



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Criminal Reference No. 1/2023

1. Pooja Gurjar [REDACTED]
2. Smt. Rekha Gurjar [REDACTED]
3. Smt. Narayani Gurjar [REDACTED]

----Petitioners

Versus

State Of Rajasthan, Through Public Prosecutor

----Respondent

For Petitioner(s) : Mr. Biri Singh Sinsinwar, Sr. Advocate assisted by Mr. Harendra Singh Sinsinwar, Mr. Dhruv Atrey, Mr. N.N. Meena.
Mr. A.K. Gupta, Sr. Advocate assisted by Mr. Rinesh Gupta, Mr. Gaurav Sharma, Mr. Anoop Meena, Mr. Saurabh Pratap Singh.
Mr. V.R. Bajwa, Sr. Advocate assisted by Ms. Savita Nathawal.
Mr. Rajeev Surana, Sr. Advocate assisted by Mr. Sankalp Sogani, Ms. Muskan Verma & Mr. Umang Jain.
Mr. Pankaj Gupta with Mr. Naman Yadav, Mr. Saurabh Yadav, Mr. Hemang Singh Sinsinwar, Mr. Yogendra Singh.
Mr. Sanjay Mehla with Ms. Sunita Mehla & Mr. Nagendra Sharma.
Mr. Rajesh Sharma.
Mr. Kapil Gupta with Mr. Adarsh Singhal & Mr. Ajay Gadwal.
Mr. Manish Gupta.
Mr. Kapil Prakash Mathur.
Mr. Sudesh Saini with Mr. Mohd. Zuber.
Mr. Nikhil Sharma.
Mr. S.S. Hora.
Mr. Hemant Nahta.





Mr. Shyam Bihari Gautam.
Mr. Anshuman Saxena.
Mr. Pankaj Agarwal.
Mr. Mohit Sharma with Mr. N.P. Meena
Mr. Jitesh Jain.
Mr. Timan Singh.
Mr. Abhilash Sharma.
Mr. Ashwani Chobisa.
Mr. Sandeep Pathak.
Mr. Dushyant Singh Naruka.
Mr. Mritunjya Sharma.
Mr. Anurag Mathur.
Mr. Saurabh Jain.
Mr. Rishu Jain.
Mr. Pallav Jhalani.
Mr. B.R. Rana.
Mr. B.R. Choudhary.
Mr. Pratush Choudhary.
Mr. Shubham Khunteta.
Mr. Harsh Joshi.
Mr. Akshay Shekhawat.
Mr. Abhishek B. Sharma.
Mr. Dhananjay Singh Gokhar.
Mr. Aziz Ahmed.
Mr. Farooq Ahmed.
Mr. Parmeshwar Pilonia.
Mr. D.V. Tholla with
Mr. Himanshu Tholla.
Mr. Rohitash Kr. Saini.
Mr. Naman Yadav.
Mr. Tapish Saraswat.
Mr. Nitin Jain.
Mr. Manish Kumar Sharma.
Mr. P.C. Devanda.
Mr. Mahendra Saini.
Mr. Prashant Deora.
Mr. Anish Badala.
Mr. Anuraj Pareek.
Mr. Vimal Kumar Jain.
Mr. Naman Maheshwari.

For Respondent(s) : Mr. G.S. Rathore, GA cum AAG.
Mr. Atul Sharma, PP
Mr. Kirtivardhan Singh Rathore.
Mr. Tayyab Ali.
Mr. Prashant Sharma.

HON'BLE MR. JUSTICE ARUN BHANSALI
HON'BLE MR. JUSTICE PANKAJ BHANDARI





Judgment

RESERVED ON
PRONOUNCED ON

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12/12/2023
19/12/2023

(Per - Hon'ble Pankaj Bhandari, J.)

1. In the present Criminal Reference the following question has been referred:

“Whether in all the bail applications under Sections 437, 438 or 439 Cr.P.C., the complainant/first informant/victim defined under Section 2(wa) of the Cr.P.C. is necessary party and necessarily be impleaded as party respondent?”

