

Guidelines on Appearance of Victims: POCSO Bail Applications

Background

In *Reena Jha v. Union of India* (W.P.(C) 5011/2017) and *Miss G (Minor) through her Mother v. State of NCT of Delhi* (2020 SCC OnLine Del 629), the Delhi High Court laid down the procedure to be followed in giving notice of bail applications to victims in POCSO cases to ensure the victim is given an opportunity of being heard while deciding the bail application. However, in practice, courts and police interpreted this to mean that the victim must be present on all dates of the hearing, causing children to repeatedly be exposed to the accused. In some cases, children have been directed to appear in court themselves for bail hearings despite being represented by their counsel. This is especially concerning in cases where there may be multiple accused persons for whom several applications are moved and the victims are expected to appear on each hearing.

New guidelines

In *Babulal v. State*, based on the recommendations made by multiple stakeholders, the court noted that such insistence on the presence of the victim in court has an adverse impact on the psyche of the victim. These clarifications to the previous guidelines passed by the court are meant to ensure that the victim is not re-traumatised as a result of being present in court.

The guidelines are as follows:

- 1.The investigating officer shall ensure that the notice of a bail application is served in a timely manner.
- 2.Questions should be framed appropriately and put to the victim to ascertain the apprehensions of the victim if the accused is released on bail.
- 3.The support person should be present with the victim for providing psychological and logistical support.
- 4.The victim can be produced virtually before the court so as to balance her concerns with the rights of the accused.
- 5.The victim may give a written authorisation to her counsel/parent/guardian/support person to appear and make submissions on her behalf. In such a case, her physical/virtual presence should not be insisted upon.
- 6.If the victim appears in court on one date of hearing the bail application, her submissions qua the bail application may be recorded on that date and the same may be used for adjudicating the bail application on subsequent hearings as well, without insisting on the repeated presence of the victim.
- 7.In exceptional cases, the judge may have an in-chamber interaction with the victim and record her submissions qua the bail application in the order sheet passed on that day, so that the same may be considered at a later stage.
- 8.Once the bail application is disposed of, a copy of the order should be mandatorily sent to the victim.
- 9.Judicial officers should be sensitised about the need to reduce the possibility of the accused coming face to face with the victim.