

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Appeal No.101 of 2021Order reserved on:17/11/2021Order delivered on: 19/01/2022

1. Akash Chandrakar, S/o Shri Ashok Chandrakar, aged about 23 years, R/o Village Bemcha, Police Station and District Mahasamund (CG)
2. Kumari @ Guddi Chandrakar, W/o Manglu, aged about 40 years, R/o Village Barbaspur, Police Station and District Mahasamund (CG)
---- Appellants

Versus

State of Chhattisgarh, Through Station House Officer, Police Station
Mahasamund, District Mahasamund (CG)

---- Respondent

For Appellants: Mr. C.R. Sahu, Advocate.

For Respondent / State: -

Mr. Ravish Verma, Government Advocate.

Amicus Curiae: Mr. Ashish Surana, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal and
Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. OrderSanjay K. Agrawal, J.

1. The short question that has cropped up for consideration would be, whether for considering an application for suspension of sentence and grant of bail under Section 389(1) of the CrPC, notice to the victim/complainant under the provisions of the Protection of Children from Sexual Offences Act, 2012 (for short, 'the POCSO Act') would be necessary as appellant NO.1 has been convicted for offence under Section 6 of the POCSO Act and appellant No.2 has been convicted for offence under Section 6 read with Section 17 of the POCSO Act in



addition to their conviction for offences under the provisions of the Indian Penal Code.

2. In this appeal preferred under Section 374(2) of the CrPC, application for suspension of their substantive jail sentence has also been preferred by the appellants/accused for suspension of their sentences for offences under the provisions of the IPC as well as under the provisions of the POCSO Act.
3. Mr. Ashish Surana, learned Amicus Curiae, would submit that by Amendment Act No.5 of 2009 and by virtue of the POCSO Rules, 2007, the right created in favour of the victim has to be given fullest effect to and interest of the victim/ informant/ complainant has to be protected post trial proceedings also and that would extend while hearing the application for suspension of sentence as ultimately by suspending the substantive jail sentence awarded, bail has to be granted which would be covered within the meaning of sub-rule (15) of Rule 4 of the POCSO Rules, 2020. He would further submit that in the matter of Aparna Bhat and others v. State of Madhya Pradesh and another¹ while setting aside the imposition of certain bail conditions in a case involving sexual offence against woman, the Supreme Court has held that in case bail is granted the complainant should immediately be informed that the accused has been granted bail and copy of the bail order be made over to him/her within two days, as such, notice of the application for suspension of sentence in any criminal appeal has to be served to the victim/complainant, so that he/she may have a say on the application for suspension of sentence, in which ultimately by suspending sentence the accused has to be

¹ 2021 SCC OnLine SC 230



enlarged on bail in pending criminal appeal, therefore, notice to the complainant/victim would be absolutely necessary before considering the application for suspension of sentence.

4. We have heard learned counsel appearing for the parties as well as the *amicus curiae* and given our thoughtful consideration and also went through the records with utmost circumspection.
5. As noticed above, the short question would be, whether notice to the victim/complainant of offence under the POCSO Act would be necessary while considering the application for suspension of sentence preferred under Section 389(1) of the CrPC in pending criminal appeal against conviction of the appellants / accused persons.
6. At this stage, it would be necessary to notice brief history relating to evolution of victim's right as the State has ultimate control over the investigation and conduct of criminal proceedings during trial. Earlier the right of victim was not recognized appropriately having no participation in adjudication process. The Supreme Court in the matter of Rattan Singh v. State of Punjab² pointed out the deficiency in the system wherein the right of victim has not been recognized at all. Thereafter the Law Commission of India in its 154th report in Chapter XV on Victimology made several recommendations on compensation to the victim and again the Committee on Reforms of Criminal Justice System was constituted by the Government of India and ultimately, the Malimath Committee report made several recommendations relating to participation of victim in trial, impleadment of victim in trial as party

² (1979) 4 SCC 719



and representation through Advocate and the report of the Law Commission and the recommendations of the Committee made therein is one of the cause leading to passing of the Code of Criminal Procedure (Amendment) Act, 2008 which came into force w.e.f 31.12.2009.