2. A Standing Order No.32/S.O./2023 dated 15.09.2023 was issued by the Office of this Court whereby it was enjoined upon all concerned that in future, in all matters, arising out of criminal act committed against victim as defined under Section 2(wa) of Cr.P.C., the victim be necessarily impleaded as party-respondent. The aforesaid Standing Order was passed on the basis of observations made in order dated 08.08.2023 passed by the learned Single Judge in **S.B. Criminal Miscellaneous Bail Application No.9490/2023** titled as *Nitoo Singh @ Nitu Singh Versus State of Rajasthan* that victim is necessary party in all the bail matters arising out of criminal act committed against the victim. Thereafter, learned Single Judge in order dated 27.09.2023 passed in *Pooja Gurjar & Ors. Versus State of Rajasthan: S.B. Criminal Miscellaneous Bail Application No.11910/2023* expressed disagreement with decision taken by the learned Single Judge in order dated 08.08.2023 and observed that informant/complainant/victim in the proceedings seeking grant of bail under Sections 437, 438 or 439 of Cr.P.C. neither can be considered as necessary party nor a proper party and accordingly





framed a question hereinabove mentioned to be dealt by the Larger Bench by way of reference.

3. Learned Advocates namely Mr. Biri Singh Sinsinwar, Senior Advocate assisted by Mr. Harendra Singh Sinsinwar; Mr. A.K. Gupta, Senior Advocate, assisted by Mr. Rinesh Gupta; Mr. V.R. Bajwa, Senior Advocate, assisted by Ms. Savita Nathawat; Mr. Pankaj Gupta; Mr. Nikhil Sharma, Mr. Manish Gupta; Mr. Mohit Sharma; Mr. Pankaj Agarwal; Mr. Naman Maheshwari; Mr. Sagar Sharma; Mr. Hemant Gupta; Mr. Prashant Daga; Mr. Kapil Gupta; Mr. Anish Bhadala and Mr. Hemant Nahta have submitted their written submissions and have placed reliance on the judgments, namely, *Jagjeet Singh & Ors. Versus Ashish Mishra & Monu & Anr. : (2022) 9 SCC 321*; Saleem versus The State of NCT of Delhi & Anr.: **Bail Application No.3635/2022**; *Ganesh Das: CRA 228 of 2020*; *Johirul Islam @ Jaher Ali Versus The State of Assam: Criminal Appeal No.332/2022*; *Rohit Versus State of Maharashtra: Criminal Appeal (ST) No.8953/2023*; *Birbal Kumar Nishad Versus State of Chhattisgarh: SLP (Cri) No.4540/2021*; *Rekha Murarka Versus State of West Bengal: (2020) 2 SCC 474*; *Informant Versus State of Karnataka: 2023 SCC Online Kar 69*; *Shiv Kumar Versus Hukam Chand & Anr. : (1999) 7 SCC 467* and *Mallikarjun Kodagali (Dead) represented by Legal Representatives Versus State of Karnataka: (2019) 2 SCC 752*.

4. It is contended by learned Advocates that the Apex Court in *Jagjeet Singh & Ors. Versus Ashish Mishra & Monu & Anr. : (2022)*





9 SCC 321 decided on 18.04.2022, no where directs that the victim should be impleaded as a necessary party. Our attention has been drawn towards the judgment of the Apex Court in Jagjeet Singh & Ors. (supra). It is contended that the judgment of the Apex Court in Jagjeet Singh & Ors. (supra) was considered by the Delhi High Court in *Saleem versus The State of NCT of Delhi & Anr.*: **Bail Application No.3635/2022** decided on 19.04.2023 wherein the Court held that the victim's right to be heard does not include the obligation to be impleaded as a party-respondent in criminal proceedings.

5. It is contended that bail is a rule and jail is an exception. It is argued that in the statute, there is no provision providing for impleading victim as a party-respondent and if a victim is to be impleaded as a party-respondent and notices are to be served, the same would unnecessarily delay the process and curtail the right of an accused as it would violate the spirit of Article 21 of the Constitution of India, which states that no person shall be deprived of his/her life or personal liberty except according to procedure established by law. It is also argued that Section 301 of Cr.P.C. recognizes the right of any private person to engage a pleader to assist the Public Prosecutor/Assistant Public Prosecutor and he can even submit written arguments, with permission of the Court. It is contended that similar right is also provided in proviso to sub-section (8) of Section 24 of Cr.P.C.

