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

+ BAIL APPLN. 3635/2022

SALEEM ..... Petitioner

Through: Mr. Sudarshan Rajan and  
Mohd. Qamar, Advocates.

versus

THE STATE OF NCT OF DELHI AND ANR. .... Respondents

Through: Ms. Meenakshi Dahiya, APP for the  
State with SI Sanjeev, P.S.: Jaitpur.

**CORAM:**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**ORDER**

**16.01.2023**

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Ms. Meenakshi Dahiya, learned APP for the State submits that pursuant to the intimation under section 439(1-A) CrPC served upon her, the prosecutrix is present in court. However, she seeks appointment of legal-aid counsel to represent her. Accordingly, the Secretary, Delhi High Court Legal Services Committee ('DHCLSC') is directed to appoint an appropriate counsel to represent the prosecutrix in the present bail petition. Let a copy of this order be sent to the Secretary, DHCLSC for compliance *forthwith*.

2. *Vide* order dated 05.12.2022 made on the last date of hearing, the following query was put to the Registrar (Filing) in para No.8 of that order:

*"8. In the circumstances, the Registrar (Filing) is directed to inform this court as to whether there is any ruling by any court or any practice directions issued, requiring the impleadment of a victim/prosecutrix/informant as a respondent (even if anonymised)*

*in bail applications or criminal appeals relating to sexual offences under the IPC and/or the POCSO Act. This query be answered in light of the fact that the identity of the victim/prosecutrix is supposed to be protected and kept confidential in all such proceedings; and section 439(1-A) of the Cr.P.C. and practice directions dated 24.09.2019 issued by the Delhi High Court only require that the victim/informant or any person authorized be heard at the time of hearing of a bail application for certain offences. Let a report be filed in response to the query, before the next date.”*

3. In response to the query, *vide* report dated 05.01.2023 the Registrar has cited section 439(1-A) of the Cr.P.C. and Practice Directions dated 24.09.2019 issued by the Delhi High Court; in addition to saying that “...*previously verbal directions were given by Hon’ble Court that the victim/complainant be arrayed in the Memo of Parties as respondent after hiding the identity of the victim...*”.
4. Furthermore, the Registrar has also made reference to an order dated 21.02.2022 made by a Co-ordinate Bench in Crl A No 68/2022 titled *Rakesh Bhatnagar vs. State (Govt) of the NCT of Delhi*, to the following effect:

*“2. The complainant has not been made a party to the instant appeal as required the statutory provisions of the POCSO Act. Learned counsel for the appellant seeks permission to move an appropriate application to implead the complainant as respondent No.2 along with amended Memo of Parties. Let the needful be done within ten days.”*

thereby submitting, that the *practice* of requiring that the victim/prosecutrix/informant be impleaded as respondent in bail petitions and criminal appeals relating to sexual offences under the Indian Penal Code and/or the POCSO Act, is being implemented in compliance with the aforesaid directions.

5. Mr. Sudarshan Rajan, learned counsel appearing for the petitioner submits that the petitioner had also impleaded the prosecutrix/complainant as respondent No.2 since the Registry had so required.
6. Ms. Dahiya, learned APP for the State submits, that though she is not aware of any statutory provision either under the IPC or the POCSO Act that requires impleadment of a prosecutrix/complainant, in her understanding, the Registry is placing this requirement only in view of section 439(1-A) of Cr.P.C. and Practice Directions dated 24.09.2019 issued by this court.
7. Ms. Dahiya further draws attention to a decision of the Division Bench of this court (of which the under-signed was a member) which, *vide* order dated 25.11.2019 and 27.01.2020 made in WP (C) No 5011/2017 titled *Reena Jha & Anr vs. Union of India & Ors extended the application* of section 439(1-A) Cr.P.C. to cases under the POCSO Act instead of restricting the same *only* to the specified sexual offences under the IPC.
8. Since maintaining confidentiality and privacy of a victim/prosecutrix in sexual offences is a mandate of the law *inter-alia* under section 228A IPC and section 23 POCSO Act; and a victim/complainant is not *ordinarily* required to be impleaded in such cases, in order to take a considered view on this aspect, this court appoints Ms. Rebecca Mammen John, learned senior counsel as *Amicus Curiae* to assist the court on the following query:
  - a. Whether the requirement of giving intimation to a victim/prosecutrix/informant as contained in section 439(1-A)

Cr.P.C. read with Delhi High Court Practice Directions dated 24.09.2019 *to enable her to be heard* on a bail petition *also requires* the victim/prosecutrix/informant to be *impleaded* as a party-respondent to a bail petition and/or a criminal appeal, particularly in light of the recent Supreme Court judgment in ***Jagjeet Singh & Ors. vs. Ashish Mishra @ Monu & Anr.***<sup>1</sup>;

- b. Whether any other judicial verdict or statutory provision requires such impleadment.
9. Let a copy of this order be sent to Ms. John within 03 days. She is requested to assist the court in the matter on the next date.
10. List for consideration of the bail petition and of the aforesaid query on 31<sup>st</sup> January 2023 at 03:30 pm.

**ANUP JAIRAM BHAMBHANI, J**

**JANUARY 16, 2023/ak**

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<sup>1</sup> (2022) 9 SCC 321 at para 24.2