



2026:KER:17222

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

THURSDAY, THE 26TH DAY OF FEBRUARY 2026 / 7TH PHALGUNA, 1947

CRL.MC NO. 516 OF 2026

CRIME NO.2021/2025 OF Kottayam East Police Station, Kottayam

CRMP NO.1 OF 2026 OF DISTRICT & SESSIONS COURT/RENT

CONTROL APPELLATE AUTHORITY, KOTTAYAM

PETITIONER(S)/VICTIMS GUARDIAN

XXXXXXXXXX
XXXXXXXXXX

BY ADVS.
SHRI.C.S.MANILAL
SRI.S.NIDHEESH

RESPONDENTS/STATE & ACCUSED

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM., PIN - 682031

2 XXXXXXXXXXXX
XXXXXXXXXXXX

BY ADVS.
SMT.USHA BABY
SMT.K.G.RAJI
PP. SMT. ANIMA.M

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
16.2.2026, THE COURT ON 26.02.2026 PASSED THE FOLLOWING:



C.R.

ORDER

Dated : 26th February, 2025

The father of the victim involved in crime No.2021 of 2025 of Kottayam East police station filed this Crl.M.C under Section 528 BNSS praying for setting aside Annexure-A3 bail order passed by the Sessions Judge, Kottayam, granting bail to the accused/2nd respondent, mainly on the ground that, before granting bail to the accused, no notice was given to the victim.

2. The offences involved in crime No.2021 of 2025 of Kottayam East police station are under Section 351 BNS and Section 4(2), 3(d), 8 r/w 7 of Protection of Children from Sexual Offences Act, 2012 (PoCSO Act). The allegation against the 2nd respondent is that on 14.11.2025 at about 2.15 p.m, he trespassed into the residence of the victim who was a minor boy aged 14 and committed penetrative sexual assault upon him and intimidated him not to disclose about the same to others. From the records it appears that the 2nd respondent was arrested by the police on 15.11.2025 and as per Annexure-A3 order, he was released on bail.

3. From Annexure-A3 order, it is not clear as to whether any notice was given to the victim, before granting bail to the 2nd respondent. In the above circumstances, the learned Public Prosecutor was directed to ascertain whether any such notice was given to the victim, before passing Annexure-A3 order. The learned Public Prosecutor, upon instructions, submitted that no such notice



was given to the victim.

4. Relying upon Section 40 of the PoCSO Act, Rule 4 of the Protection of Children from Sexual Offences Rules, 2020 (PoCSO Rules, 2020) as well as sub-section (2) of Section 483 BNSS, the learned counsel for the petitioner would argue that before granting bail, the learned Sessions Judge was bound to hear the victim also. According to him, since no such opportunity was given in this case, Annexure-A3 bail order is liable to be set aside. He has also relied upon the decision of the Bombay High Court in **Arjun Kishanrao Maige v. State of Maharashtra and Others, 2021 KHC 3867** and the decision of the Hon'ble Supreme court in **Jagjeet Singh and Others v. Ashish Mishra @ Monu and Another, 2022 (3) KHC 449**, in support of his argument.

5. The petition was strongly opposed by the 2nd respondent. In the objection he contends that he was released on bail only about two months after the arrest. The learned counsel would also submit that at the time of hearing the bail application, the mother of the victim was present in the Court. According to the learned counsel for the petitioner, the mother of the victim is working as an advocate clerk and hence according to him, for the mere reason that the mother of the victim attended the court in her capacity as an advocate clerk, the duty of the court to hear the victim cannot be dispensed with. In the objection he further contends that there was property dispute with the petitioner. It was further contended that he is a plumber by profession. His



service was utilised by the petitioner for 7 days and no wages was paid. According to him, with respect to the said issue there was wordy altercation which led to registration of this false case against him.

6. Section 40 of the PoCSO Act reads as follows :-

“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.”

7. Rule 4 (13), (14) and (15) of the PoCSO Rules, 2020 reads as follows :

4. Procedure regarding care and protection of child.

.....

