

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 63351 of 2025

Arising Out of PS. Case No.-9 Year-2025 Thana- MAHILA PS District- Khagaria

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Veena Sinha, wife of late Ajay Kumar Sinha, resident of Mohalla - North
Hajipur, Ward No.23, P.S. - Chitragupta Nagar, District - Khajaria, Bihar

... .. Petitioner

Versus

1. The State of Bihar
2. Rampukar Sahni S/o- Late Kishun Sahni.
3. Badal Kumar S/o- Rampukar Sahni.
4. Abhishek Kumar S/o- Rampukar Sahni.
5. Rohit Sahni S/o- Late Kishun Sahni.

All resident of village - Sanhaule, Ward No.25, P.S. - Chitragupta
Nagar, Dist- Khagaria, Bihar.

... .. Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Vivek Kumar Sinha, Advocate Ms. Urvashi Bharti, Advocate
For the State	:	Mr. Uma Shankar Prasad Singh, APP
For the Opp. Party Nos. 2 to 5 :		Dr. Harendra Kumar Singh, Advocate Mr. Santosh Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
C.AV. JUDGMENT
Date : 05-08-2026

The present application has been filed by the petitioner-informant under Section 483(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), praying for cancellation of the regular bail granted to the opposite parties nos.2 to 5, namely, Rampukar Sahni, Badal Kumar, Abhishek Kumar and Rohit Sahni, by the learned Special Judge, POCSO Act, Khagaria, *vide* order dated 19.07.2025 passed in B.P. No.47 of 2025, in connection with Mahila P.S. Case No.09 of 2025,



corresponding to POCSO Case No.37A of 2025, registered for the offences punishable under Sections 74, 76, 115(2), 126(2), 351(2) and 351(3), read with Section 3(5), of the Bharatiya Nyaya Sanhita, 2023 (BNS) and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). The petitioner assails the impugned order principally on the ground that the said order came to be passed on the very day of surrender, without issuing notice to the petitioner or without hearing her, who is the mother and guardian of the victim child and also the informant of the case.

2. The prosecution case, as set out in the self-written statement of the petitioner-informant recorded on 03.03.2025 at about 12:50 P.M., is that on 02.03.2025, at about 10:00 A.M., the five named accused persons, namely, Rampukar Sahni, Rohit Sahni, Abhishek Kumar @ Bittu Kumar, Badal Kumar and Suraj Kumar, forming a gang, entered the bedroom of the daughter of the informant, who was aged about 14 years, with the intention of committing a sexual offence upon her. It is alleged that the accused Rampukar Sahni bit the chest of the victim with his teeth, and when the victim resisted, the accused Rohit Sahni attempted to tear her trousers. It is further alleged that when the informant attempted to protect her daughter, the



accused Rampukar Sahni assaulted the victim with a glass bottle and the accused Bittu Kumar caught hold of the hair of the informant and began to disrobe the victim with the intention of outraging her modesty. It is further alleged that the accused Badal Kumar and Suraj Kumar, with the intention to kill, assaulted the victim with the iron rods held in their respective hands. Thereafter, the victim was taken to the Sadar Hospital, Khagaria for treatment. It is alleged by the informant that she is a widow and the mother of the minor victim and the accused persons had an evil eye upon her daughter from before, and that she was in great fear and terror on account of the occurrence.

3. On the basis of the said statement, Mahila P.S. Case No.09 of 2025 came to be registered on 03.03.2025.

4. In the course of the investigation, as noticed in the order dated 15.07.2025 of the Special Judge himself, the further statement of the informant came to be recorded in paragraph no.2 of the case diary, and the statements of the victim and of the other witnesses came to be recorded in paragraph nos.5, 9, 10 and 11 thereof, all of whom supported the prosecution case. The facts described in the injury report of the victim were noticed in paragraph no.26 of the case diary and the charge-sheet came to be submitted against the accused persons,



keeping the investigation pending.

