HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Miscellaneous Bail Application No. 11482/2025

Sandeep Singh Alias Sonu S/o Karm Singh, Aged About 28 Years, R/ Ward No 4 Manewala Police Station Suratgarh Sadar Dist. Shriganganagar.
(Presently Lodged At District Jail Hanumangarh)

----Petitioner

Versus

State Of Rajasthan, Through PP

----Respondent

For Petitioner(s) : Mr. Nishant Motsara
For Respondent(s) : Mr. Hathi Singh Jodha, PP

HON'BLE MR.JUSTICE SANDEEP SHAH

Order

REPORTABLE

Reserved On- 06/10/2025

Pronounced On- 14/10/2025

1. The applicant has filed the present bail application being aggrieved against the order dated 12.09.2025 passed by Learned Special Judge (POCSO Act Cases) No.1, Hanumangarh whereby the bail application filed by the applicant has been rejected.

2. The office has pointed out the defect regarding non-impleadment of the informant/victim as a party in the application.

3. Upon the objection so raised, learned counsel for the applicant has filed an application praying for waiving of the defect and asserted that in present case the victim was 16 years and 7 months of age, as on the date of incident, and the case in hand is not a case of gang rape, neither allegations of offence punishable under Section 65 or Section 70(2) of BNS 2023 have been levelled

against the applicant and, therefore, as per Section 483 of BNSS, there is no requirement of impleading the victim, her guardian or informant as a party to the present bail application.

4. The issue specifically raised for consideration is "**as to whether the victim/child or her guardian/parents or person in whom the child has trust and confidence is *mandatorily required to be impleaded as a party respondent in cases under the Prevention of Children from Sexual Offence Act, 2012*, more particularly in bail applications."**

5. Learned counsel for the applicant asserted that the issue in hand has already been decided by Division Bench of this Court in D.B. Criminal Reference No. 1/2023 ***"Pooja Gurjar & Anr. v. State of Rajasthan"*** decided on 19.12.2023, while dealing with provisions of Section 439(1A) of Cr.P.C.

6. Learned counsel for the applicant further submitted that the Division Bench while considering the provisions of Section 439 (1A) Cr.P.C. as well as Sections 437 to 439 Cr.P.C. has dealt with the issue and held that there is no requirement of impleading the victim as a party to the proceedings, and has emphasized that the victim has a right of audience at every stage of proceedings but there is no requirement of impleading her/him as a party respondent in bail applications under Sections 437, 438 and 439 of Cr.P.C. He further assertted that the judgment of ***"Jagjeet Singh v. Aashish Mishra"*** reported in **2022(9) SCC Page 321** mandating right of hearing to the victim has been considered and dealt with by the Division Bench in the case of ***Pooja Gurjar (Supra)*** and thereafter gave the conclusive finding. He thus asserted that there is no requirement of impleading the victim or

his/her guardian as a party respondent. He thus prayed for over-ruling of the defect pointed out by the office.

7. Learned Public Prosecutor asserted that impleadment of the victim or her guardian/parents as per Rule 4(13) & Rule (15) of the POCSO Rules 2020, is necessary.

Analysis and Reasoning:-

8. As far as the rights of a victim are concerned, initially there was no specific provision under the Cr.P.C. with regard to the same and thereafter in view of the various judgments pronounced by the Hon'ble Supreme Court, the Legislature thought it prudent to deliberate upon the rights of the victims. In this regard, the Ministry of Home Affairs, by way of its order date 24.11.2000, constituted a Committee on Reforms on Criminal Justice System to consider the measures for revamping the Criminal Justice System. The Committee was constituted under the Chairmanship of Justice V.S. Malimath, Former Chief Justice of Karnataka and Kerala High Courts. The notification constituting the Committee in question itself observed as under:-

> *"……People by and large have lost confidence in the Criminal Justice System ..... Victims feel ignored and are crying for attention and justice …. there is need for developing a cohesive system, in which, all parts work in co-ordination to achieve the common goal."*

9. The Committee in its early deliberation recognized that at present the victims do not get legal rights and protections they deserve, as also, they have got no right of participation or a role to play in criminal proceedings. It was also observed that Justice cannot be delivered until the victim is put as one of the focal point of consideration in criminal proceedings. The Committee

deliberated upon the laws in various European Nations also, more particularly, France, wherein, a very active role was assigned to the victim or his representative in criminal proceedings, inasmuch as, those who suffer on account of commission of an offence were entitled to become parties to the proceedings from the investigation stage itself, in France. The Committee also deliberated upon the issue of the right of a victim to prefer an appeal against an adverse order passed by the learned Trial Court, as well as, an appeal against the acquittal. Furthermore, the right of the representation through a lawyer, as a constitutional right, was also considered to be granted to the victim. The Committee also observed that there was a need for appointment of an Officer equivalent to Probation Officer to take care of victim's interest in investigation and trial and shall also act as a coordinator with the police and the Courts to monitor, coordinate and ensure delivery of justice to the victim during the pendency of the case.

