

CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.09.2025

PRONOUNCED ON : 26.09.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 2025
in
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

CrI.M.P.(MD)NO.7809 of 2025:

Venkateshwaran .. Petitioner / Appellant

Vs.

State of Tamil Nadu through
The Inspector of Police,
All Women Police Station,
Sivagangai,
Sivagangai District.
Cr.No.14 of 2017. .. Respondent/Complainant

PRAYER in CrI.M.P.: Petition filed under Section 430(1) of BNSS / 389(1) of Cr.P.C., to suspend the sentence imposed against the petitioner in Spl.S.C.NO.18 of 2018, dated 31.12.2022, passed by the Principal Special Court of exclusive trial of cases under the POCSO Act, 2012, at Sivagangai and enlarge the petitioner on bail pending disposal of the appeal.

PRAYER IN CRIMINAL APPEAL: Criminal Appeal filed under Section 374(2) Cr.P.C, to call for the entire records pertaining to the judgment dated



Crl.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

30.12.2022 made in Special Sessions Case No.18 of 2018, passed by the learned
Principal Special Court for Exclusive Trial of Cases under the POCSO Act, 2012
at Sivagangai and set aside the same.

For Petitioner : Mr.G.Karuppasamypandiyan

For Respondent : Mr.B.Thanga Aravind
Government Advocate (Crl.Side)

Crl.M.P.(MD)NO.11825 of 2025:

Azhagu Raja .. Petitioner / Appellant

Vs.

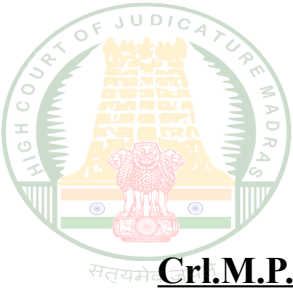
State of Tamil Nadu through
The Inspector of Police,
Thenkarai Police Station,
Theni District. .. Respondent/Complainant

PRAYER in Crl.M.P.: Petition filed under Section 430(2) r/w 483 of BNSS to
suspend the sentence imposed by the Principal Special Court for Exclusive trial
of cases under POCSO Act, Theni, in Spl.S.C.No.84 of 2023, dated 25.02.2025
and enlarge the petitioner on bail pending disposal of the criminal appeal.

PRAYER IN CRIMINAL APPEAL: Criminal Appeal filed under Section
415(2) of BNSS to call for the entire records and set aside the conviction and
sentence passed by the Principal Special Court for Exclusive trial of cases under
POCSO Act, Theni in Spl.S.C.No.84 of 2023, dated 25.02.2025.

For Petitioner : Mr.G.Karuppasamypandiyan
for Mr.A.Karthick Kumar

For Respondent : Mr.B.Thanga Aravind
Government Advocate (Crl.Side)



CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

CrI.M.P.(MD)NO.11926 of 2025:

Venkateshwaran

.. Petitioner / Appellant

Vs.

State of Tamil Nadu through
The Inspector of Police,
All Women Police Station,
Sivagangai,
Sivagangai District.
Cr.No.14 of 2017.

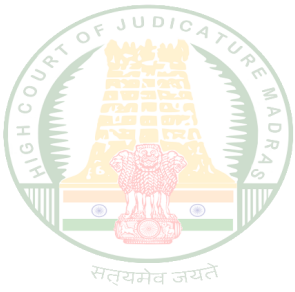
.. Respondent/Complainant

PRAYER in CrI.M.P.: Petition filed under Section 430(2) r/w 483 of BNSS to enlarge the petitioner on bail by suspending the sentence imposed in Spl.S.C.No. 77 of 2024, on the file of the Sessions Judge, Fast Track Mahila Court, Dindigul, dated 11.08.2025..

PRAYER IN CRIMINAL APPEAL: Criminal Appeal filed under Section 374(2) Cr.P.C, to call for the entire records and set aside the judgment made in Spl.S.C.No.77 of 2024, by the Sessions Judge (Fast Track Mahila Court), Dindigul, dated 11.08.2025.

For Petitioner : Mr.D.Venkatesh

For Respondent : Mr.B.Thanga Aravind
Government Advocate (CrI.Side)



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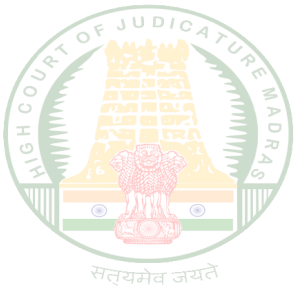
Crl.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

COMMON ORDER

These three Criminal Appeals are directed against the judgments of conviction and sentence made in Spl.S.C.No.18 of 2018, dated 30.12.2022, on the file of the Principal Special Court for Exclusive trial of cases under the POCSO Act, 2012, Sivagangai, in Spl.S.C.No.84 of 2023, dated 25.02.2025 on the file of the Principal Special Court for Exclusive trial of cases under the POCSO Act, Theni and in Spl.S.C.No.77 of 2024, dated 11.08.2025 on the file of Fast Track Mahila Court, Dindigul respectively for the offence under the POCSO Act.

