MANOJ JAIN
REGISTRAR GENERAL

HIGH COURT OF DELHI
Sher Shah Road
New Delhi-110 503
Off. : 23387969
Fax : 23073485

150 YEARS OF CELEBRATING THE MAHATMA

THROUGH E-MAIL ONLY
No. 23/RG/DHC/2020
Dated : 08.06.2020

To

1. The District & Sessions Judge (HQs.)
2. The District & Sessions Judge-cum-Special Judge (PC ACT), CBI, Rouse Avenue Court Complex
3. All the District & Sessions Judges

SUB: Compliance of order dated 05.06.2020 passed by the Hon'ble Court in Crl. M.C. 1474/2020

Respect Sir/Madam,

The Hon'ble Court vide order dated 05.06.2020 (Reserved on 04.06.2020 and pronounced on 05.06.2020) while disposing of the Crl. M.C. 1474/2020 issued certain directions and inter-alia ordered as under :-

> *23. Accordingly, in order to ensure effective implementation of the 2018 amendment to the Cr. PC., and further to the practice directions, as also the orders passed by the ld. Division Bench of this Court in* ***Reena Jha Vs. UOI (supra)*** *the following directions are issued:*
>
> *a) Whenever an accused who is charged under Sections 376(3), 376- AB, 376 - DA or 376 DB of the IPC or the provisions of the POCSO Act, moves an application for regular bail or interim bail, notice shall be issued to the IO cs also any counsel on record for the victim/complainant/informant;*
>
> *b) The IO upon receipt of the bail application and/or the notice of such application, shall immediately issue notice to the victim/complainant/informant in prescribed format as per 'Annexure A' of the Practice Directions. The Practice Directions dated 24th September, 2019 along with 'Annexure A' are appended to this order for ready reference.*
>
> *c) The service of notice shall be certified by the SHO of the local police station by signing Annexure A at the prescribed place.*
>
> *d) The duly completed Annexure A shall be filed along with the reply/ status report filed by the IO in respect of the bail application and shall be presented to the Court.*
>
> *e) If the IO cannot trace the complainant/victim/informant, the reasons for the same shall be mentioned in the status report. Further, if there is any specific reason for non-appearance of the complainant/victim/informant, the same shall be recorded and placed before the Court.*
>
> *f) In case the complainant/victim/informant has not been traced, the IO shall try to ascertain the whereabouts of the complainant/victim/informant and place the same before the Court.*
>
> *g) The Court, before proceeding to hear the bail application would ascertain the service of notice, and if no notice has been served, either through the IO or the counsel on record, as a secondary safeguard, issue summons to the complainant/victim/informant.*

h) Once the victim/complainant/informant appears before the Court, and if needed, adequate representation shall be ensured for the victim/complainant/informant either through own counsel or through a legal service authority counsel.

i) All the relevant documents required for the victim/complainant/informant to effectively represent the case for opposing the bail shall be provided.

j) In every bail order, service of notice or reasons for non-service or non-hearing of the complainant/victim/informant shall be specifically recorded before proceeding to pass orders.

k) If the complainant/victim/informant does not appear despite service of notice, bail can be considered by the Court, in accordance with law.

l) In case interim bail is sought for an emergency such as death in family or a medical emergency, and awaiting notice to the complainant/victim/informant appears non-feasible, in a rare case, reasons for the same shall first be recorded in the order.

24. Considering that during emergency situations such as the current lockdown, bail applications are being heard by Sessions Judges who are not the regular POCSO Courts, the respective District Judges are directed to conduct sensitisation programmes through video conferencing within a week, to inform and to sensitise all the presiding officers of the importance of compliance of the mandatory condition of issuing notice to the complainant/victim/informant, and the legal position in this regard.

25. In order to ensure compliance of these directions, including the previous orders of the ld. Division Bench of this Court, and keeping in view the continuous non-adherence to the same, it is deemed appropriate to direct that any non-compliance of the mandatory condition of issuance of notice and service of notice to the complainant/victim/informant could entail consequential action, in accordance with law. This order along with the orders of the ld. Division Bench in Reena Jha & Anr. (supra) and the Practice Directions issued by the Delhi High Court be circulated to the Commissioner of Police, Delhi and Director, Prosecutions and all District Judges for onward circulation to all DHJS officers.

In view of the above, please find enclosed herewith a copy the order dated 05.06.2020 passed by the Hon'ble Court in Crl. M.C. 1474/2020 along with orders 25.11.2019 and 27.01.2020 passed by the Hon'ble Division Bench in *Reena Jha & Anr. (supra)* in W.P. (C) 5011/2017 and the Practice Directions dated 24.09.2019 issued by the Delhi High Court for information and necessary action.

With regards,

Yours sincerely,

(Manoj Jain)

Enclosed as above.