10. Based upon the recommendations of the Committee as well as the recommendations of the Law Commission, various amendments were incorporated in the Code of Criminal Procedure, 1973 by way of Amendment Act, 2008, w.e.f. 31.12.2009.

11. By way of above-mentioned Act, first of all definition of victim was added under Section 2, (wa), which provides as under:-

> *"[**(wa)** "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir;]"*

12. Furthermore, a proviso was added to Section 372 of Cr.P.C. which provides as under:-

> *"**372. No appeal to lie unless otherwise provided.**—No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:*
>
> *[1][Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.]"*

13. As also, right of representation was given to the victim under Section 24 of Sub-Section 8 proviso was added as under:-

> *"**(8)** The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor:*
>
> *[1][Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.]"*

14. Thus, the victim was given a substantial representation to contest the cases also by way of assisting the prosecution, as also, right to appeal against acquittal or for a lesser punishment being imposed or inadequate compensation being awarded was provided, to the victim. However, the right to participate in proceedings, at the stage of bail application or other ancillary applications, was not recognized.

15. The Central Government thereafter came up with the Criminal Law Amendment Act, 2018 which was notified on 11.08.2018, wherein various amendments were brought under the Indian Penal Code, 1860, Indian Evidence Act, 1872, Code of Criminal Procedure 1973 and Protection of Children from Sexual Offences Act, 2012. The offences punishable under Sections 376

AB, 376 DA, 376 DB were incorporated under the IPC, 1980, as also, certain amendments in Section 376 IPC, were introduced.

16. As far as the amendment to Code of Criminal Procedure, 1973 is concerned, a very important amendment, relevant for adjudication of the present case, came to be incorporated in Section 439 of Cr.P.C., whereby Section 439 (1A) was added, which provides as under:-

> *"[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 Indian Penal Code (45 of 1860).] "*

17. It is thus clear that the Legislature in its wisdom thought it incumbent to ensure that the victim of heinous offences like Sections 376(3), 376(AB) or Section 376(DA) as well as Section 376 (DB), get a right of hearing while deciding the bail applications under Section 439 Cr.P.C. The provision further emphasizes the requirement of informant or, any person authorized by him, to be present at the time of hearing of the application for bail.

18. As far as the provisions of Sections 437, 438 and 439 of Cr.P.C. including 439(1A) are concerned, the same has been dealt with in detail by the Division Bench while deciding the reference in the Case of "***Pooja Gurjar (Supra)"*** and also after considering the provisions of Section 228-A IPC, Sections 23, 33(7) and 37 of the POCSO Act, 2012 and Section 327(3) of the Cr.P.C., the Court dealt with the issue of identity of the victim to be kept confidential and thereafter held that there was no requirement of impleading

the victim, however, his/her right of audience while deciding the bail applications was answered in positive.

19. However, in the present case, the issue involved is as to whether in cases, involving offences punishable under POCSO Act, there is any requirement of impleading the victim/child, his/her parents or guardian or other person in whom child has trust and confidence, as a party respondent. For the purpose of elaborating the issue, few provisions of POCSO Act would be relevant to be considered.

20. Sections 39 and 40 of the Protection of Children from Sexual Offences Act, 2012 provide as under:-

> *"**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 non-governmental 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.*
>
> ***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."*

21. Furthermore, Rule 4 of the Protection of Children from Sexual Offences Rules, 2020 provides as under:-

> *"**4. Procedure regarding care and protection of child.** - **(1)** Where any Special Juvenile Police Unit (hereafter referred to as "SJPU") or the local police receives any information under sub-section (1) of section19 of the Act from any person including the child, the SJPU or local police receiving the report of such information shall forthwith disclose to the person making the report, the following details:-*
>
> ***(i)** his or her name and designation;*

