

Reserved**Court No.- 32****Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46998 of 2020****Applicant :- Junaid****Opposite Party :- State of U.P. and Another****Counsel for Applicant :- Mohammad Mustafa****Counsel for Opposite Party :- G.A., Maya Pati Pandey****Hon'ble Ajay Bhanot, J.**

1. The judgement is being structured in the following conceptual framework to facilitate the discussion:

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I. Introduction:

2. While arguing the bail application Sri Mohd. Mustafa, learned counsel for the applicant submitted at length that the question of service of notice upon the victim raises legal issues of public importance. Considering the general importance of the matter, the members of the Bar were invited to assist the Court.

3. At the request of the Court, Sri Nazrul Islam Jafri, learned Senior Counsel assisted by Sri Mohammad Zubair, learned counsel, Sri Dharmendra Singhal, learned Senior Counsel assisted by Sri Shivendra Raj Singhal, learned counsel, Sri Vinay Saran, learned Senior Counsel assisted by Sri Saumitra Dwivedi, learned counsel, Sri Arun Kumar Singh Deshwal, learned counsel and Sri R.P.S. Chauhan, learned counsel also made their submissions. The Court expresses gratitude to the learned members of the Bar for their able assistance and appreciates their selfless service to the cause of law.

4. Shri Ashish Mishra, learned counsel for the High Court has been heard. Affidavit on behalf of the High Court is taken in the record.

5. The State represented by Shri Manish Goyal, learned Additional Advocate General assisted by Shri Avinash Kumar Tripathi, learned AGA, has to its credit not adopted an adversarial approach but that of a stakeholder in this

controversy. Though, the acid test lies ahead in the efficacious implementation of the directions of the Court.

II. Submissions of learned counsels:

6. The following submissions were made by the learned Senior Counsels and learned Counsels at the Bar:

(i) The practice of issuance of notices to the victim by the courts in bail applications is contrary to provisions of the Protection of Children From Sexual Offences Act, 2012¹ read with the Protection of Children From Sexual Offences Rules, 2020².

(ii) Practice of issuance of the notice of bail application to the victim by the court varies from court to court. This leads to inconsistencies in procedures, introduces uncertainty in the time frame for maturation of bail applications, and delays the hearing of bail applications.

(iii) Authorities need adequate time to perform their statutory duties under the POCSO Act, 2012 read with POCSO Rules, 2020 before a bail application becomes ripe for being placed before the Court. The time period of two days for maturation of a bail under the Rules of Court, 1952 of Allahabad High Court is insufficient in cases under the said enactment.

1 hereinafter referred to as the “POCSO Act, 2012”

2 hereinafter referred to as the “POCSO Rules, 2020”

(iv) Various authorities need to sync up their functioning and work under a defined time frame to uphold the rights of victim and to protect the rights of the accused.

(v) Steps have to be taken by all stakeholders to protect the identity of the victim.

(vi) The judgements of the Delhi High Court in **Reena Jha Vs. Union of India**³ and **Miss G (Minor) Thru. Her Mother Vs. State of NCT Delhi**⁴ and the judgement of Bombay High Court in **Arjun Kishanrao Malge Vs. State of Maharashtra**⁵ are distinguishable in some respects and are not directly applicable in the State of U.P. The relevant provisions of law were not referred to the Court in **Tanul Rastogi Vs. State of U.P.**⁶ and the order is not a binding precedent.

III. Defining the controversy and its origins

7. Amendments made in the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1995 and the Protection of Children From Sexual Offences Act, 2012 read with the Protection of Children From Sexual Offences Rules, 2020 conferred rights on victims. The changed legislative perspective towards victims, altered the judicial approach in processing bail applications. The practice of issuance of notice by courts to victims in bail

3 2020 SCC OnLine Del 1389

4 2020 SCC OnLine Del 629

5 2021 SCC OnLine Bom 551

6 **Bail No. 4018 of 2020**, dated 25.06.2020 {Allahabad High Court at Lucknow Bench}

applications for offences under the said enactments came into being. The correctness of this practice was in issue in **Ajeet Chaudhary vs. State of U.P.**⁷

8. The instant controversy is similar in some respects to **Ajeet Chaudhary (supra)**. But the distinctive features of the POCSO Act, 2012 read with POCSO Rules, 2020 require separate consideration.

9. Attention of this Court has been called to the following issues in the submissions made by the learned members of the Bar:

(a) Whether notice of a bail application for offences under the POCSO Act, 2012 read with POCSO Rules, 2020 is liable to be issued by the Court to the child and the consequences thereof? Or whether notice of such bail application is liable to be served upon the child/ authorized person by the authorities nominated for the purpose and in the manner prescribed in the POCSO Act, 2012 read with POCSO Rules, 2020?

(b) What is a reasonable time line to enable various authorities to discharge their statutory functions under the POCSO Act, 2012 read with POCSO Rules, 2020 before the bail application becomes ripe

for being placed before the Court?

(c) A decision on the aforesaid issues to resolve the bail conundrum has to ensure that the practices of the bail processual regime are consistent with the POCSO Act, 2012 read with POCSO Rules, 2020, protect the rights of the both victim and the accused, and define the time frame for placing the bail application after its maturation before the Court.

IV. Rights of an accused:

10. The constitution makers made fundamental rights of the citizens sacrosanct by writing them into the text of the Constitution of India. The constitutional courts made fundamental liberties of the citizens inviolable by evolving tenets of constitutional law.

11. The defence of liberty does not always manifest in a people's movement, a philosopher's prose, a poet's verse, or a statesman's actions. The challenge to liberty is often less dramatic, and its defence more mundane.

12. Learned counsels at the bar have raised substantive issues of individual liberty of the accused and statutory rights of the victim arising from the procedure of bail maturation for offences under the POCSO Act, 2012 read with POCSO Rules, 2020.

13. Any detention is a restraint on liberty. A detention passes the first test of legality when it is compliant with the statutory provisions. However, a detention of a citizen satisfies the mandate of liberty after its validity is tested by the Court. Delay in the reckoning before the Court, degrades the liberty of the citizen.

14. Time for maturation of a bail application before it is placed in court has to be definite. Upholding this as a right of a bail applicant in **Ajeet Chaudhary (supra)**, it was further held:

“39. A bail processual framework violates fundamental rights and personal liberties of an accused guaranteed under Articles 14 and 21 of the Constitution of India in the following situations:

- A.** Provisions with an unreasonably large time for maturation of a bail application;
- B.** Procedures where the time period for hearing of a bail application is undefined;
- C.** Practices causing indefinite deferment of hearing of a bail application.
- D.** Failure of police authorities to provide timely instructions to the Government Advocate before the hearing of bail application.

