

Court No. 66**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 36536 of 2023**Applicant :-** Siddhant @ Aashu**Opposite Party :-** State Of U.P. And 3 Others**Counsel for Applicant :-** Atmaram Nadiwal, Dinesh Kumar Yadav**Counsel for Opposite Party :-** G.A.**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. The case at hand also requires consideration of the role of Child Welfare Committee¹ report in ensuring a just hearing to the victim in bail proceedings in offences under the Protection of Children From Sexual Offences Act, 2012². The POCSO Act, 2012 read with Protection of Children from Sexual Offences Rules, 2020³ create a composite scheme to serve equal justice to victims, and the CWC report has a direct bearing on fair administration of bail jurisdiction and the trial process.

3. The prosecution case discloses that after the victim was abducted, the accused were chased and intercepted by the villagers. The F.I.R. was got lodged promptly. The accused were arrested at the spot and the victim too was recovered. Medical report was drawn up on the same day. The statements of the victim under Sections 161 Cr.P.C. and 164 Cr.P.C., accounts of the witnesses as well as medical report fully corroborated the prosecution story of abduction and rape. However subsequently the victim turned hostile in the trial. In these circumstances the implementation of the POCSO Act, 2012 and the role of the CWC reports in securing justice to child victims of sexual offences need to be examined.

4. The CWC report available with the learned AGA does not depict examination of socio-economic circumstances of the

1 hereinafter referred to as 'the CWC'

2 hereinafter referred to as 'the POCSO Act, 2012'

3 hereinafter referred to as 'the POCSO Rules, 2020'

victim and of the accused persons. The appointment of the support person in this case was not preceded by requisite enquiries and made in a mechanical manner. Support person did not send any report regarding the victim's condition to the CWC at any stage. The mental condition of the victim after the sexual assault was not adverted to in the report. These shortcomings had far reaching consequences on the trial. Protection and rehabilitation needs of the child victim in this case were absent in the report.

5. In summation the CWC report neglected various relevant aspects regarding the victim's condition and is not in consonance with the statute.

6. This Court is finding that CWC reports are often deficient and not in conformity with the statutory parameters laid down in Rule 4 of the POCSO Rules, 2020. This creates impediments in fair administration of bail jurisdiction in POCSO Act offences and in dispensation of justice to child victims of sexual offences.

II. Submissions of learned counsel for both the parties on CWC report:

7. Shri Atmaram Nadiwal, learned counsel and Shri Dinesh Kumar Yadav, learned counsel for the applicant has made these submissions:

I. The applicant cannot be penalized for the failure of the Child Welfare Committee.

II. CWC report has no bearing on the bail application.

8. Shri Paritosh Kumar Malviya, learned AGA-I; Shri Rishi Chaddha, learned AGA and Ms. Sujata Chaudhary, learned AGA for the State made the following submissions:

I. CWC report is an indispensable feature of the POCSO Act and assists in securing justice to the victim.

II. CWC report is liable to be examined by the court while hearing bail in light of judgement rendered by this Court in **Junaid Vs State of U.P. and another**⁴.

III. CWC report was not drawn in adherence to POCSO Act and Rules and has resulted in a miscarriage of justice.

III. Statutory Schemes :

III (1). Relevant Provisions

9. Grant of bails in offences under the POCSO Act, 2012 are regulated by Section 439 of the Code of Criminal Procedure, 1973⁵ as well as the provisions of the POCSO Act, 2012 read with the POCSO Rules, 2020.

10. A distinguishable feature of the said POCSO Act, 2012 read with POCSO Rules, 2020 is that the statutory right of hearing at the bail application of the accused is vested in the victim. The enactment marks shift from earlier tenets of criminal jurisprudence which gave a weaker right of hearing to a victim in criminal matters prosecuted by the State. Child victims of POCSO Act, 2012 offences constitute a separate and well defined class. The legislature has acknowledged their vulnerabilities of this class, and the scheme of enactment

4 2021 (6) ADJ 511

5 hereinafter referred to as 'the Cr.P.C'

squarely addresses their plight. The protective and ameliorative regime under the POCSO Act, 2012 read with POCSO Rules, 2020, is initiated at the pre-trial stage and extends through the trial process.

11. This Court in **Junaid Vs State of U.P. and another**⁶ while examining the functions of CWC in the context of bail applications held as under:

“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.”

12. The POCSO Act, 2012 read with POCSO Rules, 2020 contemplates a significant role for the Child Welfare

Committee in securing the rights and interests of child victims of sexual abuse.

