. The POCSO Act stands out as a special law

that does not have specifically punitive bail provisions. However, the Act itself is commonly justified on the grounds that the offences it regulates (sexual offences against minors) are serious enough to be penalised and punished under a dedicated, and particularly stringent law itself. This naturally raises questions as to whether despite the Act prescribing regular bail provisions, courts are inclined to use its stringency, punitive design (§29) and seriousness as grounds for demonstrating excessive prejudice in their approach.

Therefore, along with looking at the specific question of Dharmander Singh's influence, the next section will also undertake a broader examination of prejudice over a two-year period in the Delhi High Court's reasoning. An examination of over fifty cases passed by the same court that in 2020 (Dharmander Singh) passed a particularly prejudicial judgement, will yield valuable insights about prejudice in POCSO bail jurisprudence, at a time when there is cause to be appreciably concerned about threats to the presumption of innocence in India.

VII. EXAMINING PREJUDICE IN POCSO BAIL PROCEEDINGS: THE DELHI HIGH COURT

This section takes off from the findings of prejudice in the previous section, and conducts an exhaustive examination of prejudice in the doctrines of the DHC over a two-year period. Accordingly, Part VII.A sets out the specific research questions, data gathered and methodology used, while Part VII.B presents the data along with analyses, inferences and findings, dealing with each research question separately. Cumulatively, the record indicates that the DHC was not especially prejudicial in its bail jurisprudence under the POCSO Act during the concerned period.

VIII. RESEARCH QUESTIONS, DATA, AND METHODOLOGY

With this background in place, this section of the paper will analyse judgements passed by the DHC in two years, 2022 and 2023, in bail applications involving offences under the POCSO

Act. The analysis will primarily seek to answer four questions; *first*, whether the judgement of the DHC in Dharmander Singh resulted in any tangible increase in the threshold for the grant of bail; *second*, whether §29 of the POCSO Act has increased prejudice and made it tougher to secure bail under the Act; *third*, whether the DHC showed a tendency to refuse bail on account of offences under the POCSO Act being 'serious'/ 'grave'/'heinous'; and *fourth*, whether the DHC was more prejudicial in its approach to bail applications under the POCSO Act vis-à-vis the Indian Penal Code ('IPC').

The first two questions follow from the above discussion of Dharmander Singh and §29. Examining the DHC's decisions is the best method to evaluate these questions since Dharmander Singh was passed by the DHC itself and is thus more likely to feature in its decisions as precedential or persuasive. This analysis will shed some light on whether §29 of the Act as a whole has, in any manner, increased the difficulty in securing bail under the POCSO Act. The third question flows from the peculiarity in the bail provision of the POCSO Act noted earlier – that it is not punitively designed, unlike other special statutes dealing with serious offences.

Accordingly, the analysis will seek to understand whether, despite the regular provisions on bail, the DHC considered offences under the POCSO Act as particularly 'serious' and whether they were consequently less inclined to grant bail. The fourth question tests whether, irrespective of the answers to the first three questions, the DHC was measurably more prejudicial in its judgements under the POCSO Act and will accordingly use its judgements in bail applications under §375 and §376 of the IPC during the same time period as the point of comparison.

§375 and §376 of the IPC, dealing with the sexual offence of rape against women (which criminalises non-consensual cunnilingus in addition to penetrative acts), forms a good comparator to offences under the POCSO Act, which also criminalises penetrative and non-penetrative sexual offences against children. While §376 of the IPC defines and punishes the offence of aggravated rape, Chapter IIB of the POCSO Act contains a similar specification of

aggravating circumstances for the offence of aggravated penetrative sexual assault. Overall, an. appropriate ground for comparison is provided by §375 and §376 of the IPC.

There are four data sets that form a part of this analysis, as follows:

1. A list of all Delhi High Court judgements in the year 2023 in bail applications involving a charge under the POCSO Act **(Annexure 1)**. The focus of this analysis is only on applications for regular bail, and anticipatory bail applications have accordingly been excluded. One interim bail application, where the accused was granted interim bail to attend a family wedding, was also excluded since it has no relevance to the focus of the analysis. Where there are multiple connected matters, only one has been retained in the list, so as to not skew the findings since the reasoning and conclusion are the same.

2. A list of all Delhi High Court judgements in the year 2022 in bail applications involving a charge under the POCSO Act **(Annexure 2)**. Once again, anticipatory bail applications have been removed, and only one among connected matters has been chosen. Further, a judgement that focused on a pure question of law - whether an accused is entitled to default bail under §167(2) when a chargesheet has been filed, but cognizance has not been taken by the Court - has been removed, since the focus of the analysis is on how the Court weighed the facts of the case.

3. A list of all Delhi High Court judgements in the year 2023 in bail applications involving a charge under §375/376 of the IPC **(Annexure 3)**. Similarly, this list only includes applications for regular bail.

4. A list of all Delhi High Court judgements in the year 2022 in bail applications involving a charge under §375/376 of the IPC **(Annexure 3)**. Similarly, this list only includes applications for regular bail.

The lists in Annexures 1 and 2 were drawn from the 'Freetext Search' function in the 'Delhi High Court Judgement Information System'. The word 'POCSO' was entered in the search function, yielding a chronological list of judgements, from which the bail applications were selected.

The lists in Annexures 3 and 4 were drawn from the 'Category Wise' search function in the 'Delhi High Court Judgement Information System'. A search was performed with the following parameters — Case Category: Sexual Offences Against Women (Other than at Workplace); and Year: 2023, followed by Year: 2022. From this list, applications for regular bail involving a charge under §375/376 were selected.

Annexures 3 and 4 together form a comparator to Annexures 1 and 2 to evaluate differences/similarities in how the DHC evaluated factors such as 'consent' under the IPC and the POCSO Act. Annexures 1 and 2 together contain fifty-four judgments delivered by eighteen different judges, with the maximum number of judgements delivered by a single judge being 6 (Rajnish Bhatnagar J. and Dinesh Kumar Sharma J.).

The distribution is thus fairly even and sufficient to draw conclusions. Annexures 3 and 4 together contain twenty-three judgments, delivered by twelve different judges, with the maximum number of judgements delivered by a single judge being 3 (Amit Mahajan J., Swarna Kanta Sharma J., and Subramonium Prasad J.). This distribution is also fairly even. Further, there are nine judges in common between all the judgements under the POCSO Act and all the judgements under the IPC, allowing for an analysis of whether cases under the POCSO Act were decided differently in practice.

IX. FINDINGS AND INFERENCES

X. DHARMANDER SINGH DID NOT RESULT IN A HIGHER STANDARD FOR BAIL OR GREATER DENIAL OF BAIL

The data shows that the judgement of Anup Bhambhani J. in Dharmander Singh did not make it practically harder for accused persons to be granted bail by the DHC. The instances where it was invoked by judges across 2022 and 2023 are shown in the table below, which only includes the citation, charge, judge, and whether bail was granted. The names of the cases, as well as the substantive reasoning of the DHC that features in the analysis below can be found in the Annexures.

S. No.	Case Citation	Charge	Bail Granted	Judge
1.	BAIL APPLN. 958/2023	§6	YES	Sudhir Kumar Jain
2.	BAIL APPLN. 1576/2023	§6	YES	Vikas Mahajan
3.	BAIL APPLN. 1957/2023	§6	YES	Vikas Mahajan
4.	BAIL APPLN. 2898/2022	§6	YES	Vikas Mahajan
5.	BAIL APPLN. 489/2023	§4	YES	Vikas Mahajan
6.	BAIL APPLN. 3722/2022	§6	YES	Anup Jairam Bhambhani
7.	BAIL APPLN. 3767/2021	§4	YES	Amit Mahajan
8.	BAIL APPLN. 3618/2022	§6	YES	Anup Jairam Bhambhani
9.	BAIL APPLN. 457/2022	§10	YES	Prateek Jalan
10.	BAIL APPLN. 3468/2021	§6	NO	Rajnish Bhatnagar
11.	BAIL APPLN. 163/2022	§6	NO	Prateek Jalan

Dharmander Singh was thus cited only eleven times across fifty-four total cases and by six different judges. In eight of the cases, the charge was under §6, while §§4 and 10 formed the charge in two cases and one case, respectively. Two such instances were

by Anup Bhambhani J. himself,[71] almost mirroring the reasoning in Dharmander Singh, since he first highlighted the raised threshold and ultimately concluded that the case appeared consensual. In fact, contrary to what one might expect, the accused was granted bail in nine of the eleven cases above.