OFFICE OF THE DISTRICT & SESSIONS JUDGE-CUM-SPL. JUDGE (PC ACT)(CBI)ROUSE AVENUE DITRICT COURT, NEW DELHI

No.Stat.Inst/RADC/Gaz/2020/ E-3650-3689 Dated, Delhi the 09.06.2020

E-copy of the letter of Hon'ble Registrar General, High Court of Delhi, New Delhi along with enclosures, received through e-mail be circulated to:-

1. All the Judicial Officers at Rouse Avenue District Court, New Delhi.
2. In-charge, Computer Branch, RADC, New Delhi for being uploaded on the official website.
3. The P.S. to Ld. District & Sessions Judge-cum-Spl. Judge (PC Act) (CBI), RADC, New Delhi.

Sd/-
(Santosh Snehi Mann)
Officer In-charge (Judl.)
For District & Sessions Judge-
cum- Special Judge(PC Act)(CBI)
Rouse Avenue District Court, New Delhi.

HIGH COURT OF DELHI : NEW DELHI

No. 67/Rules/DHC Dated : 24.09.2019

PRACTICE DIRECTION

Section 439 of the Code of Criminal Procedure, 1973 stood amended by the Criminal Law (Amendment) Act, 2018 (No. 22 of 2018) w.e.f. 21.04.2018 vide which, amongst others, it has been mandated that the presence of the informant or any person authorized by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code and that the High Court or the Court of Session shall, before granting bail, give notice of such application to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.

The relevant provisions of "The Criminal Law (Amendment) Act, 2018" in this respect are reproduced herein below:-

"23. In Section 439 of the Code of Criminal Procedure-

(a) In sub-section(1), after the first proviso, the following proviso shall be inserted, namely:-

"Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-Section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code (45 of 1860), give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application."

(b) After sub-section(1), the following sub-section shall be inserted, namely:-

"(1-A) The presence of the informant or any person authorized 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 376-AB or section 376-DA or section 376-DB of the Indian Penal Code (45 of 1860)."

In order to ensure better and effective compliance of the above provisions, Hon'ble the Chief Justice has been pleased to direct as under:-

(a) Before granting bail to a person who is accused of an offence triable under sub-Section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code, the High Court or the Court of Session shall give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application; and

(b) The Courts shall ensure that the Investigating Officer has, in writing as per **Annexure A**, communicated to the informant or any person authorized by her that her presence is obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code. **Annexure A** shall be filed by the I.O. along with the Reply / Status Report to such bail application and the Courts shall make all endeavour to ensure presence of the informant or any person authorized by her.

These directions shall come into force with immediate effect.

By Order
Sd/-
(DINESH KUMAR SHARMA)
REGISTRAR GENERAL

ANNEXURE A

NOTICE TO INFORMANT OF OBLIGATION TO BE PRESENT AT THE TIME OF HEARING OF THE APPLICATION FOR BAIL TO THE PERSON ACCUSED OF THE OFFENCE UNDER SUB-SECTION (3) OF SECTION 376 OR SECTION 376-AB OR SECTION 376-DA OR SECTION 376-DB OF THE INDIAN PENAL CODE, 1860

You are hereby informed that the person accused in FIR No._____ dated _____ PS _____ under Section _____ has filed an application for grant of bail which is listed for hearing in the Hon'ble High Court of Delhi / Hon'ble Court of Sh. / Smt. _____, Additional Sessions Judge, _____ District, Delhi.

Kindly take notice that as per Section 439 (1-A) of the Code of Criminal Procedure, 1973 your presence / presence of any person authorised by you is obligatory at the time of hearing of the above mentioned bail application.

(S/d) (S/d)
Informant Investigating Officer

I, _____, SHO of P.S. _____ do hereby certify that the I.O. of the above mentioned FIR has duly communicated the informant that her presence / presence of any person authorized by her is obligatory at the time of hearing of the bail application of the person accused in FIR No. _____ dated _____.

(S/d)
SHO, P.S. _____

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

\+ W.P.(C) 5011/2017

REENA JHA AND ANR. ..... Petitioners

Through: Mr.Siddharth Aggarwal, Mr.Gautam Khazanchi, Mr.Krishna Datta Multani, Mr.Vishnu Menon, Ms.Tara Narula, Mr.Ashish Kumar, Advocates

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Ms.Monika Arora, CGSC with Mr.Kushal Kumar, Advocate for R-1/UOI.
Mr.Sumer Sethi and Ms.Dolly Sharma, Advocates with Mr.Kanwaljeet Arora, Member Secretary DSLSA.
Mr.Ajay Digpaul and Aaryan Verma, Advocates for R-3 with Mrs.Rupali Banerjee Singh, Member Secretary, NCPCR.
Mr.Sanjoy Ghose, ASC, GNCTD and Ms.Urvi Mohan, Advocate with Mr.Rajesh Deo, DCP, Legal Cell, Delhi Police.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