(ii) *the address and telephone number;*

(iii) *the name, designation and contact details of the officer who supervises the officer receiving the information.*

(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.*"

22. A perusal of the above-mentioned provision will clearly reveal that the provision of Sections 39 and 40 of POCSO Act, 2012 itself make it mandatory to provide assistance of a legal counsel of their choice to the family or the guardian of the child and if the family or the guardian are unable to afford legal counsel, the Legal Service Authorities **shall** provide a lawyer to them. This provision itself mandates that the victim/child has been given a right to participate in the legal proceedings through the counsel. This coupled with provisions of Rule 4 Sub-Rule 13 and 14 will clearly reveal that the Legislature itself had clearly intended to inform the child or his parents or guardian or other person, in whom the child has trust and confidence with regard to each and every step of the criminal proceedings, including the arrest of the accused, the applications filed and other Court proceedings. The applications filed will necessarily include the bail application also. The responsibility qua the same has been saddled upon the Special Juvenile Police Unit or the local police. Not only this, Sub-Rule 14 further provides that the local police or the SLPU shall even inform the child and his parents/guardians or the person, whom he deposes trust and confidence, about their entitlement and services available to them under the Act or any other Law for the time in force as per Form-A. Sub-Rule 15 also deals with the detail of the information to be provided to the child/ his parents, guardians etc.

23. A perusal of Form-A annexed with the Rules will reveal that from receiving the copy of the FIR, it also provides for free legal aid to be provided to the child/victim.

24. A conjoint reading of Sections 39, 40 and Rule 4 of the POCSO Rules clearly specify the legislative intent of providing complete information to the child, his guardian/ or person in whom he deposes trust and confidence about the safeguards available and to ensure that his interest is protected including information about each and every stage of the Court proceedings i.e. from the arrest of the accused, filing of applications including bail applications and entire details uptil the conclusion of the Courts proceedings. Not only this, there is a mandate of providing a lawyer through legal aid in case the child or his family members/ guardians are not in a position to afford one.

25. Needless to emphasize that POCSO Act and the Rules framed thereunder constitute special legislation enacted with the intend to ensure proper development of the child, their right to privacy, and to safeguard their best interest and well-being. These attributes are of paramount importance at every stage and are aimed to ensure the physical, emotional, intellectual, health and social development of the child. The Act and the Rules framed thereunder provide for a complete mechanism recognizing the need to protect the child from offences, falling within the purview of the Act, method and manner to deal with such offences, etc.

26. Needless to emphasize that the above-mentioned provisions are in addition to the safeguards provided under Section 439 (1A) of the Cr.P.C. or under Section 483(2) of BNSS which are confined to limited offences only.

27. Though provisions under Section 439(1A) of Cr.P.C or Section 483(2) of BNSS are attracted only in case of offences under

Sections 376, 376 AB, 376 DA, 376 DB (Section 65 and 70(2) of the BNS), however, the provisions under the Act will be an additional safeguard over and above what has been provided under Sections 439(1A) and 483 of BNSS. An identical issue came up for consideration before Division Bench of High Court of Bombay in the case of ***"Arjun Kishanrao Malge v. State of Maharashtra & Ors."*** reported in 2021 SCC OnLine Bom 551, wherein while dealing with the provisions of POCSO Act, the Hon'ble Division Bench has held as under:-

> *"**20.** 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 scheduledon such applications at the various stages of the proceedings. We are accordingly inclined to dispose of the petition with the following directions:-*
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> ***(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."*

28. Similarly, the Division Bench of High Court of Chhattisgarh, Bilaspur in the case of ***"Akash Chandrakar & Anr. v. State of Chhattisgarh"*** in Criminal Appeal No. 101 of 2021 decided on 19.01.2022 has held as under:-

"23.*Accordingly, it is directed that notice of the application for suspension of sentence be also issued to the victim or one of his/her parents or guardian or informant and it should be served on the address provided by the State Counsel. To*

secure the interest of victim, legal assistance may be provided by DLSA or SALSA or High Court Legal Services Committee, as the case may be, through their empanelled Advocate etc.