41. Attributes of the processual framework of bails which are in accord with Articles 14 and 21 of the Constitution of India are these. Bail applications have to be processed expeditiously and placed before the court for hearing in a reasonable and

definite time frame. The procedure for processing the bail application needs to be consistent, and the time period for hearing of the bail application has to be certain.

42. The proposition that a bail application cannot be under procedural incubation for an unreasonable time, is the sequitor of the preceding tenets of constitutional law.”

V. Child Rights Legislations

15. The Constitution of India, international instruments, the statutes and judicial precedent applicable to the current controversy converge on these first principles of child rights jurisprudence. Recognition of the vulnerability of children to abuse and exploitation, and the incapacity of children to defend themselves against such offences. Affirmation of the responsibility of the courts and the state to create a sensitive environment to deal with the victims of such offences, and to protect the dignity and rights of the child. The POCSO Act, 2012 further enjoins authorities and courts to respectively provide support services to the child with promptitude and ensure expeditious disposal of cases.

16. Judgements of the Supreme Court in **Eera through Dr. Manjula Krippendorf Vs. State (NCT of Delhi) and another⁸**, **Alakh Alok Srivastava Vs. Union of India**

and others⁹ and of Bombay High Court in **Arjun Kishanrao Malge (supra)** can be referred to with profit in this context.

VI. Relevant provisions of Protection of Children from Sexual Offences Act, 2012 read with Protection of Children from Sexual Offences Act, 2020:

VI-A. Rights of victim to receive notice of bail application and the mode of service:

17. The POCSO Act, 2012 (as amended from time to time) was enacted with the object “to protect children from offences from 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”. The Statement of Objects and Reasons of the POCSO Act, 2012 is appended as Appendix 1ⁱ (*see endnote*).

18. The Rules framed under Section 45 of the POCSO Act, 2012, for carrying out the purposes of the Act are called “the Protection of Children from Sexual Offences Rules, 2020.

19. Relevant parts of the statutory scheme shall now be discussed.

20. 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**). Form A¹⁰ ⁱⁱ to be filled by the police officials contains the list of entitlements of the child and has to be served upon the latter. Form B¹¹ⁱⁱⁱ is the preliminary assessment report to be submitted by the police to the Child Welfare Committee¹². 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

10 **Form A** appended to endnote as **Appendix ii** to the judgment

11 **Form B** appended to endnote as **Appendix iii** to the judgment

12 hereinafter referred to as the **CWC**

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.

21. The legislative intent in regard to the said obligations of the local police/SJPU is disclosed from the phraseology employed by the legislature.

22. A reference may now be made to some judicial precedents containing long settled principles of statutory interpretation.

23. The word “shall” mostly denotes that the provision is mandatory (*see State of Haryana Vs. Raghuvir Dayal*¹³).

24. The settled principle of strict construction of criminal statutes was reiterated by the Supreme Court in *Dilip Kumar Sharma Vs State of M.P.*¹⁴:

“23. It is well settled that such a penal provision must be strictly construed ; that is to say, in the absence of clear compelling language the provision should not be given a wider interpretation and no case should be held to fall

13 (1995) 1 SCC 132

14 (1976) 1 SCC 560

within which does not come within the reasonable interpretation of the statute.”

25. By reinforcing the word “shall” with the words “be the responsibility of” in Rule 4 (13) and “shall” in Rule 4(14) of the POCSO Rules,2020 the legislature has created an imperative charter of duties for the local police/SJPU. Rule 4(13), Rule 4(14) and Rule 4(15) of the POCSO Rules, 2020 are a part of a composite scheme and are mandatory in nature.

26. The said statutory functions are discharged only when the local police/ SJPU serve notice of the bail application upon the child, intimate the date of hearing and apprise the latter of entitled information and services. The POCSO Rules, 2020 thus nominate the local police/SJPU as the sole agency to serve notice and also prescribe the way to do it. Adherence to the statutory agency and mode of service fructify the rights of the child under the enactment.

27. The judicial proposition which controls the performance of lawful acts, was stated in the celebrated passage in **Nazir Ahmad Vs. The King-Emperor**¹⁵:

“...where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.”

28. This dictum in **Nazir Ahmad (supra)** has been followed consistently and is an integral part of the body of judicial precedent. [See: **D.R. Venkatachalam v. Transport Commissioner and others**¹⁶, para 17; **State Vs. Sanjeev**

15 AIR 1936 PC 253(2)

16 (1977) 2 SCC 273

Nanda¹⁷ para 17 and Public Interest Foundation Vs. Union of India¹⁸ paras 99, 100 and 101]

29. Notice to the victim by the court is not contemplated under the POCSO Act, 2012 read with POCSO Rules, 2020. Without knowledge of and access to entitled information and services, the court notice is of no avail to the child. Rights of the child would be undermined if court notice is deemed sufficient in such facts and circumstances.

30. The statutory mode of service is also conducive to protect the identity of the child, and is consistent with the requirement of Section 33 (7) of the POCSO Act, 2012.

31. The role of CWC (discussed later) further obviates the need for High Court to issue notices to the victim.

32. There is merit in the submission that the practice of notice by the court varies from court to court and introduces uncertainty in the period of maturation of the bail application and delays the hearing. The process of bail maturation has to be uniform with a definite time line.

VI-B. Applicability of Section 439 (IA) Cr.P.C. to bail applications for offences under the POCSO Act, 2012.

33. Section 439 (IA) Cr.P.C. is reproduced below:

“439 (IA). Special powers of High Court or Court of Session regarding bail.-

“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

17 2012 (8) SCC 450

18 2019 (3) SCC 224

section 376DA or section 376DB of the Indian Penal Code (45 of 1860).”

34. The legislature consciously did not incorporate offences under POCSO Act, 2012 in Section 439(IA) Cr.P.C. Hence the requirement of mandatory presence of persons nominated in Section 439(IA) Cr.P.C., at the hearing of bail application, is confined only to the offences stipulated in the provision namely Section 376(3), Section 376, Section 376 AB, Section 376 DA, Section 376DB of the I.P.C. The said persons (nominated in Section 439(IA) Cr.P.C.) may not be obligated to attend but are certainly entitled to be present at the hearing of the bail application in POCSO Act, 2012 offences.

35. The conclusions are supported by authorities in point. The rule of strict interpretation of criminal statutes has been referenced earlier. **See: Dilip Kumar Sharma (supra).** In **State of A.P. Vs. Mangali Yadagiri**¹⁹, the Telangana High Court interpreted the scheme of the enactment in light of Section 42-A of the POCSO Act, 2012 and also held that the POCSO Act, 2012 is a self contained code:

“18. A perusal of both the enactments would show that POSCO Act is a self contained legislature which was introduced with a view to protect the children from the offences of sexual assault, harassment, pornography and other allied offences. It was introduced with number of safeguards to the children at every stage of the proceedings by incorporating a child friendly procedure.