2. In the present three appeals, the appellants filed applications seeking suspension of sentence under Section 430(2) of the BNSS. Upon hearing these matters, this Court raised a query regarding whether the de facto complainant is a necessary party in Criminal Appeals challenging convictions under the POCSO Act and in applications for suspension of sentence.

3. The learned Counsel for the appellants would submit that notice is not necessary as neither POCSO Act nor the Rules framed thereunder does not provide for the same. But the learned Government Advocate (Crl.Side) would



CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

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submit that notice is necessary since amended Section 439(1-A) Cr.P.C., provides notice before granting bail to a person accused of an offence under Section 376(3) or 376-AB or Section 376-DA or 376-DB I.P.C. Hence, this Court heard the arguments of the learned Counsel appearing for the appellants and the learned Government Advocate(CrI.Side) appearing for the State.

4. The sole preliminary issue to be determined is whether the defacto complainant is a necessary party in a criminal appeal challenging a conviction under the POCSO Act and in an application for suspension of sentence, and if so, the manner of their involvement.

5. Following the U.N., Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, victimology jurisprudence has evolved globally. Consequently, the Code of Criminal Procedure had undergone amendments to recognise the victim's rights in the Indian Criminal Jurisprudence System. In ***Jagjeet Singh and Others Vs. Ashish Mishra and another*** reported in ***AIR 2022 SC 1918***, three Judge Bench of the Hon'ble Apex Court observed that the definition of victim under Section 2(wa) Cr.P.C., has given a wide and expansive meaning to the expression “Victim”, which means a person who has suffered any loss or injury caused by reason of the act or omission for which the

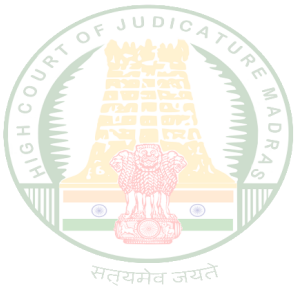


CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

accused person has been charged and the expression “Victim” includes his or her guardian or legal heir. It will be useful to refer the following passages:

“22. This Court, in *Mallikarjun Kodagali (Dead) v. State of Karnataka & Ors*⁵, while dealing with questions regarding a victim’s right to file an appeal under *section 372* of Cr.P.C, observed that there was need to give adequate representation to victims in criminal proceedings. The Court therein affirmed the victim’s right to file an appeal against an order of acquittal. In *Mallikarjun Kodagali*, though the Court was primarily concerned with a different legal issue, it will be fruitful in the present context to take note of some of the observations made therein:

“3. What follows in a trial is often secondary victimisation through repeated appearances in court in a hostile or a semi hostile environment in the courtroom. Till sometime back, secondary victimisation was in the form of aggressive and intimidating cross-examination, but a more humane interpretation of the provisions of the *Evidence Act, 1872* has made the trial a little less uncomfortable for the victim of an offence, particularly the victim of a sexual crime. In this regard, the judiciary has been proactive in ensuring that the rights of victims are addressed, but a lot more needs to be done. Today, the rights of an accused far outweigh the rights of the victim of an offence in many respects. There needs to be some balancing of the concerns and equalising their rights so that the criminal proceedings



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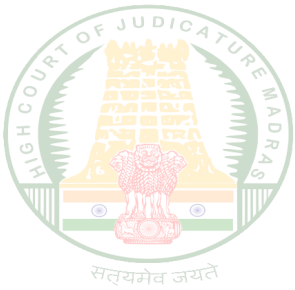
CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

*are fair to both. [Girish Kumar Suneja v. CBI, (2017)
14 SCC 809 : (2018) 1 SCC (Cri) 202] xxx*

8. The rights of victims, and indeed victimology, is an evolving jurisprudence and it is more than appropriate to move forward in a positive direction, rather than stand still or worse, take a step backward. A voice has been given to victims of crime by Parliament and the judiciary and that voice needs to be heard, and if not already heard, it needs to be raised to a higher decibel so that it is clearly heard.” (Emphasis Supplied)

23. It cannot be gainsaid that the right of a victim under the amended [Cr.P.C.](#) are substantive, enforceable, and are another facet of human rights. The victim’s right, therefore, cannot be termed or construed restrictively like a brutum fulmen. We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the [Cr.P.C.](#) The presence of ‘State’ in the proceedings, therefore, does not tantamount to according a hearing to a ‘victim’ of the crime.