7. In the unamended Code of Criminal Procedure, 1861, there was no right to appeal against the order of acquittal. The Code of Criminal Procedure, 1898 provided unconditional right to appeal against the order of acquittal enabling the State to direct the Public Prosecutor to present an appeal to the High Court from the order of acquittal passed by any Court. However, the Code of Criminal Procedure, 1973 inserted Section 378(3) requiring to seek leave for filing appeal against the order of acquittal and now unconditional right to appeal has been given to the victim by virtue of proviso to Section 372 of the CrPC.

8. The Code of Criminal Procedure was amended vide Code of Criminal Procedure (Amendment) Act No. 5 of 2009. The statement of objects and reasons of the Amendment Act reads as under:-

“Statement of Objects and Reasons.-

The need to amend the Code of Criminal Procedure, 1973.....

2.....At present, the victims are the worst sufferers in a crime and they don't have much role in the Court proceedings. They need to be given certain rights and compensation, so that there is no distortion of the criminal justice system.”

9. Section 2(wa) of the CrPC defines “victim” which states as under:-

“2.(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;".

Section 24(8) has also been inserted in the Code of Criminal Procedure by the Amendment Act No.5 of 2009. Proviso to sub-section (8) of Section 24 of the CrPC provides as under:-

"24(8) xxx xxx xxx

Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section."

10. As such, by virtue of proviso to Section 24(8) of the CrPC, the victim can seek permission of the Court to engage an Advocate of his/her choice to assist the prosecution. This provision has been inserted for protection of right of the victim in trial by making appropriate amendment in Section 24 of the CrPC and keeping in view that the victim is the worst sufferer of the crime and he/she would be involved in adjudication of criminal trial.

11. The Supreme Court in the matter of Sandeep Kumar Bafna v. State of Maharashtra³ has recognized the right of the complainant/informant in the following words:-

"32....The complainant or informant or aggrieved party may, however, be heard at a crucial and critical juncture of the trial so that his interests in the prosecution are not prejudiced or jeopardised. It seems to us that constant or even frequent interference in the prosecution should not be encouraged as it will have a deleterious impact on its impartiality. If the Magistrate or Sessions Judge harbours the opinion that the prosecution is likely to fail, prudence would prompt that the complainant or informant or aggrieved party be given an informal hearing."

12. Thus, in view of the aforesaid principle of law laid down by the Supreme Court in Sandeep Kumar Bafna (supra), if any adverse order in any criminal proceeding is going to be passed against the

³ (2015) 3 SCC (Cri.) 558





prosecution, it is in the interest of justice to hear the informant/complainant in assistance of the prosecution.

13. The question is requirement of notice to the victim/informant/complainant under the Act of 2012 which came into force w.e.f. 14.11.2012, The POCSO Act makes special provision for sexual crime against children and Sections 23, 24(5) and 33(7) of the POCSO Act 2012 ensure protection of the victim. The Central Government in exercise of the powers conferred by sub-section (1) read with clauses (a) to (d) of sub-section (2) of Section 45 of the POCSO Act has framed rules known as the Protection of Children from Sexual Offences Rules, 2020 of which sub-rule (15) of Rule 4 is pertinent which states as under:-

“(15) 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:-

- (i) the availability of public and private emergency and crises services;
- (ii) the procedural steps involved in a criminal prosecution;
- (iii) the availability of victims' 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."

14. A careful perusal of the aforesaid rule would show that victim/child and his/her parents or guardian or other person in whom the child has trust and confidence, is entitled for the notice of the bail, release or detention status of an offender or suspected offender as a matter of right and that can be done only if the victim/child or his/her parents or guardian or other person in whom the child has trust and confidence, such an information has to be provided by Special Juvenile Police Unit / local police / support person. In the considered opinion of this Court, the object of the rule above-stated can be achieved competently by giving prior notice by the Court while hearing the application for suspension of sentence filed by the accused, who has been convicted for offence under the POCSO Act, to the child/victim/ child's parents/guardian/other person in whom the child has trust and confidence.

15. Section 39 of the POCSO Act provides guidelines for child to take assistance of experts, etc., which states 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 nongovernmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child."