In six such cases, the DHC made references to the existence of consent in its reasoning. In doing so, it variously remarked that the parties were on 'friendly terms', that the prosecutrix was of 'sufficient maturity and intellectual capacity', and that the parties had been in a 'relationship'. In addition, there were sometimes more explicit statements that their relationship appeared consensual. In one such case, it held that the first sexual encounter between the parties had been consensual (although this was not apparent from the record) and that the age gap between the parties was relatively small (even though it was allegedly six years).[72]

In one other case *Aditya Raj* v. *State (NCT of Delhi)*[73], the DHC did not itself make a reference to consent, but reproduced Dharmander Singh's entire holding on consensual relationships. At the same time, an argument on consent was also made by the defence, since the relationship between the parties was admittedly consensual at the beginning. Further, in two cases, the Court granted bail despite the accused being the father of the victim, and despite citing Dharmander Singh, which clearly stated that closeness in the familial relationship is a ground for denying bail.[74] In both these cases, the DHC referred to matrimonial disputes between the parents of the victim, suggesting that it was a false case deliberately filed by the victim's mother.

Of the two cases that actually denied bail to the accused, one only cited the part of Dharmander Singh that enumerated the thirteen relevant factors, and not the opinion that §29 raises the

[71] Vicky v. State (NCT of Delhi), (2023) 2 HCC (Del) 525 : 2023 SCC OnLine Del 3367; Bijender Mehto v. GNCT of Delhi, 2022 SCC OnLine Del 4545.

[72] Roshan Singh v. State (NCT of Delhi), 2023 SCC OnLine Del 1294.

[73] 2023 SCC OnLine Del 7769.

[74] Mohit Kumar v. State (NCT of Delhi), 2022 SCC OnLine Del 1225; Varun Arya v. State (NCT of Delhi), 2023 SCC OnLine Del 4852.

threshold for the grant of bail.[75] Further, these two cases involved allegations of assault perpetrated against a thirteen-year-old and a two-and-half-year-old, making it unlikely that bail would have been granted even if Dharmander Singh were not cited, since the DHC was generally quick to deny bail when the victim was very young and no argument about consent could be made.

Therefore, from the data, it appears that Dharmander Singh did not practically raise the Delhi High Court's threshold for granting bail in cases under the POCSO Act. For one, upwards of seventy-nine percent of the relevant cases did not cite Dharmander Singh. Further, bail was granted in a majority of the cases in which it was cited, and it was likely not the overriding factor in the two cases where bail was denied. In fact, it never appeared that Dharmander Singh actually influenced the DHC's reasoning. To the contrary, it seemed like it was mentioned as an aside, while the DHC ultimately held (multiple times) that the relationship was consensual. Interestingly, this is similar to how Dharmander Singh itself was decided.

XI. SECTION 29 OF THE POCSO ACT DID NOT RESULT IN A HIGHER STANDARD FOR BAIL OR GREATER DENIAL OF BAIL

The data also shows that §29 of the POCSO Act did not significantly increase the standard required to obtain bail. Apart from the cases where §29 was cited in conjunction with Dharmander Singh, §29 was independently cited in only three cases out of thirty-three in 2023 and in none in 2022. The three instances can be found listed in the table below. Once again, only details regarding the citation, charge, judge, and whether bail was granted, have been included.

Sl. No.	Case Citation	Charge	Bail Granted	Judge
1.	BAIL APPLN. 1396/2022	§6	NO	Amit Sharma
2.	BAIL APPLN. 2241/2022	§§6, 8	NO	Tushar Rao Gedela
3.	BAIL APPLN. 1949/2022	§6	NO	Amit Sharma

[75] Avinash v. State (NCT of Delhi), (2022) 4 HCC (Del) 113 : 2022 SCC OnLine Del 1176.

Although bail was denied in all three cases, it can be argued that in two of them, §29 had little to no impact on the DHC's ultimate verdict. For instance, in *Rajkumar Gupta* v. *State (NCT of Delhi)*,[76] the DHC first launched into a detailed explanation of how the DNA evidence in the case was convincing and incriminating before adding right at the end, almost as an afterthought, that the presumption under §29 was 'automatically entailed'. Given that weighing evidence and deciding upon whether a *prima facie* case exists is an (unfortunately) established practice in the Indian judiciary, it is overwhelmingly probable that the DHC would have chosen to deny bail on the strength of the DNA evidence alone, regardless of §29.

Similarly, in *Rohit Srivastava* v. *State (NCT of Delhi)*,[77] the DHC first established that the prosecution evidence was fairly strong, before citing §29. Further, this case involved the rape of an eight-year-old, and the DHC was observably reluctant to grant bail in cases involving very young minors. Therefore, it is all the more likely that bail would have been denied even in the absence of §29. It is only in the third case – *Shashim Das* v. *State (NCT of Delhi)*[78], ('Shashim Das') – where it could be argued that §29 was determinative, since the DHC explicitly held that the accused "had not been able to rebut the presumption of guilt, as contained in Section 29 of POCSO." However, even then, the DHC did affirm that the prosecution's case was *prima facie* convincing and corroborated by the medical evidence, and referred to what it perceived as a prior attempt to influence the victim.

Thus, based on these remarks, it once again appears likely that the DHC would have denied bail even without invoking §29. It is important to note that in all three cases, the DHC held that the 'presumption' in §29 applies, without clarifying or watering it down like in Dharmander Singh, conceivably meaning that it referred to the presumption of guilt in its entirety. Indeed, in Shashim Das, it explicitly held that the accused had not been able to "rebut the presumption of guilt" under §29.

[76] 2023 SCC OnLine Del 4032.
[77] 2023 SCC OnLine Del 287.
[78] 2023 SCC OnLine Del 4299.

This is an especially troubling line of reasoning since, if applied consistently, it would probably result in accused people having to conclusively 'prove' their innocence at bail, resulting in an erroneous and high standard for the grant of bail. It is fortunate, therefore, that this line of reasoning appears in only five percent of the cases surveyed, and even then, does not seem to have substantially influenced the ultimate decision of the DHC.

XII. THE JUDGES DID NOT DEMONSTRATE A TENDENCY TO VIEW CASES UNDER THE POCSO ACT AS SERIOUS PER SE

From the judgements surveyed, it does not appear that the judges were inclined to appreciate cases under the POCSO Act as serious *per se*, i.e., serious simply because of the charge under the POCSO Act. All judgements that referred to the offence committed as being 'serious', 'grave', or 'heinous' in cases involving a charge under the POCSO Act in both 2023 and 2022 have been listed in the table below, with the same particulars as before. For the purposes of this analysis, the terms 'serious'/'seriousness' are used to encompass instances where any of the three adjectives raising the level of the offence ('serious', 'grave', 'heinous') were used.

S. No.	Case Citation	Charge	Bail Granted	Judge
1.	BAIL APPLN. 2586/2023	§§4, 6	NO	Rajnish Bhatnagar
2.	BAIL APPLN. 2790/2023	§6	NO	Swarana Kanta Sharma
3.	BAIL APPLN. 43/2023	§6	NO	Rajnish Bhatnagar
4.	BAIL APPLN. 2660/2023	§6	NO	Sudhir Kumar Jain
5.	BAIL APPLN. 3340/2022	§§8, 12	NO	Rajnish Bhatnagar
6.	BAIL APPLN. 3093/2022	§6	NO	Anup Jairam Bhambhani
7.	BAIL APPLN. 510/2020	§§6, 12	NO	Rajnish Bhatnagar
8.	BAIL APPLN. 3008/2022	§§10, 12	NO	Swarana Kanta Sharma
9.	BAIL APPLN. 3468/2021	§6	NO	Rajnish Bhatnagar
10.	BAIL APPLN. 163/2022	§6	NO	Prateek Jalan
11.	BAIL APPLN. 457/2022	§10	YES	Prateek Jalan
12.	BAIL APPLN. 3682/2021	§6	NO	Talwant Singh

The data does not show any evidence that the DHC treated cases under the POCSO Act as serious *per se*. *Firstly*, only twelve out of fifty-four cases in total were classified as serious. *Secondly*, only three of these twelve cases were classified as serious in relation to a charge that was not penetrative sexual assault. Indeed, in one such case involving a charge under Section 10 *Mohit Kumar* v. *State (NCT of Delhi)*[79], the accused was actually granted bail despite the allegations being labelled as 'serious'. In fact, the DHC first cited Dharmander Singh on how the threshold of bail is increased under the POCSO Act, held that the offence was serious, but went on to grant bail for multiple reasons that cast doubts on the veracity of the prosecution story.

Thirdly, even in the eleven cases where bail was denied, four of them involved a student-teacher relationship between the prosecutrix and the accused.[80] In fact, in two such cases, the DHC explicitly held that the exploitation of the teacher-student relationship made the offence graver.[81] Thus, even within the cases considered 'serious', there was a common aggravating factor that may explain why a third of them were considered serious. Similarly, five other cases classified as serious contained a common aggravating factor — that the victim was very young, i.e., at or below the age of thirteen in all five cases.[82]

The fact that the classification of cases as serious can be linked to aggravating factors, along with a large number of cases

[79] 2022 SCC OnLine Del 1225.