24. A ‘victim’ within the meaning of [Cr.P.C.](#) cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a ‘victim’ has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that ‘victim’ and ‘complainant/informant’ are two distinct connotations in



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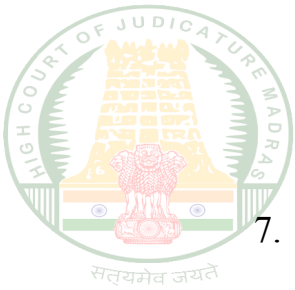


CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

criminal jurisprudence. It is not always necessary that the complainant/informant is also a 'victim', for even a stranger to the act of crime can be an 'informant', and similarly, a 'victim' need not be the complainant or informant of a felony.

25. The above stated enunciations are not to be conflated with certain statutory provisions, such as those present in Special Acts like the Scheduled Cast and Scheduled Tribes (Prevention of Atrocities) Act, 1989, where there is a legal obligation to hear the victim at the time of granting bail. Instead, what must be taken note of is that; First, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged; Second, where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.

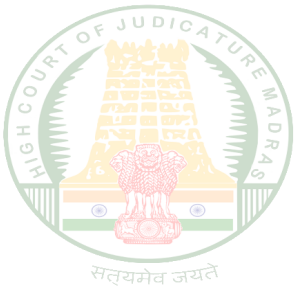
6. The Hon'ble Supreme Court has categorically held that the victim has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision.



Crl.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

7. The learned Counsel for the appellant in Crl.A.(MD)No.949 of 2025 would submit that the above decision cannot be made applicable to the case on hand, as the Hon'ble Apex Court has not dealt with the scope of appeal against conviction filed by the accused under the POCSO Act, without impleading the victim, parent or guardian, but it was held that the victim is entitled to be heard at the stage of adjudication of bail application of an accused.

8. The learned Counsel for the appellants in other two appeals would rely on the decision of the Division Bench of Rajasthan High Court in ***Pooja Gurjar and Others Vs. State of Rajasthan*** in D.B.Criminal Reference No.1 of 2023, dated 19.12.2023, wherein the Division Bench attempted to interpret the judgment of the Hon'ble Supreme Court in ***Jagjeet Singh's case*** referred supra, has held that mandate of ***Jagjeet Singh's case*** that the victim has unbridled participatory rights in criminal proceedings does not mean that the victim must replace or substitute the State as the prosecuting agency nor that the victim must be impleaded as a party to the proceedings so as to make the victim answerable in all aspects. The Division Bench has further observed that ***Jagjeet Singh's case*** only provides that the victim has vested right to be heard at every stage of proceedings and that therefore, the victim is not a necessary party and is not required to be impleaded as party-respondent in bail applications under Sections 437, 438, 439 I.P.C.



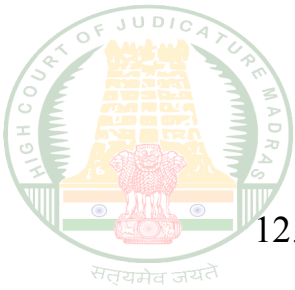
CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

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9. The learned Counsel would further submit that above judgment in ***Pooja Gurjar's case*** and the POCSO Act makes it clear that the Court is neither statutorily obligated to send notice to the victim girl nor directed the accused to implead the victim girl as a party to hear and decide the bail applications and appeal bail applications.

10. At the outset, since the present issue relates to POCSO Act, it is necessary to clarify one aspect that the victim we are now referring, would only denote the defacto complainant or the parent or the guardian of the victim girl and not the the victim girl herself, who need not be impleaded or heard in the case.

11. Moreover in ***Jagjeet Singh's case*** referred above, the Hon'ble Supreme Court has dealt with an appeal filed by the defacto complainant challenging the order granting bail by the High Court. While recognising the rights of the victim to take part in the Court proceedings, has held that the victim or the defacto complainant has legally vested right to be heard at every step post the occurrence of an offence and such a person has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision.



CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

12. Before entering into further, it is necessary to refer Sections 39 and 40 of POCSO Act and the relevant Sub-Rules in Rule 4 of POCSO Rules and the amended Section 439(1-A) Cr.P.C., and the guideline 2.2 of Model Guidelines issued by the Ministry of Women and Child Development, Government of India in exercise of the powers conferred under Section 39 of POCSO Act:

“ Section 39 and 40 of POCSO Act

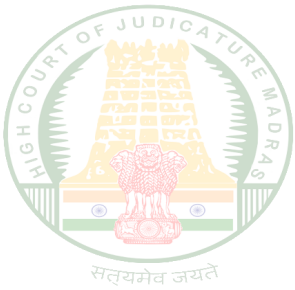
39. Guidelines for child to take assistance of experts, etc.— Subject to such rules as may be made in this behalf, the State Government shall prepare guidelines for use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child.