O R D E R

% 25.11.2019

1. Learned counsel for the petitioners submits that despite the Delhi High Court Practice directions dated 24.09.2019 and format provided in Annexure ‘A’ to the Practice Directions being issued, in reality, no information, in compliance with Section 439 of the Code of Criminal Procedure, 1973, is being conveyed to the victim or her family members prior to entertaining an application seeking bail for offences triable under Section 376 (3), Section 376-AB, Section 376-DA or Section 376-DB of the Indian Penal Code, 1860. Practice Directions issued by

this Court are extracted as under along with annexure A:

" ***HIGH COURT OF DELHI : NEW DELHI***

No. 67/Rules/DHC *Dated : 24.09.2019*

PRACTICE DIRECTION

Section 439 of the Code of Criminal Procedure, 1973 stood amended by the Criminal Law (Amendment) Act, 2018 (No. 22 of 2018) w.e.f. 21.04.2018 vide which, amongst others, it has been mandated that the presence of the informant or any person authorized by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code and that the High Court or the Court of Session shall, before granting bail, give notice of such application to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.

The relevant provisions of "The Criminal Law (Amendment) Act, 2018" in this respect are reproduced herein below:-

"23. In Section 439 of the Code of Criminal Procedure-

(a) In sub-section(1), after the first proviso, the following proviso shall be inserted, namely:-

"Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-Section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code (45 of 1860), give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application."

(b) After sub-section(1), the following sub-section shall be inserted, namely:-

"(1-A) The presence of the informant or any person authorized 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 376-AB or section 376-DA or section 376-DB of the Indian Penal Code (45 of 1860)."

In order to ensure better and effective compliance of the above provisions, Hon'ble the Chief Justice has been pleased to direct as under:-

(a) Before granting bail to a person who is accused of an offence

triable under sub-Section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code, the High Court or the Court of Session shall give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application; and

(b) The Courts shall ensure that the Investigating Officer has, in writing as per Annexure A, communicated to the informant or any person authorized by her that her presence is obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code. Annexure A shall be filed by the I.O. along with the Reply / Status Report to such bail application and the Courts shall make all endeavour to ensure presence of the informant or any person authorized by her.

These directions shall come into force with immediate effect.

By Order
Sd/-
(DINESH KUMAR SHARMA)
REGISTRAR GENERAL"

ANNEXURE A

NOTICE TO INFORMANT OF OBLIGATION TO BE PRESENT AT THE TIME OF HEARING OF THE APPLICATION FOR BAIL TO THE PERSON ACCUSED OF THE OFFENCE UNDER SUB-SECTION (3) OF SECTION 376 OR SECTION 376- AB OR SECTION 376-DA OR SECTION 376-DB OF THE INDIAN PENAL CODE, 1860

You are hereby informed that the person accused in FIR No._____ dated _____ PS _____ under Section _____ has filed an application for grant of bail which is listed for hearing in the Hon'ble High Court of Delhi / Hon'ble Court of Sh. / Smt. _____, Additional Sessions Judge, _____ District, Delhi.

Kindly take notice that as per Section 439 (1-A) of the Code of Criminal Procedure, 1973 your presence / presence of any person authorised by you is obligatory at the time of hearing of the above mentioned bail application.

(S/d) *(S/d)*
Informant *Investigating Officer*

I, _____, SHO of P.S. _____ do hereby certify that the I.O. of the above mentioned FIR has duly communicated the informant that her presence / presence of any person authorized by her is obligatory at the time of hearing of the bail application of the person accused in FIR No. _____ dated _____.

(S/d)
SHO, P.S. _____"

2. While the petitioners and respondents will file a note and give further suggestions, for the time-being, we direct that a copy of this order wherein the Practice Directions have been extracted along with Annexure 'A', be sent to all the District Judges, who will be responsible to bring the same to the notice of all the Criminal Courts in Delhi under their respective jurisdictions. The District Judges will also file a report in this Court as to whether these Practice Directions are being followed and if not, the reasons for such omission; and ensure that in the future the same are followed uniformly and without fail.

3. Copy of this order be also brought to the notice of the Presidents and Secretaries of all Bar Associations in Delhi and be put-up on the Notice Boards of all concerned Criminal Courts.

4. List the matter for further directions on 19.12.2019.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 25, 2019
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 5011/2017

REENA JHA AND ANR ..... Petitioners

Through Mr. Sidharth Aggarwal, Mr. Gautam Khazanchi, Mr. Ashish Kumar & Mr. Shreyas Raniwala, Advocates.

versus

UNION OF INDIA AND ORS ..... Respondents

Through Mr. Sanjay Ghose, ASC for GNCTD with Ms. Urvi Mohan & Mr. Naman Jain, Advocates.
Mr. Sumer Kumar Sethi & Ms. Dolly Sharma, Advocates for DSLSA alongwith Mr. Kanwaljeet Arora, Member Secretary, DSLSA.
Mr. Ajay Digpaul, Advocate for R-3 alongwith Ms. Tanushree Luthra, Member Secretary, NCPCR.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

O R D E R

% 27.01.2020

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 Indian 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).

