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

**Date of Decision: 23<sup>rd</sup> September, 2026**

# **CNR No. DLHC010455342026**

+ **W.P.(CRL) 2976/2026 & CRL.M.A. 29702/2026**

**BILAL & ANR.**

**.....Petitioners**

Through: Mr. Avnish Singh, Mr. Mahendra  
Vikram Singh and Mr. Suraj Sharma,  
Advocates with P-1 (in-Person).

versus

**THE STATE GOVT OF NCT OF DELHI THROUGH SHO & ORS.**

**.....Respondents**

Through: Mr. Rahul Tyagi, ASC (Crl.) with Mr.  
Sangeet Sibou, Ms. Priya Rai, Ms.  
Neha Ghugtyal, Mr. Ajay Jangra, Mr.  
Avinash Kumar Singh and Mr.  
Priyansh Raj Singh, Advocates for  
State.

SI Yamini Vats, P.S. Daryaganj with  
Complainant (in-Person).

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

### **JUDGMENT**

**SANJEEV NARULA, J. (Oral):**

1. This case lies at the intersection of personal choice and the protective mandate of the law. The Petitioners say that they married of their own volition and with the consent of both families. Petitioner No. 2 has consistently maintained that she was neither compelled to marry Petitioner



No. 1 nor subjected to any forcible sexual relationship thereafter. Yet, at the time of the marriage, she was just over sixteen years of age and, being below eighteen, remained a child in the eyes of law. That fact brings into play a statutory regime whose concern is not merely with the voluntariness of a relationship, but with the protection of children from sexual exploitation and the consequences of child marriage. The question, therefore, is whether consent and the asserted validity of the marriage can displace that protective framework where the law itself fixes eighteen as the age below which consent to sexual activity has no legal efficacy.

2. The material facts, not in dispute, are as follows: Petitioner No. 2 was born on 19<sup>th</sup> September, 2008. She married Petitioner No. 1 on 20<sup>th</sup> December, 2024, when she was sixteen years and three months old. Petitioner No. 1, born on 1<sup>st</sup> January, 1997, was then nearly twenty-eight. The couple thereafter lived together. By May 2026, Petitioner No. 2 was about eight months pregnant. Her age came to the attention of the authorities when she visited a Government hospital for treatment during the pregnancy.

3. The FIR did not originate from any accusation made by Petitioner No. 2. Her statement, as recorded by the police, is that the marriage took place with the consent of the two families; that she thereafter lived with Petitioner No. 1; and that physical relations commenced after the marriage. The police, having obtained her school record showing her date of birth as 19<sup>th</sup> September, 2008 registered FIR No. 189/2026 at P.S. Darya Ganj under Section 64(1) of the Bharatiya Nyaya Sanhita, 2023<sup>1</sup> and Section 6 of the Protection of Children from Sexual Offences Act, 2012<sup>2</sup>.

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<sup>1</sup> “BNS”

<sup>2</sup> “POCSO Act”



4. Her position has remained consistent. The petition records that when she was questioned at the hospital on 23<sup>rd</sup> and 27<sup>th</sup> May, 2026, she maintained that she had married of her own free will and was residing happily with Petitioner No. 1. Her statement under Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023<sup>3</sup> also contains no allegation of force. When Petitioner No. 1's application for bail was considered on 5<sup>th</sup> June, 2026, Petitioner No. 2 appeared through video conferencing from the labour room and stated that she did not oppose his release and wanted him by her side. The Special Judge interacted with her and recorded that she denied being under fear or undue influence.

5. The circumstances which followed were unfortunate. The foetus died in utero and Petitioner No. 2 delivered a stillborn child on 6<sup>th</sup> June, 2026. An order was thereafter obtained from the Sub-Divisional Magistrate for exhumation of the child for DNA profiling and collection of evidence.

6. The Petitioners have approached this Court seeking quashing of the FIR, disciplinary proceedings against the police officers concerned, and compensation for the alleged false implication and harassment suffered by them.

*The Petitioners' case*

7. The principal submission is founded upon Muslim personal law. Reliance is placed upon Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 and upon the principle stated in Mulla's Principles of Mahomedan Law that a Muslim of sound mind who has attained puberty is competent to contract marriage, puberty being presumed, in the absence of evidence, upon completion of fifteen years.