The legislature introduced the non-obstante clause in Section 42-A of the POSCO Act with effect from 20.06.2012 giving an overriding effect to the provisions of the POSCO Act, though the legislature was aware about the existence of non-obstante clause in Section 20 of the

SC/ST Act.”

36. The restrictive consequences of a self contained code described in enduring words by Tulzapurkar J. in **S. N. Srikantia and Co. Vs. Union of India**²⁰, shall apply here:

“12....in my view, if the Arbitration Act, being both an amending and consolidating Act was intended to be a self-contained Code and therefore exhaustive fo the law on the subject or on some particular point (and there could be no dispute that the Act is a self-contained code and exhaustive) a corollary would follow that it declares the whole of the law upon a particular subject or point and would carry with it a negative import that it shall not be permissible to do what is not mentioned in it and further that what is permissible thereunder will be done only in the manner indicated and no other.” (emphasis supplied)

37. The proposition stated in **S. N. Srikantia (supra)** was followed in **Noy Vellesina Engineering SPA Vs. Jindal Drugs Ltd.**²¹

VI-C. Case Laws : Discussion

38. The Delhi High Court promulgated practice directions to implement the mandate of Section 439(IA) Cr.P.C. The aforesaid practice directions were made applicable to bail applications for offences under the POCSO Act, 2012 in the judgment rendered by the Delhi High Court in **Reena Jha (supra)**. The judgment is brief and is fully extracted below:

“1. Mr. Sidharth Aggarwal, learned counsel appearing for petitioners points-out that Practice Directions dated 24.09.2019 as referred to in order dated 25.11.2019 are based upon amendments to Section 439 Code of Criminal Procedure 1973 (Cr.P.C.) and apply to aggravated forms of sexual offences under Section 376(3), 376-AB, 376-DA and 376-DB of Penal Code, 1860 (IPC). The Practice Directions however do not apply to cases under the Protection of Children from Sexual Offences Act (‘POCSO Act’). He further draws attention to Section 40 of POCSO Act read with Rule 4(11) & 4(12)(viii) of the Protection of Children from Sexual Offences Rules, 2012 (‘POCSO Rules).

20 AIR 1967 Bom 347

21 (2021) 1 SCC 382

16

2. It is the submission of counsel for the petitioners that Practice Directions dated 24.09.2019 or directions to the same effect should also be extended/made applicable to offences under POCSO Act.

3. Counsel points-out however that an issue in relation to POCSO offences may arise in cases where the crime has been perpetrated by a close family member; in which case, issuing notice or giving information to such family member in line with the Practice Directions, would not serve any purpose. Mr. Aggarwal suggests that in such cases notice be issued to the concerned Child Welfare Committee and a copy of such notice/information be also sent to Delhi State Legal Services Authority ('DSLISA').

4. We see merit in the submission made by Mr. Aggarwal. Accordingly, we direct that the provisions of Practice Directions dated 24.09.2019 shall *mutatis mutandis* also apply to offences under POCSO Act.

5. We further direct that the present order shall be read in conjunction with order dated 25.11.2019; and both orders shall be circulated to all District Judges in Delhi, who will be responsible to bring the same to the notice of the concerned criminal courts dealing with POCSO matters under their respective jurisdictions and to ensure that the same are implemented.

6. We also direct the National Commission for Protection of Children Rights ('NCPCR') and State Commission for Protection of Children Rights ('SCPCR') to ensure that they comply with the mandate of Rule 6 of POCSO Rules in relation to monitoring and implementation of the provisions of the POCSO Act, strictly and faithfully.

7. In view of the above, Mr. Aggarwal submits that no further orders are required to be passed in the present Public Interest Litigation.

8. Accordingly, the present petition is disposed of, with the court recording its appreciation for the valuable assistance rendered by Mr. Aggarwal, other learned counsel for the parties and the officials who appeared in the matter, including Mr. Kanwaljeet Arora, Member Secretary DSLISA and Ms. Tanushree Luthra, Member Secretary NCPCR."

39. Comprehensive directions to ensure effective compliance of the judgment in **Reena Jha (supra)** were issued by the Delhi High Court in **Miss G (Minor) Thru Her Mother (supra)**.

40. The Bombay High Court in **Arjun Kishanrao Malge (supra)** following the judgments of Delhi High Court in **Reena Jha(supra)** and **Miss G (supra)** emphasized the responsibility of the courts in matters of offences against children.

41. No such practice directions have been framed by the Allahabad High Court. Further as held earlier Section 439 (IA) Cr.PC. is not applicable to bail applications for offences under the POCSO Act, 2012. In light of these distinguishing facts and the preceding discussion **Reena Jha (supra)**, **Miss G (supra)** and **Arjun Kishanrao Malge(supra)**, cannot be invoked to support the practice of issuance of notices by courts to the victims.

42. However, the said judgments are not entirely bereft of precedential value for Allahabad High Court. The application has to be nuanced. It has to be stated that the said judgments of Delhi High Court and Bombay High Court enrich legal debate, and elevate the concerns of child rights to the conscience of the court. The judgments have sensitized the process of law and ameliorated the plight of child victims by acknowledging the responsibilities of the courts and making the CWC, Legal Services Authorities and police officials accountable to courts in bail applications. These recognizable principles of law can be clearly distilled from **Reena Jha (supra)**, **Miss G (supra)**, **Arjun Kishanrao Malge (supra)**.

43. The order by the learned Single Judge of this Court in **Tanul Rastogi Vs. State of U.P.**²² needs consideration:

“I have considered the arguments advanced by the learned counsel for the applicant as well as by the learned A.G.A.
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:

22 **Bail No. 4018 of 2020**, dated 25.06.2020 {Allahabad High Court at Lucknow Bench}

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"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.

Issue notice to the informant-Km. Diksha Rastogi d/o Giri Raj Rastogi r/o 222/44, Raja Bazar, Chowk, Lucknow, returnable at an early date. Steps be taken within 10 days.

(emphasis supplied)

List this case on 06.08.2020.

Station House Officer of the police station concerned shall ensure service of notice on the aforesaid person."

44. Notices were issued to the victim in **Tanul Rastogi (supra)** revealing her identity in the teeth of Section 33(7) of the POCSO Act, 2012. Clearly the learned Single Judge was

not referred to all the relevant provisions of the statute. In such view of the matter the order in **Tanul Rastogi (supra)** is not a binding precedent.