5. Apprehending arrest, the opposite parties nos.2 to 5 moved the Special Judge, POCSO Act, Khagaria, for the grant of anticipatory bail by filing A.B.P. No.47 of 2025, which came to be rejected *vide* order dated 15.07.2025. The said order reads as under:-

"न्यायालय : विशेष न्यायाधीश, पॉक्सो एक्ट, खगड़िया।

उपस्थित : जितेन्द्र कुमार, विशेष न्यायाधीश, पॉक्सो एक्ट, खगड़िया।

पॉक्सो वाद संख्या-37/2025

विशेष अग्रिम जमानत आवेदन संख्या-47/2025

रामपुकार सहनी एवं 3 अन्य बनाम बिहार राज्य

आदेश

5.07.2025 :- महिला थाना कांड संख्या-09/25 अंतर्गत धारा-74, 76, 115(2), 126(2), 351(2), (3), 3(5) बी.एन.एस. एवं धारा-8 पॉक्सो एक्ट के आरोपित आवेदक अभियुक्त 1. रामपुकार सहनी, 2. बादल कुमार, 3. अभिषेक कुमार, 4. रोहित सहनी की ओर से उनके विद्वान अधिवक्ता श्री संतोष कुमार मिश्रा के द्वारा अग्रिम जमानत आवेदन दाखिल किया गया। अग्रिम जमानत आवेदन की प्रति विद्वान अपर लोक अभियोजक को दी गई है। दोनों पक्षों को सुनने के पश्चात अभिलेख आज आदेश हेतु प्रस्तुत किया गया।

आवेदक अभियुक्तगण की ओर से उनके विद्वान अधिवक्ता ने अग्रिम जमानत के बिन्दु पर कथन किया है कि आवेदकगण बिल्कुल निर्दोष हैं एवं उन्होंने कोई अपराध नहीं किया है। उन्हें इस वाद में दुर्भावना एवं दुश्मनी के कारण गलत ढंग से फंसाया गया है। आवेदक संख्या-1, 2, 3 का कोई आपराधिक इतिहास नहीं है एवं आवेदक संख्या-4 के विरुद्ध उत्पाद अधिनियम का एक केस लंबित है जिसमें वह जमानत पर है। सम्पूर्ण अभियोजन कथा बिल्कुल झूठा एवं मनगढ़ंत है। वास्तव में इस वाद के आवेदक रामपुकार सहनी एवं सूचिका के बीच भूमि विवाद है जिसके लिए उसके द्वारा किया गया टाइटिल सूट नं०-24/2023 लंबित है। सूचिका एवं पीड़िता दोनों उसके दुकान का सामान तोड़-फोड़कर फेंक दिया जो कि सी०सी०टी०वी० फुटेज से स्पष्ट है। आवेदकगण के द्वारा सूचिका एवं उसके परिवार के सदस्यों के विरुद्ध शिकायत आवेदन संख्या-5860 दिनांक 28.12.24 एवं 1825/25 डी.एस.पी., खगड़िया को प्रेषित किया गया है। सम्पूर्ण अभिलेख के अवलोकन से स्पष्ट है कि आवेदकगण के विरुद्ध कोई सकारात्मक साक्ष्य नहीं है। तथाकथित घटना में आवेदकगण की कोई भागीदारी नहीं है। आवेदकगण के विरुद्ध आरोपित धाराओं के तहत आरोप नहीं बनता



है। आवेदकगण विचारण का सामना करने को तैयार हैं एवं उनके फरार होने की संभावना नहीं है। उपरोक्त तथ्यों के आलोक में आवेदकगण को अग्रिम जमानत की सुविधा प्रदान करने का निवेदन किया गया है।