13. The police authorities while investigating an offence upon receiving information which satisfies the prerequisites of Section 19(1) of the POCSO Act, 2012 shall produce before the Child Welfare Committee in the manner stated in the provision. The provision is extracted hereinunder:

“19. Reporting of offences:— (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,--

- (a) the Special Juvenile Police Unit; or
- (b) the local police.

(2) Every report given under sub-section (1) shall be--

- (a) ascribed an entry number and recorded in writing;
- (b) be read over to the informant;
- (c) shall be entered in a book to be kept by the Police Unit.”

14. The monitoring framework is spelt out in Rule 12 of the POCSO Rules, 2020ⁱ (see Appendix I).

15. Appointment of a ‘support person’ is also a critical feature in the protective scheme of the POCSO Act, 2012 read with POCSO Rules, 2020:

“2 Definition:

(f) “support person” means a person assigned by the Child Welfare Committee, in accordance with sub-rule (7) of rule 4, to render assistance to the child through the process of investigation and trial, or any other person assisting the child in the pre-trial or trial process in respect of an offence under the Act.”

16. The importance of engaging with experts of different fields and taking their assistance for the benefit of the child are

mandated in Section 39 of the POCSO Act, 2012. The provision states as follows:

“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.”

17. The provisions of POCSO Act, 2012 have to be implemented in conjunction with the provisions of the Juvenile Justice (Care and Protection of Children), Act, 2015⁷. Section 2(14) of the JJ Act, 2015 defines child in need of care and protection. The provision has a wide ambit and covers a children who has suffered sexual abuse. The provision is extracted hereinunder:

“2. Definition: —

(14) "child in need of care and protection" means a child—

(iii) who resides with a person (whether a guardian of the child or not) and such person—

(a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or

(b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or

(c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or

(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or

(viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or

(ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or

(x) who is being or is likely to be abused for unconscionable gains; or

or

7 hereinafter referred to as the “JJ Act, 2015”

(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage;”

18. Section 31 of the JJ Act, 2015, nominates the person who may produce the child in need of care and protection before the CWC. The provision is part of Appendixⁱⁱ II.

19. The procedure before the CWC after the child is produced is outlined in Rule 18 (1) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016⁸. The provision is part of Appendixⁱⁱⁱ III.

20. The procedure for enquiry which is to be undertaken into the circumstances of the child is prescribed in Rule 19 of the JJ Rules, 2016. Provision is part of Appendix^{iv} IV.

21. The provisions for line of enquiry of the CWC in the JJ Act, 2015 are more comprehensive. However, there is no conflict with the enquiry contemplated under Rule 4 of the POCSO Rules, 2020. Both the provisions have to be interpreted harmoniously in the best interests of the child. The provisions of the JJ Rules, 2016 and the POCSO Act, 2012 read with POCSO Rules, 2020 insofar as they relate to child victims of sexual offences have to be construed as an integrated scheme to achieve the common purpose which is the welfare of the child victim.

III. Statutory Schemes :

III (2). Provisions & issues arising for consideration:

22. Some aspects of the functioning of CWCs and issues with respect of CWC reports which arise directly for consideration

8 hereinafter referred to as the “JJ Rules, 2016”

in the facts and circumstances of this case are discussed in this part of the narrative.

III (2) A. Procedure regarding care and protection of child

23. The procedure regarding care and protection of a child and the duties of the police authorities, the CWC and other agencies are delineated in Rule 4 of the POCSO Rules, 2020. Rule 4(3) of the POCSO Rules, 2020, nominates the SJPU or the local police as the first responders and requires them to take various actions upon receipt of information in accordance with the provisions of Section 19(1) of the POCSO Act, 2012. The relevant provision is extracted hereinunder:

"4. Procedure regarding care and protection of child:-

(3) Where an SJPU or the local police, as the case may be, receives information in accordance with the provisions contained under sub-section (1) of section 19 of the Act in respect of an offence that has been committed or attempted or is likely to be committed, the authority concerned shall, where applicable, —

(a) proceed to record and register a First Information Report as per the provisions of section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), and furnish a copy thereof free of cost to the person making such report, as per sub-section (2) of section 154 of that Code;

(b) where the child needs emergency medical care as described under sub-section (5) of section 19 of the Act or under these rules, arrange for the child to access such care, in accordance with rule 6;

(c) take the child to the hospital for the medical examination in accordance with section 27 of the Act;

(d) ensure that the samples collected for the purposes of the forensic tests are sent to the forensic laboratory immediately;

(e) inform the child and child's parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief;

(f) inform the child and child’s parent or guardian or other person in whom the child has trust and confidence as to the right of the child to legal advice and counsel and the right to be represented by a lawyer, in accordance with section 40 of the Act.”