VI-D. Enforcement of rights of the child under POCSO Act, 2012 read with POCSO Rules, 2020.

45. POCSO Act, 2012 read with POCSO Rules 2020 vest rights in a child and also provide for means of realizing them.

46. The persons who shall act as guardians of the child are described in Rule 4(7)^{23iv}.

47. CWC has a prominent role in protecting the best interests of the child. CWC constantly monitors the well being of the child. In appropriate circumstances it appoints a support person for the child. Reference may be made in this regard to Rule 4(5), 4(6), 4(8), 4(9), 4(10), 4(11), 4(12) of the POCSO Rules, 2020^{24v}.

48. Sections 19(5) and 19(6) of the POCSO Act, 2012^{25vi} read with Rule 4(4) of the POCSO Rules, 2020 cast the duty upon the local police /SJPU to report the offence to the CWC without unnecessary delay but within 24 hours, and in certain cases to produce the child before the CWC with a request for a

23 Provisions appended to endnote as **Appendix iv**

24 Provisions appended to endnote as **Appendix v**

25 Provisions appended to endnote as **Appendix vi**

detailed assessment by the latter. While Section 39 enables CWC to requisition services of experts^{26vii}.

49. Section 40 of the POCSO Act, 2012 confers upon the child the right of assistance of a legal practitioner and is extracted below:

“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.”

50. 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).”

51. The Juvenile Justice (Care and Protection of Children) Act, 2015²⁷ is the next critical link in the chain of enactments which govern the controversy.

52. Section 27 and Section 30 of the J.J. Act, 2015 detail the creation and functions of the CWC^{28viii}.

53. Relevant provisions of the Legal Services Authorities Act, 1987²⁹ creating the State Legal Services Authority³⁰, District

26 Provisions is appended as Appendix **vii**

27 hereinafter referred to as the **“J.J. Act, 2015”**

28 Provisions is appended as Appendix **viii**

29 hereinafter referred to as the **LSA Act**

30 hereinafter referred to as the **SLSA**

Legal Services Authorities³¹ and High Court Legal Services Committee³² and in regard to their functions, mandate to coordinate with other agencies to provide legal aid and criteria for grant of legal aid are stipulated in Section 6, Section 7, Section 8, Section 12 and Section 13. Provisions are appended to the endnote as **appendix**^{33ix}.

54. C.W.C. has to take steps to effectuate the right to free legal aid vested in the victim in coordination with other agencies like District Legal Services Authority and High Court Legal Services Committee.

55. The right to a legal counsel without right of hearing is illusory. The right to be heard by the court is concomitant to the right to a legal counsel. The scope of this right was described more eloquently by the Bombay High Court in **Arjun Krishnarao (supra)**:

“**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 scheduled on such applications at the various stages of the proceedings.”

56. The rights become effective only when these conditions are satisfied prior to placement of the bail application before the court: (i) The child is imparted information about entitlements and services. (ii) The child is able to access

31 hereinafter referred to as the **DLSA**

32 hereinafter referred to as the **HCLSC**

33 Provisions is appended in the endnote as Appendix ix

relevant services like free legal aid and provided a support person in eligible cases.

57. Diverse statutes and multiple agencies do not manifest disparate legislative aims.

58. What then is the task of the Court? The task of the Court is to achieve the overarching and underlying legislative intent by integrating the various statutes into an unified legal framework. This requires corralling up the assortment of statutory bodies under a single legal umbrella, establishing synergy in aims, and ensuring concert in action of said authorities.

59. In summation, the rights of child come to fruition after the authorities perform the following functions respectively:

A. Functions of local police/SJPU:

I. To inform the CWC about the offence within 24 hours of its registration.

II. To serve the notice of bail application upon the child and intimate the date of hearing of the bail application to it.

III. Apprise the child of its rights to information and services under the POCSO Act, 2012 and POCSO Rules, 2020 and as detailed in Form A.

IV. Inform the CWC about the need of the child for free

legal aid.

V. Produce the child before CWC when required under law. Prepare and submit reports as provided under the POCSO Act, 2012 read with POCSO Rules, 2020 including one Form A and in Form B to the CWC.

VI. To provide instructions to the Government Advocate in the High Court and DGC (Criminal) in the trial courts before hearing of the bail application. These will also include the report of service of bail application upon the victim, copies of Form B and information given to CWC, and report of information given to the child regarding entitlements under the POCSO Act, 2012 read with POCSO Rules, 2020 as detailed in Form A.

B. Functions of CWC:-

I. Receive information and documents from the police and take appropriate action thereupon as provided in the POCSO Act, 2012 read with POCSO Rules, 2020.

II. To apprise the child of its entitlements under the POCSO Act, 2012 read with POCSO Rules, 2020. Identify the person who would be best suited to protect the interests of the child and receive notices of the legal proceedings on its behalf from amongst the following persons: child's parents/guardian/any other person in whom the child has trust and confidence or appoint a

support person for the child whenever required.

III. To prepare reports and coordinate with the police and various government agencies for providing information and services entitled to the child.

IV. To coordinate with the DLSA and HCLSC to provide free legal aid in appropriate cases to the child at the District Court and High Court respectively.

V. Disclose to the High Court as well as the trial court the status of entitled information and services including free legal aid provided to the child and submit relevant reports when the bail application is placed before the Court.

C. Functions of DLSA and HCLSC-

I. The DLSA and the HCLSC have to provide services of a legal counsel to the victim free of cost, upon the recommendation of the CWC, in bail proceedings before the District Court and High Court respectively. The agencies have to coordinate their functioning in this regard.

II. To inform the District Court and High Court respectively about the status of the legal aid provided to the victim and the requisition of the CWC in this regard, when the bail application is placed before the court.

D. Functions of District Magistrate:

I. To review the functioning of the CWC on a quarterly basis.

VI-E. Protecting the identity of the child victim & Parties to a bail application:

60. The police and other concerned authorities in the State of Uttar Pradesh, shall ensure strict compliance of the provisions of Section 33(7) of the POCSO Act, 2012 to protect the identity of the victim. Section 33(7) of the POCSO Act, 2012 is reproduced below:

“33(7). The Special Court shall ensure that the identity of the child is not disclosed at anytime during the course of investigation or trial:

Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

Explanation.-For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.”

61. In terms of Section 33 (7) of the POCSO Act, 2012 the name of the victim/parents/legal guardians of the victim or her address or any other information which tends to reveal the identity of the child shall be anonymized. All other steps shall be taken by the police, CWC and all other concerned authorities to ensure that the identity of the victim is not compromised.

