

04.09.2025
Item no.11(DL)
Court No.42
srm

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION**

C.R.M.(M) 1148 of 2025

In Re: An application under Section 483(3) of the Bharatiya
Nagarik Suraksha Sanhita, 2023 corresponding to Section
439(2) of the Code of Criminal Procedure, 1973.

In Re : XXX

.... Petitioner.

Mr. Kaustav Bagchi,
Mr. Debayan Ghosh,
Ms. Priti Kar

...for the Petitioner.

Md. Anwor Hossain,
Mr. Debanik Das

...for the State.

Mr. Debasis Kar,
Mr. Arka Tilak Bhadra,

...for the Opposite Party No.2.

1. This application is filed seeking for cancellation of bail granted in respect of offences pertaining to Protection of Children from Sexual Offences Act, 2012 (*hereinafter referred to as the 'POCSO Act'*).
2. The cancellation of bail has been sought for on a solitary ground that the impugned order of the learned Trial Court dated 9th June, 2025 granting bail to the opposite party No.2 has been passed without giving an opportunity of hearing to the informant/victim or her authorized representative.
3. Mr. Kaustav Bagchi, learned Advocate appearing for the petitioner submits that it is settled proposition of law that

the victim/informant of a sexual offence has to be given an opportunity of hearing/participation at the stage of bail hearing. The learned Trial Court without giving such opportunity has passed the order granting bail to opposite party no.2 which is perverse on the face of it. On such score, he seeks for cancellation of bail. To buttress his contention, he relies on the following decisions:

- (i) ***Jagjeet Singh & Ors. versus Ashish Mishra alias Monu & Anr.*** reported in ***(2022) 9 SCC 321***
- (ii) ***Arjun Kishan Rao Malge versus State of Maharashtra & Ors.*** reported in ***(2021) SCC OnLine Bom 551***
- (iii) ***Hariram Bhambhi versus Satyanaraya*** reported in ***2021 SCC OnLine SC 1010***
- (iv) ***Miss G.(Minor) Thr. her versus State of NCT of Delhi & Anr.*** reported in ***2020 SCC OnLine Del 629***
- (v) ***Informant versus State of Karnataka, by Maddur Police & Anr.*** reported in ***2023 SCC OnLine Kar 69.***

4. Learned advocate for the State, opposite party no.1 also submits that the hearing of the bail application of the opposite party no.2 ought to have been taken up for consideration by the learned trial court upon giving opportunity of hearing to the petitioner/*de facto* complainant.
5. On the contrary, Mr. Debasis Kar, learned Advocate appearing for the opposite party No.2 submits that setting aside an order granting bail and cancellation of bail are to

distinct concepts. While former contemplates the correctness of the order itself, the latter pertains to the conduct of the accused subsequent to the order granting bail. The bail can be cancelled only on the ground of any supervening circumstances, like tampering of evidence either during investigation or during trial, threatening of witness, accused likely to abscond and trial getting delayed on that account etc. whereas in an order challenging grant of bail on the ground that it has been granted illegally, consideration would be whether there was improper or arbitrary exercise of discretion in grant of bail or findings recorded were perverse. To buttress his contention, he relies on the decisions of the Hon'ble Supreme Court passed in (i) ***Ashok Dhankad versus State of NCT of Delhi & Anr.*** reported in **2025 Supreme (SC) 1196**, (ii) ***Union of India rep. by the Inspector of Police National Investigation Agency Chennai Branch versus Barakathullah Etc.*** reported in **2024 Supreme (SC) 503**, and (iii) ***Emlang Laloo versus Anitimary Mawlong & Anr.*** reported in **2024 Supreme (Online)(SC) 8208**. Further Rule 4 of the Protection of Children from Sexual Offences Rules, 2020 contemplates that it shall be responsibility of the SJPU, or the local police to keep the child and child's parent or guardian or other person in whom the child has trust and confidence, and where a support person has been assigned, such person, informed about the developments, including the arrest of the

accused, applications filed and other court proceedings and it does not envisages that the accused is under statutory obligation to intimate the victim of the application filed on behalf of the accused seeking for bail. Therefore, there is no such illegality in the order passed by the learned Trial Court in granting bail to the opposite party No.2.