विद्वान विशेष लोक अभियोजक द्वारा अग्रिम जमानत का विरोध किया गया है।

सूचिका वीणा सिन्हा के टंकित आवेदन के अनुसार अभियोजन का मामला संक्षेप में यह है कि दिनांक 02.03.25 (sic) को समय लगभग 10.00 बजे राम पुकार सहनी, रोहित सहनी, अभिषेक कुमार उर्फ बिट्टू कुमार, बादल कुमार, सूरज कुमार (रामपुकार का स्टाफ) सभी एक गैंग बनाकर सूचिका की पुत्री xxxx के उपर लैंगिक अपराध के आशय से उसके शयन कक्ष में ६ जुस आये तथा रामपुकार सहनी ने उसकी पुत्री के छाती पर अपने मुंह से दांत काटा जिसका प्रतिरोध सूचिका की पुत्री ने किया तो रोहित सहनी ने उसका ट्राउजर फाड़ने का प्रयास किया। रामपुकार सहनी ने उसकी पुत्री के उपर शीशा के बोतल से हमला कर दिया। बिट्टू कुमार ने सूचिका का झोंटा पकड़कर उसकी पुत्री का लज्जा भंग करने के उद्देश्य से निर्वस्त्र करने लगा। बादल कुमार और सूरज कुमार ने जान मारने की नियत से उसकी पुत्री पर अपने-अपने हाथ में लिए लोहे के छड़ से हमला कर दिया जिसका ईलाज सदर अस्पताल, खगड़िया में चल रहा है। सूचिका का कथन है कि इन अपराधकर्मियों की बुरी नजर पूर्व से उसकी पुत्री पर रही है।

उभयपक्षों को जमानत के बिन्दु पर सुना एवं अभिलेख का अवलोकन किया। अभिलेख अवलोकन से विदित होता है कि सूचिका द्वारा दिये गये आवेदन के आधार पर आवेदक अभियुक्तगण एवं अन्य के विरुद्ध प्राथमिकी दर्ज किया गया है। अनुसंधानकर्ता ने अपने अनुसंधान के क्रम में केस डायरी के कंडिका-2 में वादिनी का पुनः बयान व कंडिका-5, 9, 10, 11 में पीड़िता सहित अन्य साक्षियों का बयान अंकित किया गया है जिसमें सभी ने अभियोजन कथन का समर्थन किया है। केस डायरी के कंडिका-26 में पीड़िता का जखम प्रतिवेदन में वर्णित तथ्यों को अंकित किया गया है। आवेदकगण प्राथमिकी के नामजद अभियुक्त हैं एवं उनके विरुद्ध आरोपित धाराओं के संदर्भ में विशिष्ट आरोप है। मामले में आवेदक अभियुक्तगण के विरुद्ध अनुसंधान जारी रखते हुए आरोप पत्र समर्पित किया गया है।

वाद के तथ्यों, परिस्थितियों एवं अपराध की गंभीरता को देखते हुए आवेदक अभियुक्तगण को अग्रिम जमानत की सुविधा प्रदान करना न्यायोचित प्रतीत नहीं होता है।

अतः आवेदक अभियुक्तगण की ओर से दाखिल अग्रिम जमानत आवेदन अस्वीकृत किया जाता है।

(लेखापित एवं शुद्धित)

विशेष न्यायाधीश, पॉक्सो एक्ट, खगड़िया।"

6. Within four days thereafter, on 19.07.2025,

the same accused persons/Opposite Parties 2 to 5, surrendered



before the same Special Judge and moved an application for regular bail, being B.P. No.47 of 2025, which came to be allowed on the very same day *vide* the impugned order dated 19.07.2025, which reads as under:-

"न्यायालय : विशेष न्यायाधीश, पॉक्सो एक्ट, खगड़िया।
उपस्थित : जितेन्द्र कुमार, विशेष न्यायाधीश, पॉक्सो एक्ट,
खगड़िया।

पॉक्सो वाद संख्या-37ए/2025
विशेष जमानत आवेदन संख्या-47/2025
रामपुकार सहनी एवं 3 अन्य बनाम बिहार राज्य
आदेश