6. It is contended that according to the principle of "*casus omissus*", if a matter, which should have been, but has not been





provided for in a statute cannot be supplied by Courts, as to do so will be legislation and not construction. It is argued that if the Legislature would have intended that victim has to be heard as a necessary party and has to be impleaded as party-respondent, the same could have been specifically provided for in the statute. It is also argued that Section 439(1A) of Cr.P.C. was inserted by Act 22 of 2018, with effect from 21.04.2018, which provides that the presence of the informant or any person authorized 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 IPC and as the Legislature had specifically made provision for particular offences, the intention of the Legislature is writ large that they did not intend that the victim has to be heard in all cases.

7. It is contended that except for Section 439(1A) of Cr.P.C., there is no provision in Sections 437, 438 or 439 of Cr.P.C. wherein a victim is considered as a necessary party and is required to be impleaded as party-respondent. It is also contended that Section 439(1A) of Cr.P.C. also does not make it mandatory for impleading the informant as a party-respondent in the bail applications. It is further contended that wherever the Legislature thought it proper, it has given right to the victim as has been given under Section 372 of Cr.P.C. whereby the Legislature has inserted a proviso to Section 372 of Cr.P.C., recognizing the right of victim to appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. It is also contended





that in cases of sexual offences, as per Section 228A of I.P.C., the name and place of residence of the victim of the crime is not to be disclosed and in such cases the service upon the victim would render the purpose of the above provision futile and service upon such victim would be impracticable in absence of name and residence. It is further contended that as per Section 15A of SC/ST Act, victim is required to be impleaded as a necessary party. A reference is made of the judgment in *Johirul Islam @ Jaher Ali Versus The State of Assam: Criminal Appeal No.332/2022* decided on 14.12.2022 wherein Gauhati High Court has specifically observed that there is no requirement of the victim being impleaded as party in the proceedings under Section 389 of Cr.P.C. It was also observed that victim is not required to be impleaded as a party, however, if the victim comes forward for participation in the criminal proceedings then he must be afforded a reasonable opportunity of hearing.

8. Reliance is also placed on the judgment in *Ganesh Das: CRA 228 of 2020* along with connected matter wherein the question before the Bench was whether the victim is a necessary party to an appeal under Section 374 of Cr.P.C. from conviction? Would such an appeal be defective in the absence of impleadment of victim? The Division Bench of the Calcutta High Court held that the victim is not a necessary party to a criminal appeal from conviction for offences against woman or child, punishable under provisions of the I.P.C. or POCSO Act or any other penal provision, which will apply in relation to offences affecting human body against any "woman" and/or "child", both these expressions being





understood in the context of the respective legislation, which deals with such offences and no such appeal would be defective in absence of impleadment of the victim.

9. Reliance is also placed on *Rohit Versus State of Maharashtra: Criminal Appeal (ST) No.8953/2023* decided by the Bombay High Court on 10.11.2023 wherein it has been held that in POCSO cases, child or child's parents or guardian etc. are not necessary party to criminal appeal from conviction for offences under the provisions of the IPC or the POCSO Act. The appellant in that case was directed to delete the name of the victim from the appeal as also in the application.

10. Learned Additional Advocate General appearing on behalf of the State has also contended that victim is not a necessary party and therefore, is not required to be impleaded as party-respondent in bail applications under Sections 437, 438 or 439 of Cr.P.C.

11. We have considered the contentions made by the learned Senior Advocates and other members of the Bar as well as learned Additional Advocate General and have carefully gone through the material on record.

12. Since the referred question pertains to impleadment of victim as a party-respondent in matters pertaining to bail applications, it would be appropriate to quote the provisions of Sections 437, 438 or 439 of Cr.P.C.

"437. When bail may be taken in case of non-bailable offence—(1) When any person accused of, or suspected of, the commission of any non-bailable



offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of session, he may be released on bail, but—

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:

Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.



(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abatement of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the Court shall impose the conditions—

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary.

(4) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its reasons or special reasons for so doing.

(5) Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time, after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

438. Direction for grant of bail to person apprehending arrest—(1) Where any person has reason to believe that he may be arrested on



accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; that in the event of such arrest, he shall be released on bail; and that Court may, after taking into consideration, *inter alia*, the following factors, namely:-

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

either reject the application forthwith or issue an interim order for grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(1A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including—

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;





(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue aailable warrant in conformity with the direction of the Court under sub-section (1).

(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code (45 of 1860).

439. Special powers of High Court or Court of Session regarding bail—(1) A High Court or Court of Session may direct,—

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code (45 of 1860),



give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.

