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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 609/2024**

K.A MINOR (THROUGH GUARDIAN)Petitioner

Through: Ms. Tara Narula and Ms. Priya Sahil,
Advocates.

versus

STATE OF NCT OF DELHIRespondent

Through: Mr. Nawal Kishore Jha, APP for State
along with SI Jagroshni P.S. G. T.
Enclave.

**CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**ORDER
03.12.2024**

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1. By way of the present petition, the petitioner seeks to assail the order dated 07.07.2023 passed by the Special Judge (POCSO), Shahdara, Karkardooma Courts, New Delhi in FIR No. 0452/2022 registered at P.S. G. T. B. Enclave, Delhi under Section 376 of Indian Penal Code & Section 4 POCSO Act, vide which the application preferred on behalf of the victim for award of interim compensation was declined.
2. A perusal of the impugned order would show that the Trial Court denied interim compensation for the reason that the child victim has not supported her initial statement in the statement recorded under Section 164 Cr.P.C. Further, it observed that during her cross-examination, the defence had confronted her with the copy of letter that would show 'romantic infatuation' from the side of the victim.

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3. POCSO has been enacted with the object to protect children from offences of sexual assault, sexual harassment and pornography. The Supreme Court in Eera through Dr. Manjula Krippendorf vs. State NCT of Delhi reported as (2017) 15 SCC 133, the Supreme Court had remarked on the statement and object of the POCSO Act as follows:

“20. The purpose of referring to the Statement of Objects and Reasons and the Preamble of the POCSO Act is to appreciate that the very purpose of bringing a legislation of the present nature is to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child. On an avid and diligent discernment of the Preamble, it is manifest that it recognises the necessity of the right to privacy and confidentiality of a child to be protected and respected by every person by all means and through all stages of a judicial process involving the child. Best interest and well-being are regarded as being of paramount importance at every stage to ensure the health physical, emotional, intellectual and social development of the child. There is also a stipulation that sexual exploitation and sexual abuse are heinous offences and need to be effectively addressed. The Statement of Objects and Reasons provides regard being had to the constitutional mandate, to direct its policy towards securing that the tender age of children is not abused and their childhood is protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity....”

4. Compensation to the victim is an essential part of curing justice. Compensation not only provides monetary relief but is also an act which seeks to make a person whole again so that the victim can take steps for rehabilitation and start afresh. Section 33(8) of the POCSO Act provides that the Special Court may direct payment of compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child. Clause 9(3) of the POCSO Rules,



2020 formulated under the Act provide factors which need to be taken into account by the Special Court while deciding the compensation amount. A perusal of the same would show that the guilt or innocence of the accused is not a factor which is to be considered while awarding compensation. A reference may also be had to Rule 9(2) which is being reproduced hereunder:-

“9 (2) The Special Court may, on its own or on an application filed by or on behalf of the victim, recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence.”

A perusal of the above rule would show that the Special Court can award compensation even in cases of acquittal or discharge of the accused and therefore any sort of enquiry into the merits of the case at the time of awarding compensation is unwarranted.

5. The Supreme Court in the case of Saibaj Noormohammad Shaikh v. State of Maharashtra & Anr, decided on **04.11.2024** in **SLP (CrI) No. 13890/2024** has, in unequivocal terms, directed the Trial Courts to order payment of victim compensation even in cases of acquittal of the accused, including interim compensation which has to be disbursed as early as permissible. It held as follows:-

“As far as the other submissions of learned Amicus Curiae are concerned, we note that Section 357-A specifically speaks of victim compensation scheme and under the said provision, it is noted that direction for payment of victim compensation is to be implemented by the District Legal Services Authority or the State Legal Services Authority, as the case may be, and the compensation has to be released to the victim as early as



permissible.

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In the circumstances, we direct that a Sessions Court, which adjudicates a case concerning the bodily injuries such as sexual assault etc. particularly on minor children and women shall order for victim compensation to be paid having regard to the facts and circumstances of the case and based on the evidence on record, while passing the judgment either convicting or acquitting the accused. Secondly, the said direction must be implemented by the District Legal Services Authority or State Legal Services Authority, as the case may be, in letter and spirit and in the quickest manner and to ensure that the victim is paid the compensation at the earliest. There can also be a direction for payment of interim compensation which could be made by the Sessions Court depending upon the facts of each case.”

6. A Co-ordinate Bench of this Court in X vs. State of NCT of Delhi, decided in **Crl. A. 63/2022**, on **20.10.2022** has also held that the guilt or innocence of the accused is irrelevant at the time of awarding compensation. It further held that filing of the chargesheet would be the appropriate stage to award interim compensation. The Court held as follows:

“58. Since the charge sheet is a final report prepared by the investigation or law enforcement agencies for proving the accusation of a crime in a criminal court of law, the court shall form a preliminary opinion on the basis of the charge sheet. The charge sheet against an accused person is indicative that the preliminary investigation has already been completed by the police. Filing of charge sheet is indicative to prove that the child has suffered loss or injury as a result of that offence and is a victim of child sexual abuse

59. The question of whether the accused is guilty or not is not relevant or to be considered in awarding interim compensation. The focus is the survivor. Compensatory proceedings revolve around the needs of the survivor, not on the guilt of the accused.



60. The POCSO is a beneficial legislation aimed at ameliorating the suffering of children of sexual abuse. The DVC scheme contemplates 25% compensation, hence the special court must endeavour to award 25% of the compensation at the interim stage within 2 months of filing of chargesheet. The special court are within their rights to award compensation in excess of 25 % at the interim stage. The POCSO is a special statute, passed to ameliorate the suffering of the survivors. Hence, the endeavour must be to award the maximum compensation possible.

61. The Special Court, after forming a preliminary opinion on perusing the chargesheet will grant compensation.

62. I must reiterate that the trigger to award compensation is filing of the chargesheet. The Special Court must endeavour to, within 2 months of filing of chargesheet, award the compensation. After the conclusion of trial.”

7. Keeping in mind the object and purpose of POCSO Act as well as need for award of interim compensation, the impugned order refusing the interim compensation for the sole ground that the child victim has not stated about the offence in her statement recorded under Section 164 Cr.P.C, is completely flawed. The child victim in the initial complaint as well as during examination-in-chief has levelled allegations of rape in categorical terms. The letter Mark-‘X’ which formed the basis of passing the impugned order was also denied by the child victim to have been written by her. In any case, the guilt or innocence of the accused would have no effect on the award of compensation to the child victim. Moreover, the chargesheet has been filed under Section 4 of POCSO Act and Section 376 IPC and thus the appropriate stage for awarding interim compensation has already reached.



8. Consequently, the impugned order is set aside with a direction that the Trial Court shall pass an appropriate order in terms of Delhi Victim Compensation Scheme, 2018 and also keeping in mind the import of the decisions in Saibaj Noormohammad Sheikh (Supra) and X vs. State of NCT of Delhi (Supra).

9. Let a copy of this order be communicated to the Trial Court for compliance.

MANOJ KUMAR OHRI, J

DECEMBER 03, 2024/ssc