

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 12411 of 2023

An application under Section 439 of the Code of Criminal Procedure, 1973.

Chhabila Nayak @ Chhabi

Petitioner

-versus-

1. *State of Odisha*

2.

3.

Opp. Parties

For Petitioner

:

Mr. Tirth Kumar Sahu, Adv.

For Opp. Party

:

Mr. D.K. Mishra, A.G.A.
(for O.P. No.1)

CORAM:

HONOURABLE MISS JUSTICE SAVITRI RATHO

JUDGMENT

16th January 2024

Savitri Ratho, J

This is an application under Section 439 of Cr.P.C. for grant of bail to the petitioner in connection with Khordha Sadar P.S. Case No. 9 of 2023 corresponding to T.R. Case No. 267 of 2023 arising out of G.R. Case No. 49 of 2023 pending in the Court of the learned Special Judge (POCSO) -cum- Addl. Sessions Judge, at Bhubaneswar of Khordha under Sections 363, 366, 294, 506, 376(2)(n) of the Indian

Penal Code (in short “*IPC*”) read with Section 6 of the Protection of Children from Sexual Offences Act (in short “*POCSO Act.*”)

2. The prayer for bail of the petitioner has been rejected vide order dated 10.10.2023 by the learned Special Judge (POCSO) -cum- Addl. Sessions Judge, Bhubaneswar on the ground that it was a successive bail application without any new ground and as the case was at the stage of trial, there was likelihood of the petitioner absconding and intimidating prosecution witnesses.

3. The prosecution allegation in brief is that the petitioner who is the grandfather of the minor victim had called her up on 12.01.2023 and asked her to come to Bhubaneswar with her Aadhaar Card and PAN Card so that she could stay with him and he would look after her studies. She had been instructed not to inform her mother (the informant). The petitioner took her in a car from her village and brought her to his house in Salia Sahi where he was living with another woman. During her stay there, he did not allow her to speak with her mother. In a drunken condition, he would abuse her in bad language and tell that he would keep her and beget a child through her. He had sexual intercourse with her and if she protested, he would beat her.

4. Mr. T.K. Sahu, learned counsel for the petitioner submitted that false allegations have been made against the petitioner who suffers from 70% physical disability (his left forearm has been amputated) and the informant (mother of the victim) is in the habit of making such false allegations and similar type of cases have been registered against other persons. He has submitted that on the same day i.e. 13.01.2023, the victim had handed over a complaint to the O.I.C., Sadar Police Station Khurda against the informant. As the statement of the victim has not been recorded under Section 164 of Cr.P.C., no sanctity can be attached to her statement recorded under Section 161 of Cr.P.C.

5. Mr. D.K. Mishra, learned Addl. Government Advocate for the State opposed the prayer for bail. He placed the statement of the informant and victim recorded under Section 161 of Cr.P.C. and submitted that a case under Sections 363, 366, 294, 506, 376(2)(n) of IPC read with Section 6 of POCSO Act is clearly made out against the petitioner and non-recording the statement of the victim under Section 164 of Cr.P.C. does not entitle the petitioner to be released on bail. As regards the submission that the allegations are improbable as one the fore arms of the petitioner has been amputated, he has submitted in view of the age of the petitioner and the victim, the submission is bereft of

merit. He finally submitted that as the trial has started, if the petitioner is released on bail, he is likely to influence the informant and the victim who are his daughter in law and grand-daughter respectively and tamper with the prosecution evidence.

6. In view of the nature of allegations against the petitioner who is the grandfather of the victim and after going through the statement of the victim recorded under Section 161 of the Cr.P.C., I was about to dismiss the bail application. Then, Mr. T.K. Sahu learned counsel for the petitioner emphatically submitted that it is the settled position of law that notice has to be issued to the informant before disposing of an application under Section 439 of the Cr.P.C., where one of the offences alleged against the accused – petitioner is under the POCSO Act and that he wanted to argue further on merit, even if it was held that such notice is not mandatory.

