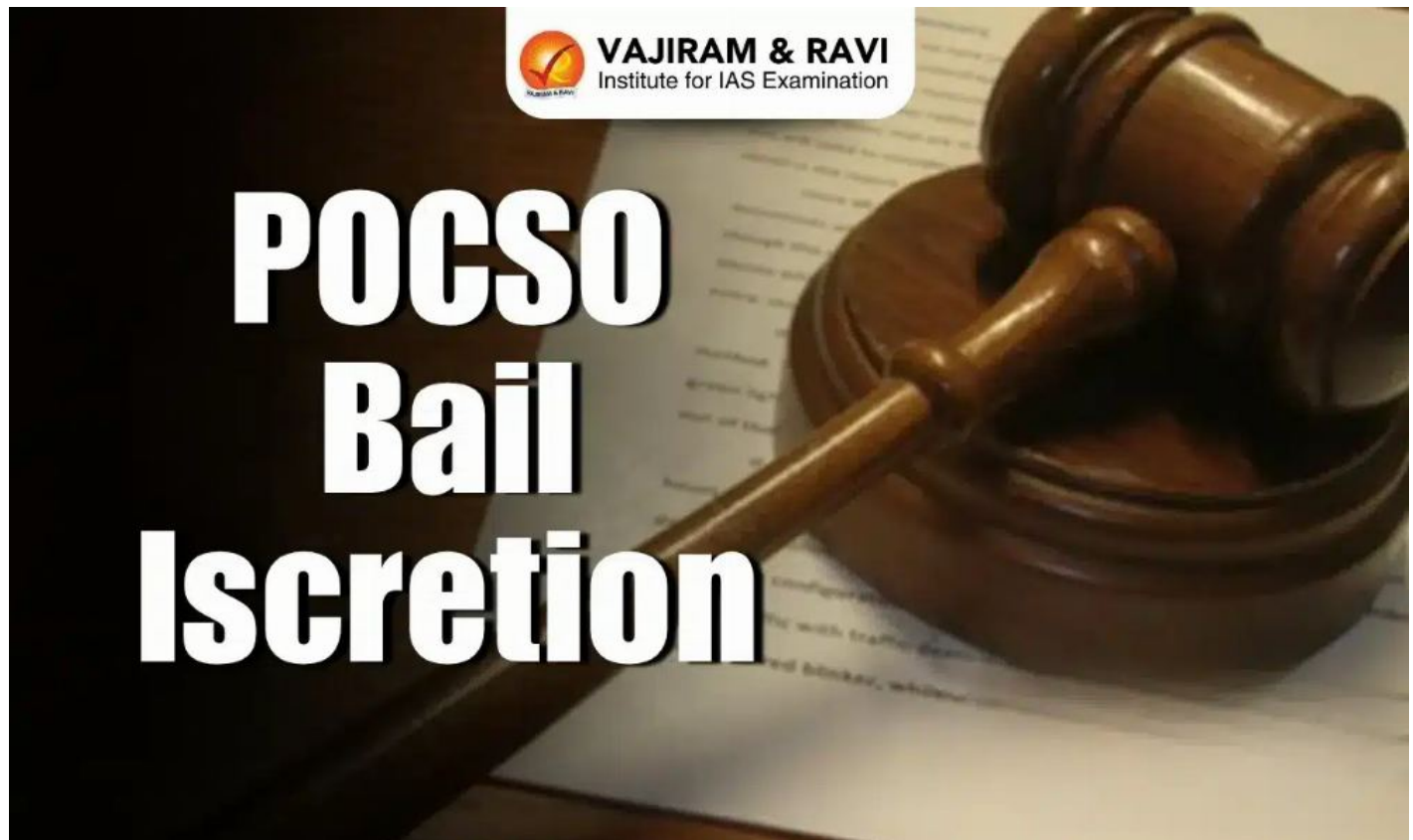


Judicial Discretion in POCSO Bail: Legal Grey Zones and Recent Trends

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POCSO Bail Discretion Latest News

- A special POCSO court in Mumbai recently granted bail to a 40-year-old teacher accused of sexually assaulting a minor, citing consensual relations.
- The order has renewed focus on the complexities of bail under the POCSO Act, which is stricter than standard criminal law.
- Unlike regular cases where the prosecution must prove guilt, in POCSO cases the burden shifts to the accused to prove innocence.
- This reversal makes securing bail—especially in the early stages of investigation—particularly difficult.

POCSO Act

- The Protection of Children from Sexual Offences (POCSO) Act, 2012 is a special law enacted to safeguard **children (individuals below 18 years of age)** from sexual offences.

- It provides a comprehensive legal framework to address sexual abuse, harassment, and exploitation of minors.

Key features of the Act

- **Gender-neutral protection:** Applies to both boys and girls.
- **Wide range of offences:** Covers penetrative and non-penetrative assault, sexual harassment, and pornography involving children.
- **Special courts:** Mandates the establishment of child-friendly Special Courts for speedy trial.
- **Mandatory reporting:** Any person who has knowledge of child sexual abuse is legally required to report it.
- **Presumption of guilt:** The accused must prove innocence, reversing the general legal principle of “innocent until proven guilty.”
- **Confidentiality:** Protects the identity of the child during investigation and trial to avoid further trauma.
- **Support for Victims:** It provides a framework for supporting and rehabilitating victims of sexual offenses.
- **Child-Friendly Procedures:** The act emphasizes child-friendly procedures for recording statements, medical examinations, and court appearances.

Judicial Discretion and Bail in POCSO Cases

- Offences under the **POCSO Act are cognizable and non-bailable**, meaning arrests can occur without a warrant and bail is not guaranteed.
- However, the Act does not lay down specific bail criteria.
- Courts rely on **Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023** (formerly Section 439 CrPC), which considers factors like the gravity of the offence, potential punishment, flight risk, and risk of evidence tampering.
- Over time, courts have introduced additional considerations.
 - In ***Dharmander Singh (2020)***, the Delhi High Court listed factors like the ages of the victim and accused, their age gap, relationship dynamics, coercion, and post-offence conduct—though not binding, they serve as a guide.
 - In ***Deshraj @ Musa vs State of Rajasthan (2024)***, the Supreme Court granted bail to an 18-year-old in a consensual relationship with a 16-year-old, given the minor age gap, time spent in custody, and slow trial progress.
- These cases underscore that bail in POCSO matters ultimately depends on judicial discretion balancing individual liberty with victim protection.

Consent and Legal Grey Zones Under POCSO

- The POCSO Act does not recognise consent from individuals below the age of 18, treating all sexual activity with minors as an offence, regardless of whether it was voluntary.
- This creates a **legal grey area**, particularly in cases involving consensual adolescent relationships that are later criminalised.
- While courts have started considering such nuances during bail hearings—especially when the alleged victim confirms the consensual nature of the relationship in a magistrate’s statement—bail remains difficult in the

early investigation phase.

- Courts often wait for critical evidence and victim testimony before granting relief, leading to prolonged custody for the accused.
- Due to this, Senior Advocate Indira Jaising has urged the Supreme Court to lower the age of consent to 16, citing infringement of adolescent rights.
- However, the Centre opposed this, warning that reducing the age could weaken protections for minors and potentially increase vulnerability to abuse.

Source: IE | NHRC

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