62. CWC and HCLSC shall be joined as necessary parties to all bail applications for offences under the POCSO Act, 2012.

The CWC and HCLSC shall ensure that they are represented by their respective counsels when the bail application is placed before the court. The DLSA will be a party in bail application in district courts. Child or her parents or legal guardians shall be impleaded as party without disclosing their names, and other identifying details like address and so forth.

63. The Director General of Police, the Principal Secretary, Child Welfare Department, Government of Uttar Pradesh and the L.R., Ministry of Law, Government of U.P. nominate officers who shall create appropriate procedures in this regard within four weeks.

64. The directions to all concerned police stations/ police officials and Police Heads of the Districts, CWC, DLSA and HCLSC shall immediately thereafter be issued for strict compliance.

VII. Timeline and procedure for maturation of bail application.

65. The discussion shall now move to the next most critical aspect of the controversy. The process and time line of the maturation of bail application for being placed before the court.

66. While determining the aforesaid issues, the court has to correlate and balance the mandate of statutory rights of the victim, with the imperative of constitutional liberties of the accused.

67. The bail maturation process has to be conducive to implementation of the POCSO Act, 2012 read with POCSO Rules, 2020 and protection of rights of the child under the said enactments. Besides the process should also secure the rights of the bail applicant.

68. The execution of statutory duties by various authorities (discussed earlier) under the POCSO Act, 2012 read POCSO Rules, 2020, are prerequisite acts of bail maturation process. Absent adequate time and opportunity for authorities to discharge the said functions, the implementation of the POCSO Act, 2012 read with POCSO Rules, 2020, shall be interdicted and rights of the child will be curtailed.

69. The time frame to perform these statutory duties has not been stated in the statute. Consequently, the time period for maturation of a bail application remains undefined.

70. The search of the legislature is for certainty. The quest of the courts is for consistency. The silences of the legislature have to be interpreted by the courts.

71. Where time period for performance of statutory duties is not provided, authorities are obligated to perform the duties in a reasonable time frame. Faced with a similar absence of specific time period in a statute to perform the duties, the Supreme Court in **Regional Provident Fund Commissioner**

Vs. K. T. Rolling Mills Pvt. Ltd.³⁴ held:

“There can be no dispute in law that when a power is conferred by statute without mentioning the period within which it could be invoked, the same has to be done within reasonable period, as all powers must be exercised reasonably, and exercise of the same within reasonable period would be a facet of reasonableness.”

72. This Court had directed the State Government to produce a viable time frame to accomplish the duties cast upon the various authorities by law. The State has filed its response affidavit. This is supported by the submissions of Sri Manish Goyal, learned Additional Advocate General on behalf of the State.

73. The response affidavit by the State Government being relevant for creation of reasonable time frame is extracted hereinunder:

“2. That the aforesaid bail application was taken up by the Hon’ble Court on 01.02.2021 and after hearing counsel for the parties, the Hon’ble Court while granting bail to the application has directed the State to file affidavit with regard to:

(i) Time period for determination to be made as to who amongst the child’s parents, guardians, or persons in who the child has trust or support person is most suitable to receive the notice of bail applications and engage on behalf of the child under the POCSO Act read with the POCSO Rules. The aforesaid person is also required to be nominated by the Child Welfare Committee for implementing various provisions of the POCSO Act read with POCSO Rules.

(ii) The likely time period to be taken by the Child Welfare Committee for arranging of legal services for the child

before the (a) district court (b) and the High Court.

3. That in respect of the queries made by the Hon'ble Court in it is stated that vide letter No. C-354/Nide.Ma.Ka./Go.Pra./2020-21, dated 05.02.2021 issued by the Directorate of Women Welfare addressed to the Chairperson of all Child Welfare Committees of State of Uttar Pradesh to nominate suitable support person of the victim-child involved in POCSO matters for doing suitable pairvi on their behalf within three days from the date of lodging of F.I.R. and also to ensure that the child is provided legal assistance at district level within three days by the District Legal Cell Authority and at the State level by the State Legal Cell Authority within 5 days.”

74. Learned counsels at the Bar agree that the time line in the affidavit is reasonable. Shree Manish Goyal, learned Additional Government Advocate assisted by Shri Ashwani Kumar Tripathi, learned AGA for the State submits that the time line stated in the affidavit reflects the government policy and shall be strictly adhered to.

75. Accordingly, the following timeline to execute the different statutory functions by the respective authorities shall be implemented:

Sr. No.		Time period
1.	Information of crime to be given by local police/SJPU to CWC (Ref: Section 19(6) of the POCSO Act 2012).	24 hours after report of crime
2.	Time period for CWC for creation of	Within 3 days from

	an assessment report and to identify person from amongst the parents/guardian/person in whom the child has trust or to nominate support person (if required) who is best suited to protect the best interests of child and receive bail notice on its behalf.	date of lodgement of the F.I.R.
3.	Time period for service of notice of bail application by the local police/SJPU upon CWC.	Within 3 days from the date of service of notice of bail application upon the office of the Government Advocate at the High Court.
4.	Time period for service of notice of bail application by the local police/SJPU upon the child and to apprise it about information and services entitled under the POCSO Act, 2012 read with POCSO Rules, 2020.	Within 4 days from date of service of notice of bail application upon office of Government Advocate at High Court.
5.	Time period for CWC and District Legal Services Authority for providing legal aid before the hearing of the bail application in the	Within 5 days from date of receipt of notice of bail application by CWC

	District Court. CWC shall also provide details of information and services entitled to the child under the POCSO Act, 2012 read with POCSO Rules, 2020.	
6.	Time period for CWC and High Court Legal Services Committee, DLSA for providing legal aid before hearing of the bail application in the High Court and District Court respectively.	Within 5 days from date of receipt of notice of bail application by CWC
7.	Time period for child/child's parents/guardian/any other person in whom the child has trust and confidence/support person to engage counsel of choice for the hearing of the bail application before the High Court and the District Court.	Within 5 days from date of service of notice of bail application by local police/SJPU upon the child.
8.	Time period for police authorities to provide instructions to the Government Advocate, along with report of service of bail application upon victim and CWC, report apprising the child of entitled information and services under the POCSO Act, 2012 read with POCSO	Within 8 days after date of service of notice of bail application upon the office of the Government Advocate at the High Court. Under all

	Rules, 2020 and other reports described earlier.	circumstances the same should be provided to the Government Advocate before the bail application is placed before the Court.
9.	Time period for CWC to submit report before the High Court regarding the status of information and services including legal aid provided to the child.	Report to be produced when bail application is first placed before the Court.
10.	Time period for HCLSC and DLSA to inform the High Court and trial court respectively about the grant of legal aid to the victim and requisition in this regard by CWC.	When the bail application is placed before the court.
11.	Time for the Registry to place the bail application before the Court	On the 10 th day after service of notice of bail application upon the office of the Government Advocate at the High Court.