[80] Gyanendra Kumar v. State (NCT of Delhi), 2023 SCC OnLine Del 6725; Saurabh Tripathi v. State (NCT of Delhi), 2023 SCC OnLine Del 5668; Babu Lal Bhawariya v. State (NCT of Delhi), 2023 SCC OnLine Del 3629; Sandeep Kumar v. State (NCT of Delhi), (2023) 3 HCC (Del) 566 : 2023 SCC OnLine Del 4510.

[81] Sandeep Kumar v. State (NCT of Delhi), (2023) 3 HCC (Del) 566 : 2023 SCC OnLine Del 4510; Babu Lal Bhawariya v. State (NCT of Delhi), 2023 SCC OnLine Del 3629.

[82] Jitendra Kumar v. State (NCT of Delhi), 2023 SCC OnLine Del 8118; Bablu v. State (NCT of Delhi), 2023 SCC OnLine Del 3328; Surya Prakash Pal v. State (NCT of Delhi), 2022 SCC OnLine Del 1036; Avinash v. State (NCT of Delhi), (2022) 4 HCC (Del) 113 : 2022 SCC OnLine Del 1176; Pappu Kumar Thakur v. State (NCT of Delhi), 2023 SCC OnLine Del 5700.

(upwards of seventy-seven percent) that were not classified as serious, despite many involving allegations of penetrative sexual assault, shows that the DHC did not demonstrate a tendency to consider cases under the POCSO Act as being serious *per se*.

XIII. IT DOES NOT APPEAR THAT THE JUDGES WERE HESITANT TO GRANT BAIL UNDER THE POCSO ACT VIS-À-VIS THE IPC

The data does not show that it was significantly harder to secure bail under the POCSO Act than under the IPC. Apart from the analyses in the three sections above, there appear to be common patterns that were likely to have influenced the DHC in favour of granting bail. For instance, besides the cases that cited Dharmander Singh and simultaneously alleged consent (described in Section I above), there were nine additional cases that granted bail on the grounds that the relationship appeared consensual, with the DHC using various phrases like 'loving couple', 'adolescent attraction', and 'voluntary elopement' to suggest that there was consent.[83]

An important factor relevant to the DHC reaching a finding of consent was the age of the victim, and the gap in age between the victim and the accused. If the prosecutrix was close to the age of majority, the DHC showed a tendency to hold that she possessed 'sufficient maturity and intellectual capacity'. Similarly, though a large gap in age was a factor against granting bail, the DHC was quite liberal in its approach in *Roshan Singh* v. *State (NCT of Delhi)*[84], where it held that a six-year gap in age was 'relatively small'. In fact, despite the trend of teacher-student cases being deemed

[83] Vivek Kumar @ Ishmiel v. State (NCT of Delhi), BAIL APPLN. 41/2023; Vipin Singh v. State (NCT of Delhi), 2023 SCC OnLine Del 648; Rajeev Kumar v. State(NCT of Delhi), 2023 SCC OnLine Del 598; Niket Ranjan v. State (NCT of Delhi), 2023 SCC OnLine Del 290; Bharat v. State (NCT of Delhi), 2022 SCC OnLine Del 3504; Hanzla Iqbal v. State (NCT of Delhi), 2022 SCC OnLine Del 2598; Harpal Sharma v. State (NCT of Delhi), 2022 SCC OnLine Del 2068; Mohan Singh Jogi v. State (NCT of Delhi), 2022 SCC OnLine Del 1685; Mohit v. State (NCT of Delhi), 2022 SCC OnLine Del 1313; Kishan v. State (NCT of Delhi), 2022 SCC OnLine Del 781.

[84] 2023 SCC OnLine Del 1294.

'serious', the DHC in *Niket Ranjan* v. *State (NCT of Delhi)*[85] granted bail to a tuition teacher accused of sexually assaulting his student, observing that she was close to the age of majority at the time of the incident, and that she continued to 'associate' with the accused.

There were only two cases *Jagbir v. State (NCT of Delhi)*[86] and *Raghav Yadav* v. *State (NCT of Delhi)*[87] where the DHC explicitly rejected an argument of consent on the grounds that consent is irrelevant under the POCSO Act. The grant of bail consequent to observations that the victim exercised their agency also extended, surprisingly, to a case involving a thirteen-year-old victim who had allegedly been forcibly raped while working as a domestic help at the home of the accused. While holding that there were inconsistencies between the First Information Report ('FIR') and 164 statements, the DHC remarked that there was no 'exercise of force' in bringing the victim to work at the home of the accused.

Comparing the data under the IPC and the POCSO Act yields similarities. The statistics on findings of consent under the POCSO Act are similar to cases under the IPC. While around thirty percent of cases under the IPC resulted in the grant of bail with suggestions of consent by the Court, the corresponding number under the POCSO Act was around thirty-one percent. The proportional similarity is indeed surprising, given that consent is a relevant fact under the IPC but not under the POCSO Act. Additionally, there were cases under both the IPC *Akshay Rawat* v. *State (NCT of Delhi)*[88] and the POCSO Act *Hanzla Iqbal* v. *State (NCt of Delhi)*[89] where the Court granted bail while observing that it was possibly a case of the prosecutrix 'honey trapping' the victim.

Further, while the Court in two cases under the IPC *(Ahshan Ali* v. *State (NCT of Delhi)*[90]*,* and *Mohd. Aamir* v. *State (NCT*

[85] 2023 SCC OnLine Del 290.
[86] 2022 SCC OnLine Del 2159.
[87] 2022 SCC OnLine Del 1290.
[88] 2022 SCC OnLine Del 802.
[89] 2022 SCC OnLine Del 2598.
[90] 2023 SCC OnLine Del 2944.

of Delhi)[91]*)* granted bail because the case appeared to be an offshoot of a matrimonial dispute, it demonstrated a similar tendency in cases under the POCSO Act. In three cases *Varun Arya* v. *State (NCT of Delhi)*[92]*, Amit Thapliyal* v. *State (NCT of Delhi)*[93]*,* and *Mohit Kumar* v. *State (NCT of Delhi)*[94]*,* the Court granted bail where the accused were the fathers of the respective victims, while making remarks about how there were running matrimonial disputes between the parents of the victim. Surprisingly, two of these cases cited Dharmander Singh on the increased threshold of proof, with one of them even labelling the allegations as serious.[95] Despite this, bail was granted to the accused in both cases, showing that any perceived 'seriousness' under the POCSO Act did not affect the manner in which the Court appreciated allegations of matrimonial disputes.

Taken together with the analyses in B.1, B.2 and B.3, we can conclude that the DHC in 2022 and 2023 did not show a disinclination to grant bail in cases under the POCSO Act merely because of Dharmander Singh, §29 of the Act, or the 'seriousness' of allegations under the POCSO Act. In the same period, the fact that there were at least fifteen cases where bail was granted under the POCSO Act with suggestions of 'consent', and the presence of some similarities in the Court's reasoning under the POCSO Act and the IPC, demonstrate that the DHC was not more prejudicial in its approach to bail applications under the POCSO Act than under the IPC, on average.

Indeed, the overall numbers paint a similar picture. While just over sixty-nine percent of all cases under the IPC resulted in the grant of bail, the corresponding number of cases under the POCSO Act was around fifty-seven percent. Even if all cases involving accusations of non-penetrative assault under the POCSO Act are removed (of which bail was granted in seven out of nine cases), bail was still granted in around fifty-three percent of the remaining cases,

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91 2022 SCC OnLine Del 1199.

92 2023 SCC OnLine Del 4852.

93 2023 SCC OnLine Del 1296.

94 2022 SCC OnLine Del 1225.

95 Varun Arya v. State (NCT of Delhi), 2023 SCC OnLine Del 4852; Mohit Kumar v. State (NCT of Delhi), 2022 SCC OnLine Del 1225.

all involving charges under §4 or §6 of the Act (penetrative sexual assault).

To clarify, this paper does not express a positive opinion about these statistics, or any support for the way the DHC decided cases under either the POCSO Act or the IPC. Indeed, as can be seen upon an examination of the annexures, the DHC based its opinion on irrelevant factors in many cases, such as the strength of the evidence, consent/matrimonial disputes under the POCSO Act, severity of the allegations, etc. Any factors relevant to the grant of bail (threat of the accused fleeing, influencing witnesses, etc.) were mentioned cursorily, if at all, and almost as an afterthought after the Court had already drawn its conclusions based on other factors. However, the overall findings are positive for the specific inquiries conducted, with which explanation this paper will conclude.

XIV. CONCLUSION

This paper tests whether, even in the absence of special bail provisions, courts have demonstrated exceptional prejudice in their approach to bail proceedings under the POCSO Act. This analysis is prompted by the context set out in Parts II to V of the paper. First, this paper explained that the position of the presumption of innocence in India pre-trial is uncertain and threatened. This is especially seen in bail proceedings, which often contain considerations not strictly relevant to the grant of bail, and which involve a sense of pre-judgement of guilt. One such consideration is the 'seriousness'/ 'gravity' of an offence being weighed, without explicitly linking it to the likelihood of the accused to flee.