(1A) 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 DB of the Indian Penal Code (45 of 1860).

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

13. A bare perusal of the above provisions would reveal that there is no provision provided in the statute whereby the victim is required to be made a party-respondent in bail applications. However, Section 439(1A) of Cr.P.C. was inserted by Act 22 of 2018 with effect from 21.4.2018, which makes presence of the informant or any person authorized by him obligatory at the time of hearing of the application for bail to the person under sub-section (3) of Section 376AB or Section 376DA or Section 376DB of the Indian Penal Code. Thus, the statute only provides for giving opportunity of hearing to the victim in cases relating to some of the Sections pertaining to the offence of rape. Had it been the intention of the Legislature, it would have in unequivocal terms mentioned in the statute itself about impleadment of the victim as a necessary party in all cases. In *Padma Sundara Rao (Dead) & Ors. Versus State of T.N. & Ors.*: **(2002) 3 SCC 533** wherein the Apex Court has observed that:

"12. The rival pleas regarding re-writing of statute and casus omissus need careful consideration. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and





primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See *Lenigh Valley Coal Co. v. Yensavage* 218 FR 547). The view was re-iterated in [Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama](#) (AIR 1990 SC 981)."

14. We are of the considered view that if victim is to be impleaded as a party in proceedings under Section 437 of Cr.P.C., wherein Magistrate has been authorized to release persons on bail under the age of 16 years or woman or sick or infirm, would become redundant and in such cases also, Magistrate would have to wait for impleadment of victim as a party and for hearing them. In many non-bailable offences, accused, who is in custody is not knowing the name of the victim and in such cases, his bail application would be delayed, which would be violative of Article 21 of the Constitution of India as his custody would be de hors the provisions of the statute.

15. It is pertinent to mention here that the Common Law Countries follow the adversarial system of administration of the criminal justice and the role of the victim in that system is only limited to the extent that the report of the alleged offence has been transmitted to the State machinery and thereafter, the State prosecutes the accused for the crime committed within the territory. The said principle had been incorporated in the Criminal Procedure Code through various provisions, which are as follows:-

"2. Definitions:—In this Code, unless the context otherwise requires:—



(wa) "victim" 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.

24. Public Prosecutors:—

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor:

Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.

225. Trial to be conducted by Public Prosecutor:

—In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

301. Appearance by Public Prosecutors:—(1) The

Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

372. No appeal to lie unless otherwise provided:—

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."

16. From perusal of the above provisions, it is revealed that the State is under an obligation to prosecute the offenders and for this purpose, Special Public Prosecutors, Public Prosecutors and



Additional Public Prosecutors are appointed for conducting proceedings before the Criminal Courts. A proviso to sub-section (8) of Section 24 of Cr.P.C. was inserted by Act 5 of 2009 with effect from 31.12.2009, which provides that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section. As per sub-section (2) of Section 301 of Cr.P.C., if any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case. None of the provisions in the Cr.P.C. provides for impleadment of victim as a necessary party. It is important to note that the above provisions recognizes the State's responsibility to uphold public order and ensure access to justice for all, especially in situations where the victim's voice might otherwise go unheard. By taking on the mantle of prosecution, the State actively combats crime and safeguards the rights of victims, fostering a sense of security and trust within the legal system. In the case of *Shiv Kumar Versus Hukam Chand & Anr.*: **(1997) 7 SCC 467** it was held by the Apex Court that fair trial is not only important for complainant/victim's point of view but it is equally important for accused. It has also been held as under:-

“From the scheme of the Code the legislative intention is manifestly clear that prosecution in a sessions court cannot be conducted by any one other than the Public



Prosecutor. The legislature reminds the State that the policy must strictly conform to fairness in the trial of an accused in a sessions court. A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case. The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle/conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the fore and make it available to the accused. Even if the defence counsel overlooked it, Public Prosecutor has the added responsibility to bring it to the notice of the court if it comes to his knowledge. A private counsel, if allowed free hand to conduct prosecution would focus on bringing the case to conviction even if it is not a fit case to be so convicted. That is the reason why Parliament applied a bridle on him and subjected his role strictly to the instructions given by the Public Prosecutor.”