7. I have heard learned counsel for the parties on the following point-

“If it is mandatory to issue notice to the victim / informant in an application filed under Section 439 of the Cr.P.C., where one of the offences alleged against the accused / petitioner was an offence under the POCSO Act.”

8. Mr. T.K. Sahu, learned counsel for the petitioner submitted that as the petitioner is alleged to have committed an offence under the POCSO Act, notice is required to be issued to the victim and / or the informant as per the provisions of Rule 4 (13) and Rule 4 (15) of the Protection of Children from Sexual Offences Act, 2020 and submitted that the decision of the Bombay High Court in the case of *Arjun Kishanrao Malge vs. The State Of Maharashtra* reported in *2021 SCC Online 551* holding that notice to the informant / victim is mandatory, clinches the issue.

9. Mr. D.K. Mishra, learned Addl. Government Advocate for the State opposed the submission of the learned counsel for the petitioner and submitted that where one of the offences alleged against the accused – petitioner is under the POCSO Act, the informant / victim is required to be heard before the prayer for bail is allowed, for which prior notice is required to be issued to him / her / them. But requirement of issue notice to the informant / victim, cannot be held to be mandatory in all such bail applications as there may be cases where the Court finds that the bail application being bereft of merit is liable to be dismissed without hearing the informant / victim. The victim/informant is not required to be heard before dismissing a bail application.

10. In order to consider the submission of the learned counsel regarding necessity of issue of notice before hearing a bail application where one of the offences alleged against the accused is under POCSO Act, it is necessary to examine the relevant statutory provisions.

11. Section 439 of the Cr.P.C. has been amended with effect from 21-4-2018 by the Criminal Law (Amendment) Act, 2018 (22 of 2018) making it mandatory for the informant or any person authorised by him to be present at the time of hearing of the application for bail filed by the accused with respect to certain offences. Second proviso to Section 439 of the Cr.P.C. was added, which states as under:-

“Provided further that the High Court or the Court of Session shall, before granting bail to person who is accused of an offence triable under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Penal Code, 1860, give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.”

12. Similarly, sub-section (1A) of Section 439 of the Cr.P.C. was also inserted by way of amendment with effect from 21-4-2018, which states as under:-

“(1A) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Penal Code, 1860.”

13. A careful perusal of the aforesaid provision - sub-section (1A) of Section 439 of the Cr.P.C., would show that the presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail of a petitioner/ applicant accused of committing offences under section 376 (3) or section 376AB or section 376DA or section 376DB of the IPC. The three provisions are extracted below :

“Section – 376 *Punishment for rape*

(1)xxx

(2) xxx

(3) *Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:*

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.”

“Section - 376AB. Punishment for rape on woman under twelve years of age.—Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.”

“Section 376 DA. Punishment for gang rape on woman under sixteen years of age.—Where a woman under sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.”

“Section 376 DB. Punishment for gang rape on woman under twelve years of age.—*Where a woman under twelve years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death:*

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim.

Provided further that any fine imposed under this section shall be paid to the victim.”

14. Section 376 (3) of the IPC provides for punishment for rape where the victim is under sixteen years of age. Section - 376 AB provides for punishment for rape where the victim is aged under twelve years. Section 376 DA provides for punishment for gang rape where the victim is under sixteen years twelve years and Section 376 DB provides for punishment for gang rape where the victim is under

twelve years. These three provisions deal with punishment where the child is aged below sixteen years.

15. The POCSO Act makes special provision for sexual offences perpetrated against children. Section 2(d) of the POCSO Act defines “*child*” which means any person below the age of eighteen years. By virtue of Section 29 of the POCSO Act, burden of proof is reversed in respect of offence under Sections, 3, 5, 7 and 9, and there is a presumption of commission of offence unless the contrary is proved. Section 3 of the POCSO Act defines penetrative sexual assault and Section 4 provides punishment for penetrative sexual assault. Section 5 defines aggravated penetrative sexual assault and Section 6 provides punishment for aggravated penetrative sexual assault. Similarly, Section 7 defines sexual assault and Section 8 provides punishment for sexual assault. Section 9 defines aggravated sexual assault and Section 10 provides punishment for aggravated sexual assault.