Over the years, Parliament has drafted multiple 'special criminal laws', using the 'seriousness' of the offences they regulate as a justification for introducing statutorily punitive and prejudicial bail provisions. The POCSO Act stands out as a similar special law that was drafted with the intention of stringently penalising sexual offences against children, but does not make bail proceedings a statutorily punitive process. Instead, it prescribes that the regular procedure for bail under the CrPC is to be followed.

This is more noteworthy because of §29 in the POCSO Act, which reverses the burden of proof at trial for certain offences and places it on the accused. Therefore, given *firstly* that it is a special law regulating a serious offence, *secondly* the tendency in Indian jurisprudence to deny bail for 'serious' allegations, and *thirdly*, §29 of the Act that reverses the burden of proof, the natural question that arises is whether these factors have had the effect of prejudicially raising the threshold for the grant of bail, despite the regular bail provisions in the Act.

Indeed, the analysis in Part VI of the paper tells us that this suspicion is well-founded. Three different courts, including the SC (in Rajballav Prasad), have opined that §29 (an evidentiary standard of proof) must be taken into consideration at the stage of bail. Perhaps the most significant among these is Dharmander Singh — which takes Rajballav Prasad forward to propose a problematic model of adjudication that explicitly raises the threshold for the grant of bail. Bhambhani J.'s judgement in Dharmander Singh has thus far not received any significant literary attention or criticism, which this paper provides in detail.

Further, given the unprecedented detail of the judgement, its future trajectory is a matter of interest. The ruling may conceivably be used as precedential/persuasive in subsequent judgements, especially in a legal system like India's, where the presumption of innocence is under threat. At the same time, the context built in Parts I-V raises more general questions about whether courts under the POCSO Act show prejudicial inclinations motivated by seriousness, stringency, and the reverse-onus clause in the Act. Therefore, in Part VII, the paper comprehensively examines the doctrines of the DHC in 2022-23 to answer these questions.

The conclusion drawn is that the record does not evince significant additional prejudice, even when compared with adjudication under the IPC (the general criminal law). Of course, this conclusion is specific to the DHC, but the choice of the court, as well as the time period, make the analysis particularly significant. The DHC is

the court that passed Dharmander Singh in 2020, and the examination is conducted over two years closely following it — 2022 and 2023.

Therefore, *firstly*, it is well-placed as a marker for determining whether Dharmander Singh has had, and is likely to have, significant precedential/persuasive effect. *Secondly*, it measures general prejudice in a court that passed a significant prejudicial ruling in the past, which makes its conclusions relevant to one's estimation of the threat that the presumption of innocence faces in India. The absence of such prejudice by the DHC is encouraging. Indeed, where the potential for prejudice and misinterpretation is prevalent (as demonstrated by Rajballav Prasad, Joy and Dharmander Singh), the fact that the DHC did not demonstrate a level of prejudice that belies the regular bail provisions under the POCSO Act is welcomed.

Annexures 1

The focus of this analysis is only on applications for regular bail, and anticipatory bail applications have accordingly been excluded. One interim bail application, where the accused was granted interim bail to attend a family wedding, was also excluded, since it has no relevance to the focus of the analysis. Where there are multiple connected matters, only one has been retained in the list, so as to not skew the findings since the reasoning and conclusion is the same.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
1.	BA 2586/2023Jitendra Kumar @ Jeetu v. The State (NCT of Delhi)	18/12/2023	§§4, 6	NO	Rajnish Bhatnagar	Allegations of three men having sexually assaulted a 12-year-old. Petitioner was in jail for more than 30 months. The Court held that allegations were grave and serious in nature, and that no ground for bail was made out.
2.	BA 958/2023 Aditya Raj v. State and Anr.	07/12/2023	§6	YES	Sudhir Kumar Jain	The case involved an initially consensual relationship. The Court noted that the first allegation of rape was in 2017, yet the complaint was filed only in 2020 – held that prosecution should explain this delay during trial. Subsequently, it remarked that petitioner had deep roots in society and was not a flight risk. The Court also cited Dharmander Singh, and the factors to be considered while granting bail under the POCSO Act.
3.	BA 3812/2023 Harish Chander @ Suraj Bhatt v. State NCT of Delhi	06/12/2023		NO	Swarana Kanta Sharma	The accused had procured explicit photos after representing himself as the munshi of a Judge of the Delhi High Court. The Court alluded to the 'truth having been brought out' during investigation and the FSL report (though trial had not yet been concluded). It held that this case was a grave threat to public faith in the judiciary.
4.	BA 1923/2023 Ram Prasad v. State NCT of Delhi	01/12/2023	§10	YES	Rajnish Bhatnagar	The petitioner had attempted to outrage the complainant's modesty. The complainant's family had then been attacked by the petitioner's family. The Court granted bail since the petitioner had been in custody since 2019, and all material public witnesses had been examined – no chance of tampering with evidence.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
5.	BA 1576/2023 Sonu v. State	01/11/2023	§6	YES	Vikas Mahajan	The Court cited Dharmander Singh's verdict on a higher threshold for bail after charges have been framed, and the relevant factors to be considered. The Court noted that the petitioner and prosecutrix were from the same village, caste and gotra, and were unmarried. Further, the prosecutrix had been a major for a large part of the period spent with the petitioner. Further, even though she was a minor during the alleged period of occurrence, she was 16.5, and of "sufficient maturity and intellectual capacity to understand the implication of her conduct." Further, the Court remarked that the petitioner was in a legal and financial position to start a family life.
6.	BA 2790/2023 Gyanendra Kumar v. State	19/10/2023	§6	NO	Swarana Kanta Sharma	Allegations of sexual assault by a tuition teacher. The complainant was 14 years old and had been impregnated twice. In view of the seriousness of the allegations, and the fact that the prosecutrix had not yet been examined, the Court denied bail.
7.	BA 41/2023 Vivek Kumar @ Ishmiel v. The State Govt. of NCT of Delhi and Anr.	11/10/2023	§§4, 17	YES	Rajnish Bhatnagar	The complainant had misrepresented her age on social media even though she was a minor. In this context, the Court held that petitioner was not expected to have investigated her actual age. It then looked at pictures and concluded that they were a "loving couple."
8.	BA 43/2023 Sh. Pappu Kumar Thakur v. The State (Govt. of NCT of Delhi)	14/09/2023	§6	NO	Rajnish Bhatnagar	Allegation that the accused had been sexually exploiting the victim since she was 13 years old. They subsequently got married, but he falsely told her that he was divorced from his first wife, when he was actually married with two children. The Court denied bail because the allegations were "grave and serious" in nature. The Court also remarked in affirmative terms that the petitioner 'had been' establishing physical relations with the victim as a minor girl.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
9.	BA 2660/2023 Saurabh Tripathi v. State of NCT of Delhi	12/09/2023	§6	NO	Sudhir Kumar Jain	Allegations of sexual assault by the tuition teacher of the victim during classes. The Court denied bail because of the "gravity of the offence and the manner in which the offence was committed."
10.	BA 3340/2022 Rahul v. State NCT of Delhi	04/09/2023	§§8, 12	NO	Rajnish Bhatnagar	Allegations that the accused grabbed the hand of the victim, covered her mouth, tried to drag her somewhere else, touched her waist and chest inappropriately, and also molested her. The Court denied bail on the basis of two factors, one among which was the allegation that the parents of the victim had been threatened with "dire consequences" by the petitioner. The Court also remarked that the allegations were "serious" in nature.
11.	BA 363/2023 Vikender Singh Yadav v. The State of NCT of Delhi	29/08/2023	§10	YES	Dinesh Kumar Sharma	Allegation that the accused had put his hands inside the clothes of the prosecutrix and had made a 'bad touch'. Bail was granted, with the condition that the accused would move beyond a radius of 5km from the victim's house.
12.	BA 1581/2023 Ashok Singh @ Ashok Kumar v. The State of NCT of Delhi Thr. Sho Ps. Khajuri Khas	24/08/2023	§6	YES	Dinesh Kumar Sharma	The allegation against the applicant was that the place where the offence was committed was in his possession. The Court held as follows - "The law regarding bail is a very well settled…the detention during trial cannot be made as punitive detention…it is a settled proposition that at the stage of bail, the court cannot go into the detailed examination of the facts…at the stage of bail, the court is only to take a prima facie view."