76. The timeline of duties stated above has to be strictly adhered to by the respective authorities.

77. In case application is not filed in time for it to be placed before the High Court, in the above stipulated time, a further notice of two days shall be given to the Government Advocate as well as counsel for the victim.

78. The same procedure with necessary adaptations shall be implemented by the trial courts in all district judgeships in the State of U.P.

79. At this stage, it will be apposite to make reference to the Rules of Court, 1952 providing for the period of maturation of bail application. The relevant part of Rule 18 of the Rules of Court, 1952 (as amended on 19.09.2018), is reproduced hereinbelow:

“(3) Save in exceptional circumstances-

(a) No bail application shall be placed before the Court unless notice thereof has been given to the Government Advocate and a period of two days has elapsed from the date of such notice.

(b) If the application for bail has not been moved within seven days after the expiry of the aforesaid period of two days the applicant or his counsel shall give two days previous notice to the Government Advocate as to the exact date on which such application is intended to be moved.

(c) Where the prayer for bail is contained in a petition of appeal or application for revision, notice thereof may be given to the Government Advocate the same day prior to the hearing of such petition or application and the fact of such previous notice having been given, shall be endorsed on such petition or application. Alongwith such notice a certified copy or one attested to be true by the counsel, of the Judgment appealed from or sought to be revised shall also be given to the Government Advocate.]

(emphasis supplied)”

80. The Rules of Court, 1952 contemplate an advance notice of two days to the Government Advocate prior to placement of the bail application before the Court. The notice period is to

enable the Government Advocate to receive appropriate instructions from the police authorities in the case.

81. Clearly as in the case of SC-ST Act, 1989, the said notice period of two days previous notice to the Government Advocate is insufficient for maturation of a bail application under POCSO Act, 2012 read with POCSO Rules, 2020. This time period has to be enlarged to meet the requirements of POCSO Act, 2012 read with POCSO Rules, 2020. The same was done in similar circumstances in a case pertaining to SC/ST Act, 1989 (**See: Ajeet Chaudhary**).

82. The response affidavit on behalf of Allahabad High Court asserts that the Allahabad High Court(Amendment) Rules, 2018 reduced the advance notice period in bail applications to two days. Obviously the Allahabad High Court Rules amended in the year 2018 could not take cognizance of and factor in the legislative mandate of the POCSO Rules, 2020. Secondly, the affidavit of the Allahabad High Court does not dispute the fact that two days advance notice period is inadequate for the authorities to accomplish the aforesaid statutory duties. Thirdly the practice of issuance of notices to the victim under the POCSO Act, 2012 has been supported on the foot of the ruling of this Court in **Tanul Rastogi (supra)**, which as the preceding discussion holds is not a binding precedent.

83. In wake of these reasons, the justification of advance notice of two days in bail applications for offences under the

POCSO Act, 2012 as advanced in the response affidavit filed by the High Court is not accepted.

84. The POCSO Act, 2012 read with POCSO Rules, 2020 is a special legislation. It is open to the High Court on the administrative side to consider the feasibility of creating specific rules for bail maturation/time period for advance notice upon the Government Advocate and other necessary parties for the said enactments, and regarding joinder of parties to the bail applications.

VIII. Monitoring and implementation of the directions in the judgment:

85. In Criminal Misc. Bail application No. 22305 of 2021 (Sanjay @ Mausam Vs. State of U.P.) and Criminal Misc. Bail Application No. 19839 of 2021 (Sahil Vs. State of U.P.), this Court noted the consequences of failure of police authorities to furnish timely instructions to the Government Advocate in bail applications and also registered its concern at the non compliance of the directions in **Ajeet Chaudhary (supra)** by the Director General of Police.

86. It is time to administer a caution. Failure to comply with the directions of this Court will thwart the endeavours to sensitize the legal process and impede the implementation of the legislative mandate. The misconduct will have to be duly investigated and the delinquent officials have to be proceeded

against departmentally in accordance with law.

87. The police authorities have to create a credible system of oversight and accountability to deter individual officers from defying orders of the court, acting contrary to law and committing constitutional violations.

88. Regular monitoring of the implementation of the directions in this judgement is essential.

89. For this purpose the following directions are being issued:

I. The Director General of Police, UP Police/competent officer in the PHQ shall create a framework and standard operating procedures for the State of U.P. to ensure compliance of the directions and strict adherence to the timeline of duties stated earlier. The framework shall include nomination of officials responsible for executing specific tasks with a corresponding time line.

II. The Senior Superintendent of Police/ Deputy Commissioner of Police/Superintendent of Police (in districts where there is no post of Senior Superintendent of Police) of the concerned district shall be the nodal officer, who shall supervise the staff charged with the duty of actually serving the bail notice upon the victim and the CWC, imparting information about entitlements under the POCSO Act, 2012 read with POCSO Rules, 2020 to the victim, and submitting the assessment (Form

B) to the CWC and to furnish timely instructions to the Government Advocate/District Government Counsel in bail applications. In case, there is default on part of such official, the S.S.P./ D.C.P/ S.P. of the concerned district shall take immediate action in accordance with law against such erring official.

III. The Director General of Police shall create a State Level Committee headed by Officer not below than the rank of Additional Director General of Police. The aforesaid committee shall prepare biannual reports which review the working and implementation of the above said directions throughout the State of U.P., & examine the action taken against the officials who violate the directions.

IV. The District Magistrate of the concerned district to ensure that the reports as directed in this order are produced by the CWC before the Court when the bail application is placed in Court. Appropriate action shall be taken against those who default.

V. Biannual reports shall be prepared by the Principal Secretary/competent authority in the Ministry of Child Welfare, Government of U.P. regarding compliance of the directions by the CWCs in State of U.P. and the action taken against erring officials.

VI. Reports under Direction Nos. III and V shall be placed before the High Court Legal Services Committee; High Court Committee for monitoring the expeditious disposal of rape and Protection of Children From Sexual Offences Act cases; High Court Committee for monitoring implementation of the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000, twice in an year.

VII. The Director General of Police, U.P., the Principal Secretary, Child Welfare Committee, Government of U.P., L.R., Government of U.P. to respectively file compliance affidavits before the Registrar General, Allahabad High Court, Allahabad on or before 12.09.2021.

VIII. The Registry shall ensure that the child or its parents are not joined as parties to the bail application by name. It should also be ensured that any other information like address or neighbourhood which will reveal the identity of the child shall not be stated in the bail application. The aforesaid details shall be anonymised.

