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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

ORDER

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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)
Informant

(S/d)
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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W.P.(C) 5011/2017

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