(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 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.*

8. Sub-section (2) of Section 483 BNSS reads as follows :

483. Special powers of High Court or Court of Session regarding bail.

(1).....

(2) 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 section 65 or sub-section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023.



9. After analyzing Section 40 of the PoCSO Act, Rule 4 of the Protection of Children from Sexual Offences Rules, 2020 (PoCSO Rules, 2020) as well as sub-section (2) of Section 483 BNSS, the Bombay High Court in **Arjun Kishanrao Maige** (supra) held in paragraph 12 to 17 as follows :

12. The PoCSO Act is a special legislation enacted by the Parliament with an object to provide a statutory shield to protect children from the offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences. The scheme of this legislation is clear from the different Chapters and its contents. Chapter II deals with sexual offences against children which are differently categorized and for punishment of such offences. Chapter III provides for using child for pornographic purposes and punishment therefor. Chapter IV deals with abetment and attempt to commit an offence. Chapter V provides for the procedure for reporting of cases. Chapter VI contains the provisions in relation to procedures for recording statement of the child. Chapter VII provides for Special Courts to be designated for providing speedy trial for offences falling under such legislation; provisions on presumption as to certain offences; presumption of culpable mental state, as also application of the Cr.P.C to the proceedings before a Special Court. Chapter VIII provides for the procedure and powers of Special Courts and recording of evidence. Chapter IX provides for miscellaneous provisions as to guidelines for child to take assistance of experts etc. (S.39); right to child to take assistance of legal practitioner (S.40).

13. On a perusal of the scheme of the said legislation, it is clear that a robust mechanism recognizing the need to protect children from the offences falling within the purview of this legislation and the method and manner to deal judicially such offences, is prescribed as a part of the



administration of criminal justice.

14. *Section 40 of the POSCO Act, falling under Chapter IX titled "Miscellaneous Provisions", confers a right upon a child to take assistance of a legal practitioner. It provides that 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, and as per the proviso, 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. From a bare reading of Section 40, it is limpid that it mandates entitlement interalia conferred on the family or the guardian of the child of the assistance of legal Counsel of their choice in regard to any offences under the Act, and if the family or the guardian of the child are unable to afford a legal counsel of their choice, it is mandatory and an obligation of the 'Legal Service Authority', to provide a lawyer to them from its panel. Such mandate of Section 40 is made procedurally effective by framing of Rule 4(13), 4(14) and 4(15) of the POSCO Rules. Sub-rule (13) provides that it shall be the responsibility of the SJPU or the local police to keep the child and child's parent or guardian etc., informed about the developments, including the arrest of the accused, applications filed and other court proceedings. Sub-rule (14) provides that information in relation to the services available to them under the Act or any other law for time being in force as per Form-A, be provided for, as also to complete the 'Preliminary Assessment Report' in Form B, within 24 hours of the registration of the First Information Report and submit it to the Child Welfare Committee. Sub-rule (15) of Rule 4 postulates information to be provided by the SJPU, local police, or support person interalia to the child and child's parents or guardians and which includes information as described under Clause (i) to (x) which speaks of the variety of information interalia of availability of public and private emergency and crisis service; the procedural steps involved in a criminal prosecution; the availability of victim's compensation benefits; the status*



of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent not interfering with the investigation; the arrest of a suspected offender; the filing of charges against a suspected offender; the schedule of court proceedings that the child is either required to attend or is entitled to attend; the bail, release or detention status of an offender or suspected offender; rendering of a verdict after trial; and the sentence imposed on an offender.

15. On a conjoint reading of Section 40 of the POCSO Act read with Rule 4 of the POSCO Rules the legislative mandate is that of complete information to be made available, of all the proceedings and its progress in relation to the offences under the said Act, to the parent or the guardian of the child, with the sole object to safeguard the interest and well being of the child at every stage of the judicial process, to give effect to the mandate of [Articles 15 and 39](#) of the Constitution. On behalf of the petitioner, we have been shown several orders passed by the Courts trying such offences. We see from such orders, that the concerned Courts have completely overlooked the mandate of [Section 40](#) of the POCSO Act read with Rule 4 of the POCSO Rules.

