



2026:AHC:204121

A.F.R.**HIGH COURT OF JUDICATURE AT ALLAHABAD****CRIMINAL MISC. ANTICIPATORY BAIL CANCELLATION
APPLICATION No. - 45 of 2026**

Veer Singh

.....Applicant(s)

Versus

State Of U.P. And 2 Others

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Kanchan Chaudhary
Counsel for Opposite Party(s)	:	G.A., Neeraj Tripathi

Court No. - 72**HON'BLE VIVEK KUMAR SINGH, J.**

1. Rejoinder affidavit filed today is taken on record. Pleadings have been exchanged between the parties.
2. Heard Ms. Kanchan Chaudhary, learned counsel for the applicant-informant, Sri Pankaj Kumar Tiwari, Advocate holding brief of Sri Neeraj Tripathi, learned counsel for the accused-opposite party nos. 2 and 3 (accused), learned A.G.A. for the State and perused the record.
3. The present anticipatory bail cancellation application has been filed by the applicant to cancel the anticipatory bail granted to opposite party nos. 2 and 3, vide order dated 17.01.2026, passed by learned Special Judge (POCSO Act), Bulandshahar, in Anticipatory Bail Application No. 98 of 2026, arising out of Case Crime No. 45 of 2023, under Sections 74, 115(2), 351(1), 352 of B.N.S. and under Section 7/8 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "POCSO Act"), P.S. Anoop Shahar, District Bulandshahar.
4. The succinct facts of the case are that a First Information Report was lodged by the first informant (applicant) on 06.02.2023, against the opposite party nos. 2 and 3 (accused), alleging therein that a sexual assault upon the minor victim was made by them. The police after investigation submitted final report in this case. Thereafter, the first

informant filed a protest petition which was allowed by the learned Special Judge (POCSO Act), Bulandshahar, vide order dated 14.02.2025. The case was treated as a complaint case. The informant was directed to produce evidence under Section 200 and 202 of Cr.P.C. (Section 223 B.N.S.S. and 225 B.N.S.S.) The informant produced witnesses under Section 223 of B.N.S.S. and 225 of B.N.S.S. The learned Special Judge (POCSO Act), Bulandshahar, after considering the material on record, summoned the opposite party nos. 2 and 3 (accused), to face trial under Section 74, 115(2), 351(1), 352 of B.N.S. and Section 7/8 of POCSO Act, vide order dated 15.10.2025. As soon as the opposite party nos. 2 and 3 (accused), came to know about their summoning, they filed an anticipatory bail application before the court concerned on 05.01.2026 and the same was allowed by the learned Special Judge (POCSO Act), Bulandshahar, vide order dated 17.01.2026. The order reflects that no notice to the informant/victim was ever issued by the learned Special Judge (POCSO Act), Bulandshahar, before granting bail to the accused persons/opposite party nos. 2 and 3. There is nothing on record to suggest that the learned trial court issued notice to the victim or her natural guardian/informant nor afforded them any opportunity of hearing, prior to passing the order granting anticipatory bail.

5. Aggrieved by the complete denial of the statutory right of the audience, the informant (applicant) has approached this Court seeking cancellation of the anticipatory bail order dated 17.01.2026, on the ground of fundamental procedural illegality and violation of statutory mandates under the POCSO Act and the Code of Criminal Procedure/B.N.S.S.

6. Learned counsel for the applicant/informant/complainant, submitted that Section 40 of the POCSO Act read with Rule 4(13), 4(14), 4(15) of the POCSO Rules, 2020, make it mandatory to issue notice and provide a fair hearing to the victim/informant at every stage of proceedings including bail and anticipatory bail application. Further, submission was made that the learned trial court acted in flagrant violations of principles of natural justice and statutory mandate by deciding anticipatory bail application behind the back of the victim or the informant. Such procedural infirmity goes to the root of the jurisdiction and renders the orders illegal and unsustainable in law. Learned Additional Government

Advocate also supported the prayer of the victim, submitting that the service of notice upon the victim/informant is mandatory in offence against minors and sexual offences and the learned trial court ought not to have proceeded without ensuring service of notice, therefore, anticipatory bail order dated 17.01.2026 should be set-aside by this Court.

7. Learned counsel for the opposite party nos. 2 and 3 (accused), vehemently resisted the application, argued that once bail/anticipatory bail is granted, it should not be cancelled lightly unless there are allegations of misuse of liberty, tampering with evidence or threatening the witnesses. The failure to issue notice was an omission on the part of the Court/State, for which the accused persons should not be penalized.

8. I have heard rival submissions of the parties and perused the record as well as the statutory provisions and authoritative judicial pronouncements on this issue.

9. A primary question before this Court is:

(i) Whether an order granting anticipatory bail in an offence under the POCSO Act, passed without notice or opportunity of hearing to the victim/informant, in violation of statutory mandates, is sustainable in law or liable to be cancelled/set aside ?