40. Right of child to take assistance of legal practitioner.— Subject to the proviso to section 301 of the Code of Criminal Procedure, 1973 (2 of 1974) the family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under this Act: Provided that if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them.

Rule 4 of POCSO Rules:

4. Procedure regarding care and protection of child.

(1) Where any Special Juvenile Police Unit (hereafter referred to as "SJPU") or the local police receives any information under sub-section (1) of section 19 of the Act from any person including



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CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

the child, the SJPU or local police receiving the report of such information shall forthwith disclose to the person making the report, the following details:-

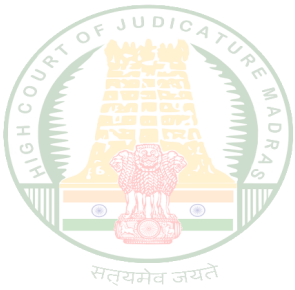
- (i)his or her name and designation;*
- (ii)the address and telephone number;*
- (iii)the name, designation and contact details of the officer who supervises the officer receiving the information.*

.....

(13)It shall be the responsibility of the SJPU, or the local police to keep the child and child's parent or guardian or other person in whom the child has trust and confidence, and where a support person has been assigned, such person, informed about the developments, including the arrest of the accused, applications filed and other court proceedings.

(14)SJPU or the local police shall also inform the child and child's parents or guardian or other person in whom the child has trust and confidence about their entitlements and services available to them under the Act or any other law for the time being applicable as per Form-A. It shall also complete the Preliminary Assessment Report in Form B within 24 hours of the registration of the First Information Report and submit it to the CWC

(15)The information to be provided by the SJPU, local police, or support person, to the child and child's parents or guardian or



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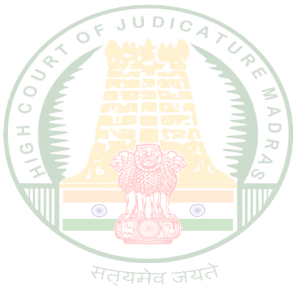
CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

other person in whom the child has trust and confidence, includes but is not limited to the following:-

- (i) the availability of public and private emergency and crisis services;*
- (ii) the procedural steps involved in a criminal prosecution;*
- (iii) the availability of victim's compensation benefits;*
- (iv) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;*
- (v) the arrest of a suspected offender;*
- (vi) the filing of charges against a suspected offender;*
- (vii) the schedule of court proceedings that the child is either required to attend or is entitled to attend;*
- (viii) the bail, release or detention status of an offender or suspected offender;*
- (ix) the rendering of a verdict after trial; and*
- (x) the sentence imposed on an offender.*

Section 439(1-A) Cr.P.C.: *The presence of the informant or any person authorised 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.*

Guideline 2.2 of Model Guidelines issued by the Ministry of Women and Child Development, Government of India in exercise of the powers conferred under Section 39 of POCSO Act:



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CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

"2.2. At trial

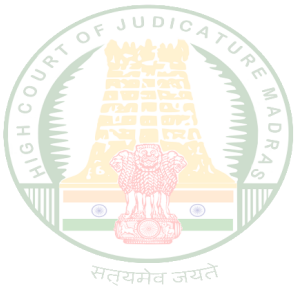
(i) Children have the right to be heard in any judicial and administrative proceedings affecting them. They must be given a reasonable opportunity to express their views all matters affecting him and these must be taken into account. He should also be allowed to provide initial and further information, views or evidence during the proceedings.

(ii) Children have the right to information about the case in which they are involved, including information on the progress and outcome of that case, unless the lawyer considers that it would be contrary to the welfare and best interests of the child.

It would be best if the lawyer coordinates with other persons or agencies concerned with the child's welfare, such as the support person, so that this information is conveyed in the most effective manner. Victims should receive the most appropriate information on the proceedings from all their representatives, and the assistance of a support person appointed under Rule 4(7) most often constitutes the best practice in ensuring that full information is conveyed to the victim.

Such information would include:

- (a) Charges brought against the accused or, if none, the stay of the proceedings against him;*
- (b) The progress and results of the investigation;*
- (c) The progress of the case;*



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CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

(d) *The status of the accused, including his/her bail, temporary release, parole or pardon, escape, absconding from justice or death;*

(e) *The available evidence;*

(f) *The child's role in the proceedings;*

(g) *The child's right to express their views and concerns in relation to the proceedings;*

(h) *The scheduling of the case;*

(i) *All decisions, or, at least those decisions affecting their interests;*

(j) *Their right to challenge or appeal decisions and the modalities of such appeal;*

(k) *The status of convicted offenders and the enforcement of their sentence, including their possible release, transfer, escape or death."*