17. The Delhi High Court in *Saleem Versus The State of NCT of Delhi & Anr.* (supra) was dealing with the question whether the victim’s right to be heard include the obligation to be impleaded as a party-respondent in criminal proceedings? The Delhi High Court has made key observations and conclusions, which read as under:-

“23. On a conspectus of the foregoing therefore, on the one hand, there is the unbridled right of a victim to participate in all criminal proceedings relating to the crime; and on the other hand, in so far as sexual offences are concerned, there is also a legal mandate that the victim’s identity must be kept confidential.

25. It must be noticed that the mandate of Jagjeet Singh (supra) is that the victim has unbridled participatory rights in criminal proceedings, which is not to say that the victim must replace or substitute the State as the prosecuting agency; nor that the victim must be placed as an impleaded party to the proceedings so as to make the victim answerable in all aspects. 26. Furthermore, notice must also be taken of the fact that section 439(1A) Cr.P.C. requires the court to hear a victim at the stage of considering bail





petitions and other similar matters; and nowhere does that provision require that the victim be made a party to such proceedings.

33. Upon a conspectus of the foregoing, this court is persuaded to draw the following conclusions, which it is made clear, are restricted to criminal matters relating to or arising from or concerning sexual offences :

33.1.

33.2. In accordance with the mandate of the Supreme Court in *Jagjit Singh (supra)*, a victim now has unbridled participatory rights in all criminal proceedings in relation to which the person is a victim, but that in itself is no reason to implead a victim as a party to any such proceedings, unless otherwise specifically so provided in the statute; Section 439(1A) Cr.P.C. mandates that a victim be heard in proceedings relating to bail, without however requiring that the victim be impleaded as a party to bail petitions."

18. The Delhi High Court in the aforesaid judgment while relying upon the judgment of the Apex Court in *Jagjeet Singh & Ors. Versus Ashish Mishra & Monu & Anr.* (supra) observed that insofar as sexual offences are concerned, it is the unequivocal statutory mandate *inter-alia* in Section 228-A IPC, Sections 23, 33(7) and 37 of POCSO Act and Sections 327(2) and 327(3) of the Cr.P.C. that the identity of a victim must be kept confidential. In the said judgment, the Delhi High Court has placed reliance on the judgment in *Nipun Saxena Versus Union of India: (2019) 2 SCC 703* and held that the requirement of maintaining confidentiality of a victim of a sexual offence, in the widest possible terms, *inter-alia* in the following words:

"11. Neither IPC nor CrPC define the phrase "identity of any person". Section 228-A IPC clearly prohibits the printing or publishing "the name or any matter which may make known the identity of the person". It is obvious that not only the publication of the name of the victim is prohibited but also the disclosure of any other matter which may make known the identity of





such victim. We are clearly of the view that the phrase "matter which may make known the identity of the person" does not solely mean that only the name of the victim should not be disclosed but it also means that the identity of the victim should not be discernible from any matter published in the media. The intention of the law-makers was that the victim of such offences should not be identifiable so that they do not face any hostile discrimination or harassment in the future.

"12. A victim of rape will face hostile discrimination and social ostracisation in society. Such victim will find it difficult to get a job, will find it difficult to get married and will also find it difficult to get integrated in society like a normal human being. Our criminal jurisprudence does not provide for an adequate witness protection programme and, therefore, the need is much greater to protect the victim and hide her identity. In this regard, we may make reference to some ways and means where the identity is disclosed without naming the victim. In one case, which made the headlines recently, though the name of the victim was not given, it was stated that she had topped the State Board Examination and the name of the State was given. It would not require rocket science to find out and establish her identity. In another instance, footage is shown on the electronic media where the face of the victim is blurred but the faces of her relatives, her neighbours, the name of the village, etc. is clearly visible. This also amounts to disclosing the identity of the victim. We, therefore, hold that no person can print or publish the name of the victim or disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.

"25. Dealing with Section 327 CrPC in Gurmit Singh case [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384] this Court held as follows:

"24. ... The courts should, as far as possible, avoid disclosing the name of the prosecutrix in their orders to save further embarrassment to the victim of sex crime. The anonymity of the victim of the crime must be maintained as far as possible throughout. In the present case, the trial court has repeatedly used the name of the victim in its order under appeal, when it could have just referred to her as the prosecutrix. We need say no more on this aspect and hope that the trial courts would take recourse to the provisions of Sections 327(2) and (3) CrPC liberally. Trial of rape cases in camera should be the rule and an open trial in such cases an exception."