10. Under Rule 4(13), 4(14) and 4(15) of the Protection of Children from Sexual Offences Rules, 2020, (hereinafter referred to as "POCSO Rules, 2020") as well as judicial guidelines issued by the Hon'ble Apex Court, the Special Court is under a strict legal obligations to inform the victim/guardian about any application filed by the accused, including bail application and anticipatory bail application, and to ensure their representation/hearing.

11. The POCSO Act, 2012 (as amended from time to time) was enacted with the object "to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for speedy trial of such offences and for matters connected therewith or incidental thereto".

12. Rule 4(13), 4(14) and (15) of the POCSO Rules, 2020, cast responsibility upon the local police/SJPU to provide information about the status of investigations, developments and schedule of court proceedings and bail applications, and other entitlements and services to the child (**In this judgement "child" shall include child and child's parents/guardian/any other person in whom the child has confidence/support person**). The provisions are being extracted hereinunder for ease of reference:

"4. Procedure regarding care and protection of child. -

(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**.

(emphasis supplied)

"4(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;***

(emphasis supplied)

(ix) the rendering of a verdict after trial; and

(x) the sentence imposed on an offender."

13. Section 40 of the POCSO Act, provides right to the child to take assistance of legal practitioner. Section 40 of the POCSO Act reads as under:

*"40. **Right of child to take assistance of legal practitioner.**- Subject to the proviso to section 301 of the Code of Criminal Procedure, 1973 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."

Thus, Section 40 of the POCSO Act while giving right of legal assistance to the family or guardian of the child, also provides that if they are unable to afford a counsel, the Legal Services Authority shall provide a lawyer to them.

Under Section 45 of the POCSO Act, Protection of Children from Sexual Offences Rules, 2012 were framed, which came into force on 14th November, 2012. Rule 4 of the Rules provides care and protection to the

victim. Sub-rule (12) of Rule 4 of the Rules provides that the information be provided by the State Juvenile Police Unit (SJPU), local police, or support person, to the child and his parents or guardian or other person, in whom the child has trust and confidence. Rule 4(12)(viii) provides that the information be also provided to the child/his parents or guardian or other person in relation to the bail, release or detention status of an offender or suspected offender. Rule 4(12) is being reproduced as under:

"4. Care and Protection.-

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

(viii) the bail, release or detention status of an offender or suspected offender."

Thus, the aforesaid provision clearly provides that the information of bail be given to the complainant/informant/victim or other person in whom the child has trust and confidence. In such circumstances, the arguments advanced by the learned counsel for the applicant has no legs to stand."

14. Rule 7 of the POCSO Rules, 2020, provides the procedure and authorities responsible for providing free legal aid to the child:

"Rule 7. Legal aid and assistance. - (1) The CWC shall make a recommendation to District Legal Services Authority (hereafter referred to as "DLSA") for legal aid and assistance.

(2) The legal aid and assistance shall be provided to the child in accordance with the provisions of the Legal Services Authorities Act,

1987 (39 of 1987)."

15. The Hon'ble Apex Court in the case of **Jagjeet Singh and Others vs. Ashish Mishra @ Monu and Another, (2022) 9 SCC 321**, re-affirmed the expensive rights of a victim in criminal proceedings. The Apex Court explicitly held that a victim has unbridled statutory rights to participate in the proceedings from the stage of investigation till the culmination of trial including bail herein. The relevant paragraphs of **Jagjeet Singh (Supra)** are quoted hereinbelow:

23. A 'victim' within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a 'victim' has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that 'victim' and 'complainant/informant' are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a 'victim', for even a stranger to the act of crime can be an 'informant', and similarly, a 'victim' need not be the complainant or informant of a felony.

24. The above stated enunciations are not to be conflated with certain statutory provisions, such as those present in Special Acts like the Scheduled Cast and Scheduled Tribes (Prevention of Atrocities) Act, 1989, where there is a legal obligation to hear the victim at the time of granting bail. Instead, what must be taken note of is that:

24.1. First, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged.

24.2. Second, where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting

on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.

25. Adverting to the case at hand, we are constrained to express our disappointment with the manner in which the High Court has failed to acknowledge the right of the victims. It is worth mentioning that, the complainant in FIR No. 219 of 2021, as well as the present Appellants, are close relatives of the farmers who have lost their lives in the incident dated 03.10.2021. The specific stance taken by learned Senior Counsel for the Appellants that the Counsel for the 'victims' had got disconnected from the online proceedings and could not make effective submissions before the High Court has not been controverted by the Respondents. Thereafter, an application seeking a rehearing on the ground that the 'victims' could not participate in the proceedings was also moved but it appears that the same was not considered by the High Court while granting bail to the respondent-Accused.