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<sup>3</sup> "BNSS"



8. The Petitioners carry this submission a step further. They say that Petitioner No. 2 had attained puberty before the *nikah* on 20<sup>th</sup> December, 2024 and was therefore competent to marry under Muslim personal law. From the asserted validity of the marriage, they seek to derive immunity for the sexual relationship that followed. Ground I puts the argument plainly: once the marriage is recognised in law, the subsequent cohabitation, including the physical relationship between the parties, cannot attract criminal liability.

9. To support this proposition, the Petitioners rely principally on *Yunus Khan v. State of Haryana*<sup>4</sup>, *Gulam Deen v. State of Punjab*<sup>5</sup>, *Javed v. State of Haryana*<sup>6</sup>, and the Full Bench decision of this Court in *Court on its Own Motion (Lajja Devi) v. State*<sup>7</sup>. They also contend that *Gulam Deen* and *Javed* stand affirmed because the Supreme Court dismissed the challenges carried by the National Commission for Protection of Child Rights<sup>8</sup> and the National Commission for Women<sup>9</sup> on 19<sup>th</sup> August, 2025. Whether that procedural disposal bears the legal consequence attributed to it is considered later.

10. The Petitioners also place considerable emphasis on the surrounding circumstances: Petitioner No. 2 has never complained of force or coercion; both families accepted the marriage; and she has continued to support Petitioner No. 1 even after registration of the FIR. These facts are not without significance. They bear upon her present welfare and explain why

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<sup>4</sup> 2014 SCC OnLine P&H 3588

<sup>5</sup> 2022 SCC OnLine P&H 1485

<sup>6</sup> CRWP-7426/2022 (P&HHC) decided on 30<sup>th</sup> September 2022

<sup>7</sup> 2012 SCC OnLine Del 3937

<sup>8</sup> “NCPCR”

<sup>9</sup> “NCW”



the Petitioners seek to bring the prosecution to an end. But they cannot, by themselves, determine whether the admitted sexual relationship falls outside POCSO and the BNS. That question must be answered by the statutory scheme.

*The question that actually arises*

11. The Petitioners' argument brings together two distinct questions. Keeping them separate is important.

12. One concerns the legal character and consequences of a *nikah* solemnised by a Muslim girl who has attained puberty but is still below eighteen. The other is whether that *nikah*, by itself, places subsequent sexual intercourse beyond the reach of POCSO and BNS while she remains a child under those statutes.

13. The first question need not be finally decided here. Even if the validity of the *nikah* is assumed in the Petitioners' favour, the second question must still be answered by the penal statutes. Personal law may determine whether a marriage has been contracted and the civil consequences that follow. It cannot supply an exception to a criminal law where Parliament has provided none.

14. That distinction is central to the case. A marriage may have consequences for status, maintenance, legitimacy, residence and rights between the parties. It does not necessarily immunise conduct that a secular penal statute independently prohibits. The legal status of the relationship and the criminal character of an act within it are separate questions.

*The statutory scheme leaves little room for doubt*

15. POCSO leaves little room for ambiguity. Section 2(1)(d) defines a "child" as any person below eighteen. Section 3 makes penetrative sexual



assault upon a child an offence; the child's consent does not take the act outside that provision. If any circumstance specified in Section 5 is present, the offence is aggravated penetrative sexual assault, punishable under Section 6. Section 42-A completes the scheme by giving POCSO overriding effect, to the extent of any inconsistency, over every other law.

16. The same legislative choice now appears directly in the BNS. Section 63 treats sexual intercourse with a woman below eighteen as rape, with or without her consent. More importantly for the argument advanced here, the marital exception is available only where the wife is not under eighteen years of age. Thus, even where the woman is the man's wife, marriage itself does not remove the offence if she is below eighteen. The BNS came into force on 1<sup>st</sup> July, 2024; the acts alleged in this case occurred thereafter.

17. This is a deliberate legislative arrangement. POCSO fixes eighteen as the threshold for sexual consent. The BNS fixes the same threshold and expressly withholds the marital exception where the wife is below eighteen. The Prohibition of Child Marriage Act, 2006<sup>10</sup> separately defines a female below eighteen as a child and attaches penal consequences to an adult male contracting a child marriage.