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
13.	BA 1957/2023 Varun Arya v. State of NCT of Delhi	14/08/2023	§6	YES	Vikas Mahajan	Allegation that the father of the victim had molested her under the influence of alcohol and had forcefully inserted his fingers into her private parts. There was a record of multiple cross-cases having been filed by the complainant (mother of the victim), and the father of the victim against each other. So, it was contended that this was a false case. The Court cited Dharmander Singh, and noted that there was an "inordinate" delay in filing the FIR. Also, in earlier FIR's filed by the complainant, there were no references to the alleged incidents. Also, it opined that there was an obvious running matrimonial dispute because of the number of cross-FIR's. In this factual matrix, the Court held that there was a possibility of 'victim tutoring' which could not be ruled out, and had the potential to make a dent in the prosecution's case. It held that the high threshold under §29 was met.
14.	BA 2128/2023 Nabal Thakur (In J.C.) v. The State	09/08/2023		NO	Swarana Kanta Sharma	The Court held that "Considering the overall facts and circumstances of the case, and the fact that the prosecutrix who was a minor at the time of commission of offence, was repeatedly raped by the present applicant, this Court finds no ground for grant of bail at this stage."

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
15.	BA 3008/2022 Sandeep Kumar v. State (Govt of NCT of Delhi) & Anr.	01/08/2023	§§10, 12	NO	Swarana Kanta Sharma	The Court held that "considering … the tender age of the victim, the conduct of the applicant of indulging in outraging the modesty of victim child, indulging in sexual conversations, taking advantage of the relationship of being a teacher and being 22 years elder to her as well as taking advantage of ignorance of the child about good touch and bad touch, not only violated the body of the victim child but also disregarded the sanctity of his relationship with the minor child of being his teacher." According to the Court, the alleged exploitation of the teacher-student relationship "made the offence graver."
16.	BA 2858/2022 Avdesh v. The State of (NCT of Delhi) & Anr.	01/08/2023	§8	YES	Dinesh Kumar Sharma	Allegation that the accused had forcibly kissed the victim on her neck, and had attempted to lift her frock, before she shouted for help and was rescued. The Court considered that the accused had been in custody for over a year, that the victim and her mother had already been examined, and that the conduct of the petitioner had been 'satisfactory'. The Court also made statements about how courts cannot examine the record in detail at the time of bail, and that pre-conviction detention cannot be 'punitive'.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
17.	BA 2898/2022 Sanjay Kumar v. State Govt. of NCT of Delhi and Anr.	28/07/2023	§6	YES	Vikas Mahajan	Allegation that the accused had 'befriended the prosecutrix' and had subsequently 'established sexual relations' with her, when he was 20 years old, and she was 17.5 years old. Court held that the prosecutrix was 17.5 years old and was thus of "sufficient maturity and intellectual capacity." Further, it held that from the 164 statement of the prosecutrix, it prima facie appeared that their romantic and physical relationship was consensual. The Court then cited Dharmander Singh and the factors it identified as relevant to the grant of bail under the POCSO Act. The Court then held that the FIR had likely been filed by the prosecutrix "at the insistence of her family who were perhaps embarrassed after the discovery of prosecutrix's pregnancy." After this, it held that since the mother and prosecutrix had already recorded their testimonies, there were no apprehensions about material witnesses being influenced, and also that the accused was young with clean antecedents, who would be in the "company of hardened criminals" in jail.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
18.	BA 1396/2022 Shashim Das v. State of NCT of Delhi and Anr.	25/07/2023	§6	NO	Amit Sharma	Allegation that the accused (the father of one of the prosecutrix's friends) had inserted his finger into her 'private parts' and threatened her with consequences if she disclosed it. The Court cited arguments made by both sides that involved appreciation of the evidence – contradictions in testimony, strength of the medical evidence etc. The Court held that the case was "covered by §29 of the POCSO which raises presumption of guilt against the accused." Further, the Court held that the victim's account was prima facie corroborated by the medical evidence. The Court denied bail while holding that the accused had not been able to "rebut the presumption of guilt, as contained in §29 of POCSO." In addition, the Court considered what it called an attempt to influence the prosecutrix, which was a recording of a conversation between the victim and the accused's daughter, wherein the former alleged that the accused had not done anything wrong.
19.	BA 2028/2023 Prince Nagar v. The State	25/07/2023	§12	YES	Dinesh Kumar Sharma	Allegations that the accused verbally abused the complainant and slapped her. The Court held – "The bail during trial cannot be taken as a punitive measure…the court at the stage of bail cannot examine the facts meticulously nor can it check the probative value of the witnesses." But at the same time, it also remarked that "it is a matter of record that there is a history of enmity between the family of the complainant and the petitioner." Further, since the accused was only 20, and the trial was likely to take a long time, bail was granted.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
20.	BA 2048/2023 G Arun v. State NCT of Delhi	18/07/2023	§8	YES	Dinesh Kumar Sharma	Allegation that the accused molested the prosecutrix, pressed her breasts, and gave a "blow to her eyes." The Court granted bail, remarking that the accused had not been named in the FIR.
21.	BA 489/2023 Shubham Pal v. State of NCT of Delhi & Ors.	12/07/2023	§4	YES	Vikas Mahajan	The prosecutrix's mother had filed the complaint, alleging that the accused had coaxed her minor daughter into running away with him. The Court referenced the prosecutrix's statement where she stated that she had developed 'friendly relations' with the accused, and that she had herself refused to go back home, or to contact her parents. On this basis, the Court held that the prosecutrix was of "sufficient maturity and intellectual capacity" and had joined the accused of her own free will. It further cited XXX v. State Govt. of NCT And Anr, where the Delhi High Court had held that the POCSO was not meant to "criminalise consensual romantic relationships between young adults." It then also cited Dharmander Singh, and the factors it specified (but did not cite the part about §29). After this, it considered other factors - the unlikelihood of witnesses being influenced, the accused fleeing trial, and the fact that the accused did not have any criminal history.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
22.	BA 2241/2022 Rajkumar Gupta v. State (Govt of NCT of Delhi) & Anr.	11/07/2023	§§6, 8	NO	Tushar Rao Gedela	The Court explicitly attached a lot of weight to the strength of the DNA evidence in the case - "That apart, a very crucial and relevant aspect of the entire gamut would be the DNA profiling, generated from the blood of the applicant which stands matched with the DNA profile generated from the semen detected on the pillows recovered from the place of occurrence, thereby intricately connecting and intertwining the applicant to the offences as alleged by the prosecution." However, in the very next line, it held that arguments on contradictions in FSL reports were not relevant at bail, and were only relevant during trial. It then denied bail, holding that since the charges were under §6 and §8 of the POSCO Act, the presumption under Section 29 was 'automatically entailed'.
23.	BA 202/2023 Osama Javed v. The State Anr	07/07/2023	§12	YES	Dinesh Kumar Sharma	Allegation that the accused was stalking and harassing the victim, and had threatened to throw acid on her if she did not talk to him. The prosecution argued that the accused initially absconded, and was recovered with great difficulty from Jharkhand. However, the Court granted bail since the investigation was already complete, the accused had no criminal antecedents, and because of the "totality of the facts and circumstances of the case."