26. We, therefore, answer question (A) in the affirmative, and hold that in the present case, the 'victims' have been denied a fair and effective hearing at the time of granting bail to the Respondent- Accused.

16. Needless to say that the anticipatory bail application shall be decided on merits, only after giving the adequate opportunity of hearing to the victim or his/her guardian. If the victim is unable to engage the services of a private counsel, it shall be obligatory upon the Court to provide him/her a legal aid counsel with adequate experience in the criminal law at the State expenses.

17. This Court has sought an explanation on 11.09.2026 from the court concerned as to whether any notice was issued by the court concerned before passing the order dated 17.01.2026 or any opportunity of hearing was provided to the victim/informant.

18. In response of the order dated 11.09.2026, passed by this Court, learned Special Judge (POCSO Act), Bulandshahar, sent a reply dated 22.09.2026, wherein it is admitted that no notice was issued by the court concerned before passing the final order of anticipatory bail dated

17.01.2026. It is further mentioned in the reply dated 22.09.2026, that the concerned police officer had already informed the informant in respect of pendency of bail applications. A copy of notice allegedly sent by the concerned police station has been appended alongwith the reply dated 22.09.2026. The notice reflects that it does not contain any signature of the informant or the victim. It has been mentioned in the notice dated 16.01.2026, that the informant has been informed on telephone. Nothing is mentioned in the notice dated 16.01.2026, as to who received the call or how the notice was served upon the informant. Whether a verbal information was given to the informant or the notice was sent through whatsapp. On this issue, the notice is silent. It appears that the informant was not duly informed by the police authority in respect of pendency of anticipatory bail application of the opposite party nos. 2 and 3 (accused). Admittedly, the concerned court did not issue any notice to the informant/victim prior to hearing of anticipatory bail application on 17.01.2026.

19. Learned counsel for the opposite party nos. 2 and 3 (accused) argued that the bail cannot be cancelled without proof of post bail misconduct.

20. This Court finds this argument misconceived. There is a clear legal distinction between cancellation of bail due to supervening circumstances such as tampering with evidence or breaching conditions and setting aside the order granting bail on account of perversity, non-application of mind, or patent procedural illegality. When an order granting pre-arrest bail is passed in direct contravention of a mandatory statutory command and in violation of the principles of natural justice (*audi alteram partem*), such an order is *void ab initio* and suffers from a jurisdictional error. It is liable to be set aside on this ground alone irrespective of whether the accused has misused the liberty after the order.

21. The Hon'ble Supreme Court in **Mahipal v. Rajesh Kumar Alias Polia and Another, AIR 2020 SC 670**, held that: -

"17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting

bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment."

22. In the present case, the learned trial court completely overlooked the mandatory requirement of issuing notice to the victim/informant before considering the anticipatory bail application under the POCSO Act. This failure has caused grave prejudice to the victim depriving her of the right to present material facts, gravity of offence and apprehensions regarding safety.

23. This Court, therefore, answer question 9(i) in the affirmative and holds that no opportunity of hearing was afforded to the victim or her guardian before passing the impugned order. The statutory provision has been violated by the court concerned and, therefore, such kind of order is not sustainable in the law.

24. In view of the foregoing analysis, this Court upholds that the order dated 17.01.2026, passed by the learned trial court, suffers from manifest illegality and procedural irregularity having been passed without affording opportunity of hearing to the first informant/victim in violation of statutory provisions and principle of natural justice. Consequently, the application is allowed. The order dated 17.01.2026 passed by learned Special Judge (POCSO Act), Bulandshahar, in Anticipatory Bail Application No. 98 of 2026, is hereby set aside/cancelled. The matter is remanded back to the learned trial court with the following directions:

- (a) The learned trial court shall restore the Anticipatory Bail Application No. 98 of 2026, to its original number.
- (b) The court shall issue proper notice to the first informant/victim, giving reasonable time to file objections/counter affidavit, if any.
- (c) After affording a fair and effective opportunity of hearing to the first

informant/victim as well as the State, the learned trial court shall decide the anticipatory bail application afresh on its own merits, strictly in accordance with law, uninfluenced by any observation made in the earlier order or this judgment.

(d) To prevent any immediate hardship, the opposite party nos. 2 and 3 (accused), are granted protection by this Court for a period of six weeks from today. It is provided that no coercive action shall be taken against the opposite party nos. 2 and 3 (accused), for a period of six weeks from today, within which period the learned trial court shall make all endeavour to hear and decide the restored anticipatory bail application.

25. Let a copy of this order be transmitted forthwith the learned trial court concerned for necessary compliance.

26. A copy of this order may be placed before the Registrar General of this Court with a request to circulate this order to all the Courts of Special Judge (POCSO Act) of the State of U.P. for its necessary compliance and further reference.

(Vivek Kumar Singh,J.)

September 29, 2026

A.P. Pandey