III (2) B. Conditions precedent for participation of CWC with reference to Rule 4 of the POCSO Rules, 2020

24. The prerequisites which have to be satisfied by the SJPU or the local police prior to production of child before the CWC for detailed assessment of the latter are stated in Rule 4 (4) of the POCSO Rules, 2020:

“4(4) Where the SJPU or the local police receives information under sub-section (1) of section 19 of the Act, and has a reasonable apprehension that the offence has been committed or attempted or is likely to be committed by a person living in the same or shared household with the child, or the child is living in a child care institution and is without parental support, **or the child is found to be without any home and parental support**, the concerned SJPU, or the local police shall produce the child before the concerned Child Welfare Committee (hereafter referred to as "CWC") within 24 hours of receipt of such report, together with reasons in writing as to whether the child is in need of care and protection under sub-section (5) of section 19 of the Act, and with a request for a detailed assessment by the CWC.”

(emphasis supplied)

25. The words “the child is found to be without any home and parental support” in Rule 4 (4) of the POCSO Rules, 2020, denote that the legislative intent is to go beyond the fact that the child is simply living with their⁹ parents and stays in the shelter of a temporary/permanent structure. The provision casts a duty to examine the status of the child in the family, the nature of support and understanding which are bestowed on the child by their parents. This fact is particularly critical in view of relegation of the girl child and children with disabilities to

9 “**their**” is being used as a gender inclusive Pronoun in place of “his” or “her”. “Their” is used as a singular in such situations. [see : **Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)**]

an insignificant position in many families on account of a skewed value systems or oppressive social norms.

III (2) C. Enquiry by the CWC:

26. The role of the CWC commences upon receipt of a report in Rule 4(3) of the POCSO Rules, 2020. The CWC shall thereafter proceed to make its determination under Rule 4 (5) of the POCSO Rules, 2020, in accordance with the powers vested under Section 31 (1) of the JJ Act, 2015. The relevant provisions are extracted hereunder:

“4(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.”

27. CWC is enjoined by law to create a report after meeting the victim on various aspects related to their¹⁰ conditions. Parameters of the CWC report which also define its purpose are provided in Rule 4(6) of the POCSO Rules, 2020. The provisions being germane to the controversy are reproduced below for ease of reference:

“(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;

(emphasis supplied)

10 “**their**” is being used as a gender inclusive Pronoun in place of “his” or “her”. “Their” is used as a singular in such situations. [see : **Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)**]

- (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.”

28. While enquiring into the “capacity of the parents”, the CWC under Rule 4(6) of the POCSO Rules, 2020, will examine the ability of the parents to give unconditional support to the victim in the hour of crisis, and to rally the family behind the child to tide over the trauma. The statutory mandate is furthered by ascertaining the empathy shown by the parents to the plight of the victim, and responsive engagement with the child in assisting them¹¹ to overcome the ordeal. The capacity of the parents is reflected in the manner they facilitate the victim’s rehabilitation and confident re-entry into the social mainstream. The enquiry should factor in the strength of the parents to withstand pressures and to insulate the child from unhealthy influences during the investigation/trial.

29. The “capacity of the parents” signifies the need to determine the socio-economic conditions and vulnerabilities of the victim and her family in the facts and circumstances of the

¹¹ “**them**” is being used as a gender inclusive Pronoun in place of “him” or “her”. “**Them**” is used as a singular in such situations. [see : **Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)**]

case. These have to be seen in light of the impact of the crime on the child and the ability of the parents to provide a conducive environment to the child victim in their¹² striving for justice and search for closure with dignity.

III(2) D. Agencies assisting the CWC

30. The CWC in drawing up its report can seek the assistance of a social worker and other expert agencies in light of Rule 4(5) of the POCSO Rules, 2020 (quoted earlier). The conduct of the process by the CWC should not be intrusive and has to respect the privacy of the child and the family.