13. A Public Interest Litigation was filed before the Bombay High Court in ***Arjun Kishanrao Malge Vs. The State of Maharashtra and Others*** (AIR Online 2021 Bombay High Court) raising issues in regard to the rights of the children to participate in the trial of offences under the POCSO Act. The Division Bench of the said High Court by referring to Section 40 of POCSO Act r/w Rule 4 of POCSO Rules, accepting the grievance of the petitioner therein that mandate of Section 40 of the POCSO Act r/w Rule 4 of POCSO Rules were

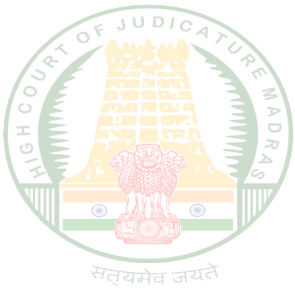


CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

not followed, has held that the same recognize a statutory entitlement to the assistance of and representation by legal counsel for the family or the guardian of the child and entitlement to be present and to participate in proceedings in accordance with the said provision and that there is also an entitlement of such persons to be made aware of the filing of applications and the hearings scheduled and observed as follows:

“17. In our opinion, the petitioner is correct in his contention, also referring to the provisions of [Section 439](#) of the Cr.P.C and the This Order is modified/corrected by Speaking to Minutes Order dated 09/04/2021

2.CRPIILNo.52021.docx amendment made thereto by incorporation of Sub-section (1A) [(by Act 22 of 2018) with effect from 21 April 2019] stipulating that " the presence of the informant or any person authorised 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." It needs to be noted that such provisions of the [Indian Penal Code](#) referring to sub-section (1A) of [Section 439](#) of the Cr.P.C. are in relation to the offences under sub-section (3) of Section 376 or Section 376AB or Section 376DA or [Section 376DB](#) of the IPC which relate to children. We thus find ourselves in agreement with the contention of the petitioner that akin to the offences which fall under the [Indian Penal Code](#) as set out in sub- section (1A) of [Section 439](#) of Cr.P.C., with respect to applications for bail under the [POCSO Act](#), the presence of the informant or any



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CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

person authorised by him shall be made obligatory at the time of hearing of the application for bail. This would certainly be in consonance with the object of [Section 40](#) of the POCSO Act read with Rule 4(13) and 4(15) of the POCSO Rules.”

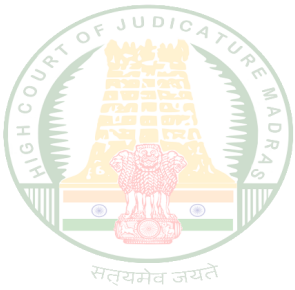
Thereafter the Division Bench has proceeded to issue the following directions:

“We are accordingly inclined to dispose of the petition with the following directions:-

(i) Notwithstanding the duty of the SJPU to intimate the child's family or guardian or the legal counsel under Rule 4 of the POCSO Rules:-

a. where an application is made before the Court on behalf of the prosecution, it shall be the duty of the office of the public prosecutor to issue notice of hearing of such application to the child's family or as the case may be, the guardian, and where a legal counsel on behalf of the child is already on record, to such legal counsel, along with all relevant documents and the record necessary for effective participation in the proceedings;

b. when an application is made before the Court on behalf of the accused, it shall be the duty of the accused to issue notice of hearing of such application to the child's family or as the case may be, the guardian, and where a legal counsel on behalf of the child is already on record, to such legal counsel, along with all relevant documents and the record necessary for effective participation in the proceedings.



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CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

(ii) When an application is made on behalf of the prosecution, it shall be the duty of the Police Officer to confirm to the relevant Court that service of such application alongwith all relevant documents and the record necessary for effective participation in the This Order is modified/corrected by Speaking to Minutes Order dated 09/04/2021

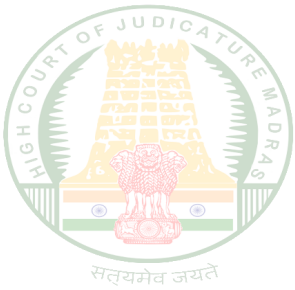
2.CRPILNo.52021.docx proceedings, and the notice of hearing has been undertaken and completed along with proof of service.

(iii) In the event, it has not been possible to serve the child's family, guardian or legal counsel, it shall be the duty of the SJPU to inform the reasons in writing to the relevant court.

(iv) The appropriate Court, before proceeding to hear the application, shall ascertain the status of service of notice, and if it is found that notice has not been issued, the Court may make such reasoned order as it deems fit to secure the ends of justice, taking into account any emergent circumstances that warrant dealing with the application in the absence of the child's family or guardian or legal counsel.

(v) In the event despite issuance of notice, the child's family, guardian or legal counsel, does not attend the hearing, the Court may proceed further without the presence of such noticee, or issue a fresh notice, as the Court may deem fit and proper, considering the interest of justice.