6. The primary issue on which the bail order is assailed is the denial of opportunity to the petitioner/*de facto* complainant or the victim to participate and oppose the bail application.
7. Sub-section (2) of Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 provides, *inter alia*, the presence of the informant or any person authorized by him is obligatory at the time of hearing of bail application in sexual offences involving rape of minors.
8. In *Jagjeet Singh (supra)*, the right of a victim to be heard in bail application was recognized. The Court held as follows:

“23. A “victim” within the meaning of CrPC cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a “victim” has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that “victim” and “complainant/informant” are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a “victim”, for even a stranger to the act of crime can be an “informant”, and similarly, a “victim” need not be the complainant or informant of a felony.

24. *** **

24.1. First, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged.

24.2. Second, where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave

miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.”

9. This Hon’ble Court in CRM (DB) 1977 of 2023 in a similar situation considering the observation of the Hon’ble Supreme Court in *Jagjeet Singh (supra)* observed as follows:

*“7. This provision and the law declared in **Jagjeet Singh (supra)** marks the expanding participatory rights of the victim in criminal jurisprudence. Sub-section (1A) of section 439 CrPC makes the presence of the informant a pre condition for bail hearing in cases involving rape of minors. The law presumes the informant (if she is not the victim herself) is a person interested in the victim and her presence would ensure ventilation of the concerns of the victim. The ratio in **Jagjeet Singh (supra)** enjoins when the victim is present during bail hearing, she shall have a right to participate therein. Right to be present during bail hearing would be rendered illusory if the right to be notified of such hearing is not read into it. A conjoint reading of the participatory rights from this perspective makes it imperative that notice of bail hearing in cases involving rape of minors must be given to the informant to ensure her presence and participation during the hearing”*

10. In the present case, undisputedly, the informant/victim was not notified about the bail application filed by the opposite party no.2 and, therefore, there is factually a denial of right to the informant/victim to participate in the proceedings which is recognised under Section 483(2) of Bharatiya Nagarik Suraksha Sanhita (*in short*, ‘BNSS’). Since it is now trite that the bail application of accused for offences punishable under Section 65 or Sub-Section 2 of Section 70 of the Bharatiya Nyaya Sanhita (*in short*, ‘BNS’) or for offences punishable under Sections of POCSO Act cannot be heard and disposed of without giving opportunity of being heard to the informant/victim, the Court and the prosecution are required to take into consideration the obligation on their part to keep the

informant/victim informed about the stages of criminal proceedings including filing of the application seeking bail by the accused persons.

11. This Court finds substance in the submissions of learned advocate for the petitioner relying on the decision of Hon'ble Supreme Court in *Jagjeet Singh (supra)* and decisions of other High Courts.
12. In view of the circumstances as enumerated above, since while considering the bail application of the accused opposite party no.2 by the learned trial court, the participatory right of the informant/victim was not secured, as mandated under law, the arguments advanced on behalf of the opposite party no.2 does not hold good.
13. Bearing in mind the proposition laid down by the Hon'ble Supreme Court in *Jagjeet Singh (supra)* as well as the observation of this Court in CRM (DB) 1977 of 2023, I am inclined to suspend the order of the trial court dated 9th June, 2025 granting bail to the opposite party no.2 for a period of three weeks.
14. The opposite party No.2 is directed to surrender before the learned Trial Court on 11th September, 2025 and pray for regular bail afresh.
15. The Public Prosecutor shall produce the case diary on that date. The informant or her representative shall attend and participate in hearing in accordance with law.

16. Bail hearing shall be done on the same day or if the Court is unable to do so within one or two days thereof and appropriate order be passed.
17. It is made clear that this Court has not expressed any opinion with regard to the merits of the case which is left open to be decided independently by the learned Trial Court in accordance with law.
18. Needless to mention that the bail application shall not be deferred on the ground of pendency of the present application.
19. List this matter on **18th September, 2025**.

(Bivas Pattanayak, J.)