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
24.	BA 3093/2022 Babu Lal Bhawariya v. State of NCT of Delhi	19/06/2023	§6	NO	Anup Jairam Bhambhani	The accused was the schoolteacher of the prosecutrix, and was alleged to have committed forcible sexual intercourse on her while unconscious, obtained a video recording, and then threatened to circulate it if she told anyone about the incident. Using this threat, he had sexual intercourse with her multiple times. The Court in its own words conducted a prima facie "conspectus of the record and submissions made," deciding that there were certain factors that 'weighed' with it. For example, the Court saw no reason to disbelieve the prosecutrix's statement, considered that the DNA evidence held 'strongly' against the accused, and that the CCTV footage was incriminating. Further, the Court noted that since they were in a teacher-student relationship, the offence was aggravated and became more egregious. In its final remarks, it held that given the social standing of the accused, there was a possibility of him attempting to flee/influence witnesses/prejudice the trial.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
25.	BA 3722/2022 Vicky @ Kapil v. The State and Anr.	01/06/2023	§6	YES	Anup Jairam Bhambhani	Allegation that the accused had sexual relations with the prosecutrix twice, with the second time being an instance of forced intoxication against her consent. The Court took on record some alleged contradictions in the statements of the victim's mother, and the MLC's that were conducted. The Court cited Dharmander Singh, and referred to both the §29 part, and the enumeration of the thirteen factors. Further, the Court held that the age gap between the two was not so wide that the act was 'vile'. Since they were at the "age of innocence," it is possible that their alliance was "innocent". In its final remarks, the Court held that the deposition of all material witnesses was complete, the petitioner was young and without criminal antecedents, had been in judicial custody for two years, and that there was no evidence to suggest that he would flee or attempt to influence witnesses.
26.	BA 510/2020 Bablu v. State & Anr.	31/05/2023	§§6, 12	NO	Rajnish Bhatnagar	Allegation that the maternal uncle of the victim forcibly undressed her and inserted his finger into her private parts. When she asked him to stop, he threatened to kill her. The Court denied bail because of the seriousness of the allegations, and the minority of the victim.
27.	BA 3604/2021 Manish Prasad v. State Govt. of NCT of Delhi	27/03/2023	§6	YES	Yogesh Khanna	Allegations of rape of a 16-year-old. The accused had been in custody for two years, investigation had not been completed, and trial had not yet commenced. The Court remarked that it had considered the period of custody, the delay in reporting the offence, and the statement of the mother that the prosecutrix never informed her of the alleged sexual abuse despite being in contact over a prolonged period, and granted bail.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
28.	BA 3767/2021 Roshan Singh v. State Govt of NCT of Delhi	03/03/2023	§4	YES	Amit Mahajan	Allegations of forcible sexual intercourse three separate times. The Court made multiple statements about the strength of the evidence in the case. It first took into consideration that the accused and victim were on 'friendly terms' with each other, and that their first physical sexual encounter had been with her consent (although this was not the case). It then went on to cite the SC's judgement in Rajballav Prasad, and the DHC's judgement in Dharmander Singh, both of which held that the courts have to consider the effect of §29 at the stage of bail. Consequently, the Court looked at whether the evidence in the case was 'credible' or 'ex-facie appeared to support the prosecution'. In this regard, it considered the following factors to be relevant – the relatively small age-gap (even though it was alleged to have been 6 years), that the victim had been in a 'relationship' with the accused, that no injuries had been found, that it was improbable that "a young boy of 20 years of age" had dragged the victim to the upper floors against her will, and that the prosecutrix had only alleged that she was 'hidden' under the accused's bed. In addition to these evidentiary statements, it also noted that the accused had been in custody for two years, that the trial was unlikely to conclude soon, that the accused did not have criminal antecedents, that investigation was complete, and that the charge sheet had been filed and the prosecutrix's statement recorded.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
29.	BA 866/2022 Amit Thapliyal v. The State and Anr.	03/03/2023	§§6, 10, 12	YES	Amit Mahajan	Allegations that the accused (the father of the victim), used to touch her 'perineal' area while bathing her, and used to ask her to sit on him while he was naked. He also threatened to kill her if she revealed anything. The defence contended that there was a one-year delay in filing the FIR. The Court noted that the accused and the complainant (mother of the victim) had a long history of 'matrimonial discord' and had filed many cross-complaints against each other. Then, the Court identified the following factors as relevant to bail under POCSO jurisprudence – the age difference between the victim and the accused, the 'family relationship' between the victim and the accused, whether the accused is a repeat offender, and the chances of the accused threatening the victim. With this background, the Court then held that the allegation of the insertion of the accused's finger into the victim's private parts did not feature in the original FIR, that the delay in filing the FIR was unreasonable, that the medical examination had not revealed anything, that there was a history of matrimonial disputes, that the accused had been in custody for two years with the trial unlikely to be completed any time soon, and that allegations against a 'father' have far-reaching social consequences.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
30.	BA 1177/2022 Vipin Singh v. State and Anr.	07/02/2023	§6	YES	Amit Sharma	Allegation by the father of the victim that she had been abducted by the accused. The victim stated that she had initially gone with the accused consensually, but that he made 'physical relations' with her 10-12 times, used to beat her, drink, and threaten her not to disclose anything. The Court held that the accused had not had physical relations with her on the pretext of a promise to marry, that she had run away with him voluntarily, and that because she was 17 and he 25, there was no force or coercion. Further, the victim could "understand the consequences" of her actions, and the accused could not have known that she was a minor. In its final remarks, the Court held that there was no material on record substantiating the apprehension that the accused would influence the victim or her family.
31.	BA 1379/2022 Sh. Rajeev Kumar v. The State & Ors.	02/02/2023	§6	YES	Swarana Kanta Sharma	The mother of the prosecutrix had filed a missing complaint, but the prosecutrix stated that she had gone with the accused and had gotten married to him of her own volition. This was despite her already being married to someone else, with a child (even though she was a minor). The Court held that the case seemed to have sprung from an "adolescent attraction" leading to an "emotional relationship", and that no sexual relations had taken place between the parties.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
32.	BA 1949/2022 Rohit Srivastava v. State of NCT of Delhi and Anr	24/01/2023	Section 6	NO	Amit Sharma	Allegations that the accused had sexually assaulted the 8-year-old victim on multiple occasions. The Court held that the testimony of the prosecutrix was fairly consistent, and that there was no substantive material in support of the defence of false implication. The Court then referred to §29 of the POCSO Act, and held that because the accused had been charged under §6, "the presumption provided for under §29 … .would apply to the facts of the present case."
33.	BA 2753/2022 Niket Ranjan v. State of NCT of Delhi & Anr.	23/01/2023	Section 6	YES	Anish Dayal	Allegation that a tuition teacher had blackmailed and had sexual intercourse with the victim (his student). The Court held that considering the "varying testimony" of the victim, her "lack of specificity", as well as her "continued association" with the accused (visits to hotels, exchange of photographs), the trial court may eventually reach a finding of "consensual interaction". Further, the first reported incident was just a month before she became a major, the material witnesses had been examined, and the trial was likely to take time.