IX. The Registrar General shall ensure compliance of all the directions, related to the Registry of this Court.

Copy of this order:-

90. The Government Advocate, High Court Allahabad shall forthwith ensure service of copy of this order on:

1. High Court Legal Services Committee, High Court Allahabad.
2. State Legal Services Authority, Lucknow.
3. L.R./Principal Secretary, Law, Government of U.P. Lucknow.
4. Principal Secretary, Child Welfare, Government of U.P., Lucknow.
5. Director General of Police, U.P Police, Lucknow.

91. Registrar General of this Court to forthwith place this order before the following Hon'ble Committees:

1. High Court Committee for monitoring the expeditious disposal of rape and Protection of Children From Sexual Offences Act cases.
2. High Court Committee for monitoring implementation of the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000.
3. High Court Legal Services Committee.

IX. Order on bail application:

92. Heard Shri Mohammad Mustafa, learned counsel for the applicant and learned AGA for the State.

93. A first information report was lodged against the applicant

as Case Crime No. 158 of 2020, at Police Station- Itwa, District- Siddharth Nagar on 26.08.2020 under Sections- 363, 366 IPC, and Section 3(1)(da), 3(1)(dha) and 3(2)(va) of SC/ST Act (subsequently also under Sections 16/17 POCSO Act).

94. The bail application of the applicant was rejected by learned Additional District and Sessions Judge/Special Judge (POCSO Act), Siddharth Nagar, on 14.10.2020.

95. Sri Mohammad Mustafa, learned counsel for the applicant contends that the applicant is not accused of rape or abduction. The applicant did not blackmail the victim. These acts were committed by the main accused Sajjad. The applicant also did not accompany the victim and Sajjad in the bus. The statement of the victim squarely contradicts the FIR insofar as the involvement of the application is concerned. Lastly it is submitted by learned counsel for applicant that the applicant shall not abscond, and will fully cooperate in the criminal law proceedings. The applicant shall not tamper with the evidence nor influence the witnesses in any manner.

96. Learned A.G.A and Shri Maya Pati Pandey, learned counsel for the complainant could not satisfactorily dispute the aforesaid submissions from the record.

97. I see merit in the submissions of Shri Mohd. Mustafa, learned counsel for the applicant and accordingly hold that the

applicant is entitled to be enlarged on bail.

98. In light of the preceding discussion and without making any observations on the merits of the case, the bail application is **allowed**.

99. Let the applicant **Junaid** be enlarged on bail in Case Crime No. 158 of 2020, under Sections- 363, 366, 368 IPC, and Sections 16/17 POCSO Act and Section 3(2)(V) of SC/ST Act, Police Station- Itwa, District- Siddharth Nagar, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions.

i. The applicant will not tamper with the evidence during the trial.

ii. The applicant will not influence the prosecution witness.

iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

iv. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court to any police officer or tamper with the evidence.

100. In case of breach of any of the above conditions, the

prosecution shall be at liberty to move bail cancellation application before this Court.

101. The party shall file computer generated copy of this order downloaded from the official website of High Court, Allahabad. The concerned Court/ Authority/ Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 09.07.2021

Dhananjai Sharma

i Appendix i

POCSO Act, 2012

Statement of Objects and Reasons

“Article 15 of the Constitution, inter-alia, confers upon the State powers to make special provision for children. Further, Article 39, inter-alia, provides that the State shall in particular direct its policy towards securing that the tender age of children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

2. The United Nations Convention on Rights of Children, ratified by India on 11th December, 1992, requires the State Parties to undertake all appropriate National, By-lateral and Multi lateral measures to prevent (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; and (c) the exploitative use of children in pornographic performances and materials.

3. The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the study on child abuse: India 2007' conducted by the Ministry of Women and Child Department. Moreover, sexual offences against children are not adequately addressed by the extant laws. A large number of such offences are neither specifically provided for nor are they adequately penalized. The interests of the child, both as a victim as well as a witness, need to be protected. It is felt that offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence.

4. It is, therefore, proposed to enact a self contained comprehensive legislation inter-alia to provide for protection of children from the sexual offences and pornography with due regard for safeguarding the interest and well being of the child at every stage of the Judicial process, incorporating child friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Courts for speedy trial of such offences.

5. The Bill would contribute to enforcement of the right of all children to safety, security and protection from sexual abuse and exploitation.

6. The notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives.”

ii Appendix II

POCSO Rules, 2020

Form -A

Entitlement of children who have suffered sexual abuse to receive information and services

1. To receive a copy of the FIR.
2. To receive adequate security and protection by Police.
3. To receive immediate and free medical examination by civil hospital/PHC etc.
4. To receive Counselling and consultation for mental and psychological well being
5. For Recording of statement of child by woman police officer at child's home or any other place convenient to child
6. To be moved to a Child Care Institution where offence was at home or in a shared household, to the custody of a person whom child reposes faith.
7. For Immediate aid and assistance on the recommendation of CWC.
8. For being kept away from accused at all times, during trial and otherwise.
9. To have an interpreter or translator, where needed.
10. To have special educator for the child or other specialized person where child is disabled.
11. For Free Legal Aid.
12. For Support Person to be appointed by Child Welfare Committee.
13. To continue with education.
14. To privacy and confidentiality.
15. For list of Important Contact No.'s including that of the District Magistrate and the Superintendent of Police.

.....

Duty Officer

(Name & Designation to be mentioned)

Date:.....

I have received a copy of 'Form-A'

(Signature of Victim/Parent/Guardian)

(Note : The form may be converted in local and simple Child friendly language)

iii Appendix III

POCSO Rules, 2020

Form-B

Preliminary Assessment Report

	Parameters	Comment
1.	Age of the victim	
2.	Relationship of child to the offender	
3.	Type of abuse and gravity of the offence	
4.	Available details and severity of mental and physical harm/injury suffered by the child	
5.	Whether the child is disabled (physical, mental or intellectual)	
6.	Details regarding economic status of victim's parents, total number of child's family members, occupation of child's parents and monthly family income.	
7.	Whether the victim has undergone or is undergoing any medical treatment due to incident of the present case or needs medical treatment on account of offence.	
8.	Whether there has been loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial or other reason?	
9.	Whether the abuse was a single isolated incident or whether the abuse took place over a period of time?	
10.	Whether the parents of victim are undergoing any treatment or have any health issues?	
11.	Aadhar No. of the child, if available.	

Date:.....

.....

Station House Officer

iv Appendix iv

POCSO Rules, 2020

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

(7) The child and child's parent or guardian or any other person in whom the child has trust and confidence and with whom the child has been living, who is affected by such determination, shall be informed that such determination is being considered.

v Appendix v

POCSO Rules, 2020

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

(5) Upon receipt of a report under sub-rule (3), the concerned CWC must proceed, in accordance with its powers under sub-section (1) of section 31 of the Juvenile Justice Act, 2015 (2 of 2016), to make a determination within three days, either on its own or with the assistance of a social worker, as to whether the child needs to be taken out of the custody of child's family or shared household and placed in a children's home or a shelter home.