(vi) When the proceedings under the Act would also relate to an offence against Sections 376(3), 376-AB, 376-DA or 376-DB of



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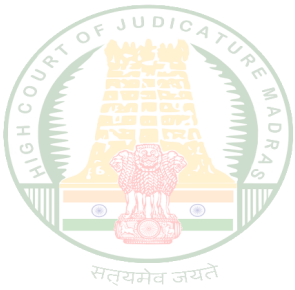


CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

the [Indian Penal Code](#), the notice to the victim shall be issued under Section 439(1-A) read with Rule 4(13) and 4(15)."

14. A Division Bench of the ***Chhattisgarh High Court in Akash Chandrakar and another Vs. State of Chattisgarh in Criminal Appeal No.101 of 2021*** has specifically dealt with the question whether for considering an application for suspension of sentence and grant of bail under [Section 389\(1\)](#) of the CrPC, notice to the victim/complainant under the provisions of the [POCSO Act, 2012](#) would be necessary, by referring to the Rule 4(15) of POCSO Rules 2020 and the guidelines issued by the Central Government under Section 39 of POCSO Act has held that notice either to the victim or one of his/her parents or guardian/informant or support person in whom the child has trust and confidence would be absolutely necessary in the ends of justice while hearing and considering the application for suspension of sentence in pending appeal preferred by the appellant/accused convicted under the offences against woman or child punishable under the provisions of the [POCSO Act](#) and the concluding direction of the Division Bench is extracted hereunder:

"Accordingly, it is directed that notice of the application for suspension of sentence be also issued to the victim or one of his/her parents or guardian or informant and it should be served on the address provided by the State Counsel. To secure the



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CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

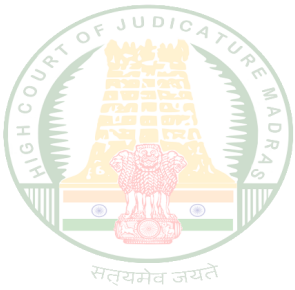
interest of victim, legal assistance may be provided by DLSA or SALSA or High Court Legal Services Committee, as the case may be, through their empanelled Advocate etc.. “

15. It is also necessary to refer the decision of the Division Bench of Karnataka High Court in ***Bibi Ayesha Khanum and others Vs. Union of India and others in W.P.NO.2318 of 2022, dated 23.02.2022***, wherein a Writ Petition was filed seeking various reliefs including for issuance of directions to the respondents therein to ensure effective implementation of the POCSO Act 2012 and POCSO Rules 2020 and to declare that Section 40 of the POCSO Act r/w Rule 4 of the Rules mandates that the child victim/parent/guardian/complainant shall be informed through the issuance of a notice regarding any application for bail preferred by an accused and that legal representative of the child victim/parent or guardians/complainant is heard before granting of bail to the accused and etc.

16. The Division Bench by referring to the decision of Bombay High Court in ***Arjun Kishanrao Malge's case***, referred supra has issued some directions and the relevant directions are extracted hereunder:

“.....

17.3. The Accused or the counsel for the accused shall serve a copy of any application or objections to be filed in the said proceedings on the Victim's parents/caregiver/guardian as also



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CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

the legal counsel if appointed and issue notice of hearing of such application on them, along with all relevant documents and records necessary for their effective participation in the proceedings. The Accused or the Counsel for the Accused to file necessary proof of service of copies and notice of hearing. In the unlikely event of service not being effected it shall be the duty of the Accused or Counsel for the Accused to inform the reasons in writing to the relevant court.

.....

17.8. 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 bail be it regular, interim, transit or any other classification, notice shall be issued by the Accused to the Investigating officer, SJPU, Public Prosecutor as also any counsel on record for the victim/complainant/informant;”

17. The Division Bench has further directed that in case if notice has not been served, the Court has to record a reasoned order and in case if no one has appeared despite the service of notice, the Court can proceed further or issue a fresh notice.

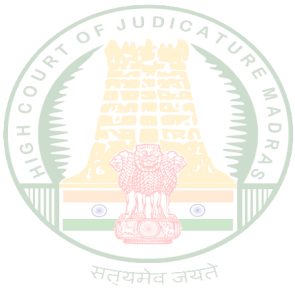
18. No doubt, a Division Bench of Calcutta High Court in the matter of Ganesh Das in CRA.228 of 2020 while considering the note of Registry that the criminal appeal filed challenging the conviction and sentence imposed under the



CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

POCSO Act is defective as the victim has not been made as party in the appeal, by observing that the trial, conviction and sentence are matters primarily between the accused person and the State and the statutory provisions for institution of the appeal and the hearing thereof, do not, in their terms, enjoin impleadment of the victim in the appeals and taking note of the principles relating to protection of dignity and privacy and modality of ensuring those values, has concluded that the victim is not a necessary party to a Criminal Appeal from conviction for offences against women or child punishable under the provision of I.P.C., or POCSO Act or any other penal provision which will apply relating to offences affecting human body against any “woman” and / or “child” and that no such appeal would be defective in the absence of implementation of the victim.