31. Rules 4(8) to 4(12) of the POCSO Rules, 2020, contemplate the appointment of a suitable “support person” by the CWC. The CWC after considering the relevant facts and circumstances should appoint a suitable support person to assist the child in all possible manner through the process of investigation and trial and also to obviate the possibility of the victim being pressurized on any count. Information of the support person shall be conveyed to police authorities. The support person shall be monitored by the CWC. The provision is extracted hereinunder:

“(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

12 “**their**” is being used as a gender inclusive Pronoun in place of “his” or “her”. “Their” is used as a singular in such situations. [see : **Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)**]

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 wellbeing, 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 counseling; 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."

III(2) E. Evaluation of mental health of the child victim by CWC:

32. The scope of the enquiry by the CWC after taking into account the preference or opinion of the child in the matter, together with the best interests of the child are provided in Rule 4 (6) of the POCSO Rules, 2020 (as quoted earlier).

33. The words employed in Rule 4 and Rule 4 (6)(vii) of the POCSO Rules, 2020 especially the phrase "best interests of the child" reflect the wide ambit of the CWC enquiry. Operationalizing the broad terms of Rule 4(6)(vii) of the POCSO Rules, 2020, is the key to achieving the legislative object of the CWC. Rule 4(6)(vii) of the POCSO Rules, 2020

also embraces an enquiry into the mental health and psychological condition of a victim of a POCSO Act offence.

34. Engaging with child victims of sexual offences and evaluating their conditions is a complex task. The process requires sensitive engagement and professional handling of the victim by experts in child psychology, mental health and allied fields. In many instances CWC members are not professional psychologists or experts in mental health and behavioural sciences, and often do not have a ready access to the advice of the latter. Absence of expert advice results in infirmities in CWC reports which may inflict lasting traumas upon victims, impede their rehabilitation and even cheat the process of justice. In these circumstances it is mandatory for the CWC to work with expert agencies to develop a scientific framework for evaluating the mental condition and needs of a child victims of sexual abuse.

35. Paucity of trained psychologists and mental health experts was noticed by the National Institute of Mental Health & Neurosciences, Bangalore¹³ in its report published in August 2023 rendered in the context of ‘Juveniles in conflict with law.’

36. Creation of standardized lines of enquiries and templates developed by expert agencies like NIMHANS can supply the deficiencies in the current system. Standardized evaluation systems/enquiry formats so drawn up by institutions like NIMHANS can guide the CWC in assessing the mental

¹³ hereinafter referred to “NIMHANS”

condition of a child victim of a POCSO Act offence, and to determine the process of rehabilitation of the latter. The said standards of enquiry can form the basis of the CWC reports.

37. Opinions of mental health experts/psychologists in CWC reports is a legal mandate which aid the courts to determine the capacity of the child victim to depose before the court and to sensitize the trial proceedings. Incorporating opinions of mental health professionals/psychologists in the said reports will also assist in the rehabilitation of the victim by making a timely reference to mental health professionals for prolonged treatment if needed.

38. In a number of fields the legislature has acknowledged the necessity of interface of law and legal professionals with other domains and domain experts.

39. At times the intellectual capital created by the siloed process of courts is inadequate for addressing complex legal issues of moment. In such situations, the Courts have not hesitated to draw from other fields of knowledge or domains of specialization. Interdisciplinary engagement garners the intellectual capital which is necessary to serve justice in complex decision making processes like those related to minor victims of sexual offences. The concept of interdisciplinary engagement has found legitimacy in the legal process. Inclusive decision making is noticeable in holdings of constitutional courts. This paradigm shift in the process of law

was recognized by the Supreme Court in **Barun Chandra Thakur Vs. Master Bholu and Another**¹⁴.

40. The discussion will profit from the holdings and the methodology adopted in **Barun Chandra Thakur (supra)** which arose out of proceedings under the Juvenile Justice (Care and Protection of Children) Act, 2015.

41. The concept of interdisciplinary engagement between the courts and experts in the field of child psychology was affirmed in **Barun Chandra Thakur (supra)** by referencing and relying on various specialized agencies and institutions like NIMHANS, Bangalore.

42. **Barun Chandra Thakur (supra)** went on to notice specialized nature of the field of child psychology and the importance of integrating report of such experts in the preliminary assessment mandated by Section 15 of the JJ Act, 2015 by holding thus:

“75. It is to be noted that child psychology is a specialised branch of development psychology, its genesis is based on the premise that children and adults have a different thought process. The individualised assessment of adolescent mental capacity and ability to understand the consequences of the offence is one of the most crucial determinants of the preliminary assessment mandated by Section 15 of the Act, 2015. The report of the preliminary assessment decides the germane question of transferring the case of a child between 16 to 18 years of age to the Children’s Court. This evaluation of ‘mental capacity and ability to understand the consequences’ of the child in conflict with law can, in no way, be relegated to the status of a perfunctory and a routine task. The process of taking a decision on which the fate of the child in conflict with law precariously rests, should not be taken without conducting a meticulous psychological evaluation.”