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 (‘DSLSA’).

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 DSLSA and Ms. Tanushree Luthra, Member Secretary NCPCR.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

JANUARY 27, 2020
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 4th June, 2020
Date of decision: 5th June, 2020

\+ **CRL.M.C. 1474/2020 & CRL.M.As. 6330/2020, 6705/2020**

MISS G (MINOR) THR. HER ..... Applicant
Through: Ms. Tara Narula, Advocate.
versus

STATE OF NCT OF DELHI & ANR. ..... Respondents
Through: Ms. Meenakshi Dahiya, Advocate for R-1.
Mr. Uttam Singh, Advocate for R-1.

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

1. The present Petition highlights a perennial and grave problem of hearing not being afforded to victims/complainants/informants, in bail applications filed on behalf of those accused who are facing trial under the provisions of Sections 376(3), 376- AB, 376 - DA or 376 DB of the IPC dealing with rape of women below 12, 16 years of age including gang rapes as also under the provisions of Protection of Children from Sexual Offences ("POCSO") Act, 2012.

2. As per the Criminal Law (Amendment) Act, 2018, Section 439 of the Cr. P.C. was amended with effect from 21st April, 2020 by which it was made mandatory for the informant or any other person authorised by the informant to be present at the time of hearing of an application for bail filed by the accused under these provisions. The said amendment reads as under:

"23. In Section 439 of the Code of Criminal Procedure-
(a) In sub-section (1), after the first proviso, the following proviso shall be inserted, namely:-

> *"Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-Section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code (45 of 1860), give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application."*

(b) After sub-section(1), the following sub-section shall be inserted, namely:-

> *"(1-A) <u>The presence of the informant or any person authorized by him shall be obligatory at the time of hearing of the application for bail</u> to the person under sub-section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code (45 of 1860)."*

3. The Delhi High Court issued `Practice Directions' on 24th September, 2019 to ensure compliance of the above amendment and directed as under:

> *"In order to ensure better and effective compliance of the above provisions, Hon'ble the Chief Justice has been pleased to direct as under:-*
>
> > *(a) Before granting bail to a person who is accused of an offence triable under sub-*

> *Section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code, the High Court or the Court of Session shall give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application; and*
>
> *(b) The Courts shall ensure that the Investigating Officer has, in writing as per* ***Annexure A****, communicated to the informant or any person authorized by her that her presence is obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code.* ***Annexure A*** *shall be filed by the I.O. along with the Reply / Status Report to such bail application and the Courts shall make all endeavour to ensure presence of the informant or any person authorized by her."*

As per the above Practice Directions, a format was prescribed for the communication to the informant by the Investigating Officer.

4. The POCSO Act makes special provisions for sexual crimes against children. Under Section 3, penetrative sexual assault ("PSA") is defined and Section 4 provides for punishment for PSA. Section 5 defines Aggravated PSA and Section 6 provides for punishment thereof. Section 7 defines sexual assault and Section 8 provides punishment thereof. Section 9 defines aggravated sexual assault and Section 10 provides for punishment thereof. The provisions of the POCSO Act define a child as "*any person below the age of eighteen years"*. Those sexual offences against children, which would

be punishable under certain provisions of the IPC are also punishable under the POCSO Act.

5. Under Section 29 of the POCSO Act, the burden of proof is reversed in respect of offences under Sections 3, 5, 7 and 9 of the Act i.e., there is a presumption of commission of offence unless the contrary is proved. Under Section 40, the child is also entitled to the assistance of a legal counsel and if the family or the guardian of the child is unable to afford legal counsel, the respective Legal Services Authority provides legal assistance to the child. Corresponding with the amendments to Section 439, amendments were introduced in Section 42 of the POCSO Act to incorporate offences under Sections 376(3), 376-AB, 376-DA or 376 DB of the IPC and provide for higher degree of punishment in cases where a person is charged under provisions of the POCSO Act, 2012 and these provisions of the IPC

6. Despite this being the legal position, a ld. Division Bench of this Court in W.P. (C) 5011/2017 titled *Reena Jha & Anr. v Union of India & Ors*. had occasion to notice that information regarding bail applications filed by accused was not being conveyed to the victims/complainants/informants or their family members prior to entertaining applications for bail. Vide order dated 25th November, 2019 the ld. Division Bench, after noticing the amendment in the Cr.P.C and the Practice Directions, directed as under:

> *"2. While the petitioners and respondents will file a note and give further suggestions, for the time-being, we direct that a copy of this order wherein the Practice Directions have been extracted along with Annexure 'A', be sent to all the District Judges, who will be responsible to bring the same to the notice of all the Criminal Courts in Delhi under their respective jurisdictions. The District Judges will also file a report in this Court as to whether*

these Practice Directions are being followed and if not, the reasons for such omission; and ensure that in the future the same are followed uniformly and without fail.

