

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.83 OF 2025

XYZ

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Ganesh Gupta a/w Sahil Ghorpade Roshni Naaz, Priyanka Rathod and Madan Khansole i/by GG Legal Associates, *for the Applicant.*

Ms. Gauri S. Rao, *APP for the Respondent No.1 - State.*

Mr. Abhishek Kulkarni a/w Sagar Wakale, *for the Respondent No.2.*

Mr. Nitin Shirsat, Kandivali Police Station, present.

CORAM **DR. NEELA GOKHALE, J.**

DATED: **11TH FEBRUARY 2026**

PC:-

1. By this Application, the Applicant seeks quashing and setting aside of the order dated 9th May, 2024 granting bail to the Respondent No.2 passed by the Addl. Sessions Judge, Dindoshi in connection with C.R. No.271 of 2024, registered with Kandivali police station for the offences punishable under Sections 353, 506(2), 34 of the Indian Penal Code, 1860 ('IPC'), Sections 8, 12 of the Protection of Children from Sexual Offences ('POCSO') Act, 2012 and

Section 75 of the Juvenile Justice (Care and Protection of Children) 2015.

2. The principal ground of challenge is that despite the offences alleged against the accused being under the POCSO Act, no notice of the bail application was given to the victim or the complainant.

3. Heard Mr. Ganesh Gupta, learned counsel for the Applicant, Mr. Abhishek Kulkarni, learned counsel for the Respondent No.2 and Ms. Gauri Rao, learned APP representing the State.

4. Mr. Gupta has brought to my attention a decision of the Division Bench of this Court in Public Interest Litigation No.4 of 2021 dated 8th April, 2021 reported in AIR Online 2021 Bom 624.

5. In Paragraph No.17, this Court observed as under:

“17. In our opinion, the petitioner is correct in his contention, also referring to the provisions of Section 439 of the Cr.PC 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.PC. 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.PC., 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."

6. Adverting to various provisions of the relevant statutes, this Court in Paragraph No.20(i)(b) of the same decision, directed as under:

"20.(i) 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.”

7. Mr. Gupta has also brought to my attention the decision of the Supreme Court in the matter of ***X v. the State of Uttar Pradesh & Anr.***, wherein the Supreme Court was considering an appeal challenging the bail granted to the accused in connection with an FIR registered for offences punishable under Sections 323, 363, 376D, 506 and 392 of the IPC, Sections 5(g) and 6 of the POCSO Act and Sections 3(2) and 5(A) of the SC/ST Act. While canceling the bail granted to the accused, the Supreme Court observed under:

“6. It is pertinent to note that as per Section 439(1A) of Cr.P.C., the presence of the informant or any person authorised by him or her is 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 IPC. Similarly, it is also mandatory on the part of the Special Public Prosecutor of the State Government to inform the victim about the court proceedings, including bail proceedings as contemplated in sub-section (3) of Section 15A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.”

8. Mr. Gupta also submitted that the Respondent No.2 accused had sought quashing of the FIR/charge-sheet in the present case, however, by order dated 1st July 2025 in Writ Petition No. 2095 of 2025, a Division Bench of this Court has dismissed the said Petition. The Respondent No.2 assailed the dismissal of her Writ Petition before the Supreme Court by filing SLP (Crl.) No. 17512 of 2025. By order dated 15th December 2025, the Supreme Court dismissed the said SLP.

9. Thus, considering the factual matrix of the present case and the offences alleged against the Respondent No.2 and the aforesaid decision of this Court and the Supreme Court, it was incumbent upon the Trial Court to issue notice to the complainant / victim and give complainant / victim an opportunity of being heard while deciding the bail application.

10. Admittedly, no such notice was given to the complainant / victim. Thus, the prosecution failed to bring to the notice of the Court as well as the complainant / victim

regarding hearing of the bail application. Considering statutory provisions as well as the decisions of this Court and the Supreme Court, it appears that there is a gross violation of the statutory provisions as the Trial Court has not considered the mandatory requirements of the provisions as well as the decisions of this Court and the Supreme Court. Accordingly, the bail granted to the accused in the cursory manner without assigning cogent reason as to why the notice was not required to be given to the complainant / victim, deserves to be canceled. In these circumstances, I am of the opinion that the impugned order passed by the Trial Court is in disregard of the mandatory provisions as well as the special statutes and hence, deserves to be set aside.

11. The Respondent No.2 / accused is directed to surrender before the Special Court concerned within a period of one week from today. She is at liberty to make a fresh bail application before the Sessions Court.

12. If any such application is made to the Trial Court, the Trial Court shall consider the same expeditiously, preferably within a period of one week. If any such application is made and is being heard by the Sessions Court, the present Applicant shall not take unnecessary adjournments.

(DR. NEELA GOKHALE, J)