

**AFR**

Neutral Citation No. - 2024:AHC:142805

**Court No. - 65**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 30292 of 2024

**Applicant :-** [REDACTED]

**Opposite Party :-** State Of U.P. And 3 Others

**Counsel for Applicant :-** M.P. Srivastava, Manoj Kumar Kushwaha

**Counsel for Opposite Party :-** G.A.

**Hon'ble Ajay Bhanot, J.**

1. Matter is taken up in the revised call.
2. Heard Shri M.P. Srivastava, learned counsel for the applicant and Shri Chandan Agrawal, learned AGA-I for the State.
3. By means of this bail application the applicant has prayed to be enlarged on bail in Case Crime No.516 of 2022 at Police Station-Chaubeypur, District-Varanasi under Sections 376, 120B I.P.C. and Section 16/17 of the POCSO Act. The applicant is in jail since 04.11.2022.
4. The bail application of the applicant was rejected by learned trial court on 06.07.2024.
5. From the records and the submissions of the learned A.G.A., it is evident that the victim has not been apprised of her rights to a support person and a legal counsellor. The records do not depict the appointment of support person or legal aid/counsel for a victim. Status of grant entitlements of the victim under the POCSO Act are also absent in the records of the State. This assumes importance in view of the fact that the victim is the daughter of the applicant.

6. The issue that arises for consideration in the bail application is the need and the manner to realize the rights of child victims under the POCSO Act offences in bail proceedings.

7. Victims under the POCSO Act are entitled for various support systems like support person, legal aid, medical care, counselling services and other beneficial schemes of the State Government. The child victims of sexual abuse are a most vulnerable class of citizens. The children of the said class are often incapacitated in their search for justice by other disabling circumstances like the trauma of the incident, social marginalization, financial penury, legal illiteracy and the like. Bereft the support systems guaranteed by the statute, child victims of sexual offences under the POCSO Act cannot prosecute their cases effectively before the competent court.

8. The realization of the statutory rights of child victims of sexual offences under the POCSO Act is the key to empower them to engage with the legal process on a fair footing. The statutory support systems enhance the capacity of the said victims to interface with officials and secure their rights. Empowerment of children who are victims of sexual offences is an imperative necessity to remove the barriers in their search for justice. And the same can be achieved by fruition of their statutory rights. Denial of rights vested in child victims of sexual offences by the POCSO Act during court proceedings will defeat the legislative intent of the statute and result

in miscarriages of justice.

9. Various authorities have been created under the POCSO Act to uphold the rights of victims. The said authorities like police, Child Welfare Committee, District Legal Services Authorities, medical authorities, district administration are enjoined by the statute to provide the entitlements under the POCSO Act to victims like support persons, medical specialists, legal aid, beneficial schemes of the government and so on. Responsibility is cast on the courts/magistrates considering the bail applications in POCSO offences to ensure that entitlements of the victims are provided and the rights conferred by the said enactment are enforced. Faithful execution of the said responsibilities will ameliorate the disadvantages faced by child victims in legal proceedings.

10. The rights and entitlements of the victims under the POCSO Act can be realized at the stage of bails and during the trials only by bringing the concerned statutory authorities like Child Welfare Committee (C.W.C.), medical authorities and the police authorities within the scope of the jurisdiction of the learned magistrates/learned trial courts. The said authorities shall remain accountable to the learned magistrates/trial courts for the purposes of implementing the rights of the aforesaid victims during the course of various legal proceedings including bails. The said authorities have to apprise the trial court about the manner in which the rights of victims under the POCSO Act have been

implemented. The learned trial courts are under an obligation of law to consider the said reports, make relevant enquiries from the said competent authorities and record their satisfaction as regards access of victims to their entitlements and support systems under the POCSO Act.

11. The following tabulated chart will depict some of the entitlements of the child victims of sexual offences under the POCSO Act read with POCSO Rules and other provisions of law. The chart also shows the authorities who are required to provide the aforesaid entitlements to the child victims:

<b>Sr. No.</b>	<b>Nature of entitlements of victims</b>	<b>Competent Authorities</b>
1	Protection	Special Juvenile Police Unit (SJPU)/Local Police Authorities/Child Welfare Committee/Magistrates
2	Medical Aid	Competent medical authority/ police authorities/ Child Welfare Committee
3	Counselling	Competent medical authority/ Child Welfare Committee
4.	Schooling	Child Welfare Committee/Basic Education Officer/District Inspector of School
5.	Support Person	Child Welfare Committee
6.	Legal Aid	District Legal Services Authority on recommendation of Child Welfare Committee
7.	Government Aid/Beneficial Government Schemes	Child Welfare Committee/District Administration
8	Any other items under the	Child Welfare Committee/As

	POCSO Act read with POCSO Rules	provided by law.
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12. The narrative and the observations made above can be fortified by the judgement of this Court in **Junaid v. State of U.P. and another**, reported at **2021 SCC OnLine All 463** wherein it was held:

"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)."

13. The reports depicting compliance of the above parameters and details of the facilities and support systems provided to the child victims as per law shall be submitted by the Child Welfare Committee (CWC) and the police respectively before the court at the hearing of the bail applications. The learned trial courts shall examine the aforesaid reports at the time of hearing of the bail applications and if required shall issue appropriate directions.

14. The above mandate of POCSO Act has to be rigorously followed and meticulously implemented. Currently the implementation of the POCSO Act in the above stated manner is deficient, which frustrates the

legislative intent. Legislation cannot be reduced to a dead letter by apathy of the statutory authorities.

15. The Secretary, Department of Women and Child Development, Uttar Pradesh Government is directed to ensure that proper formats of reports to be submitted by the CWCs before the courts in bail applications under the POCSO Act are created in line with the observations in this judgement and other requirements as per law. Furthermore, proper training programmes to build the capacity of the CWCs to draw up such reports shall also be undertaken on a regular routine basis. The State Government shall regularly monitor the compliance of the above said directions.

16. The victim is a minor who is 14 years of age. The applicant is the father of the victim. The victim has identified the applicant as the principal offender who trafficked her for money. The victim is vulnerable. The offence is grave. There is likelihood that the applicant had committed the offence. At this stage, no case for bail is made out.

17. Without going into the merits of the case, the bail application is dismissed.

18. A copy of this order be sent to learned Government Advocate for service upon the Director General of Police, Government of U.P. and Additional Director General of Police (Prosecution), Government of U.P., Lucknow as well as Secretary, Department of Women and Child Development, Uttar Pradesh Government for

compliance.

**Order Date :-** 4.10.2024  
Ashish Tripathi