3. Copy of this order be also brought to the notice of the Presidents and Secretaries of all Bar Associations in Delhi and be put-up on the Notice Boards of all concerned Criminal Courts."

7. Thereafter, vide order dated 27th January, 2020 the ld. Division Bench also clarified that the Practice Directions dated 24th September, 2019 would *mutatis mutandis* apply to offences under the POCSO Act as well. The said directions read:

"4. ...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."

8. Recently, lockdown was announced across the country due to the outbreak of COVID-19. The High Powered Committee of this Court, in its Minutes dated 18th May, 2020, while passing several directions in respect of undertrial prisoners and conditions for grant of bail to them, made it clear that the relaxed 45-day interim bail given to other undertrial prisoners would not extend *inter alia*, to the following two categories:

> *"(ii) Those under trial prisoners who are facing trial under Section 4 & 6 of POCSO Act;*
>
> *(iii) Those under trial prisoners who are facing trial for offences under Section 376, 376A, 376B, 376C, 376D and 376E and Acid Attack*;"

9. The amendments in the Cr. PC. and the Practice Directions issued by this Court leave no room for any doubt that in all cases under these provisions where the accused seeks bail, notice ought to be issued to the complainant, and this obligation does not have any exception. Apart from mere issuance of Notice by the Court, as per the Practice Directions, the IO has to serve notice in the prescribed Form, Annexure -A. After service of notice, the factum of service has to be re-ascertained by the SHO who has to certify that the informant/victim/complainant has been duly communicated the necessity of her presence at the time of hearing of the bail application. It is however seen that a large number of bail applications were moved before the Sessions Court by undertrial prisoners who were accused of offences under the various provisions of the IPC pertaining to rape, as also the provisions of the POCSO Act. In a majority of these cases, no notice was issued to the Complainant/victim/informant.

10. In the present petition, Respondent No.2 filed one such bail application, seeking interim bail on the ground of his wife's illness. The said interim bail application was taken up on 5th May, 2020. The order passed by the ld. Addl. Sessions Judge dated 5th May, 2020 granted bail for one month to the accused till 5th June, 2020. In the said order, it is noticed that the offences under which the accused has been charged, are Section 376

of the IPC and Section 4 of the POCSO Act. Despite this being the position, no notice was issued to the complainant and the complainant was not represented at the time when the interim bail was granted.

11. The present petition was then moved before this Court, highlighting the legal position and seeking quashing of the grant of interim bail and for police protection. The Petitioner also prays for strict compliance of the amendments to the Cr. PC and the Practice Directions referred to above.

12. A ld. Single Judge of this Court on 13th May, 2020, after noticing that the complainant had not been heard prior to grant of interim bail, directed the Practice Directions dated 24th September, 2019 as also the orders passed by the ld. Division Bench dated 25th November, 2019 and 27th January, 2020 to be circulated to all the Districts and Sessions Judges in Delhi.

13. Thereafter, the matter was again listed on 22nd May, 2020 on which date, ld. counsel for the Petitioner pointed out that despite the previous orders dated 13th May, 2020, Sessions Courts continued to entertain bail applications and dispose of the same without hearing the complainant/victim/informant. Under such circumstances, this Court called for a report from the ld. Registrar General. The directions issued on 22nd May 2020 read:

> "*4. Ms. Tara Narula, ld. counsel appearing for the Complainant in the present case submits that as per enquiries made by her, even after the order dated 13th May, 2020, the Practice Directions are not being followed and in such matters, bail applications are being heard without notice to the Complainant, or without the Complainant being heard. She further submits that there are more than 80 cases, which have been heard in this manner by the criminal courts.*

> *5. In view of this submission, it is deemed appropriate that an urgent report be called from the ld. Registrar General, as to the number of such matters which have been dealt with by the criminal/POCSO courts without notice to the Complainant and the number of matters in which the Complainant was not present or not heard before disposal of bail applications. A detailed report be filed with this Court after collecting the data from the various District Judges of all the District Courts in Delhi. The Practice Directions ought to be completely adhered to, as they are meant to ensure that the Complainants'/victims' rights are adequately safeguarded.*"

14. Yesterday i.e., on 4th June, 2020, the matter was listed for hearing. Ms. Tara Narula, ld. counsel appearing for the Petitioner has taken the Court through the various applicable statutory provisions. She has also submitted that her *vakalatmana* was on record in the Sessions Court, and thus there is no reason whatsoever for notice not being issued to her before granting of bail to the accused. Ld. counsel has, according to her, made an analysis of 122 orders, which have been collated from the various websites of the District courts, to submit that in several matters, bail has been granted without hearing the Complainant/victim/informant. The said analysis is set out below:

> *"6. A short analysis of the tabulated 122 Orders is as under:*
>
> > *a. <u>None of the 122 Orders included record the presence of the Complainant or indicate whether Notice of the bail application was issued to the complainant at any stage, in any manner</u>.*

*b. Of the 122 orders, regular / interim bail was granted in **36 cases**.*

*c. Of the 36 cases in which bail has been granted, Sections 4 & 6 POCSO (sexual assault and aggravated sexual assault) was invoked in the FIR in **8 cases**.*

*d. Interim Bail was granted by the Trial Court in accordance with the COVID-19 Guidelines issued by the High Powered Committee of this Hon'ble Court in **27 cases**.*

*e. 81 Orders were passed and **42 Bail Applications were decided** in the absence of the Complainant even after this Hon'ble Court's Order dated 13.05.2020, passed in the present Petition. There is no information within these Orders to indicate whether information of the bail hearing was given to the victim by either the police or the Court at any stage, and whether any efforts were made to secure representation on their behalf. Bail was granted in **9 of these cases**.*

*f. These Orders are **not exhaustive** as not all the Orders have been uploaded on the ecourts website. Pertinently, the Orders of the Central and West District (Tis Hazari Courts) have not been uploaded as urgent Orders after 30.04.2020. Furthermore, there may be a **margin of error** in the analysis as, in some cases, notice may have been issued by the Sessions Court on a previous date, but the relevant Order is not online."*

15. It is also submitted that the entire purpose of `Annexure A', which was part of the Practice Directions, was to ensure that the IO, upon notice

being received of the bail application, has to, with his reply, confirm to the Court that the complainant has been informed of the bail hearing. She further submits that during the lockdown, a large number of presiding officers, who are dealing with these matters are not regular POCSO Judges. Further, even the regular Prosecutors in POCSO cases are not present in courts. Owing to the lockdown, even the representatives of the Commissions for Women or the legal aid counsel are also not usually available in courts, unless specifically called for. She submits that, therefore, there is an absolute need to ensure that specific notice is issued to the complainants. She relies on the judgment of the Supreme Court in ***UPSC v. Papaiah & Ors (1997) 7 SCC 614*** to argue that if the bail order granted is contrary to law, it is liable to be set aside.

16. Ms. Meenakshi Dahiya, ld. APP fairly concedes that not giving notice was a clear error. The complainant ought to have been informed, and usually, the complainant has to be heard before consideration of a bail application by the accused. In fact, in this case, the documents which were submitted as medical records of the wife of the accused were also to be verified. Though they were sent to the concerned hospital for verification, since very little time was available for the prosecution, they could not be verified and interim bail was granted.

17. Mr. Uttam Singh, ld. counsel appearing for the accused – Respondent No. 2 submits that the accused has two minor daughters. He was working as a chowkidar in the Municipal Corporation, however, due to the present complaint he has been suspended, and has been in custody. In April, 2020 his wife initially had a dental problem, which resulted in swelling of the entire mouth and required urgent surgical intervention. He submits that she

is the only bread earner, and she has been working as a maid. It was on these grounds, that bail was granted. He submits that in the trial of the case, the evidence of the prosecutrix and of the main witnesses already stands concluded and hence there is no apprehension of witness tampering. The evidence of the formal witnesses is yet to be recorded. He further submits that he has moved an application for extension of the bail, as the bail comes to an end on 5th June, 2020.

18. This Court has heard counsel for the parties, and has perused the records. It is clear from the above narration, that the amendment to the Cr.PC., as also the Practice Directions issued by this Court, and the two orders passed by the ld. Division Bench brook no ambiguity whatsoever. The victim/complainant/informant has to be heard. This is the mandate of law.

19. As per the Practice Directions, the manner in which the informant/complainant/victim would have to be informed is through the IO, who has to issue notice in writing to the informant/victim/complainant. The said notice sent by the IO, and served upon the informant/victim/complainant has to be certified by the SHO of the local police station, confirming that the service has been effected. Annexure-A ought to be presented to the presiding officer at the Sessions Court, when the IO appears in response to the bail application. This procedure is obviously not being followed by the Courts below.