43. The interdisciplinary interface in the judicial process was pioneered by Justice Louis D. Brandeis. The engagement of

courts and the process of law with other domains of knowledge has a long history. It is gaining more acceptability in our country in recent times. The courts have consistently called for reports of environmental experts, scientists and so on as and when the need has arisen to secure the ends of justice.

III (2) F. CWC report & process of the courts

44. Consideration of CWC reports while deciding bail applications reflects the new contours of law created by the POCSO Act [also see **Junaid (supra)**].

45. CWC reports play a critical role in the implementation of various protective measures and other entitlements of victims under the POCSO Act, 2012 read with POCSO Rules, 2020.

46. The CWC report assists the courts in evaluating the victim's condition and to sensitize the process of law. The CWC report also helps the court to determine whether the victim has access to various protective and rehabilitative measures under the POCSO Act, 2012 read with POCSO Rules, 2020. The courts are obligated to direct the authorities to provide the benefits and entitlements to child victims under the POCSO Act, 2012 read with POCSO Rules, 2020, whenever shortcomings are observed. The rights of the child victims are brought to fruition in this manner.

47. Denial of statutory support systems like counselling services, medical care, support persons, and legal aid put the victims at a disadvantage in court proceedings, impede their rehabilitation and defeat the intent of the legislature.

48. CWC reports also enable courts to oversee the functioning of various government agencies and statutory bodies charged with duties of implementing the POCSO Act, 2012 read with POCSO Rules, 2020.

49. Authorities upon whom the statute imposes the duty to secure the rights of victims under the POCSO Act, 2012 read with POCSO Rules, 2020 are accountable to courts where legal proceedings are pending. This Court in **Junaid (supra)** held thus:

“42....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)**.”

50. In summation the CWC reports are pivotal to serve justice to child victims of POCSO Act, 2012 offences in line with the enactment. It is thus imperative that CWC report should be placed before the learned trial court as well as High Court for consideration at the time of hearing of the bail applications.

IV. Conclusions and Directions

51. Justice to child victims of POCSO Act offences is not secured only by a singular act of bringing an accused to face the law. The POCSO Act scheme takes a composite view of the menace of sexual abuse of children, and justice under the enactment has many facets. Justice to child victims of sexual

offences is truly served when the protective script of the legislation sensitizes the process of law, the alleviating measures under the enactment heal the trauma and efface the scars suffered by the victim, and the rehabilitative scheme contemplated by the legislature absorbs the victim in the social mainstream with full dignity.

52. In this wake, the following directions are issued to the competent authorities for execution:

I. The Judicial Training & Research Institute, Lucknow, in consultation with the State Government, institutions of higher legal learning, institutions of higher research and education, institutions of special expertise like NIMHANS, CWCs and other experts in the field shall create a standardized evaluation system/line of enquiry to determine the mental condition of the victims of offences under the POCSO Act, 2012 and to provide for their rehabilitation. The said standardized lines of enquiry shall provide the basis for the CWC to engage with the child and to create a report contemplated under Rule 4 of the POCSO Rules, 2020.

II. State Government/Additional Chief Secretary, Department of Women & Child Development, Government of U.P., Lucknow shall render all support to the JTRI in this undertaking.

III. NIMHANS shall create standardized evaluation enquiries/templates for determining the mental health and

rehabilitation measures of a child victim of sexual offences at the request of the JTRI.

IV. The JTRI shall similarly after consultation with the State Government, CWCs and other institutions of expertise and higher learning create appropriate standardized evaluation formats /templates containing all other relevant facts contemplated in Rule 4 of the POCSO Rules, 2020 and Rule 19 of the JJ Rules, 2016, and other relevant provisions of law.

V. The CWCs shall use the above standardized lines of enquiries/templates for drawing up the CWC reports under the POCSO Act, 2012 read with POCSO Rules, 2020.

VI. The State Government is directed to ensure that details of agencies whose assistance can be taken by the CWC under Section 39 of the POCSO Act, 2012 are duly provided to the CWCs.