16. In exercise of the powers conferred under Section 39 of the POCSO Act, the Ministry of Women and Child Development, Government of India, has issued Model Guidelines of which Guideline 2.2 is relevant to the present context which is reproduced herein-below:-

"2.2. At trial

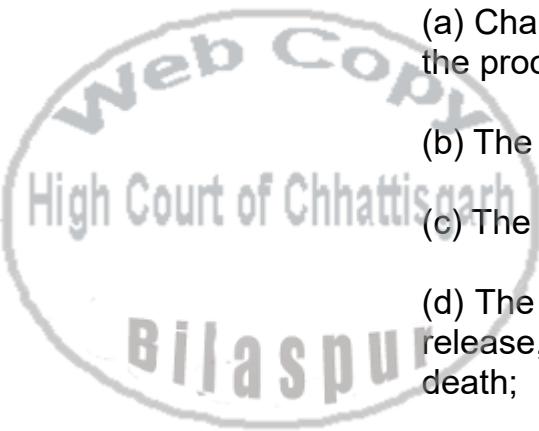




(i) Children have the right to be heard in any judicial and administrative proceedings affecting them. They must be given a reasonable opportunity to express their views all matters affecting him and these must be taken into account. He should also be allowed to provide initial and further information, views or evidence during the proceedings.

(ii) Children have the right to information about the case in which they are involved, including information on the progress and outcome of that case, unless the lawyer considers that it would be contrary to the welfare and best interests of the child. It would be best if the lawyer coordinates with other persons or agencies concerned with the child's welfare, such as the support person, so that this information is conveyed in the most effective manner. Victims should receive the most appropriate information on the proceedings from all their representatives, and the assistance of a support person appointed under Rule 4(7) most often constitutes the best practice in ensuring that full information is conveyed to the victim.

Such information would include:

- 
- (a) Charges brought against the accused or, if none, the stay of the proceedings against him;
 - (b) The progress and results of the investigation;
 - (c) The progress of the case;
 - (d) The status of the accused, including his/her bail, temporary release, parole or pardon, escape, absconding from justice or death;
 - (e) The available evidence;
 - (f) The child's role in the proceedings;
 - (g) The child's right to express their views and concerns in relation to the proceedings;
 - (h) The scheduling of the case;
 - (i) All decisions, or, at least those decisions affecting their interests;
 - (j) Their right to challenge or appeal decisions and the modalities of such appeal;
 - (k) The status of convicted offenders and the enforcement of their sentence, including their possible release, transfer, escape or death."



17. A careful perusal of the aforesaid guidelines would show that the victim has been held entitled to receive most appropriate information of the proceedings which would include the status of the accused including his/her bail, temporary release parole or pardon, escape, absconding from justice etc.. As such, the victim is entitled to have full information with regard to hearing an application for grant of bail filed by the accused and children have the right to be heard in any judicial and administrative proceedings affecting them.
18. The guidelines issued by the Ministry of Women and Child Development, Government of India under Section 39 of the POCSO Act clearly provide that the victim is entitled for full information with regard to the status of bail application of an accused who is being prosecuted on the report made on his/her behalf.
19. Thus, from the aforesaid discussion, we are of the considered opinion that though the POCSO Act does not provide for issuance of notice to the victim or his parents or guardian at the time of consideration of application for suspension of sentence of the accused/appellant who has preferred an appeal and who has been convicted for offence under the provisions of the POCSO Act, but by virtue of sub-rule (15) of Rule 4 of the Rules of 2020 and by virtue of the guidelines issued by the Central Government under Section 39 of the POCSO Act, issuance of prior notice to the victim/ complainant or his/her parents or guardian/informant would be absolutely necessary in the ends of justice before hearing the application for suspension of sentence preferred under Section 389(1) of the CrPC in pending criminal appeal by convicted person and if the sentence awarded to the accused is

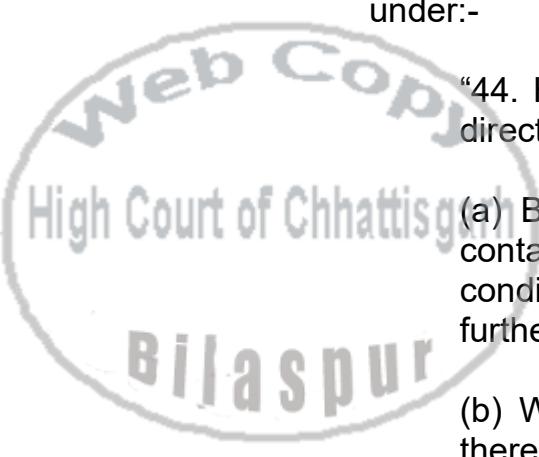


suspended, he has to be released on bail on terms and conditions imposed by that Court, as such, for suspension of sentence and grant of bail under Section 389 of the CrPC proceeding, the victim/complainant or his/her parents would be entitled for prior notice of hearing of that application.