16. Sexual offences committed against children are punishable under different provisions of the IPC, but they are also punishable under the POCSO Act. In the POCSO Act, Section 42, has been introduced with effect from 3-2-2013 by Act 13 of 2013 and has

substituted the earlier provision. It has been amended subsequently and provides for alternate punishment where an act or omission constitutes an offence punishable under this Act and also under Sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, 376E or Section 509 of the IPCs or Section 67B of the Information Technology Act, 2000 (21 of 2000). The offences - 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB and the offences 376E, section 509 of the Indian Penal Code were added by subsequent amendments. The provision is extracted below :

“42. Alternate punishment.—Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 2 [376A, 376AB, 376B, 376C, 376D, 376DA, 376DB], 3 [376E, section 509 of the Indian Penal Code or section 67B of the Information Technology Act, 2000 (21 of 2000)], then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.”

17. Section 39 of the POCSO Act provides for preparation of guidelines by the State Government for the child to take assistance of NGOs, professionals and experts, etc. during pre trial and trial stage and Section 40 of the POCSO Act confers a right upon a child to take assistance of a legal practitioner. Both the provisions are extracted below:-

“Section 39. Guidelines for child to take assistance of experts, etc. - Subject to such rules as may be made in this behalf, the State Government shall prepare guidelines for use of nongovernmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child.

Section-40. Right of child to take assistance of legal practitioner.- Subject to the proviso to section 301 of the Code of Criminal Procedure, 1973 (2 of 1974) the family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under this Act:

Provided that if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them.”

18. From a reading of Section 39 and 40 of the POCSO Act, it is apparent that while Section – 39 requires the State Government to frame guidelines for association of experts and professionals during pre-trial and trial stage to assist the child , Section 40 of the POSCO Act entitles the child to take assistance of a legal practitioner. Section 40 provides that the family or the guardian of the child shall be entitled to the assistance of a legal counsel "of their choice" for any offence under this Act, and as per the proviso, if the family or the guardian of the child are unable to afford a legal counsel "the Legal Services Authority" shall provide a lawyer to them. Such mandate in Section 40 is made procedurally effective by framing of Rule 4(13), 4(14) and 4(15) of the POSCO Rules which are extracted below:

Rule 4 (13), Rule 4 (14) and Rule 4 (15) of the Protection of Children from Sexual Offences, Rules 2020 are extracted below:

“Rule 4 . Procedure regarding Protection of Children from Sexual Offences.

- | | |
|------|----|
| “(1) | xx |
| (2) | xx |
| (3) | xx |
| (4) | xx |

(5) xx

(6) xx

(7) xx

(8) xx

(9) xx

(10) xx

(11) xx

(12) xx

(13). *It shall be the responsibility of the SJPU, or the local police to keep the child and child's parent or guardian or other person in whom the child has trust and confidence, and where a support person has been assigned, such person, informed about the developments, including the arrest of the accused, applications filed and other court proceedings.*

(14) *SJPU or the local police shall also inform the child and child's parents or guardian or other person in whom the child has trust and confidence about their entitlements and services available to them under the Act or any other law for the time being applicable as per **Form-A**. It shall also complete the Preliminary Assessment Report in **Form B** within 24 hours of the registration of the First Information Report and submit it to the CWC.*

(15) *The information to be provided by the SJPU, local police, or support person, to the child and child's parents or guardian or other person in whom the child has trust and confidence, includes but is not limited to the following:-*