"50. In view of the aforesaid discussion, we issue the following directions:

50.1. No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.

50.2. In cases where the victim is dead or of unsound mind the name of the victim or her identity should not be disclosed even under the authorisation of the next of kin, unless circumstances justifying the disclosure of her identity exist, which shall be decided by the competent authority, which at present is the Sessions Judge.

50.3. FIRs relating to offences under Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or 376-E IPC and the offences under Pocso shall not be put in the public domain.

50.4. In case a victim files an appeal under Section 372 CrPC, it is not necessary for the victim to disclose his/her identity and the appeal shall be dealt with in the manner laid down by law.

50.5. The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinised in the public domain.

50.6. All the authorities to which the name of the victim is disclosed by the investigating agency or the court are also duty-bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court.

50.7. An application by the next of kin to authorise disclosure of identity of a dead victim or of a victim of unsound mind under Section 228-A(2)(c) IPC should be made only to the Sessions Judge concerned until the Government acts under Section 228-A(1)(c) and lays down criteria as per our directions for identifying such social welfare institutions or organisations.

50.8. In case of minor victims under POCSO, disclosure of their identity can only be permitted by the Special Court, if such disclosure is in the interest of the child.





50.9. All the States/Union Territories are requested to set up at least one "One-Stop Centre" in every district within one year from today."

19. The Apex Court in the judgment of *Nipun Saxena Versus Union of India* (supra) observed that the intention of the law-makers was that the victim of such offences should not be identifiable so that they do not face any hostile discrimination or harassment in the future. The Apex Court has further held that no person can print or publish the name of the victim or disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large. The Apex Court in *Birbal Kumar Nishad Versus State of Chhattisgarh: SLP (Cri) No.4540/2021* decided on 30.06.2021 has made observations as to the necessity of anonymisation of the names of victims noting that "...It is well established that in cases like the present one, the name of the victim is not to be mentioned in any proceeding. We are of the view that all the subordinate courts shall be careful in future while dealing with such cases."

20. Thus, we are of the considered view that the mandate of *Jagjeet Singh & Ors. Versus Ashish Mishra & Monu & Anr.* (supra) 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.

21. Learned Single Judge while placing reliance on the judgment of *Jagjeet Singh & Ors. Versus Ashish Mishra & Monu & Anr.*





(supra) in *Nitoo Singh @ Nitu Singh Versus State* (supra) observed that 'evidently, the right of the victim is substantive as well as enforceable and cannot be termed as restrictive and therefore, in my view, victim is a necessary party to be added in all the bail matters arising out of criminal act committed against the victim as defined under Section 2(wa) of Cr.P.C.' The effect of the Standing Order dated 15.09.2023 issued by the Office of this Court in pursuance to the order dated 08.08.2023 would be that the accused persons shall be bound to remain in custody awaiting service of notices upon the victims, which is in direct conflict with their right to personal liberty guaranteed under Article 21 of the Constitution of India. The Standing Order shall also create hurdles as the definition of a victim under Section 2(wa) of Cr.P.C. is sufficiently wide enough to include every person of the family of the victim and it would be humongous task for the accused to serve notices upon all the victims and much greater task would be the determination of victims in a criminal case. Equally, troublesome would be the service on the victim without having their proper addresses.

22. None of the members of the Bar have supported the view taken by the learned Single Judge in *Nitoo Singh @ Nitu Singh Versus State* (supra) and have vehemently opposed the said order whereby direction has been given for impleading victim as a party-respondent. The right of the victim as well as the accused person shall be rightly balanced and any inclination to either of the parties would not subserve the fundamental principle of fair trial, therefore, it shall be kept well within the minds of the Legislature





as well as the judicial discipline that while granting any right to the victim, the right of the accused shall also be protected at the very first instance. We are of the clear view that neither the statute directs impleadment of victim as a party-respondent nor the judgment of *Jagjeet Singh & Ors. Versus Ashish Mishra & Monu & Anr.* (supra) directs impleadment of victim as a necessary party. *Jagjeet Singh & Ors.* case only provides that the victim has a vested right to be heard at every stage of proceedings. Therefore, we are of the considered view that the victim is not a necessary party and is not required to be impleaded as party-respondent in bail applications under Sections 437, 438 or 439 of Cr.P.C. The reference is accordingly answered in negative.

(PANKAJ BHANDARI),J

(ARUN BHANSALI),J

SUNIL SOLANKI /PS