19. A learned Single Judge of Bombay High Court in ***Rohit Vs. the State of Maharashtra in Crl.A.(ST) No.8953 of 2023, dated 10.11.2023***, raised a query as to why the victim has been made party-respondent in the criminal appeal challenging for the offences under POCSO Act as well as applications seeking suspension of sentence. A reply was made that the victim was made party in terms of law laid down by the Bombay High Court in ***Arjun Kishanrao Malge case***, referred supra.

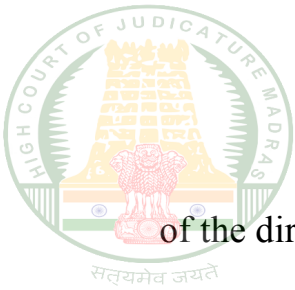


CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

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20. At the outset, it is pertinent to mention that there is no such direction in **Arjun Kishanrao Malge case**, for impleading a victim in the appeal as well as in the suspension application, but mandated the accused that when an application is made before the Court on behalf of the accused, it shall be the duty of the accused to issue notice of hearing of such application to the child's family, or the guardian, along with all relevant documents and the record necessary for effective participation in the proceedings. But the learned Singh Judge in **Rohit case** above referred, referring to the said decision in **Arjun Kishanrao Malge case** and also the decision of the Calcutta High Court Division Bench in **Ganesh Das's case** referred supra, has held that child or child's parents or guardian etc., is not a necessary party to Criminal Appeal from conviction under the provisions of I.P.C., or the POCSO Act and the child or child's parents or guardian etc., are entitled to be apprised of the status of the proceedings which includes appeals. But the learned Judge has then rightly observed that the presence of the child's parents and not of child is obligatory in terms of the directions issued in **Arjun Kishanrao Malge case** and that the SJPU or local police shall, therefore, ensure that child should not be instructed to attend the Court.

21. Regarding Section 389 of the Code, the learned Judge has observed that notice will have to be issued to the child's parents or guardian etc., in terms

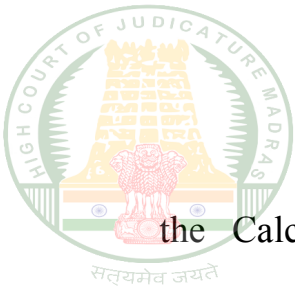


CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

of the directions issued by the Division Bench of that Court in the case of **Arjun Kishanrao Malge** for the purpose of apprising them of the status of the case, but without insisting for their presence in the Court. In Arjun Kishanrao Malge case, the Division Bench has nowhere observed that the presence of the child's parents or guardian etc., must be insisted in the hearing of the application for suspension of sentence, or hearing of any other application.

22. Generally, in police-instituted criminal cases, the victim/de facto complainant is not made a party. In criminal trials under the IPC, POCSO Act, or other special enactments, impleading the victim/de facto complainant as a party is uncommon. However, with court permission, they can engage counsel to assist the Public Prosecutor/Assistant Public Prosecutor under Section 301(2) CrPC, where the counsel's role is limited and prosecution control remains with the Public Prosecutor/Assistant Public Prosecutor. Section 302 CrPC empowers the Judicial Magistrate to permit the de facto complainant to conduct the prosecution independently through private counsel if they demonstrate inadequate prosecution by the Assistant Public Prosecutor.

23. Given the availability of prosecution and defense evidence, as well as the trial court's judgment, the appellate court can decide on the conviction's validity by hearing the prosecutor and defense counsel. The Division Bench of



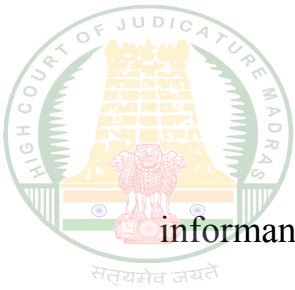
CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

the Calcutta High Court, considering principles of dignity, privacy, and modalities to ensure these values, held that the victim is not a necessary party in criminal appeals arising from convictions for offenses against women or children under the IPC or POCSO Act.

24. As already pointed out, the learned Single Judge in Bombay High Court in ***Rohit case***, has observed that child and child's parents or guardian is not a necessary party to a Criminal Appeal from conviction for the offences under the provisions of I.P.C., or POCSO Ac, but he would add that the child or child's parents or guardians are entitled to be apprised of the status of the proceedings, which includes appeal.

