

\$~6

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 198/2020

BABU LAL

..... Appellant

Through: Mr Adit S Pujari, Adv. (DHCLSC)
and Ms Aparajita Sinha, Adv.

versus

STATE

..... Respondent

Through: Ms Manjeet Arya, APP for State
SI Ajay, PS-Neb Sarai.
Ms Astha, Adv. for prosecutrix.
(through VC)
Ms. Harshita Mishra, Secretary
(Litigation), DSLSA (through VC)

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

11.01.2023

%

1. During the course of hearing of this appeal, it was pointed out by Mr Pujari, learned counsel appearing for the appellant as well as Ms Mishra, Secretary (Litigation), DSLSA that many of the victims in POCSO cases were being asked to appear physically or virtually in Court at the time of hearing bail applications. This has led to a situation where the victims were being forced not only to potentially interact with the accused person but also be present in Court when arguments regarding the offence were taken up for hearing.

2. The psychological impact on a POCSO victim being present in Court during the arguments is grave as there are allegations, accusations, doubting

the integrity, character, etc. of the prosecutrix, her family, etc. The presence of the prosecutrix victim in Court at the time of arguments, according to me, has an adverse impact on the psyche of the prosecutrix. The prosecutrix is forced to be present in Court with the accused, who is the same person who has allegedly violated her. It was felt that it would be in the interest of the victim that she is not traumatized again and again by re-living the said incident by being present in Court proceedings.

3. In this view of the matter, the DHCLSC, DSLSA as well as Mr Pujari were directed to give suggestive practice directions. The suggestive practice directions have been forwarded to this Court and I am in agreement that the said directions, if implemented in its true letter, spirit and intent, may help in reducing the trauma of a POCSO victims. In this view of the matter and in addition to the practice directions issued earlier, it is further directed that during bail hearings of a POCSO case, the following guidelines shall also be adhered to:

“i. The IO shall ensure that timely service of notice of bail application is made on the victim/ prosecutrix, so that she gets reasonable amount of time to enter appearance and make her submissions.

ii. The Investigating Officer while serving notice/summons of the bail application to the victim/ prosecutrix shall make relevant inquiries about the victim and her circumstances and shall document the same in order to assist the court in the hearing of the bail application and to facilitate effective representation and participation on behalf of the victim. The IO should ensure that while making such enquiries the victim is not made to feel uncomfortable or questioned like an accomplice to a crime. Necessary sensitivity ought to be displayed by the IO while making these enquiries.

iii. The victim can be produced virtually before the Court (either by the IO/ Support person before the Court) (by way of Video Conferencing) or by taking assistance of the District Legal Services Authority. Hybrid form of hearing of bail applications would suitably address the concerns of the victim while at the same time safeguarding the rights of the accused. Victim and the accused shall not come face to face in this manner and this can prevent the re-traumatization of the victim.

iv. If the victim gives it in writing that her counsel/ parent/guardian/ support person shall appear on her behalf and make submissions on the bail application, insistence on physical or virtual presence of the prosecutrix shouldn't be made. A written authorization of the victim authorising another to make submissions on her behalf (after victim is duly indentified by the IO) and said authorization is forwarded by the SHO, should suffice.

v. If the victim has appeared in court on one date of hearing of a bail application, her presence on subsequent dates can be dispensed with and RCC lawyer/ counsel/ parent/guardian/ support person representing the victim in court can be permitted to make submissions on behalf of the victim. On the day of the first appearance of the victim/prosecutrix, her submissions qua the bail application can be recorded by the Court and the same maybe used for the purpose of adjudicating on the bail application. The victim's opinion and objections regarding bail application on the first interaction can be mentioned in the order passed on the day of interaction between the Ld. Judge and the victim and this order can then be relied on at the stage of final disposal of bail application.

vi. In certain exceptional cases, in- chamber interaction with the victim can be done and her submissions qua the bail application can be

recorded in the order sheet passed on that day, so that the same maybe considered at a later stage.

vii. While recording the submissions/ objections/ statement of the victim qua the bail application, appropriate questions may be put to the victim to elicit her responses instead of bluntly asking her “Do you want bail to be given to the accused or not?” Rather questions can be put to her to ascertain what her apprehensions and fears are in case the accused is granted bail in the matter, for bail is to be granted by the Court concerned on the basis of overall appreciation of facts and circumstances of the case and in the light of well settled principles governing the grant of bail.

viii. Whenever the victim comes to court for a hearing on the bail application, the support person provided to her should be present with her so as to provide the necessary psychological or logistical support to the victim/prosecutrix.

ix. It may further be clarified that victim's presence may not be insisted on in cases under POCSO Act, where the accused is a child in conflict with law, because the considerations for grant of bail to the child in conflict with law are not dependant on the apprehensions of the prosecutrix. Section 12 of the Juvenile Justice (Care and Protection) Act, 2015 delineate separate parameters for considering grant of bail to children in conflict with law and giving an audience to the prosecutrix will not have any bearing on the same.

x. Further, after the bail application is disposed off, the copy of the order should be mandatorily sent to the victim. This becomes important since the victim's main concern is her safety in case the accused is enlarged

on bail. By providing her a copy of the bail order the victim is made aware about the status of the accused and the conditions of the bail and her right to approach the court for cancellation of bail in case of breach of conditions of bail.

*xi. It would further be in the fitness of things that the Judicial Officers are sensitized about the need to reduce interface of victim with the accused in court to the minimum possible and to permit victim to be represented through an authorised person in court at the time of hearing of bail application, instead of insisting for appearance of the victim in person (either virtually/physically). Judicial Officers maybe sensitized to the extent that Practice Directions issued by the Hon'ble High Court of Delhi on 24.09.2019 and judicial directions in "**Reena Jha v. Union of India**" and "**Miss 'G' (Minor) through her Mother v. State of NCT of Delhi**" were issued to ensure that victim doesn't remain unrepresented or unheard when the question of granting bail to the accused is being considered. However, it wasn't meant to invariably call for presence of victim on all dates of hearing in bail application so that the process itself becomes a punishment for the victim by exposing her to the accused/ his counsel frequently and reopening her emotional and psychological wounds."*

4. The Secretary (Litigation), DSLSA who is present in Court shall circulate the order to all necessary parties and stake holders.

5. List the appeal in due course.

JASMEET SINGH, J

JANUARY 11, 2023

sr

[Click here to check corrigendum, if any](#)