

IN THE HON'BLE HIGH COURT OF DELHI

BAIL APPLICATION No. OF 2022

IN THE MATTER OF:

3678

ROHIT VERMA

..... PETITIONER

VERSUS

THE STATE & ANR

(GOVT. OF NCT OF DELHI)

.....RESPONDENTS

MEMO OF PARTIES

ROHIT VERMA (IN JC)  
S/O NARAIN VERMA  
R/O C-165 RAJDHANI PARK  
NANGLOI  
NEW DELHI

.....PETITIONER

VERSUS

1. THE STATE OF DELHI  
(Govt Of NCT of DELHI)

2. VICTIM K  
THROUGH SHO  
POLICE STATION  
NANGLOI , DELHI

..... RESPONDENT

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ARPIT BHALLA  
ADVOCATE FOR PETITIONER  
OFF: 2<sup>ND</sup> FLOOR OF H.NO.10  
TODARMAL LANE, BENGALI MARKET  
NEW DELHI-110001  
(9990766666)(D/676/2006)

S-9

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 3678/2022

ROHIT VERMA

..... Petitioner

Through: Mr. Arpit Bhalla, Mr. Hirein Sharma,  
Advs.

versus

THE STATE OF DELHI & ANR.

..... Respondents

Through: Mr. Ajay Vikram Singh, APP for  
State with SI Praveen Kumar

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

**ORDER**

**03.02.2023**

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1. This is an application seeking grant of bail in FIR No. 373/2021 registered at PS Nangloi, Delhi u/s 363/328/342/376DA/506/34 IPC and Section 6/17 POCSO Act.
2. The prosecutrix, who is aged 17 years, has been called from Bihar for the purpose of attending Court hearing today. On query put by me regarding her physical presence in Court today, she has stated that in the notice served upon her she was asked to attend the physical hearing herself, mandatorily. She also states that she had requested to attend the hearing via Video conferencing but she was informed to attend the hearing physically.
3. The present case shows a very disturbing state of affairs. The Courts have issued repeated directions, orders and guidelines indicating that the endeavour should be not to call the prosecutrix to the High Court, to avoid



repeated mental harassment as well as to protect her identity.

4. Despite the same, there seems to be a total non-compliance of the same. Mr. Singh, learned APP has pointed out that in the present case, notice was issued by the Registry of Delhi High Court and did not contain any indication that the prosecutrix need not be present in person and can represent through VC and/or her nominated counsel and/or her guardian. Mr. Singh has also pointed out that notice indicates as “.....Also take notice that in default of your appearance on the date fixed and in the manner mentioned above the petition will be heard and decided ex-parte in your absence.”

5. This Court in CRL.A. 198/2020, BABU LAL v. STATE, discussed about the psychological impact on a POCSO Act victim being present in Court during the arguments is grave as there are allegations, accusations, doubting the integrity, character, etc. of the prosecutrix, her family, etc. It was felt that it would be in the interest of the victim that she is not traumatized again and again by re-living the said incident by being present in Court proceedings. This Court, further directed that during bail hearings of a POCSO case, the following guidelines shall also be adhered to:

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

*ii. The Investigating Officer while serving notice/summons of the bail application to the victim/ prosecutrix shall make relevant inquiries about the victim and her circumstances and shall document the same in order to assist the court in the hearing of the bail application and to facilitate effective representation and participation on behalf of the victim. The IO should*



ensure that while making such enquiries the victim is not made to feel uncomfortable or questioned like an accomplice to a crime. Necessary sensitivity ought to be displayed by the IO while making these enquiries.

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

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

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



Ld. Judge and the victim and this order can then be relied on at the stage of final disposal of bail application.

vi. In certain exceptional cases, in- chamber interaction with the victim can be done and her submissions qua the bail application can be recorded in the order sheet passed on that day, so that the same maybe considered at a later stage.

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

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

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

x. Further, after the bail application is disposed off, the copy of the order



*should be mandatorily sent to the victim. This becomes important since the victim's main concern is her safety in case the accused is enlarged."*

6. These guidelines were to be circulated to all necessary parties and stake holders. It is directed that the matter for framing the suitable notice which is required to be issued in POCSO and 376 IPC cases may be brought to the notice of the Rules Committee of Delhi High Court and if they so direct, a separate performa of notices be made to be issued by the Delhi High Court to prosecutrix in POCSO and u/s 376 IPC cases.

7. Till the committee takes a decision;

- i) it is directed that the line stating "*.....Also take notice that in default of your appearance on the date fixed and in the manner mentioned above the petition will be heard and decided ex-parte in your absence*" shall not be forming part of the notices being sent to the prosecutrix by the Delhi High Court in POCSO and 376 IPC cases. The Registrar General, Delhi High Court is requested to do the needful.
- ii) The Delhi Police is directed to ensure that every notice sent to a prosecutrix for offences of POCSO Act and/or Sections 376 IPC must indicate that the option is being given to the prosecutrix that she need not appear in person and if she chooses, she may appear through VC and/or through her guardian and/or through her duly appointed counsel. Such language as quoted in the above stated notice should be refrained from being used as the same have an effect of inducing fear in the victims.
- iii) In addition, the IO in each case shall personally telephone the



prosecutrix and inform her and/or her guardian that the prosecutrix is not required to appear personally and may appear through her counsel and/or through her attorney/guardian and/or through VC.

iv) The Commissioner of Police is requested to kindly ensure compliance.

8. The directions are necessary as the appearance of the prosecutrix is traumatic to the victims. In many cases, the prosecutrix have to come from distant locations, whereby putting the prosecutrix under tremendous stress, mentally and monetarily.

9. In the present case, the DHCLSC is directed to ensure that the prosecutrix is provided with an able counsel to defend her interest.

10. The prosecutrix shall be permitted to join proceedings in the High Court as well as in the Trial Court through VC and shall not be called unnecessarily.

11. List on 07.03.2023.



sd/-

JASMEET SINGH, J

FEBRUARY 3, 2023/dm

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