18. The Court cannot therefore substitute "puberty" for the age of eighteen fixed by POCSO and the BNS. Nor can the statutory line be redrawn through a case-specific assessment of whether a child of sixteen appeared mature enough to understand the relationship. The statute has already drawn that line at eighteen. An age threshold will inevitably operate with firmness in individual cases; that is the nature, and indeed the purpose, of a bright-line rule. If its application were to turn instead on judicial



impressions of maturity, family approval or subsequent conduct, the protection would cease to be uniform and become contingent upon the circumstances of each case.

19. None of this renders the adolescent's voice irrelevant. Her views must be heard and given due weight, consistently with her age and maturity, when the Court considers questions of custody, residence, protection, rehabilitation, bail and other measures concerning her welfare. They may also bear upon the exercise of discretion at an appropriate later stage, where the law permits. But they cannot alter the ingredients of the offence or create a defence that POCSO and the BNS do not recognise.

*Marriage does not diminish the protection of the penal law*

20. The governing principle is settled by ***Independent Thought v. Union of India***<sup>11</sup>. The Supreme Court considered Exception 2 to Section 375 IPC as it then stood, which excluded from rape, sexual intercourse by a husband with his wife if she was not below fifteen. The Court read down the exception and confined it to a wife who was eighteen or above. The result was clear: sexual intercourse with a wife below eighteen remained within the penal law, notwithstanding the marriage.

21. The decision militates against the premise underlying the Petitioners' case: that marriage may dilute the protection which the criminal law accords to a girl below eighteen. A marriage ceremony does not move a child into a lesser category of protection.

22. The BNS now places that position in the statutory text. Section 63 fixes eighteen as the age of consent and confines the marital exception to a

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<sup>10</sup> "PCMA"

<sup>11</sup> (2017) 10 SCC 800



wife who is not below eighteen. There is therefore no textual basis for treating a marriage recognised under personal law as reviving an immunity which the present penal law expressly withholds.

*The position after 'Society for Enlightenment and Voluntary Action v. Union of India'*

23. Any remaining doubt is removed by ***Society for Enlightenment and Voluntary Action v. Union of India***<sup>12</sup>. While examining the legal framework governing child marriage, a three-Judge Bench noted that POCSO applies to every person below eighteen and that the BNS retains the same age of consent. It further observed that child marriage directly threatens the principles underlying POCSO and that a man who has sexual intercourse with his minor wife is liable under that enactment.

24. The judgment is equally careful about the limits of that conclusion. It noticed the conflicting views on whether the PCMA overrides personal law, but left that wider question open because it had not been fully argued. The Court thus did not settle the civil status of every child marriage under personal law. It did, however, state the operation of POCSO within such a marriage in unambiguous terms.

25. The distinction drawn here follows the same course. It is unnecessary to decide whether the *nikah* is valid, void or voidable, or what civil consequences may flow from it. Those questions may arise before the appropriate forum. The narrower issue before us admits of a clear answer: the existence of the marriage does not place sexual intercourse with a wife below eighteen beyond POCSO. *Independent Thought* and *Society for Enlightenment* leave no room for a contrary conclusion.



*The decisions relied upon by the Petitioners*

26. *Yunus Khan* must be read in the setting in which it arose. The girl's father had filed a habeas corpus petition alleging her illegal detention. After she was produced before the Court and placed in a protection home, she sought release so that she could live with the person whom she stated she had married. The immediate question before the Court was therefore whether she should be released from the protection home and, if so, to whose custody. In answering that question, however, the Court was required to consider the validity of the nikah under Muslim law and the effect of the Prohibition of Child Marriage Act, 2006.<sup>13</sup>

27. The Court found that the girl had attained puberty and had voluntarily left with and married the man. It held that the marriage was not void under Section 12 of the PCMA, though it remained voidable at her instance under Section 3. The Court also treated the *nikah* as valid under Muslim personal law, but made that conclusion subject to any contrary determination by a competent forum in appropriate proceedings.