24.*The aforesaid question is answered accordingly. This court appreciates the valuable assistance rendered by Mr Ashish Surana on short notice as amicus."*

29. Even High Court of Karnataka in the case of ***"Informant vs. State of Karnataka & Anr."*** *reported in 2023 SCC OnLine Kar 69,* decided on 11.10.2023 while dealing with Section 439 (1A) as well as provision under the POCSO Act has held as under:-

*"**17.** Since it is now trite that the bail application of an accused for the offence punishable under Section 376(3), 376-AB, 376DA or 376-DB of IPC or for the offences punishable under the provisions of the POCSO Act cannot be heard and disposed of without giving opportunity of being heard to the informant/victim, the court and the prosecution are required to take into consideration the obligation on their part to keep the informant/victim informed about the stages of criminal proceedings including filing of applications seeking bail by the accused persons. Failure on the part of the court or the prosecution to take necessary steps in this regard will eventually cause hardship to the accused and thereby his right to liberty gets affected. Under the circumstances to ensure effective implementation of 2018 amendment to Cr.PC as well as the provisions of the POCSO Act and the Rules framed thereunder, the following directions are being issued for compliance by the court and the prosecution.*

(i) Whenever an accused who is charged under Section 376(3), 376-AB, 376- DA or 376-DB IPC or the provisions of the POCSO Act, moves an application for regular bail or anticipatory bail, the Registry of the Court shall inform the accused or the advocate for the accused about the requirement of notifying the informant/victim regarding filing of the bail application, though it is not obligatory on the part of the accused/advocate for the accused to implead the informant or the victim, as the case may be.

(ii) In the event the accused/advocate for the accused impleads the informant/victim as party-respondent to the

proceedings, steps shall be taken by the court for service of notice on the informant/victim, as the case may be.

(iii) In the event the accused/advocate for the accused does not implead the informant/victim as party-respondent to the proceedings, the court hearing the application shall take necessary steps for effective service of notice of the bail application on the informant/victim and also direct the prosecution to ensure service of notice of the bail application on the informant/victim and submit requisite acknowledgment to the said effect before the court.

(iv) It shall also be incumbent on the court and the prosecution to keep the informant/victim informed about the date of hearing of the bail application and also the right of the informant/victim to be represented and the legal assistance for which the informant/victim is entitled through the Legal Services Authority.

(v) If the prosecution is not in a position to trace the informant/victim, a status report shall be filed giving reasons for the same, which shall be taken into consideration by the concerned court and necessary orders be passed.

(vi) In the event the informant/victim does not appear before the court despite service of notice, the concerned court shall proceed to consider the bail application on its merits after having recorded that service of notice on the informant/victim is completed.(vii) In cases where applications are filed seeking interim bail, the concerned court can pass suitable orders after recording reasons for the same awaiting service of notice on the informant/victim.

(viii) The Registry of the court shall ensure that in cases where the informant is a minor, notice shall be issued on the bail applications to the parents/guardians of the minor or to the person who is duly authorized to represent the minor victim.

(ix) Registry shall ensure that if the informant or victim is a minor, he/she shall not be made as a party to the proceedings and no notice shall be issued or served on the minor informant/victim."

30. Even the High Court of Calcutta in **C.R.M.(M.) No. 1148 of 2025** In Re: an application under Section 483(3) of BNSS, 2023 corresponding to Section 439(2) of the Code of Criminal Procedure, 1973 has held as under:-

*"**10.** In the present case, undisputedly, the informant/victim was not notified about the bail application filed by the opposite party no.2 and, therefore, there is factually a denial of right to the informant/victim to participate in the proceedings which is recognised under Section 483(2) of Bharatiya Nagarik Suraksha Sanhita (in short, 'BNSS'). Since it is now trite that the bail application of accused for offences punishable under Section 65 or Sub-Section 2 of Section 70 of the Bharatiya Nyaya Sanhita (in short, 'BNS') or for offences punishable under Sections of POCSO Act cannot be heard and disposed of without giving opportunity of being heard to the informant/victim, the Court and the prosecution are required to take into consideration the obligation on their part to keep the informant/victim informed about the stages of criminal proceedings including filing of the application seeking bail by the accused persons.*

***11.** This Court finds substance in the submissions of learned advocate for the petitioner relying on the decision of Hon'ble Supreme Court in Jagjeet Singh (supra) and decisions of other High Courts.*

***12.** In view of the circumstances as enumerated above, since while considering the bail application of the accused opposite party no.2 by the learned trial court, the participatory right of the informant/victim was not secured, as mandated under law, the arguments advanced on behalf of the opposite party no.2 does not hold good."*