20. The ld. Registrar General has, pursuant to orders of this Court dated 22nd May, 2020 obtained a report from the Ld. District Judges of all Districts in Delhi. The said report in fact confirms the apprehensions raised by the Petitioner. A summary of the ld. Registrar General's report is as under:

i) The Registrar General collected data for the period between 22nd April, 2020 to 23rd May, 2020 - which is the lockdown period.

ii) The data collected was from 11 districts, and from the Rouse Avenue court complex. Cases under the POCSO Act and Section 376 and related sections of the IPC were entertained and heard in all the 11 districts except Rouse Avenue Complex, during the relevant period. In 6 districts i.e., East, South-West, Shahdara, North, New Delhi and North-East, notice to the complainant was not issued in a single case in applications for bail. In South-East district, out of 44 cases, notice was issued to the Complainant only in four cases. In four of the districts i.e., West, North West, Central and South, notices were issued to the complainant in some cases and not in all cases. The tabulated chart in the report of the Ld. Registrar General is set out below:

S. No.	**District**	**Total No. of Bail Applications**	**No. of Bail applications in which notice was issued to the complainant**	**No. of Bail applications in which notice was not issued to the complainant**
1.	Central District	45	8	37
2.	South	48	25	23
3.	East District	2	-	2
4.	South West	21	-	21
5.	Shahdara	2	-	2
6.	North West	33	16	17
7.	South East	44	4	40
8.	West	38	26	12
9.	New Delhi	25	-	25
10.	North	35	-	35
11.	North East	1	-	1
12.	Rouse Avenue	-	-	-

iii) The report of the Registrar General also mentions some reasons given, for not issuing notice i.e., that the bail applications were dismissed or that there was a compromise.

21. On the whole, out of a total of 294 cases wherein bail was sought by the accused, notices were issued to the Complainant in only 79 cases i.e., in 215 cases constitution almost 70%, no notice was issued. A perusal of the report of the ld. Registrar General, in fact, confirms the analysis which has been was placed on record by the Petitioner in respect of 122 cases, to the effect that Complainants/Informants are not being heard prior to hearing in bail applications to accused under the provisions of the POCSO Act. There is also no doubt that most Sessions Courts are not issuing notices to the complainant before entertaining or hearing bail applications of accused, including those for interim bail. In fact, even if compromise is the ground for seeking bail, there is a greater need that the same ought to be verified or confirmed from the Complainant/victim/informant.

22. The non-issuance of notice to the complainants/informants/victims is not merely a procedural lapse, but is clearly contrary to the unequivocal legislative mandate as also the declared and settled law. There could be various reasons for the same, which have been mentioned in the reports submitted by the Ld. District Judges to the Registrar General. The said reasons need not be gone into at this stage. Suffice to say, that the lockdown period has thrown up several challenges to the Court system which Courts are bracing for on an everyday basis. However, the non-issuance of notice to the complainant/victim/informant is such a fundamental pre-condition, that such a requirement of law cannot be bypassed, ignored or neglected. After perusal of the reasons given, this Court is of the opinion that they clearly do

not justify non-issuance of notice.

23. Accordingly, in order to ensure effective implementation of the 2018 amendment to the Cr. PC., and further to the practice directions, as also the orders passed by the ld. Division Bench of this Court in ***Reena Jha Vs. UOI (supra)*** the following directions are issued:

a) Whenever an accused who is charged under Sections 376(3), 376-AB, 376 - DA or 376 DB of the IPC or the provisions of the POCSO Act, moves an application for regular bail or interim bail, notice shall be issued to the IO as also any counsel on record for the victim/complainant/informant;

b) The IO upon receipt of the bail application and/or the notice of such application, shall immediately issue notice to the victim/complainant/informant in prescribed format as per 'Annexure A' of the Practice Directions. The Practice Directions dated 24th September, 2019 along with 'Annexure A' are appended to this order for ready reference.

c) The service of notice shall be certified by the SHO of the local police station by signing Annexure A at the prescribed place.

d) The duly completed Annexure A shall be filed along with the reply/ status report filed by the IO in respect of the bail application and shall be presented to the Court.

e) If the IO cannot trace the complainant/victim/informant, the reasons for the same shall be mentioned in the status report. Further, if there is any specific reason for non-appearance of the complainant/victim/informant, the same shall be recorded and placed before the Court.

f) In case the complainant/victim/informant has not been traced, the IO shall try to ascertain the whereabouts of the complainant/victim/informant and place the same before the Court.

g) The Court, before proceeding to hear the bail application would ascertain the service of notice, and if no notice has been served, either through the IO or the counsel on record, as a secondary safeguard, issue summons to the complainant/victim/informant.

h) Once the victim/complainant/informant appears before the Court, and if needed, adequate representation shall be ensured for the victim/complainant/informant either through own counsel or through a legal service authority counsel.

i) All the relevant documents required for the victim/complainant/informant to effectively represent the case for opposing the bail shall be provided.

j) In every bail order, service of notice or reasons for non-service or non-hearing of the complainant/victim/informant shall be specifically recorded before proceeding to pass orders.

k) If the complainant/victim/informant does not appear despite service of notice, bail can be considered by the Court, in accordance with law.

l) In case interim bail is sought for an emergency such as death in family or a medical emergency, and awaiting notice to the complainant/victim/informant appears non-feasible, in a rare case, reasons for the same shall first be recorded in the order.