VII. The JTRI shall after due consultation with the State Government, CWC and other stake holders prepare the training modules for all CWC members in the State. The training modules will be implemented by the State Government.

VIII. The JTRI, Lucknow, shall conclude the exercise within a period of four months from the date of receipt of a copy of this order.

53. Apart from the above standardized evaluation system/templates so create, it shall be open for the CWC to

further enquire into any other relevant issues in the facts and circumstances of a case and as per law.

54. This Court also notices that the CWC have not been provided with the necessary infrastructure and lack the required wherewithal to discharge their functions. The State Government/Additional Chief Secretary, Government of U.P. Lucknow, are directed to urgently evaluate and upgrade infrastructure available with the CWC to facilitate discharge of their statutory functions.

55. CWC while creating the report has to be conscious of the scope and limitations of its jurisdiction. The CWC report is not part of the investigations made by the police into the offences under Section 173 Cr.P.C. The report cannot be equated with the statements of the victim made under the relevant provisions of the Cr.P.C.

56. The CWC has to adhere to norms of legal propriety and act within the bounds of its jurisdiction in order to achieve its statutory purpose. The CWC acting in consonance with these tenets will sensitize the statutory authorities and the process of justice to the plight of victims and bring their rights to fruition.

57. Dysfunctions of the CWCs and neglect of their reports stymies the operation of the POCSO Act, 2012, negates the promise of the legislature and degrades the quality of justice for the child victims of sexual abuse. Remedial action has to be taken by the State Government on an urgent basis.

58. Copy of this order may be respectfully placed before the Hon'ble Juvenile Justice (Care and Protection) Act Committee, and Hon'ble Protection of Children from Sexual Offences Act Committee for kind consideration and appropriate action and also before the Director, Judicial Training & Research Institute, Lucknow for compliance.

59. The Director, JTRI, Lucknow and Additional Chief Secretary, Department of Women & Child Development, Government of U.P, shall frame a training programme for Child Welfare Committees in consultation with various stakeholders.

V. Order in Bail Application

60. This is the second bail application.

61. By means of the bail application the applicant has prayed to be enlarged on bail in Case Crime No.150 of 2021 at Police Station-Badgaon, District-Saharanpur under Sections 363, 366, 376D IPC and Section 5(g)6 of the POCSO Act.

62. The applicant is on interim bail granted by this Court on 22.08.2023.

63. The following arguments made by Shri Atmaram Nadiwal, learned counsel and Shri Dinesh Kumar Yadav, learned counsel on behalf of the applicant, which could not be satisfactorily refuted Shri Paritosh Kumar Malviya, learned AGA-I, Shri Rishi Chaddha, learned AGA and Ms. Sujata Chaudhary, learned AGA for the State from the record, entitle the applicant for grant of bail:

I. P.W. 1 who is the first informant and father of the victim as well as the victim in their testimonies before the learned trial

court have repudiated the prosecution case. The aforesaid witnesses have been declared hostile at the instance of the prosecution.

II. The applicant is a law abiding citizen who cooperated with the police investigations and had joined the trial.

III. The trial is moving at a snail's pace and is not likely to conclude anytime in the near future. The applicant is not responsible for the delay in the trial.

IV. Inordinate delay in concluding trial had led to virtually an indefinite imprisonment of the applicant without there being any credible evidence to implicate him in the offence and violates the rights of the applicant to speedy trial.

V. The applicant claims congruency in role and seeks parity in relief granted to the co-accused who has been enlarged on bail by this Court by order dated 27.07.2023 in Criminal Misc. Bail Application No. 5489 of 2023.

VI. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to join the trial proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

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

65. Let the applicant- **Siddhant @ Aashu** be released on bail in the aforesaid case crime number, on the sureties already

furnished while being enlarged on interim bail. The following conditions be imposed in the interest of justice:-

- (i) The applicant will not tamper with the evidence or influence any witness during the trial.
- (ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

Order Date:-13.09.2023

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i VI.

Appendix I

POCSO Rules, 2020

12. Monitoring of implementation of the Act.—

(1) The National Commission for the Protection of Child Rights (hereafter referred to as “NCPCR”) or the State Commission for the Protection of Child Rights (hereafter referred to as “SCPCR”), as the case may be, shall in addition to the functions assigned to them under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006), perform the following functions for implementation of the provisions of the Act—

(a) monitor the designation of Special Courts by State Governments;

(b) monitor the appointment of the Special Public Prosecutors by the State Governments;

(c) monitor the formulation of the guidelines described in section 39 of the Act by the State Governments, for the 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, and to monitor the application of these guidelines;

(d) monitor the designing and implementation of modules for training police personnel and other concerned persons, including officers of the Centre and State Governments, for the effective discharge of their functions under the Act;

(e) monitor and support the Central Government and State Governments for the dissemination of information relating to the provisions of the Act through media including the television, radio and print media at regular intervals, so as to make the general public, children as well as their parents and guardians aware of the provisions of the Act.