31. Even the High Court of Madras in ***"Venkateshwaran v. State of Tamil Nadu"*** in Crl. M.P. (MD) Nos.7809, 11825 and 11926 of 2025 has held as under:-

*"**28.** As noted earlier, the Division Bench of the Chhattisgarh High Court in Akash Chandrakar's case correctly held that notice to the victim's parents, guardian, informant, or trusted support person is essential when considering suspension of sentence in a pending appeal. Notably, Section 31 of the POCSO Act provides that the Code of Criminal Procedure, 1973, including provisions for bail and bonds, applies to proceedings before a Special Court under POCSO. This section ensures consistency and fairness by integrating existing criminal procedural laws into the POCSO framework. Section 42 of the POCSO Act serves as an alternate punishment*

provision by stipulating that if an act is punishable under both the POCSO Act and certain sections of the Indian Penal Code, the offender is to be punished under the law that provides the greater degree of punishment. This section applies when a single act or omission qualifies as an offence under both the POCSO Act and specific, listed sections of the IPC. Given these provisions and considering that suspension of sentence under Section 389 CrPC is akin to appeal bail, the principle under Section 439A CrPC—requiring notice to the informant for specific IPC offenses against children—should logically extend to both regular and appeal bail applications under the POCSO Act.

29. *Before suspending the sentence, it is essential to hear the victim's family regarding any potential harassment, threats, or coercion by the accused post-conviction. Without notice and hearing, the appellate court may remain uninformed about crucial developments. While acknowledging that some victims' families may be traumatized and unwilling to participate, others may actively engage to ensure justice is served. Therefore, hearing the victim's side is necessary before granting appeal bail.*

30. *Based on the foregoing, this Court holds that involving the victim's parents, de facto complainant, or guardian is essential in both regular and appeal bail applications filed by individuals accused of POCSO Act offenses.*

31. *It is crucial to ensure the victim is not made a party in any proceedings or applications under the POCSO Act, and no direct notice should be served to them. When involving the victim's family or de facto complainant, their identity and details should be protected, and only necessary information should be disclosed without revealing their identity.*

32. *In conclusion, it is clarified that involving the victim or their parents is not necessary in criminal appeals challenging the convictions under the POCSO Act. However, their impleadment is essential in regular bail applications under Section 483 BNSS (Section 439 Cr.P.C.) and suspension of sentence application under Section 430 BNSS (Section 389 Cr.P.C.,) It is further clarified that the victim should not be directly involved or served notice in any proceedings. Instead, notice should be served to the victim's parents or complainant through the address provided by the State Counsel. To protect the victim's*

interest, the Courts may direct the District Legal Services Authority or State Legal Service Authority or the High Court Legal Services Committee to provide legal assistance through their panal Advocates."

32. The Supreme Court in case of ***"Jagjeet Singh (Supra)"*** while dealing with the rights of victim as defined under Section 2(wa) of Cr.P.C. as well as other amendments that came into force by way of Code of Criminal Procedure Amendment Act, 2008 has held as under:-

*"**22.** It cannot be gainsaid that the rights of a victim under the amended CrPC are substantive, enforceable, and are another facet of human rights. The victim's right, therefore, cannot be termed or construed restrictively like a brutum fulmen-*. We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the CrPC. The presence of "State" in the proceedings, therefore, does not tantamount to according a hearing to a "victim" of the crime.*

***23.** A "victim" within the meaning of CrPC 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 abovestated enunciations are not to be conflated with certain statutory provisions, such as those present in the Special Acts like the Scheduled Castes 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.*

43. *This Court is tasked with ensuring that neither the right of an accused to seek bail pending trial is expropriated, nor the "victim" or the State are denuded of their right to oppose such a prayer. In a situation like this, and with a view to balance the competing rights, this Court has been invariably remanding the matter(s) back to the High Court for a fresh consideration. We are also of the considered view that ends of justice would be adequately met by remitting this case to the High Court for a fresh adjudication of the bail application of the respondent-accused, in a fair, impartial and dispassionate manner, and keeping in view the settled parameters which have been elaborated in paras 29 to 32 of this order.*

44. *Needless to say that the bail application shall be decided on merits and after giving adequate opportunity of hearing to the victims as well. If the victims are unable to engage the services of a private counsel, it shall be obligatory upon the High Court to provide them a legal aid counsel with adequate experience in criminal law, at the State's expense.* "