24. Considering that during emergency situations such as the current lockdown, bail applications are being heard by Sessions Judges who are not the regular POCSO Courts, the respective District Judges are directed to conduct sensitisation programmes through video conferencing within a week, to inform and to sensitise all the presiding officers of the importance

of compliance of the mandatory condition of issuing notice to the complainant/victim/informant, and the legal position in this regard.

25. In order to ensure compliance of these directions, including the previous orders of the ld. Division Bench of this Court, and keeping in view the continuous non-adherence to the same, it is deemed appropriate to direct that any non-compliance of the mandatory condition of issuance of notice and service of notice to the complainant/victim/informant could entail consequential action, in accordance with law. This order along with the orders of the ld. Division Bench in *Reena Jha & Anr. (supra*) and the Practice Directions issued by the Delhi High Court be circulated to the Commissioner of Police, Delhi and Director, Prosecutions and all District Judges for onward circulation to all DHJS officers.

26. Insofar as the merits of the present petition is concerned, there is no doubt that the impugned order was passed by the Ld. Sessions Judge without issuing notice to the informant/complainant/victim. The order is thus contrary to law and is unsustainable. Thus, the impugned order dated 5th May, 2020 is set aside.

27. The period for which bail was granted to the Petitioner by the impugned order also expires today. The accused has filed a fresh bail application which is stated to be listed today before the Sessions Judge. Let the said bail application be decided in accordance with law after hearing the informant/complainant/victim, the Prosecution and after taking into consideration all the grounds raised by the accused for seeking bail. The said bail application shall be decided independently, without being affected by the present order or any previous orders in this Petition as also the earlier

order granting bail which has now been set aside. Consequences upon the decision in the bail application to follow. Petition is allowed in the above terms.

PRATHIBA M. SINGH
JUDGE

JUNE 5, 2020
dj/rg

HIGH COURT OF DELHI
सत्यमेव जयते

HIGH COURT OF DELHI: NEW DELHI

No. 67/Rules/DHC Dated: 24.09.2019

PRACTICE DIRECTION

Section 439 of the Code of Criminal Procedure, 1973 stood amended by the Criminal Law (Amendment) Act, 2018 (No. 22 of 2018) w.e.f. 21.04.2018 vide which, amongst others, it has been mandated that the presence of the informant or any person authorized by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code and that the High Court or the Court of Session shall, before granting bail, give notice of such application to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.

The relevant provisions of "The Criminal Law (Amendment) Act, 2018" in this respect are reproduced herein below: -

> "23. In Section 439 of the Code of Criminal Procedure-
> (a) In sub-section (1), after the first proviso, the following proviso shall be inserted, namely: -
>
> > "Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-Section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code (45 of 1860), give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application."
>
> (b) After sub-section (1), the following sub-section shall be inserted, namely: -
>
> > "(1-A) The presence of the informant or any person authorized 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 376-AB or section 376-DA or section 376-DB of the Indian Penal Code (45 of 1860)."

In order to ensure better and effective compliance of the above provisions, Hon'ble the Chief Justice has been pleased to direct as under: -

(a) Before granting bail to a person who is accused of an offence triable under sub-Section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code, the High Court or the Court of Session shall give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application; and

(b) The Courts shall ensure that the Investigating Officer has, in writing as per **Annexure A**, communicated to the informant or any person authorized by her that her presence is obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code. **Annexure A** shall be filed by the I.O. along with the Reply / Status Report to such bail application and the Courts shall make all endeavour to ensure presence of the informant or any person authorized by her.

These directions shall come into force with immediate effect.

By Order
Sd/-
(DINESH KUMAR SHARMA)
REGISTRAR GENERAL

ANNEXURE A

NOTICE TO INFORMANT OF OBLIGATION TO BE PRESENT AT THE TIME OF HEARING OF THE APPLICATION FOR BAIL TO THE PERSON ACCUSED OF THE OFFENCE UNDER SUB-SECTION (3) OF SECTION 376 OR SECTION 376-AB OR SECTION 376-DA OR SECTION 376-DB OF THE INDIAN PENAL CODE, 1860

You are hereby informed that the person accused in FIR No._____ dated - _____ PS _____ under Section_____ has filed an application for grant of bail which is listed for hearing in the Hon'ble High Court of Delhi / Hon'ble Court of Sh. / Smt. _____, Additional Sessions Judge, _____ District, Delhi.

Kindly take notice that as per Section 439 (1-A) of the Code of Criminal Procedure, 1973 your presence / presence of any person authorised by you is obligatory at the time of hearing of the above mentioned bail application.

(S/d) (S/d)

Informant Investigating Officer

I, _____, SHO of P.S. _____ do hereby certify that the I.O. of the above mentioned FIR has duly communicated the informant that her presence / presence of any person authorized by her is obligatory at the time of hearing of the bail application of the person accused in FIR No. _____ dated _____.

(S/d)

SHO, P.S. _____