- (i) the availability of public and private emergency and crisis services;*
- (ii) the procedural steps involved in a criminal prosecution;*
- (iii) the availability of victim's compensation benefits;*
- (iv) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;*
- (v) the arrest of a suspected offender;*
- (vi) the filing of charges against a suspected offender;*
- (vii) the schedule of court proceedings that the child is either required to attend or is entitled to attend;*
- (viii) the bail, release or detention status of an offender or suspected offender;*
- (ix) the rendering of a verdict after trial; and*
- (x) the sentence imposed on an offender.”*

19. Sub-rule (13) provides that it shall be the responsibility of the SJPU, or the local police to keep the child and child's parent or guardian etc., informed about the developments, including the arrest of the accused, applications filed and other court proceedings. Sub-rule (14) provides that information in relation to the services available to them under the Act or any other law for time being in force as per Form-A, be provided for, as also to complete the 'Preliminary Assessment Report' in Form B, within 24 hours of the registration of the First Information Report and submit it to the Child Welfare

Committee. Sub-rule (15) of Rule 4 postulates information to be provided by the SJPU, local police, or support person etc to the child and his / her parents or guardians and which includes information described under Clause (i) to (x) ; the procedural steps involved in a criminal prosecution; the availability of victim's compensation benefits; the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it does not interfere with the investigation; the arrest of a suspected offender; the filing of charges against a suspected offender; the schedule of court proceedings that the child is either required to attend or is entitled to attend; the bail, release or detention status of an offender or suspected offender; rendering of a verdict after trial; and the sentence imposed on an offender.

20. Under Section 439 (1A) incorporated in the Cr.P.C. with effect from 21.04.2018, the presence of the informant or any person authorised by him is obligatory at the time of hearing of the application for bail to the person accused of offence under Section 376(3) or Section 376AB or Section 376DA or Section 376DB of the IPC. Most of these offences form part of Section 42 of the POCSO Act. But none of the offences under the POCSO Act have been

included in Section 439(1A) of the Cr.P.C. There is no analogous provision in the POCSO Act. Sub-rule (15) of Rule 4 of the Protection of Children from Sexual Offences Rules, 2020 however provides for submission of information to the victim.

21. In *Arjun Kishanrao* (supra) the Bombay High Court has held as follows :

“20. Keeping in view the protection of the children and the statutory scheme conceived under the POCSO Act, it is necessary to issue certain directions so that the legislative intent and the purpose are actually fructified at the ground level and it becomes possible to bridge the gap between the legislation remaining a mere parchment or blueprint of social change and its practice or implementation in true essence and spirit is achieved.”

21. We are thus of the clear opinion that the POCSO Act read with Rules 4(13) and 4(15) of the POCSO Rules recognize a statutory entitlement to the assistance of and representation by legal counsel for the family or the guardian of the child and entitlement to be present and to participate in proceedings in accordance with the said provision. As a necessary corollary, there is also an entitlement of such persons to be made aware of the filing of applications and the hearings scheduled on such

applications at the various stages of the proceedings. We are accordingly inclined to dispose of the petition with the following directions:-

(i) Notwithstanding the duty of the SJPU to intimate the child's family or guardian or the legal counsel under Rule 4 of the POCSO Rules:-

a). where an application is made before the Court on behalf of the prosecution, it shall be the duty of the office of the public prosecutor to issue notice of hearing of such application to the child's family or as the case may be, the guardian, and where a legal counsel on behalf of the child is already on record, to such legal counsel, along with all relevant documents and the record necessary for effective participation in the proceedings;

b). when an application is made before the Court on behalf of the accused, it shall be the duty of the accused to issue notice of hearing of such application to the child's family or as the case may be, the guardian, and where a legal counsel on behalf of the child is already on record, to such legal counsel, along with all relevant documents and the record necessary for effective participation in the proceedings.

(ii) When an application is made on behalf of the prosecution, it shall be the duty of the Police Officer to confirm to the relevant Court that service of such

application alongwith all relevant documents and the record necessary for effective participation in the proceedings, and the notice of hearing has been undertaken and completed along with proof of service.