(f) call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC.

(g) collect information and data on its own or from the relevant agencies regarding reported cases of sexual abuse and their disposal under the processes provided under the Act, including information on the following:-

(i) number and details of offences reported under the Act;

(ii) whether the procedures prescribed under the Act and rules were followed, including those regarding time frames;

(iii) details of arrangements for care and protection of victims of offences under this Act, including arrangements for emergency medical care and medical examination; and,

(iv) details regarding assessment of the need for care and protection of a child by the concerned CWC in any specific case;

(h) use the information so collected to assess the implementation of the provisions of the Act. The report on monitoring of the Act shall be included in a separate chapter in the annual report of the NCPCR or the SCPCR.

(2) The concerned authorities mandated to collect data, under the Act, shall share such data with the Central Government and every State Government, NCPCR and SCPCRs.

JJ Act, 2015

ii Appendix II

“31. Production before Committee— (1) Any child in need of care and protection may be produced before the Committee by any of the following persons, namely:

- (i) any police officer or special juvenile police unit or a designated Child Welfare Police Officer or any officer of District Child Protection Unit or inspector appointed under any labour law for the time being in force;
- (ii) any public servant;
- (iii) Childline Services or any voluntary or non-governmental organisation or any agency as may be recognised by the State Government;
- (iv) Child Welfare Officer or probation officer;
- (v) any social worker or a public spirited citizen;
- (vi) by the child himself; or
- (vii) any nurse, doctor or management of a nursing home, hospital or maternity home:

Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey.

- (2) The State Government may make rules consistent with this Act, to provide for the manner of submitting the report to the Committee and the manner of sending and entrusting the child to children home or fit facility or fit person, as the case may be, during the period of the inquiry.”

JJ Rules, 2016

iii Appendix III

18. Production before the Committee.- (1) Any child in need of care and protection shall be produced before the Committee during the working hours at its place of sitting and beyond working hours before the member as per the duty roster:

Provided that where the child cannot be produced before the Committee, the Committee shall reach out to the child where the child is located.

JJ Rules, 2016

iv Appendix IV

“19. Procedure for inquiry.-

(1) The Committee shall inquire into the circumstances under which the child is produced and accordingly declare such child to be a child in need of care and protection.

(2) The Committee shall, prima facie determine the age of the child in order to ascertain its jurisdiction, pending further inquiry as per section 94 of the Act, if need be.

(3) When a child is brought before the Committee, the Committee shall assign the case to a social worker or Case Worker or Child Welfare Officer or to any recognised non-governmental organisation for conducting the social investigation under sub-section (2) of section 36 of the Act through an order in Form 21.

(4) The Committee shall direct the person or organisation concerned to develop an individual care plan in Form 7 including a suitable rehabilitation plan. The individual care plan prepared for every child in the institutional care shall be developed with the ultimate aim of the child being rehabilitated and re-integrated based on the case history, circumstances and individual needs of the child.

(5) The inquiry shall satisfy the basic principles of natural justice and shall ensure the informed participation of the child and the parent or guardian. The child shall be given an opportunity to be heard and his opinion shall be taken into consideration with due regard to his age and level of maturity. The orders of the Committee shall be in writing and contain reasons.