Annexure 2

Once again, anticipatory bail applications have been removed, and only one among connected matters has been chosen. Further, a judgement that focuses on a pure question of law – whether an accused is entitled to default bail under Section 167(2) when chargesheet has been filed, but cognizance has not been taken by the Court – has been removed, since the focus of the analysis is on how the Court weighed the facts of cases.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
1.	BA 3618/2022 Bijender Mehto v. GNCT of Delhi & Ors.	21/12/2022	§6	YES	Anup Jairam Bhambhani	The Court held that the relationship was prima facie consensual by the victim's own admission. Further, she was "on the cusp of majority", had accompanied the accused, gotten married to him and had a child, all of her own volition. The Court then cited Dharmander Singh, held that this case fulfilled the raised threshold, and granted bail.
2.	BA 2159/2022 Anil v. State (NCT of Delhi)	15/11/2022	§§4, 6	NO	Anu Malhotra	Two bail applications had previously been denied. The Court held that the prosecutrix's 164 statement, her deposition, and her examination-in-chief substantially corroborated the prosecution version in all material particulars, even though there was a variation in one of her statements.
3.	BA 2213/2022 Pankaj Saini v. State NCT of Delhi & Anr.	04/11/2022	§6	NO	Talwant Singh	Allegations of rape against a 12–13-year-old at the time of the first incident. The Court remarked that the accused was a 'mature person', and that there was no averment that the prosecutrix had earlier voluntarily gone out with the accused. Even if there is a variation of a few months in age, the victim still remains a minor. Further, it remarked that the accused was a married man with a young daughter. The Court also remarked that it could not believe that the prosecutrix had forced him to elope with her, since he was "happily married" with a child.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
4.	BA 3555/2021 Ripul Sharma v. The State	03/11/2022	§4	YES	Talwant Singh	Second bail application that had been moved. Allegation that the accused became friends with the prosecutrix when she was 14-15, and made physical relations with her. The Court held that this was not a stage to minutely examine evidence. However, it noted that her testimony did not tally with the CDR and mobile location chart of the accused. Further, she was not able to identify the place of the incident. Since evidence of the complainant and her parents was over, the accused had clean antecedents, and there was no threat of influence, the Court granted bail.
5.	BA 2627/2022 Bharat v. The State	19/10/2022	§6	YES	Purushaindra Kumar Kaurav	Accused was the prosecutrix's uncle, and the defence argued that the accused (aged 19) was under the bonafide belief that the prosecutrix was also a major. The Court held that the case "appears consensual." Although it noted in the next line that consent does not matter under the POCSO Act, it held that since the investigation was over and the trial would take time, bail could be granted.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
6.	BA 3682/2021 Laxman v. Govt. of NCT of Delhi	11/10/2022	§6	NO	Talwant Singh	The defence argued that the accused and the prosecutrix were friends and were in contact before and after his arrest. The Court held that the accused had been charged with a "heinous offence," and that minor contradictions in testimony could not be used to grant bail in a heinous crime. Further, even if they were friends, that itself could not be used to grant bail. Further, it noted that the accused may threaten the witnesses on bail.
7.	BA 1926/2022 Hanzla Iqbal v. The State & Anr.	24/08/2022	§6	YES	Jasmeet Singh	Allegation that the accused had established physical relations with the prosecutrix, made a video and then blackmailed the prosecutrix to have physical relationships with different people. The Court held that the prosecutrix had had a 'relationship' with the accused from 2019, and if she had been blackmailed, there was nothing preventing her from approaching the police earlier. It held that a person "who is in a consensual physical relationship with another person, is not required to judicially scrutinise the date of birth of the other." Further, it opined that the transfer of huge sums of money to the prosecutrix prima facie indicates a case of 'honey trapping'.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
8.	BA 111/2022 Jagbir v. State (N.C.T. of Delhi)	22/07/2022	§§4, 6	NO	Anoop Kumar Mendiratta	Allegation that the accused persuaded and kidnapped the victim (14.5 years old) while she was waiting for her boyfriend. The victim did not oppose the grant of bail. This was a case where the accused had also gotten 'married' to her and had had a child. The Court held that sexual relationships with minors was absolutely prohibited, and that child marriage is harmful and prohibited. It affirmed that consent of a minor is irrelevant in law, and that sexual exploitation of children is a heinous crime. It further remarked that statutes concerning the rights of children are special laws that must prevail for ensuring the benefit of children. Further, it remarked that there was no evidence that the victim had agreed to be taken from her parents' custody.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
9.	BA 968/2021 Harpal Sharma v. State of NCT of Delhi	14/07/2022	§6	YES	Anoop Kumar Mendiratta	Allegation that the prosecutrix and the accused had become known to each other, but he had had forcible physical relations with her instead of taking her to a planned movie. It was further alleged that he continued to have physical relations with her, and captured and distributed photographs. The Court held that the relationship was initially voluntary, and that she had accompanied the accused "without even raising a voice." It remarked that the prosecutrix had also forwarded some photographs to the accused herself, which showed her complicity in 'voluntary sexual relations'. Further, since the prosecutrix had already been examined, and there was no apprehension of the accused influencing the witnesses, the Court granted bail.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
10.	BA 428/2022 Mohan Singh Jogi @ Mohini v. State (NCT of Delhi)	31/05/2022	§6	YES	Talwant Singh	Allegation that the accused had lured the prosecutrix and had had physical relations with her forcefully. The accused alleged that it was a love affair and that they had secretly married each other. The Court considered the accused's statement that the prosecutrix had stated that she was a major at the time of the elopement, that she had eloped from the house of her maternal uncle herself, and that she never raised a "hue and cry." It also considered that he had been in custody since 2019, and that the trial would take a while.
11.	BAIL APPLN. 577/2022 Satyender Srivastav v. State of NCT of Delhi	18/05/2022	§6	NO	Talwant Singh	The applicant was alleged to have repeatedly raped the minor victim, and the victim had supported the allegations in her 164 statement. The material witnesses including the victim were yet to be examined, and the Court remarked that the possibility of influence could not be ruled out.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
12.	BA 429/2022 Mohit v. The State (Govt. of NCT of Delhi)	05/05/2022	§§4, 6, 17	YES	Anoop Kumar Mendiratta	Allegation that the prosecutrix, a student of the ninth grade, had been raped by multiple men. The defence argued that the DNA evidence did not match, and that testimony of the prosecutrix was unreliable. The Court referred to the DNA mismatch, the absence of CCTV footage, discrepancies in the prosecutrix's cross-examination, calls made by the mother of the prosecutrix to the mother of the accused, and the fact that the prosecutrix had "accompanied" the accused despite the allegation that she had previously been assaulted. Further, since the statement of the prosecutrix had been recorded, it held that there was no threat of influence.
13.	BA 2587/2021 Raghav Yadav alias Manoj alias Anurag v. The State NCT of Delhi	29/04/2022	§6	NO	Rajnish Bhatnagar	The defence argued that the prosecutrix was inconsistent in her statements, and in her 164 statement had admitted that she and the accused had had consensual sexual relations. The Court held that this was of no consequence, since she was a minor. It referred to a judgement of the SC that held that once it was established that the accused is a minor, arguments about a "love affair" have no bearing on the grant of bail.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
14.	BAIL APPLN. 457/2022 Mohit Kumar v. State NCT of Delhi	28/04/2022	§10	YES	Prateek Jalan	Allegations of sexual assault by the father of the victim. Court cited Dharmander Singh on how the bail threshold is raised under §29, and the thirteen relevant factors it enumerated. The Court held that "despite the gravity of the offence and the higher threshold of satisfaction required under §29," the accused is entitled to bail. This was because of a delay in registering the FIR, missing allegations in the original FIR, the fact that the victim was not taken for a medical examination immediately, and the fact that the medical examination did not reveal any internal or external injury. The Court also referred to divorce proceedings and matrimonial disputes between the parents, and held that all these factors are to be considered. In its final remarks, it opined that the accused was not likely to flee or tamper with the evidence.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
15.	BAIL APPLN. 3468/2021 Avinash v. State of N.C.T. of Delhi	26/04/2022	§6	NO	Rajnish Bhatnagar	Allegation that the accused physically assaulted a 2.5-year-old. Court cited the thirteen factors enumerated in Dharmander Singh, but did not cite the part about §29. The Court held that the victim had fully supported the case of the prosecution, and had levelled serious allegations against the accused. Considering the facts, the minority of the victim, the fact that the allegations were grave and serious in nature, the categorical statement of the victim in her examination-in-chief, and the medical evidence on record, the Court denied bail.
16.	BA 163/2022 Surya Prakash Pal v. State of NCT of Delhi	12/04/2022	§6	NO	Prateek Jalan	Allegations of sexual assault against a 13-year-old boy by two accused – a truck driver and a child in conflict with law. The Court cited Dharmander Singh on how Section 29 raises the threshold for bail. It held that the offence was serious, that the accused was 42 years old, and that any inconsistencies did not negate the prima facie case against him. According to the Court, it did not meet the 'threshold of satisfaction' required by Dharmander Singh.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
17.	BA 2830/2021 Mukesh v. State of NCT of Delhi	12/04/2022	§§4, 8	YES	Rajnish Bhatnagar	Allegations that the accused had kissed, inappropriately touched, and torn the clothes of the 17-year-old victim. The Court held that the accused had been in custody for over three years, that all material witnesses had been examined, and granted bail.
18.	BA 2225/2021 Sunita v. State of NCT Delhi	21/03/2022	§§4, 6	YES	Manoj Kumar Ohri	Allegations of the accused physically abusing the 13-year-old victim, as well as abetting prostitution. The Court held that the statements of the child victim only related to being beaten and being denied food, and that there was no exercise of force in bringing the victim to work at the home of the accused.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
19.	BA 3391/2021 Kishan v. The State & Anr.	21/03/2022	§6	YES	Rajnish Bhatnagar	Allegation by the mother of the victim that the accused had kidnapped her and kept her forcefully. The victim stated that she went with the petitioner, got married, and is 6 months pregnant. The defence argued that it was consensual, and that the FIR was filed after the victim's father fought with the petitioner. The Court held that the victim had not made a single allegation against the accused, but noted in the very next line that consent was immaterial since she was a minor. Nonetheless, it further held that the consequences of her consent would be determined at trial, that they were 16 and 18 years old respectively, and have a 6-month-old daughter. Since the trial would take time, bail was granted.
20.	BA 3386/2021 Sonu Khatri v. The State (G.N.C.T of Delhi)	07/02/2022	§§6, 17	NO	Manoj Kumar Ohri	Allegations that the father of the victim had sexually assaulted her. The defence argued that the charge was false and had been made because of a matrimonial dispute. The Court disregarded this, held that the victim had consistently levelled allegations against the accused, and denied bail.

Sl. No.	Citation and Case Name	Date	POCSO Charge	Bail Given	Judge	Remarks from Court's Judgement
21.	BA 3215/2021 Vishal Tyagi v. State	01/02/2022	§§4, 8	NO	Anu Malhotra	Allegations of forced penetrative sexual assault against a 17-year-old girl. The Court examined her testimony, and considered the defence's argument that there were inconsistencies in the victim's statements. The defence also contended that there was no alarm raised/attempt to run or resist. The Court ultimately reproduced the results of the DNA analysis that matched the semen stains on the victim's clothes with the accused's blood. It then held that because of the DNA match, the consistent allegation of rape, and the minority of the victim, bail could not be granted.

Annexure 3

Sl. No.	Citation and Case Name	Date	Bail Given	Judge	Remarks from Court's Judgement
1.	BAIL APPLN. 560/2023 Rohit Dixit v. State NCT of Delhi & Ors.	11/12/2023	YES	Rajnish Bhatnagar	Allegation was that the prosecutrix had engaged in a physical relationship with the petitioner because of a promise of marriage, but the petitioner later walked back on his promise. There were also allegations of sexual intercourse after deliberate intoxication. The Court granted bail after saying that there was no evidence of forced intoxication, or of having to terminate her pregnancy. Also, the Court made a reference to her having consensually engaged in a few explicit acts.