(6) In making determination under sub-rule (4), the CWC shall take into account any preference or opinion expressed by the child on the matter, together with the best interests of the child, having regard to the following considerations, namely: -

- (i) the capacity of the parents, or of either parent, or of any other person in whom the child has trust and confidence, to provide for the immediate care and protection needs of the child, including medical needs and counselling;
- (ii) the need for the child to remain in the care of parent's, family and extended family and to maintain a connection with them;
- (iii) the child's age and level of maturity, gender, and social and economic background;
- (iv) disability of the child, if any;
- (v) any chronic illness from which a child may suffer;
- (vi) any history of family violence involving the child or a family member of the child; and,
- (vii) any other relevant factors that may have a bearing on the best interests of the child:

Provided that prior to making such determination, an inquiry shall be conducted in such a way that the child is not unnecessarily exposed to injury or inconvenience.

(8) The CWC, on receiving a report under sub-section (6) of section 19 of the Act or on the basis of its assessment made under sub-rule (5), and with the consent of the child and child's parent or guardian or other person in whom the child has trust and confidence, may provide a support person to render assistance to the child in all possible manner throughout the process of investigation and trial, and shall immediately inform the SJPU or Local Police about providing a support person to the child.

(9) The support person shall at all times maintain the confidentiality of all information pertaining to the child to which he or she has access and shall keep the child and child's parent or guardian or other person in whom the child has trust and confidence, informed regarding the proceedings of the case, including available assistance, judicial procedures, and potential outcomes. The Support person shall also inform the child of the role the Support person may play in the judicial process and ensure that any concerns that the child may have, regarding child's safety in relation to the accused and the manner in which the Support person would like to provide child's testimony, are conveyed to the relevant authorities.

(10) Where a support person has been provided to the child, the SJPU or the local police shall, within 24 hours of making such assignment, inform the Special Court in writing.

(11) The services of the support person may be terminated by the CWC upon request by the child and child's parent or guardian or person in whom the child has trust and confidence, and the child requesting the termination shall not be required to assign any reason for such request. The Special Court shall be given in writing such information.

(12) The CWC shall also Seek monthly reports from support person till the completion of trial, with respect to condition and care of child, including the family situation focusing on the physical, emotional and mental well being, and progress towards healing from trauma; engage with medical care facilities, in coordination with the support person, to ensure need-based continued medical support to the child, including psychological care and counselling; and shall ensure resumption of education of the child, or continued education of the child, or shifting of the child to a new school, if required.

vi **Appendix vi**

POCSO Act, 2012

19. Reporting of offences.—

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection including admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report, as may be prescribed.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

vii Appendix vii

POCSO Act, 2012

Section 39 of the POCSO Act, 2012 enables the CWC to requisition of services of various experts for making its assessments. Section 39 of the POCSO Act, 2012 is quoted below:

“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.”

viii Appendix viii

J.J.Act, 2015

The relevant parts of **Section 27** are stated below:

“27. Child Welfare Committee— (1) The State Government shall by notification in the Official Gazette constitute for every district, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under this Act and ensure that induction training and sensitisation of all members of the committee is provided within two months from the date of notification.”

.....

(8) The District Magistrate shall conduct a quarterly review of the functioning of the Committee.

(10) The District Magistrate shall be the grievances redressal authority for the Child Welfare Committee and anyone connected with the child, may file a petition before the District Magistrate, who shall consider and pass

appropriate orders.”

The functions and responsibilities of the Child Welfare Committee, are described in Section 30 of the J.J. Act, 2015. The material provisions speak thus:

“30. The functions and responsibilities of the Committee shall include—

(xv) ***co-ordinate*** with the police, labour department and other agencies involved in the care and protection of children with support of the District Child Protection Unit or the State Government;

(emphasis supplied)

(xvii) ***accessing appropriate legal services for children;***

(emphasis supplied)

Section 106 of the J.J. Act, 2015 creates the State Child Protection Society and District Child Protection Unit:

“106. Every State Government shall constitute a Child Protection Society for the State and Child Protection Unit for every District, consisting of such officers and other employees as may be appointed by that Government, to take up matters relating to children with a view to ensure the implementation of this Act, including the establishment and maintenance of institutions under this Act, notification of competent authorities in relation to the children and their rehabilitation and co-ordination with various official and non-official agencies concerned and to discharge such other functions as may be prescribed.”

ix. Appendix ix

Legal Services Authorities Act, 1987

Section 6 defines the “State Legal Services Authority” and Section 7 describes its functions.

Section 7 of the LSA Act, 1987 defines the functioning of the State Authorities, while Section 8 contemplates the State Authority to act in coordination with relevant governmental agencies and other bodies, engaged in promoting the cause of

legal services to the court.

Material parts of the provisions are reproduced below:

“Section 7. Functions of the State Authority- 2(a) give legal service to persons who satisfy the criteria laid down under this Act.”

“Section 8. State Authority to act in co-ordination with other agencies, etc.; can be subject in directions given by Central Authority.—In the discharge of its functions the State Authority shall appropriately act in co-ordination with other governmental agencies, non-governmental voluntary social service institutions, universities and other bodies engaged in the work of promoting the cause of legal services to the poor and shall also be guided by such directions as the Central Authority may give to it in writing.”

(emphasis supplied)

Section 8 (A) creates the “High Court Legal Services Committee”. While Section 9 constitutes the District Legal Services Authorities.

Section 12 details the criteria for giving legal services and Section 13 provides for the entitlement to legal services. Relevant provisions are stated hereunder:

“Section 12. Criteria for giving legal services-Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is -

- (a) a member of a Scheduled Caste or Scheduled Tribe;
- (b) a victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution;
- (c) a woman or a child;
- (d) a person with disability as defined in clause (i) of section 2 of the persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995]
- (e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- (f) an industrial workman; or
- (g) in custody, including custody in a protective home within the meaning of clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956) or in a juvenile home within the meaning of clause (j) of Section 2 of the Juvenile Justice Act, 1986 (53 of 1986) or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of Section 2 of the Mental Health Act, 1987 (14 of 1987); or
- (h) in receipt of annual income less than rupees nine thousand or such other higher

amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.]

“Section 13. Entitlement to Legal Services- (1) Persons who satisfy all or any of the criteria specified in Section 12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a prima-facie case to prosecute or to defend.

(2) An affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this Act unless the concerned Authority has reason to disbelieve such affidavit.”