33. A collective analysis of the applicable provisions including Sections 39 & 40 of the Act of 2012 and Rule 4 of the POCSO Rules, 2020, as also, the findings given by the various High Courts as well as Hon'ble Supreme Court upon issue in hand will clearly reveal that the child/victim, his/ her parents, his/her guardians or persons in whom the child has trust and confidence have a invaluable right to be heard during the course of proceedings, be it

bail application or any other application, and also, to participate at the trial. Not only this, although under Section 439(1A), the provision has been made for presence of victim in limited cases, however, no such embargo is there when the offence pertains to the POCSO Act. Meaning thereby, in all cases wherein the accused is implicated under the provisions of POCSO Act, the child/victim, his/her parents, his/her guardians have got a right to be informed about the proceedings and a right to be heard even on adjudication of bail applications and any other applications and participate in the entire proceedings.

34. Considering the language of Sections 39 & 40 of the Act of 2012 as well as Rule 4 of the Rules of the 2020, it is clear that parents of child, guardian or any other person in whom the child has trust and confidence has to be informed mandatorily with regard to filing of bail applications and other Court proceedings, be it filed by the prosecution or the accused also. However, there is no need for impleading the victim of his/her parents/guardian as party to the proceedings. Rather asking them to impleaded would amount to adding something into the provision which the Legislature itself has not provided for and would further be in teeth of the provisions of Sections 23, 33 & 37 of the Act of 2012 as well as Sections 72 and 73 of BNS, 2023 (Section 228-A of Cr.P.C.).

35. Thus the question is answered accordingly that while holding that there is no requirement of impleading the child/victim, parents of child, guardian or any other person in whom the child has trust and confidence, as a party to the proceedings, however,

there is a mandate of informing them of the pending proceedings including the arrest of accused, applications filed, including the bail application and other Court proceedings. As also the child/victim through parents of child, guardian or any other person in whom the child has trust and confidence and also through the legal counsel, has a right to be heard in all such proceedings pending before the Court concerned, be it trial Court or High Court.

36. Having said that, day in and day out that this Court has observed that in many cases either the victim or parents of the victim have been impleaded as party respondent while disclosing their identity, which essentially is in teeth of the provisions of Sections 23, 33 & 37 of the Act of 2012 as well as Sections 72 and 73 of BNS 2023(Section 228-A of Cr.P.C.), as also in flagrant violation of the guidelines issued by the Hon'ble Apex Court in the case of ***Nipun Saxena & Anr. v. Union of India & Ors. reported in* 2019 2 SCC Page 703**. The Hon'ble Apex Court in the case of *Nipun Saxena (Supra)* while dealing with the provisions of Section 228-A of Cr.P.C. as well as Sections 24, 33 and 37 of the POCSO Act has specifically directed that even the disclosure of name of the village of the victim would disclose identity of the victim and be in derogation of the provisions referred to supra.

37. The Hon'ble Apex Court thereafter has held as under:-

> *"**50.** In view of the aforesaid discussion, we issue the following directions:-*
>
> ***50.1.** No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner*

disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.

50.2. *In cases where the victim is dead or of unsound mind the name of the victim or her identity should not be disclosed even under the authorization of the next of the kin, unless circumstances justifying the disclosure of her identity exist, which shall be decided by the competent authority, which at present is the Sessions Judge.*

50.3. *FIRs relating to offences under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of IPC and offences under POCSO shall not be put in the public domain.*

50.4. *In case a victim files an appeal under Section 372 CrPC, it is not necessary for the victim to disclose his/her identity and the appeal shall be dealt with in the manner laid down by law.*

50.5. *The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinised in the public domain.*

50.6. *All the authorities to which the name of the victim is disclosed by the investigating agency or the court are also duty bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court.*

50.7. *An application by the next of kin to authorise disclosure of identity of a dead victim or of a victim of unsound mind under Section 228A(2)(c) of IPC should be made only to the Sessions Judge concerned until the Government acts under Section 228A(2)(c) and lays down a criteria as per our directions for identifying such social welfare institutions or organisations.*

50.8. *In case of minor victims under POCSO, disclosure of their identity can only be permitted by the Special Court, if such disclosure is in the interest of the child.*

50.9. *All the States/Union Territories are requested to set up at least one 'one stop centre' in every district within one year from today.*

> ***51.*** *A copy of this judgment be sent to the Registrar General of all the High Courts so that the same can be placed before the Chairpersons of the Juvenile Justice Committee of all the High Courts for issuance of appropriate orders and directions and also to ensure that sincere efforts are made to set up one stop centres in every district."*