Sl. No.	Citation and Case Name	Date	Bail Given	Judge	Remarks from Court's Judgement
2.	BAIL APPLN 2365/2023 Ziyaul Islam Siddiqui v. The State & Anr.	06/12/2023	NO	Swarana Kanta Sharma	Allegations of sexual assault against false promises of marriage, and of getting the victim a job. The Court rejected the argument of false implication, and denied bail.
3.	BAIL APPLN. 2014/2023 Faizan Ahmed v. State (NCT of Delhi)	05/12/2023	YES	Rajnish Bhatnagar	The victim was the wife of the accused and committed suicide. There was an allegation of 'unnatural sex' under Section 377. The Court granted bail because the co-accused was on bail, the trial would take time, and the material public witnesses had already been examined.
4.	BAIL APPLN. 707/2023 Parvez Ahmed Sheikh v. State (Govt. of NCT of Delhi)	09/10/2023	YES	Vikas Mahajan	Allegations under Section 376, along with allegations of trafficking. The Court looked at inconsistencies in statements by three PW's. Although it clarified that this does not speak to the probative value of such statements (which will be determined at trial), it held that it could be relied upon to prima facie justify the grant of bail.
5.	BAIL APPLN 1247/2023 Karan Chandela v. The State (Govt. of NCT of Delhi)	19/09/2023	NO	Tushar Rao Gedela	The Court noted that 'overwhelming evidence' pointed to a prima facie case against the applicant. It also made a reference to the prosecution not having yet fulfilled the 'twin conditions' of a circumstantial evidence case. Finally, bail was denied because of speculations that the applicant would misuse it. The Court also pointed to the criminal antecedents of the accused, his father and uncle.
6.	BAIL APPLN 2158/2023 Ashu Chaudhary v. State (Govt. of NCT of Delhi)	08/08/2023	NO	Swarana Kanta Sharma	The Court denied bail because of the seriousness of the allegations – the accused husband had forced the prosecutrix to be raped by multiple people, and had injected her with substances, etc.

Sl. No.	Citation and Case Name	Date	Bail Given	Judge	Remarks from Court's Judgement
7..	BAIL APPLN 1979/2023 Vivek Kumar Gupta v. The State of NCT of Delhi	28/07/2023	YES	Amit Bansal	The accused was only 21, had been in jail for 2 months with clean antecedents, satisfactory conduct, with a trial that was likely to take time.
8.	BAIL APPLN. 1567/2023 Jitender @ Sonu v. State (N.C.T. of Delhi) & Anr.	21/07/2023	NO	Saurabh Banerjee	The Court used the fact that two other similar FIRs were registered against the accused to show that he was a 'repeat offender', repeated that he "has been involved in committing similar offences over a period of time," referred to the seriousness of the offence, and affirmed that there was prima facie cause to believe that the accused was guilty.
9.	BAIL APPLN. 780/2022 Rishabh Rawat v. The State Govt. of NCT of Delhi	01/06/2023	YES	Anup Jairam Bhambani	The accused and prosecutrix were both majors and in a consensual relationship. The Court remarked that it cannot be said that the purported promise of marriage by the accused was ex-facie false, or that it bore any relationship to the prosecutrix agreeing to engage in sexual relations. Further, the accused was young, and had been in jail for a while.
10.	BAIL APPLN 2025/2022 Ahshan Ali v. The State (NCT of Delhi) & Anr	18/05/2023	YES	Vikas Mahajan	The Court noted that the case prima facie appeared to be an off-shoot of a matrimonial dispute. Further, the statements of the prosecutrix and both her parents had already been recorded.
11.	BAIL APPLN 3725/2022 Sahab Singh v. The State & Anr. & Ors.	08/05/2023	YES	Swarana Kanta Sharma	The Court pointed out an alleged inconsistency in the prosecutrix's account of how and when she met the accused, and granted bail.

Sl. No.	Citation and Case Name	Date	Bail Given	Judge	Remarks from Court's Judgement
12.	BAIL APPLN 3051/2022 Sanjay Malik @ Sant Sevak Das v. The State & Anr.	14/03/2023	NO	Anup Jairam Bhambhani	Allegations of deception and guile on the part of the accused. The Court opined that it could not say that the accused would not attempt the same guile and deception during the investigation. Therefore, attempts to influence/intimidate witnesses could not be ruled out.
13.	BAIL APPLN 3193/2022 Manish Kumar v. The State of NCT of Delhi and Anr.	24/02/2023	YES	Amit Sharma	The Court referred to the fact that the prosecutrix was in a relationship with the applicant for a year. Also, it held that there was an inordinate delay in filing the FIR, without reasonable explanation. Further, there was no evidence to show that the applicant was likely to tamper with witnesses/evidence. Bail was granted.
14.	BAIL APPLN 2513/2022 Safdar Ali v. The State (Govt. Of NCT of Delhi)	18/01/2023	YES	Amit Mahajan	The investigation was complete and the chargesheet had been filed. The prosecutrix and applicant had known each other since 2021, and she was on good terms with his family until the alleged rape. The Court made a reference to the implausibility of the rape having occurred without the knowledge of the family in the same building. It referred to photographs that showed that the two parties were in "good intimate relations."

Sl. No.	Citation and Case Name	Date	Bail Given	Judge	Remarks from Court's Judgement
15.	BAIL APPLN 2779/2022 Vivek Pandey v. The State Govt of NCT Delhi and Anr	13/01/2023	YES	Amit Mahajan	The Court referred to the fact that the prosecutrix had gone to the hotel room, 'albeit' on continued insistence by the accused. Even before this, she was known to the applicant and had been meeting him on a regular basis. In the hotel room, she initially resisted to intercourse, but then agreed after being told that he would marry her. The Court remarked that there was an age difference of ten years and this, along with the fact that the prosecutrix was a 'literate person', makes it hard to presume that she consented to intercourse because of the promise to marry.
16.	BAIL APPLN. 2688/2022 Jagbir @ Dada v. State (NCT of Delhi) & Anr.	13/01/2023	YES	Amit Mahajan	The Accused had been in custody since 2020. Further, the investigation had been completed. The Court referred to some inconsistencies in the prosecutrix's statement, and granted bail.
17.	BAIL APPLN. 3813/2022 Hrinmoy Das @ Hiranmoy Das v. State of Delhi NCT & Anr.	04/01/2023	YES	Dinesh Kumar Sharma	The Court referred to some allegations of attempts to manipulate the prosecutrix's §.164 statement by some friends of the prosecutrix, and granted bail.

Annexure 4

Sl. No.	Case Citation and Name	Date	Bail Given	Judge	Remarks from Court's Judgement
1.	BAIL APPLN. 3411/2022 Ashu Gautam v. State and Anr.	15/12/2022	YES	Dinesh Kumar Sharma	The Court held that the prosecutrix had visited the hotel with the accused several times, and that they "chose to have a consensual relationship without marriage for a considerable period of time."

Sl. No.	Case Citation and Name	Date	Bail Given	Judge	Remarks from Court's Judgement
2.	BAIL APPLN 3294/2021 Ritesh @ Ritesh Anand @ Ritesh Choudhary v. The State & Anr.	24/05/2022	NO	Rajnish Bhatnagar	Allegations of rape, including through forced intoxication. The Court held that the victim had explained the sequence of events in a very detailed and graphic manner. Further, the delay in registration of the FIR and the veracity of her statements was a matter for trial. To the argument of the defence that it was clearly consensual, the Court referred to her statement that they were 'friends' and on talking terms, which did not necessarily imply anything more. This is a curious case where the Court consciously stayed away from appreciating the strength of any evidence or the defences raised, but still provided no grounds relevant to the grant of bail. All things considered, it seemed to deny bail because it took the prosecution's case at face value.
3.	BAIL APPLN 1647/2021 Mohd. Aamir v. State (NCT of Delhi)	26/04/2022	YES	Rajnish Bhatnagar	Allegations of rape by the victim's husband and brother-in-law. The Court held that the victim and her husband had a matrimonial dispute which was evident from the record. Further, she had refused internal examination, and there was no evidence of external injuries despite allegations of 'brutal rape'. Appeared to be an off-shoot of the matrimonial dispute.
4.	BAIL APPLN. 3002/2021 Rohan Chaturvedi @ Rohan Chobey v. State of NCT of Delhi	08/04/2022	NO	Anu Malhotra	The Court laid out and examined the evidence on record, and on a detailed appreciation of the evidence, held that there was no ground for bail. No grounds relevant to bail were referred to.

Sl. No.	Case Citation and Name	Date	Bail Given	Judge	Remarks from Court's Judgement
5.	BAIL APPLN. 1112/2021 Akshay Rawat v. The State, Govt. of N.C.T. of Delhi	22/03/2022	YES	Subramonium Prasad	The Court pointed to evidence of monetary transactions involving the prosecutrix, and stated that there was an FIR against her for committing extortion and falsely implicating the accused in a 'honey trapping' case. It remarked that questions regarding rape, honey trapping, etc. can only be decided at trial. The accused worked in the Indian Army, had roots in society and was unlikely to flee.
6.	BAIL APPLN 3543/2021 Parveen Kumar v. The State	17/01/2022	YES	S30ubramonium Prasad	Allegations that the accused had promised to marry the prosecutrix and had then raped her on several occasions. The Court held that the physical relationship under promise of marriage was consensual, and that the question of whether consent was given under misconception or not would be determined at trial. The accused had roots in society, and was not likely to influence the prosecutrix since they were of similar social standing.