20. The Supreme Court in Aparna Bhat (supra) while considering the untenable conditions imposed by the High Court while granting bail in the case involving sexual offence against woman has laid down the following parameters including that the fact of grant of bail should be informed to the complainant immediately and copy of the bail order made over to him/her within two days. Para 44 of the report states as under:-

“44. Having regard to the foregoing discussion, it is hereby directed that henceforth:

- (a) Bail conditions should not mandate, require or permit contact between the accused and the victim. Such conditions should seek to protect the complainant from any further harassment by the accused;
- (b) Where circumstances exist for the court to believe that there might be a potential threat of harassment of the victim, or upon apprehension expressed, after calling for reports from the police, the nature of protection shall be separately considered and appropriate order made, in addition to a direction to the accused not to make any contact with the victim;
- (c) In all cases where bail is granted, the complainant should immediately be informed that the accused has been granted bail and copy of the bail order made over to him/her within two days;
- (d) Bail conditions and orders should avoid reflecting stereotypical or patriarchal notions about women and their place in society, and must strictly be in accordance with the requirements of the Cr.PC. In other words, discussion about the dress, behavior, or past “conduct” or “morals” of the prosecutrix, should not enter the verdict granting bail;
- (e) The courts while adjudicating cases involving gender





related crimes, should not suggest or entertain any notions (or encourage any steps) towards compromises between the prosecutrix and the accused to get married, suggest or mandate mediation between the accused and the survivor, or any form of compromise as it is beyond their powers and jurisdiction;

(f) Sensitivity should be displayed at all times by judges, who should ensure that there is no traumatization of the prosecutrix, during the proceedings, or anything said during the arguments, and

(g) Judges especially should not use any words, spoken or written, that would undermine or shake the confidence of the survivor in the fairness or impartiality of the court."

21. The Calcutta High Court In the Matter of : Ganesh Das⁴ while considering the question where the victim is a necessary party to an appeal preferred under Section 374 of the CrPC from conviction, who has been convicted also under the provisions of the POCSO Act, has held that though the victim is not a necessary party to the Criminal Appeal from conviction for offences against woman or child, punishable under provisions of the IPC or POCSO Act, but if the appellate Court deems it necessary to provide further assistance to secure the interest of the victim and directed as under:-

"26. iii) The procedure to be adopted in all such appeals would be to deal with those appeals without insisting on the impleadment of the victim. In cases where, over and above the assistance of the Public Prosecutor representing the State, the appellate court deems it necessary to provide further assistance to secure the interest of the victim through legal aid, the HCLSC or the DLSA concerned may be required to provide assistance through an empanelled or other advocate as may be decided by the HCLSC or the DLSA concerned. However, even in such cases, it shall be insisted by the Court that the principles relating to protection of dignity and privacy and modality of ensuring those values, as delineated above, are scrupulously adhered to."

22. Thus, from the aforesaid legal analysis and following the provisions contained in sub-rule (15) of Rule 4 of the Rules 2020 as well as the



guidelines issued by the Central Government in exercise of the powers conferred under Section 39 of the POCSO Act and following the decision of the Supreme Court in Aparna Bhat (supra), we are of the considered opinion that notice either to the victim or one of his/her parents or guardian/informant or support person in whom the child has trust and confidence would be absolutely necessary in the ends of justice while hearing and considering the application for suspension of sentence in pending appeal preferred by the appellant/accused convicted under the offences against woman or child punishable under the provisions of the POCSO Act. However, in such cases, it shall be insisted by the Court that the principles relating to protection of dignity and privacy and modality of ensuring those values, as delineated by their Lordships of the Supreme Court in the matter of Nipun Saxena and another v. Union of India and others⁵, are scrupulously adhered to and followed religiously.

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*.

5 (2019) 2 SCC 703



25. List the matter on 4-3-2022 for hearing on the application for suspension of sentence and grant of bail and another IA.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Arvind Singh Chandel)
Judge

B/-





HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.101 of 2021

Akash Chandrakar and another

Versus

State of Chhattisgarh

Head Note

In an appeal filed by the accused convicted for offence under Section 6 read with Section 17 of the POCSO Act while hearing the application for suspension of sentence and grant of bail under Section 389(1) of the CrPC, notice to the victim / complainant / her parents is necessary.