38. The Court is thus faced with a situation of dichotomy, inasmuch as, on one hand the victim/child, his/her guardian, parents or persons whom child has trust and confidence are not to be impleaded as party respondent and on the other hand, the information about the arrest/filing of the bail applications and other Court proceedings has to be given to them and that too while maintaining anonymity and not disclosing the identity of the victim or her guardian/parents or of person whom child has trust and confidence. As also considering the right of accused for early hearing of bail applications and the delay caused in deciding the bail applications because of the information to be sent to the victim etc., this Court is of the opinion that guidelines are required to be laid down to balance the right of the accused for immediate hearing of the bail applications as well as the right of the victim/child or her guardian/parents or persons whom child has trust and confidence, about setting the information of filing of the bail applications as also the appointment of counsel and providing legal aid to the victim/child or her guardian/parents or persons whom child has trust and confidence.

39. Faced with such a situation, the Court deems it appropriate to direct as under:-

(i) Immediately on filing of any bail application or any other application under the POCSO Act, the counsel for the

appellant/applicant/accused shall serve a copy of the bail application along with the requisite papers to the Public Prosecutor, in advance prior to listing of the case.

(ii) The Public Prosecutor, on the other hand, shall immediately send a copy of the same to the Investigating Officer/S.H.O. (Station House Officer) concerned for sending of an information to her guardian/parents of child/victim or persons whom child has trust and confidence and in case they have engaged a counsel, to the legal counsel concerned, inform the fact about filing of the application. The information to the guardian/parents of victim/child or person in whom child has trust and confidence shall be supplied preferably within a period of two days of the receipt of the information about filing of case by the S.H.O. (Station House Officer)/Investigating Officer concerned.

(iii) As far as possible, the S.H.O. (Station House Officer)/Investigating Officer or any other Officer as directed by him, who affects the service/communicates the information to the guardian/parents of the victim/child or person in whom child has trust and confidence, shall remain in plain clothes so as to avoid any unwanted attention at the residence of the victim.

(iv) The S.H.O. (Station House Officer) concerned shall also supply one copy of the set of paper book to the District Legal Services Authority or to the RALSA to ensure that in compliance with Sections 39 and 40 of the Act of 2012, the family members of the victim are provided with assistance of a legal counsel and in case they are unable to afford legal counsel, the State Legal Service Authorities shall provides them a lawyer.

(v) The information with regard to the filing of the bail applications or any other application or Court proceedings shall be in writing and the Investigating Officer concerned or any person authorized by him shall ensure that the receipt bears the name and signature of the person receiving it as well as the specific date and time of receipt of the same and after effecting service, the details shall immediately be sent to the Public Prosecutor for placing the same on record in the Court file.

(vi) In the event, the service cannot be effected or the guardian/ parents of victim/child or person in whom child has trust and confidence cannot be found, a report in this regard shall be made by the concerned Investigating Officer or person authorized by him before submitting the same to the Public Prosecutor.

(vii) The Court concerned shall thereafter ensure that information is sent to the guardian/parents of the victim/child or person in whom child has trust and confidence and thereafter proceed to hear the bail matters and other applications.

(viii) In cases where service could not be effected for the reason that the victim, family members, guardians or informant could not be traced, or in cases where the Courts are deciding the interim bail applications, such contingencies can be decided by the Court on case to case basis to secure ends of justice, after recording the reasons for proceeding with the adjudication, awaiting service of notice upon the family members, guardians of the child, etc.

40. However, the Court also deems it appropriate to direct the Registry to place the matter before the Hon’ble Chief Justice for

his kind consideration and issuance of necessary instructions/guidelines/SOP in this regard.

41. Considering the fact that the issue raised has been answered while observing that there is no requirement of impleading the victim or her guardian/parents or person in whom child has trust and confidence as a party to the proceedings, the application for waiving the defect filed by the learned counsel for the applicant is allowed.

42. The defect pointed out by the Registry is waived.

43. List the matter on 17.10.2025 for adjudication of the bail.

44. In the meanwhile, the Public Prosecutor through the S.H.O. (Station House Officer) concerned shall inform the parents/guardians of the child with regard to filing of the present application and send a service report in this regard immediately, to the Public Prosecutor, thereafter.

(SANDEEP SHAH),J

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