(iii) In the event, it has not been possible to serve the child's family, guardian or legal counsel, it shall be the duty of the SJPU to inform the reasons in writing to the relevant court.

(iv) The appropriate Court, before proceeding to hear the application, shall ascertain the status of service of notice, and if it is found that notice has not been issued, the Court may make such reasoned order as it deems fit to secure the ends of justice, taking into account any emergent circumstances that warrant dealing with the application in the absence of the child's family or guardian or legal counsel.

(v) In the event despite issuance of notice, the child's family, guardian or legal counsel, does not attend the hearing, the Court may proceed further without the presence of such noticee, or issue a fresh notice, as the Court may deem fit and proper, considering the interest of justice.

(vi) When the proceedings under the Act would also relate to an offence against Sections 376(3), 376-AB, 376-DA or 376-DB of the Indian Penal Code, the notice to the victim shall be issued under Section 439(1-A) read with Rule 4(13) and 4(15).

(vii) This order shall be brought to the notice of all the Sessions Judges and Special Court Judges in the State of Maharashtra.

22. After the 2018 amendment of Section 439 of the Cr.P.C., the Delhi High Court had issued 'Practice Directions' on 24th September, 2019 to ensure compliance of the amendment and had directed as under:

“In order to ensure better and effective compliance of the above provisions, Hon'ble the Chief Justice has been pleased to direct as under:-

(a) Before granting bail to a person who is accused of an offence triable under sub-Section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code, the High Court or the Court of Session shall give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application; and

(b) The Courts shall ensure that the Investigating Officer has, in writing as per Annexure A, communicated to the informant or any person authorized by her that her presence is obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code.

Annexure A shall be filed by the I.O. along with the Reply / Status Report to such bail application and the Courts shall make all endeavour to ensure presence of the informant or any person authorized by her.

In the case of **Miss G (Minor) v. State of NCT of Delhi** : **2020 SCC OnLine Del 629 : (2020) 270 DLT 516** : a learned Single Judge of the Delhi High Court has referred to the provisions of POCSO Act and Cr.P.C. and the Practice Directions dated 24th September, 2019 of the Court and the decision of the Division Bench of that Court in the case of **Reena Jha v. Union of India (W.P. (C) No. 5011/2017)** and observed that on 27th January, 2020 the Division Bench had clarified that the Practice Directions dated 24th September, 2019 would mutatis mutandis apply to offences under the POCSO Act as well. She has observed that non issuance of notice to the complainant / victim is not merely a procedural lapse, but contrary to the unequivocal legislative mandate and issued a number of directions. The relevant portion of the judgment is extracted below :

“23. Accordingly, in order to ensure effective implementation of the 2018 amendment to the Cr. PC., and further to the practice directions, as also the orders passed

by the learned Division Bench of this Court in **Reena Jha Vs. UOI** (supra) the following directions are issued:

a) Whenever an accused who is charged under Sections 376(3), 376-AB, 376-DA or 376-DB of the IPC or the provisions of the POCSO Act, moves an application for regular bail or interim bail, notice shall be issued to the IO as also any counsel on record for the victim/complainant/informant;

b) The IO upon receipt of the bail application and/or the notice of such application, shall immediately issue notice to the victim/complainant/informant in prescribed format as per 'Annexure A' of the Practice Directions. The Practice Directions dated 24th September, 2019 along with 'Annexure A' are appended to this order for ready reference.

c) The service of notice shall be certified by the SHO of the local police station by signing Annexure A at the prescribed place.

d) The duly completed Annexure A shall be filed along with the reply/ status report filed by the IO in respect of the bail application and shall be presented to the Court.

e) If the IO cannot trace the complainant/victim/informant, the reasons for the same shall be mentioned in the status report. Further, if there is any specific reason for non-

appearance of the complainant/victim/informant, the same shall be recorded and placed before the Court.