28. Read fairly, *Yunus Khan* decides whether, in those circumstances, the girl could be released from the protection home and permitted to reside with the man she claimed as her husband. It does not decide that the marriage immunised sexual intercourse with her from POCSO. No such prosecution was before the Court, and that question did not arise for determination.

29. The same distinction applies to *Gulam Deen* and *Javed*. The former arose from a petition seeking protection of life and liberty; the latter from habeas corpus proceedings concerning a girl kept in a protection home.

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<sup>12</sup> 2024 INSC 790

<sup>13</sup> "PCMA"



Neither case adjudicated a prayer to quash a POCSO prosecution on the ground that a marriage recognised under Muslim personal law had extinguished the offence.

30. Reliance on *Javed* requires an additional caution. On 13<sup>th</sup> January, 2023, while issuing notice in the NCPCR's challenge and observing that an important question of law arose, the Supreme Court directed that, pending further orders, the judgment should not be relied upon as a precedent in any other case.

31. The order dated 19<sup>th</sup> August 2025 does not bear the consequence which the Petitioners seek to draw from it. In *NCPCR v. Gulaam Deen*,<sup>14</sup> the Supreme Court noted that the underlying proceedings were confined to protection of life and liberty and dismissed the Commission's challenge for want of *locus*. The challenge arising from *Javed* was disposed of on the same basis. The Court did not adjudicate whether personal law could displace POCSO.

32. It would therefore be inaccurate to say that the Supreme Court affirmed *Gulam Deen* or *Javed* on the proposition advanced here. A dismissal for want of *locus* neither endorses the reasoning under challenge nor converts it into a declaration of law under Article 141 of the Constitution.

33. *Lajja Devi* calls for closer attention. The Petitioners rely on the Full Bench decision to contend that proceedings for rape may be quashed where a minor girl states that she voluntarily accompanied and married the accused. The decision must, however, be read in the statutory setting in which it was delivered. The Full Bench expressly excluded from the



reference the status of a marriage under Muslim law. More importantly, Section 375 IPC then fixed sixteen as the general age below which consent was immaterial, while the marital exception applied where the wife was above fifteen. Against that backdrop, the Court distinguished between a girl below sixteen, whose consent could not support quashing, and one above sixteen, whose voluntary account could be considered along with the surrounding circumstances.

34. The Full Bench was equally clear that, where intercourse constituted an offence because of the girl's age, neither the marriage nor the personal law of the parties altered the position. Its allowance for the girl's consent to be considered after sixteen followed from the age of consent then fixed by the IPC. That threshold is now eighteen under POCSO and the BNS. Properly understood, *Lajja Devi* therefore supports the governing principle: the legal efficacy of consent follows the age prescribed by the penal statute, not the age at which personal law may recognise capacity to marry.

*The divergent High Court decisions*

35. The High Courts have nevertheless taken differing approaches. In *Fija v. State (NCT of Delhi)*<sup>15</sup>, while considering a petition for protection, this Court referred to the competence of a Muslim girl who had attained puberty to marry under her personal law. The case did not concern a prayer to quash a POCSO prosecution. Those observations cannot be extended into a general rule that sexual intercourse with a minor wife falls outside POCSO. Such a proposition cannot be reconciled with *Independent Thought* or *Society for Enlightenment*.

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<sup>14</sup> Special Leave to Appeal (Crl.) No(s). 10036/2022

<sup>15</sup> 2022 SCC OnLine Del 2527



36. The distinction becomes clearer in *Mohd. Amaan Malik v. State (NCT of Delhi)*<sup>16</sup>. That was a petition for quashing an FIR which included Section 6 POCSO, and the accused advanced substantially the same submission, that the parties were Muslims, the girl had crossed fifteen, and Muslim personal law therefore excluded the operation of POCSO. The Court noticed the conflicting authorities: *Aleem Pasha v. State of Karnataka*<sup>17</sup> and *Khaledur Rahman v. State of Kerala*<sup>18</sup> on one side, and *Fija, Gulam Deen* and *Javed* on the other. It also noticed the Supreme Court's direction that *Javed* should not meanwhile be relied upon as a precedent. The Court did not finally resolve that conflict because, on the allegations before it, the sexual acts preceded the marriage. It did, however, reject the argument that the relationship could be treated as consensual for purposes of quashing, holding that even if consent were assumed, the consent of a minor was of no consequence for the sexual offence. *Amaan Malik* is therefore useful both for identifying the controversy and for the narrower proposition which is directly relevant here: the child's willingness cannot by itself remove an act from POCSO.