16. Considering the avowed legislative intent of such provisions, it thus cannot be countenanced, that when it comes to the administration of criminal justice, the stakeholders who are concerned with the investigation of such offences, as also the Special Courts dealing with the proceedings under Act, overlook and/or not recognize and/or implement the mandate of such solemn provisions.

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 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 376 DB 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 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. To such extent, we also find ourselves, in agreement with the directions of the Delhi High Court in its orders as noted above.

10. Thereafter, the Court proceeded to give the following directions in paragraph 20 of the judgment :

20. We are thus of the clear opinion that the PoCSO Act read with Rules 4(13) and 4(15) of the PoCSO Rules 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. As a necessary corollary, there is also an entitlement of such persons to be made aware of the filing of applications and the hearings scheduled on such applications at the various stages of the proceedings. 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."

(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 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.



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(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 would also relate to an offence against Sections 376(3), 376-AB, 376-DA or 376-DB of 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).*

(vii) *This order shall be brought to the notice of all the Sessions Judges and Special Court Judges in the State of Maharashtra."*

11. In the decision in **Jagjeet Singh** (supra), the Hon'ble Supreme Court considered the question whether a 'victim', as defined under Section 2(wa) of the Code of Criminal Procedure, 1973, is entitled to be heard at the stage of adjudication of bail application of an accused. In the above case, the bail application of the accused involving offences punishable under Sections 147, 148, 149, 302, 307, 326, r/w Sections 34 and 120B of IPC, as well as Sections 3, 25 and 30 of the Arms Act was considered and allowed by the High Court, without giving opportunity to the victims to oppose the bail application. After analyzing the UN Declaration of Basic Principles of Justice for the Victims of Crime and Abuse of Power, 1985, and also the law relating to the victim's rights prevailing in different nations as well as various provisions of law and precedents, the Apex Court held that in India also, the victim has the right to be heard, while considering the bail application of an accused. Further, after finding that the High Court has granted bail to the accused without



hearing the victim, his bail was cancelled and directed the High Court to dispose of the bail application afresh, after affording opportunity of hearing to the victim. In paragraph 16 to 25, the Apex Court held that:

“16. Until recently, criminal law had been viewed on a dimensional plane wherein the Courts were required to adjudicate between the accused and the State. The ‘victim’ — the de facto sufferer of a crime had no participation in the adjudicatory process and was made to sit outside the Court as a mute spectator. However, with the recognition that the ethos of criminal justice dispensation to prevent and punish ‘crime’ had surreptitiously turned its back on the ‘victim’, the jurisprudence with respect to the rights of victims to be heard and to participate in criminal proceedings began to positively evolve.

17. Internationally, the UN Declaration of Basic Principles of Justice for the Victims of Crime and Abuse of Power, 1985, which was adopted vide the United Nations General Assembly Resolution 40/34, was a landmark in boosting the pro-victim movement. The Declaration defined a ‘victim’ as someone who has suffered harm, physical or mental injury, emotional suffering, economic loss, impairment of fundamental rights through acts or omissions that are in violation of criminal laws operative within a State, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted, and regardless of the familial relationship between the perpetrator and the ‘victim’. Other international bodies, such as the European Union, also took great strides in granting and protecting the rights of ‘victims’ through various Covenants. [The position of a victim in the framework of Criminal Law and Procedure, Council of Europe Committee of Ministers to Member States, 1985; Strengthening victim's right in the EU communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Reasons, European Union,



2011; Proposal for a Directive of the European Parliament and of the Council establishing “Minimum Standards on the Rights, Support and Protection of Victims of Crime, European Union, 2011]”

18. Amongst other nations, the United States of America had also made two enactments on the subject i.e. (i) The Victims of Crime Act, 1984 under which legal assistance is granted to the crime victims; and (ii) The Victims' Rights and Restitution Act of 1990. This was followed by meaningful amendments, repeal and insertion of new provisions in both the Statutes through an Act passed by the House of Representatives as well as the Senate. In Australia, the Legislature has enacted South Australia Victims of Crime Act, 2001. While in Canada there is the Canadian Victims Bill of Rights. Most of these legislations have defined the ‘victim’ of a crime liberally and have conferred varied rights on such victims.