f) In case the complainant/victim/informant has not been traced, the IO shall try to ascertain the whereabouts of the complainant/victim/informant and place the same before the Court.

g) The Court, before proceeding to hear the bail application would ascertain the service of notice, and if no notice has been served, either through the IO or the counsel on record, as a secondary safeguard, issue summons to the complainant/victim/informant.

h) Once the victim/complainant/informant appears before the Court, and if needed, adequate representation shall be ensured for the victim/complainant/informant either through own counsel or through a legal service authority counsel.

i) All the relevant documents required for the victim/complainant/informant to effectively represent the case for opposing the bail shall be provided.

j) In every bail order, service of notice or reasons for non-service or non-hearing of the complainant/victim/informant shall be specifically recorded before proceeding to pass orders.

k) If the complainant/victim/informant does not appear despite service of notice, bail can be considered by the Court, in accordance with law.

l) In case interim bail is sought for an emergency such as death in family or a medical emergency, and awaiting notice to the complainant/victim/informant appears non-feasible, in a rare case, reasons for the same shall first be recorded in the order.”

23. From a careful perusal of the provisions and decisions referred to above, it can be inferred that even in the absence of a specific provision in the POCSO Act, the victim/informant or guardian of the victim should be given a chance to oppose a prayer for bail of the accused. The object of the POCSO Act and the POCSO Rules, can be better achieved if prior notice is issued to the victim / informant / guardian of the victim at all stages which includes applications under Section - 439 Cr.P.C.

24. But as far as bail applications are concerned, I am of the opinion that in applications under Section - 439 of the Cr.P.C., involving offences under the POCSO Act, where the Court is of the opinion that the accused- applicant does not deserve to be released on bail and dismisses the prayer for bail, there is no necessity to hear the

informant / victim or any person authorised by him / her before doing so. In other words, where the Court is not inclined to allow the prayer for bail, issue of notice to the informant / victim is not mandatory as no prejudice could possibly be caused to the victim, if the prayer for bail is dismissed. But prayer for bail should not be allowed without hearing the objection of the informant / victim or any person authorised by him / her. This would be in consonance with the object of Section 40 of POCSO Act and Rule 4(13) and 4(15) of POCSO Rules and the spirit of Section – 439 (1A) Cr.P.C.

25. It should therefore be left to the discretion of the Court hearing the application under Section 439 of the Cr.P.C. whether notice should be issued to the informant / victim or any person authorised by him / her before disposal of the bail application. It is also necessary to observe that if despite issuance of notice, if the informant / parent or guardian of the victim does not attend the hearing or does not appear through counsel, the Court may issue fresh notice or proceed further without the presence of the informant / victim or their representative, as the Court may deem fit and proper in the facts and circumstances of the case.

26. Therefore in my considered view, prayer for bail of an accused / petitioner under Section – 439 of the Cr.P.C. accused of committing offences under the POCSO Act can be rejected without issuing notice to the victim / informant but the victim / informant or guardian of the victim has to be necessarily given a chance of hearing before an application for bail is allowed.

27. I would be failing in my duty if I do not mention that till date that in this Court, in applications under Section – 439 Cr.P.C., notice is being issued to the informant / victim in cases involving offences mentioned in Section – 439 (1A) Cr.P.C. or under the POCSO Act, in the manner directed by the Court hearing the matter. The contents of the notice and the manner of service therefore varies. But perhaps it would be convenient for all concerned if an uniform format or procedure is adopted for issue of notice.

28. The BLAPL be listed before the assigned Bench for hearing on merit.

Signature Not Verified

Digitally Signed
Signed by: SUKANTA KUMAR BEHERA
Designation: Senior Stenographer
Reason: Authentication
Location: Orissa High Court, Cuttack
Date: 02-May-2024 21:25:00



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(Savitri Ratho, J)

*Orissa High Court, Cuttack.
The 16th day of January , 2024.
S.K. Behera, Senior Stenographer.*