37. More recently, in *Hamid Raza v. State (NCT of Delhi)*<sup>19</sup>, this Court reiterated in the context of bail that Muslim personal law cannot override POCSO or the BNS. The civil validity of the claimed marriage was left untouched. That, in the opinion of the Court, keeps the two legal questions in their proper compartments.

38. The Kerala High Court has consistently taken the same view. In

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<sup>16</sup> 2023 SCC OnLine Del 3870

<sup>17</sup> 2022 SCC OnLine Kar 1588

<sup>18</sup> 2022 SCC OnLine Ker 5833

<sup>19</sup> 2025:DHC:8643



*Khaledur Rahman*, it held that a marriage under Muslim personal law is not excluded from POCSO and that, where one party is a minor, the Act applies irrespective of the validity of the marriage. Section 42-A was specifically relied upon.

39. A particularly useful distinction was drawn in *Abdul Khader v. State of Kerala*<sup>20</sup>. The Court observed that a marriage may continue to have recognition between the parties under personal law while a special penal statute nevertheless governs an act committed within that marriage. Where the particular act constitutes an offence under a special enactment, the special law prevails to the extent of the inconsistency.

40. A subsequent decision of the Punjab and Haryana High Court has taken a different view from the broad proposition for which *Gulam Deen* and *Javed* are cited. In *Wahid v. State of Punjab*<sup>21</sup>, while dealing with a seventeen-year-old Muslim girl who claimed to have married after attaining puberty, the Court held that the child-protection statutes cannot be displaced by personal law and relied upon *Independent Thought*.

41. A Division Bench of the Allahabad High Court in *Rubi v. State of U.P.*,<sup>22</sup> decided on 1<sup>st</sup> July, 2026, has also examined the conflict at some length and adopted the view that personal law cannot remove the operation of POCSO where the girl is below eighteen.

42. The view that marriage does not displace POCSO also finds direct support in *Aleem Pasha*. Its facts are strikingly close. The girl was seventeen, was described as the Petitioner's wife, and the case came to be registered after a medical officer discovered during a pregnancy-related visit

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<sup>20</sup> 2024:KER:82312

<sup>21</sup> 2025:PHHC:141175



that she was a minor. The husband invoked Mohammedan law and the rule that puberty, ordinarily presumed at fifteen, determines capacity to marry. The Karnataka High Court rejected that submission in clear terms, holding that POCSO is a special enactment which overrides personal law and fixes eighteen as the relevant age for sexual activity. Significantly, the Court nevertheless granted bail after taking into account the marriage, pregnancy and the need for support. The distinction is instructive. The circumstances of the marriage may bear upon bail, custody or welfare; they do not alter the reach of the substantive offence.

43. These decisions are persuasive. The conclusion, however, does not ultimately depend upon which line of High Court authority is preferred. It follows from the statutory text of POCSO and the BNS, read with the binding pronouncements in *Independent Thought* and *Society for Enlightenment*.

*What is the legal effect of Petitioner No. 2's consent?*

44. Much emphasis has been placed upon the fact that Petitioner No. 2 has never accused Petitioner No. 1 of force, coercion or deceit. We accept, for purposes of the present petition, that this is indeed her consistent account. But absence of force does not mean absence of an offence under POCSO when the sexual act is with a child.

45. The bail order dated 5<sup>th</sup> June 2026 records that there was nothing to suggest a forcible marriage or forcible sexual assault. That circumstance was plainly relevant to bail. It cannot be transported unchanged into the ingredients of the substantive offence. POCSO does not require the prosecution to prove force where the person subjected to the sexual act is

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<sup>22</sup> 2026:AHC:130283-DB



below eighteen.

46. The same applies to family consent. Approval of the two families may explain how the marriage came about; it cannot enlarge the statutory capacity of the child to consent to sexual intercourse.