25. Based on the aforementioned decisions and legal provisions, this Court holds that impleading the victim or their parents/guardians is not mandatory in criminal appeals. However, if they wish to participate, they should be permitted to do so and be heard alongside the Public Prosecutor and defence counsel.

26 Turning to the application for suspension of sentence under Section 389 CrPC, it's pertinent to note that Section 439 CrPC was amended by the Criminal Law Amendment Act 2018, introducing Section 439(1-A), which came into force on April 20, 2019. This provision mandates the presence of the

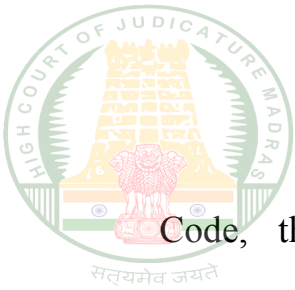


Crl.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

informant or their authorized representative during the hearing of bail applications for offenses under Sections 376(3), 376AB, 376DA, or 376DB IPC, particularly those involving children under 16 or 12 years of age.

27. The Division Bench of the Bombay High Court in *Arjun Kishanrao Malge's case* aptly observed that it agreed with the contention that, similar to IPC offenses specified in Section 439(1-A) CrPC, the presence of the informant or their authorized representative should be mandatory during bail hearings under the POCSO Act. This aligns with the objectives of Section 40 of the POCSO Act read with Rules 4(13) and 4(15) of the POCSO Rules.

28. As noted earlier, the Division Bench of the Chhattisgarh High Court in Akash Chandrakar's case correctly held that notice to the victim's parents, guardian, informant, or trusted support person is essential when considering suspension of sentence in a pending appeal. Notably, Section 31 of the POCSO Act provides that the Code of Criminal Procedure, 1973, including provisions for bail and bonds, applies to proceedings before a Special Court under POCSO. This section ensures consistency and fairness by integrating existing criminal procedural laws into the POCSO framework. Section 42 of the POCSO Act serves as an alternate punishment provision by stipulating that if an act is punishable under both the POCSO Act and certain sections of the Indian Penal

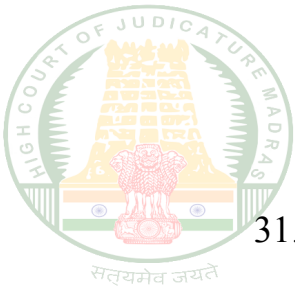


CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

Code, the offender is to be punished under the law that provides the greater degree of punishment. This section applies when a single act or omission qualifies as an offence under both the POCSO Act and specific, listed sections of the IPC. Given these provisions and considering that suspension of sentence under Section 389 CrPC is akin to appeal bail, the principle under Section 439A CrPC—requiring notice to the informant for specific IPC offenses against children—should logically extend to both regular and appeal bail applications under the POCSO Act.

29. Before suspending the sentence, it is essential to hear the victim's family regarding any potential harassment, threats, or coercion by the accused post-conviction. Without notice and hearing, the appellate court may remain uninformed about crucial developments. While acknowledging that some victims' families may be traumatized and unwilling to participate, others may actively engage to ensure justice is served. Therefore, hearing the victim's side is necessary before granting appeal bail.

30. Based on the foregoing, this Court holds that involving the victim's parents, de facto complainant, or guardian is essential in both regular and appeal bail applications filed by individuals accused of POCSO Act offenses.



CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

31. It is crucial to ensure the victim is not made a party in any proceedings or applications under the POCSO Act, and no direct notice should be served to them. When involving the victim's family or de facto complainant, their identity and details should be protected, and only necessary information should be disclosed without revealing their identity.

32. In conclusion, it is clarified that involving the victim or their parents is not necessary in criminal appeals challenging the convictions under the POCSO Act. However, their impleadment is essential in regular bail applications under Section 483 BNSS (Section 439 Cr.P.C.) and suspension of sentence application under Section 430 BNSS (Section 389 Cr.P.C.,) It is further clarified that the victim should not be directly involved or served notice in any proceedings. Instead, notice should be served to the victim's parents or complainant through the address provided by the State Counsel. To protect the victim's interest, the Courts may direct the District Legal Services Authority or State Legal Service Authority or the High Court Legal Services Committee to provide legal assistance through their panal Advocates.

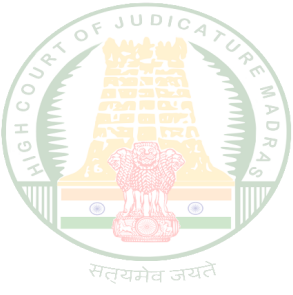
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CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 20.
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

K.MURALI SHANKAR, J.

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PRE-DELIVERY ORDER MADE IN

CrI.M.P.(MD)Nos.7809, 11825 and 11926 of 2025
in
CRL.A(MD).Nos.136 of 2023 and 936 and 949 of 2025

26.09.2025