19. On the domestic front, recent amendments to the Cr.P.C. have recognised a victim’s rights in the Indian criminal justice system. The genesis of such rights lies in the 154 th Report of the Law Commission of India, wherein, radical recommendations on the aspect of compensatory justice to a victim under a compensation scheme were made. Thereafter, a Committee on the Reforms of Criminal Justice System in its Report in 2003, suggested ways and means to develop a cohesive system in which all parts are to work in coordination to achieve the common goal of restoring the lost confidence of the people in the criminal justice system. The Committee recommended the rights of the victim or his/her legal representative “to be impleaded as a party in every criminal proceeding where the charges punishable with seven years’ imprisonment or more”.

20. It was further recommended that the victim be armed with a right to be represented by an advocate of his/her choice, and if he/she is not in a position to afford the same, to provide an advocate at the State’s expense. The victim’s right to participate in criminal trial and his/her right to know the status of investigation, and take necessary steps, or to be heard at



every crucial stage of the criminal proceedings, including at the time of grant or cancellation of bail, were also duly recognised by the Committee. Repeated judicial intervention, coupled with the recommendations made from time to time as briefly noticed above, prompted the Parliament to bring into force the Code of Criminal Procedure (Amendment) Act, 2008, which not only inserted the definition of a ‘victim’ under Section 2 (wa) but also statutorily recognised various rights of such victims at different stages of trial.

21. It is pertinent to mention that the legislature has thoughtfully 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 accused person has been charged and the expression “victim” includes his or her guardian or legal heir”

22. This Court, in Mallikarjun Kodagali (Dead) v. State of Karnataka and Others, (2019) 2 SCC 752 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 are fair to both. [Girish Kumar Suneja v. CBI, (2017) 14 SCC 809 : (2018) 1 SCC (Cri) 202]

xxxxx 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 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.”

12. With regard to the cancellation of bail which was already granted, in paragraph 41 the Apex court held that:

“41. We are, thus, of the view that this Court on account of the factors like (i) irrelevant considerations having impacted the impugned order granting bail; (ii) the High Court exceeding its jurisdiction by touching upon the merits of the case; (iii) denial of victims’ right to participate in the proceedings; and (iv) the tearing hurry shown by the High Court in entertaining or granting bail to the respondent/accused; can rightfully cancel the bail, without depriving the Respondent/Accused of his legitimate right to seek enlargement on bail on relevant considerations. “

13. In the light of Section 40 of the PoCSO Act, Rule 4 of the Protection of Children from Sexual Offences Rules, 2020 (PoCSO Rules, 2020) as well as sub-section (2) of Section 483 BNSS, as well as the precedents referred above, it can be seen that the victim is entitled to be heard, before granting bail to the accused, especially in serious and heinous offences. In the instant case, the offences involved are under Section 351 BNS and



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Section 4(2) r/w 3(d) and 8 r/w 7 of the PoCSO Act, which are very serious and heinous in nature. Therefore, in this case the victim/petitioner was entitled to be heard, before granting bail to the accused. Since the learned Sessions Judge has not given notice to the victim and the victim was not heard before passing Ext. A5 bail order, the same is liable to be set aside on that ground alone. Therefore, I am not going into the merits of the bail application.

14. In the result, Exhibit A5 bail order passed by the Sessions judge is set aside. Consequently, the bail bonds of the respondent/accused are cancelled and he is directed to surrender before the learned Sessions judge, within a period of seven days from today. The learned Sessions Judge is directed to dispose of the bail application afresh, after giving adequate opportunity of hearing to the victim as well, within a period of one month from the date of receipt of a copy of this order.

The Crl.M.C is allowed.

Sd/- C.Pratheep Kumar, Judge