47. Nor does this conclusion involve treating Petitioner No. 2 as incapable of having views or preferences. The Court must respect her account of her own circumstances. But there is a difference between respecting her present wishes and treating those wishes as a private power to waive a public penal statute. POCSO does not confer such a power upon the child, her parents, or the Court.

48. The statutory threshold of eighteen serves another purpose as well. Questions of consent in relationships involving children are not always reducible to overt physical force. Differences of age, dependence, family expectations, social pressure, pregnancy and economic circumstances may operate in ways which are difficult to reconstruct later. Parliament chose a bright line so that criminal protection does not depend upon a retrospective judicial assessment of whether a particular child was “mature enough”. A court exercising quashing jurisdiction cannot replace that legislative choice with its own.

49. The present case is not a case involving two adolescents separated by a marginal age difference. At the time of the *nikah*, Petitioner No. 2 was sixteen years and three months old; Petitioner No. 1 was nearly twenty-eight. The age difference by itself does not establish guilt, but it is certainly relevant when the Court is asked to exercise an exceptional equitable power to terminate a POCSO prosecution at its inception.

*Recent decisions concerning quashing after marriage*



50. The Court has also considered the decisions in which criminal proceedings under POCSO have been brought to an end because the parties subsequently married or established a family. Those decisions require some care in their application.

51. In *Ramji Lal Bairwa v. State of Rajasthan*,<sup>23</sup> the Supreme Court reiterated that offences under a child-protection statute are not ordinarily private disputes which can be extinguished merely because the victim or her family has arrived at a settlement with the accused. The nature and object of the special statute remain material when the High Court considers quashing.

52. In *K. Dhandapani v. State*<sup>24</sup>, decided on 9<sup>th</sup> May 2022, the Supreme Court interfered with a conviction in the peculiar facts where the parties had thereafter married and established a family. The Court itself expressly directed that the order was not to be treated as a precedent.

53. Likewise, in *K. Kirubakaran v. State of Tamil Nadu*<sup>25</sup>, the Supreme Court, taking into account the subsisting marriage, the wife and infant child, and the consequences which continued incarceration would have upon them, invoked Article 142 to do complete justice. The Court expressly acknowledged that under ordinary law the POCSO proceedings could not be quashed merely on compromise and again stated that the order would not operate as a precedent.

54. Those decisions illustrate that criminal law is administered in real human settings. They do not, however, lay down that a subsisting marriage furnishes an exemption from POCSO. Much less do they hold that the High Court must quash every such prosecution once the child, on attaining or

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<sup>23</sup> 2024 INSC 846

<sup>24</sup> Criminal Appeal No. 796 OF 2022



approaching majority, supports the accused.

*Harmeet Singh Decision*

55. The decision which requires closer consideration is ***Harmeet Singh v. State of GNCTD***<sup>26</sup>, decided by a Coordinate Bench of this Court on 16<sup>th</sup> April, 2026. It also concerned an FIR under Section 64(1) BNS and Section 6 POCSO which arose after doctors discovered, at the time of childbirth, that the woman was below eighteen. She had not complained against the accused and maintained that the relationship and marriage were voluntary.

56. *Harmeet Singh* did not hold that the minor's consent rendered the sexual act lawful. The judgment expressly declined to enter into the legal efficacy of a minor's consent or any *ex post facto* condonation. It proceeded instead upon an exceptional exercise of quashing jurisdiction, introducing the distinction between a *de jure* victim and a *de facto* victim and formulating safeguards for cases where the person whom the law regards as the victim seeks termination of the proceedings.

57. On the facts before that Court, the victim was about seventeen years and two months and the accused about twenty-two when the acts occurred. They had an eight-month-old infant; the Court found that prosecution and possible incarceration of the accused would leave the woman and child without support; and, importantly, the State itself stated that it had no objection to quashing. Those considerations were expressly recorded as decisive.

58. The present case is materially different. Petitioner No. 2 was sixteen years and three months when the marriage was solemnised and Petitioner

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<sup>25</sup> 2025 INSC 1272

<sup>26</sup> 2026:DHC:3142



No. 1 was nearly twenty-eight. There is, tragically, no surviving child whose present welfare or economic support would be jeopardised by the prosecution. More importantly, the petition before us rests squarely upon a much wider legal proposition: the marriage under Muslim personal law itself removes the criminality of the subsequent sexual relationship. That proposition cannot be accepted.