- (6) The Committee shall interview the child sensitively and in a child friendly manner and will not use adversarial or accusatory words or words that adversely impact the dignity or self-esteem of the child.
- (7) The Committee shall satisfy itself through documents and verification reports, before releasing or restoring the child, as per Form 19, in the best interest of the child.
- (8) The social investigation conducted by a social worker or Case Worker or Child Welfare Officer of the institution or any non-governmental organisation shall be as per Form 22 and must provide an assessment of the family situation of the child in detail, and explain in writing whether it will be in the best interest of the child to restore him to his family.
- (9) Before the Committee releases or restores the child, both the child as well as the parents or guardians may be referred to the Counsellor.
- (10) The Committee shall maintain proper records of the children produced before it including medical reports, social investigation report, any other report(s) and orders passed by the Committee in regard to the child.
- (11) In all cases pending inquiry, the Committee shall notify the next date of appearance of the child not later than fifteen days of the previous date and also seek periodic status report from the social worker or Case Worker or Child Welfare Officer conducting investigation on each such date.
- (12) In all cases pending inquiry, the Committee shall direct the person or institution with whom the child is placed to take steps for rehabilitation of the child including education, vocational training, etc., from the date of first production of the child itself.
- (13) Any decision taken by an individual member, when the Committee is not sitting, shall be ratified by the Committee in its next sitting.
- (14) At the time of final disposal of a case, there shall be at least three members present including the Chairperson, and in the absence of Chairperson, a member so nominated by the Chairperson to act as such.
- (15) The Committee shall function cohesively as a single body and as such shall not form any subcommittees.
- (16) Where a child has to be sent or repatriated to another district or state or country the Committee shall direct the District Child Protection Unit to take necessary permission as may be required, such as approaching the Foreigners Regional Registration Offices and Ministry of External Affairs for a no-objection certificate, contacting the counterpart Committee, or any other voluntary organisation in the other district or state or country where the child is to be sent.
- (17) At the time of final disposal of the case, the Committee shall incorporate in the order of disposal, an individual care plan in Form 7 of such child prepared by the social worker or Case Worker or Child Welfare Officer of the institution or any non-governmental organisation, as the case may be.
- (18) While finally disposing of the case, the Committee shall give a date for follow-up of the child not later than one month from the date of disposal of the case and thereafter once every month for the period of first six months and thereafter every three months for a minimum of one year or till such time as the Committee deems fit.
- (19) Where the child belongs to a different district, the Committee shall forward the age declaration, case file and the individual care plan to the Committee of the district concerned which shall likewise followup the individual care plan as if it had passed such disposal order.
- (20) The individual care plan shall be monitored by means of a rehabilitation card in Form 14 issued for the purpose by the Committee passing the disposal order and which shall form part of the record of the Committee which follow up the implementation of the individual care plan. Such rehabilitation card shall be

maintained by the Rehabilitation- cum -Placement Officer.

(21) All orders passed by the Committee in respect of a child in need of care and protection shall also be uploaded on the designated portal with due regard to the confidentiality and privacy of the child.

(22) When a parent or guardian, wishes to surrender a child under sub-section (1) of section 35 of the Act, such parent or guardian shall make an application to the Committee in Form 23. Where such parent or guardian is unable to make an application due to illiteracy or any other reason, the Committee shall facilitate the same through the Legal Aid Counsel provided by the Legal Services Authority, the deed of surrender shall be executed as per Form 24.

(23) The inquiry under sub-section 3 of section 35 of the Act shall be concluded by the Committee expeditiously and the Committee shall declare the surrendered child as legally free for adoption after the expiry of sixty days from the date of surrender.

(24) In case of orphan or abandoned child, the Committee shall make all efforts for tracing the parents or guardians of the child and on completion of such inquiry, if it is established that the child is either an orphan having no one to take care, or abandoned, the Committee shall declare the child legally free for adoption.

(25) In case an abandoned or orphan child is received by a Child Care Institution including a Specialised Adoption Agency, such a child shall be produced before the Committee within twenty-four hours (excluding the time necessary for the journey) along with a report in Form 17 containing the particulars and photograph of the child as well as the circumstances in which the child was received by it and a copy of such report shall also be submitted by the Child Care Institution or a Specialised Adoption Agency to the local police station within the same period.

(26) The Committee shall issue an order in Form 18 for short term placement and interim care of the child, pending inquiry under section 36 of the Act.

(27) The Committee shall use the designated portal to ascertain whether the abandoned child or orphan child is a missing child while causing the details of the orphan or the abandoned child to be uploaded.

(28) The Committee, after taking into account the risk factors, and in the best interest of the child, may direct the publication of the particulars and photograph of an orphan or abandoned child in national newspapers with wide circulation within seventy two hours from the time of receiving the child for the purposes of tracing out the biological parents or the legal guardian(s).

(29) The Committee, after making inquiry as per the provisions of the Act, shall issue an order in Form 25 declaring the abandoned or orphan child as legally free for adoption and send the same information to the Authority.

(30) Where the parents of the child are traced, the procedure for restoration of the child shall be as per rule 82 of these rules.”

Order Date:- 13.09.2023

Dhananjai