59. *Harmeet Singh* itself cautions that quashing POCSO prosecutions on this ground cannot become routine and specifically requires the Court to examine, amongst other things, the relative ages of the parties, the length of their family life, the presence of children and whether quashing is genuinely demanded by larger considerations of justice. It therefore does not establish a rule that every voluntary relationship culminating in marriage displaces POCSO. Its result rests upon its own exceptional facts.

60. There are also decisions of this Court taking a more restrained approach to quashing. In *Prince Kumar Sharma v. State (NCT of Delhi)*<sup>27</sup>, this Court declined to terminate a POCSO prosecution notwithstanding marriage, cohabitation and the birth of a child, holding that the High Court cannot create a judicial exception for a near-majority consensual relationship where Parliament has fixed eighteen as the threshold.

61. *Prasanjeet Mandal alias Denchu v. State NCT of Delhi*<sup>28</sup> and *Aman Gupta v. State Govt. of NCT of Delhi*<sup>29</sup> apply the same principle: later marriage or the present support of the victim does not, by itself, erase an offence which the statute treats as complete when the sexual act occurred.

62. In the present factual setting, that approach is the more appropriate

<sup>27</sup> 2025:DHC:10080

<sup>28</sup> CRL.M.C. 8123/2025, decided on 17<sup>th</sup> November, 2025 (DHC).



one. To quash the FIR merely because the parties describe themselves as married and Petitioner No. 2 supports Petitioner No. 1 would effectively introduce a marital exception into POCSO for a category of children for whom Parliament has consciously provided none.

63. The FIR cannot be characterised as unauthorised merely because there was no complaint. The submission that neither Petitioner No. 2 nor her family approached the police also does not assist the Petitioners. POCSO intentionally does not make prosecution dependent upon a complaint by the child or her parents. Section 19 places an obligation to report an apprehended or committed offence under the Act; failure to report attracts consequences under Section 21.

64. The information from the hospital therefore cannot be dismissed as gratuitous interference in the Petitioners' family life. Once the doctors became aware that a pregnant patient was below eighteen, the statutory reporting machinery was attracted.

65. Whether the prosecution ultimately proves every ingredient of Section 6 is, of course, another matter. Petitioner No. 2's pregnancy *prima facie* brings at least Section 5(j)(ii) of POCSO into consideration. The precise aggravated circumstance relied upon, and whether it is ultimately proved, are matters for investigation and trial. At the stage of quashing, the Court is concerned only with whether the allegations, taken as they stand, disclose an offence. They plainly do.

#### *Article 21 and Article 25*

66. Articles 21, 25 and 26 do not carry the Petitioners' case any further. The freedom to choose a partner is an important facet of personal liberty,

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<sup>29</sup> CRL.M.C. 1469/2025, decided on 28<sup>th</sup> November, 2025 (DHC).



and the Constitution protects the freedom to profess and practise religion. Neither freedom, however, gives an adult a right to claim immunity from a generally applicable penal law enacted to protect children. Constitutional liberty protects choice; it does not create an exception to POCSO or the BNS.

67. Nor does Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937<sup>30</sup> contain any such immunity. Its non-obstante clause operates against “custom or usage to the contrary” in the matters enumerated therein. It does not purport to repeal or override POCSO or the BNS. POCSO, on the other hand, contains an express overriding provision in Section 42-A.

68. The argument based on personal law also encounters a more elementary difficulty. Even if the *nikah* is assumed to be valid for the purpose of this petition, the BNS itself addresses intercourse within marriage and draws the line at eighteen. The Court would therefore have to disregard the express text of the current penal statute in order to accept the Petitioners’ case. That cannot be done.

69. Put simply, marriage does not advance a child’s age. A person who is sixteen before the ceremony remains sixteen afterwards. For POCSO and Section 63 BNS, that fact is determinative of the legal capacity to consent to the sexual act.

*Application to the present case*

70. Applying these principles, no case for quashing is made out. Petitioner No. 2’s age is not disputed. On the Petitioners’ own showing, she was sixteen years and three months when the *nikah* was solemnised. Sexual relations thereafter are also not disputed; they are affirmatively stated by



Petitioner No. 2 herself, and the pregnancy furnishes further *prima facie* corroboration.

71. The essential premise on which quashing is sought is therefore not that the allegations are inherently impossible, or that the basic ingredients of the offence are absent. It is that Petitioner No. 2 consented and that, being a Muslim above the age of puberty, she could validly marry Petitioner No. 1. Neither circumstance takes the sexual act outside the statutory scheme.

72. The Court expresses no final opinion on whether the marriage is valid, void or voidable or upon any civil consequence which may attach to it under personal law or the PCMA or whether Petitioner No. 1 is ultimately guilty of every offence under investigation. Those questions fall outside the limited scope of the present petition.

73. The conclusion is narrower: a marriage claimed to be valid under Muslim personal law cannot, by reason of that status alone, confer immunity from POCSO or the BNS for sexual intercourse with a wife who was below eighteen at the relevant time. Any other view would create, through judicial decision, an exception which Parliament has expressly excluded.

74. There is also a wider consideration. The POCSO framework would be substantially weakened if an adult could answer a prosecution concerning a girl below eighteen simply by producing a marriage ceremony recognised by personal law. The statutory protection would then depend not upon the age of the child, but upon whether a marriage had been arranged before the sexual relationship was discovered. That would turn the legislation on its head.

75. The law is conscious that individual cases may involve affection

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<sup>30</sup> “Shariat Act”



rather than violence, and relationships rather than predation. But that is precisely why the statutory threshold is expressed in terms of age rather than subjective intention. Courts can respond to individual circumstances through the legal discretion available at the appropriate stage. They cannot respond by redrawing the offence itself.

*Disciplinary proceedings, compensation and the exhumation*

76. The prayers for disciplinary proceedings against the police and for compensation are founded substantially upon the assertion that the FIR itself was illegally registered and that Petitioner No. 1 was falsely implicated. Once that premise is rejected, neither relief can follow merely from registration and investigation of the FIR.

77. We are conscious of the distressing circumstances surrounding the stillbirth and the subsequent exhumation of the child. The order dated 12<sup>th</sup> June, 2026 records that exhumation was directed under Section 196(4) BNSS for DNA profiling and establishment of paternity. The legality and necessity of that particular investigative measure raise a distinct question.

78. Equally, the grief suffered by the Petitioners following the loss of the child cannot be understated. But sympathy for that loss cannot retrospectively render the registration of a cognizable offence unlawful.

*Conclusion*

79. The Court is not unmindful of Petitioner No. 2's position. She says that she chose the marriage, continues to stand by Petitioner No. 1 and does not regard herself as having been wronged by him. Her statement deserves to be heard with seriousness and dignity. But the question before us is not whether the Court believes her when she says that the relationship was voluntary. We may proceed on the footing that it was. The question is



whether her consent, given when she was below eighteen, and the *nikah* said to have preceded the sexual relationship, take the case outside POCSO and the BNS. They do not.

80. POCSO embodies a legislative judgment that, for the purpose of sexual offences, childhood ends at eighteen. That protection is not lost upon marriage; *Independent Thought* holds precisely to the contrary. *Society for Enlightenment* has since reiterated that POCSO applies to sexual intercourse with a minor wife. The current BNS places the same rule in the text of the penal law itself. Personal law cannot be employed to create an exception which each of these legal instruments refuses to recognise.

81. The petition is accordingly dismissed.

82. The prayer for initiation of disciplinary proceedings against the police officials and the prayer for compensation are also declined.

83. It is clarified that the observations in this judgment are confined to the prayer for quashing and shall not be treated as findings on the guilt of Petitioner No. 1. The Trial Court shall consider the matter on the evidence placed before it and in accordance with law, uninfluenced by any observation on factual culpability contained herein.

84. Nothing in this judgment shall affect the order dated 5<sup>th</sup> June, 2026 granting bail to Petitioner No. 1, which shall continue to be governed by its own terms.

85. Pending applications, if any, are disposed of.

**SANJEEV NARULA, J**

**SEPTEMBER 23, 2026**

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