19.07.2025 :- अभियुक्त 1. रामपुकार सहनी, 2. बादल कुमार, 3. अभिषेक कुमार, 4. रोहित सहनी की ओर से आत्मसमर्पण सह जमानत आवेदन महिला थाना कांड संख्या-09/25 अंतर्गत धारा-74, 76, 115(2), 126(2), 351(2), (3), 3(5) बी.एन.एस. एवं धारा-8 पॉक्सो एक्ट के तहत उनके विद्वान अधिवक्ता श्री संतोष कुमार मिश्रा के द्वारा दाखिल किया गया। आवेदकगण को न्यायिक अभिरक्षा में लिया गया है। जमानत आवेदन संचालित किया गया।

आवेदक अभियुक्तगण की ओर से उनके विद्वान अधिवक्ता ने जमानत के बिन्दु पर कथन किया है कि आवेदकगण बिल्कुल निर्दोष हैं एवं उसने कोई अपराध नहीं किया है। उन्हें इस केस में गलत ढंग से फंसाया गया है। आवेदक संख्या-1, 2, 3 का कोई आपराधिक इतिहास नहीं है एवं आवेदक संख्या-4 के विरुद्ध खगड़िया थाना कांड संख्या-66/24 दर्ज है जिसमें वह जमानत पर है। अभियोजन कथन बिल्कुल झूठा, काल्पनिक एवं सत्य से परे है। आवेदकगण इस वाद की सूचिका के घर में 20 वर्षों से किरायेदार के रूप में किराने की दुकान चला रहा है। वास्तव में सूचिका के स्वर्गवासी पति द्वारा आवेदकगण से विभिन्न आवश्यकताओं के लिए रुपये उधार लिये गये थे जिसकी मांग करने पर आवेदकगण को दुकान खाली करने को कहा एवं तत्पश्चात उन्हें पॉक्सो एक्ट के तहत झूठा फंसा दिया गया है। आवेदकगण की ओर से सूचिका के विरुद्ध चित्रगुप्तनगर थाना कांड संख्या-24/2025 दर्ज कराया गया है। आवेदकगण के विरुद्ध आरोपित धाराओं का अपराध नहीं बनता है। आवेदकगण विचारण का सामना करने को तैयार हैं एवं उनके फरार होने की संभावना नहीं है। उपरोक्त तथ्यों के आलोक में आवेदकगण को जमानत की सुविधा प्रदान करने का निवेदन किया गया है।

विद्वान विशेष लोक अभियोजक द्वारा कथन किया गया है कि उभयपक्ष में पूर्व से रुपये की लेन-देन एवं किराये से संबंधित विवाद है। अभिलेख पर उपलब्ध साक्ष्य से आवेदकगण के विरुद्ध पॉक्सो एक्ट के तहत मामला बनता प्रतीत नहीं हो रहा है। साथ ही न्यायोचित आदेश पारित करने का अनुरोध किया गया है।

सूचिका वीणा सिन्हा के टंकित आवेदन के अनुसार



अभियोजन का मामला संक्षेप में यह है कि दिनांक 02.03.25 (sic) को समय लगभग 10.00 बजे राम पुकार सहनी, रोहित सहनी, अभिषेक कुमार उर्फ बिट्टू कुमार, बादल कुमार, सूरज कुमार (रामपुकार का स्टाफ) सभी एक गैंग बनाकर सूचिका की पुत्री xxx के उपर लैंगिक अपराध के आशय से उसके शयन कक्ष में घुस आये तथा रामपुकार सहनी ने उसकी पुत्री के छाती पर अपने मुंह से दांत काटा जिसका प्रतिरोध सूचिका की पुत्री ने किया तो रोहित सहनी ने उसका ट्राउजर फाड़ने का प्रयास किया। रामपुकार सहनी ने उसकी पुत्री के उपर शीशा के बोतल से हमला कर दिया। बिट्टू कुमार ने सूचिका का झोंटा पकड़कर उसकी पुत्री का लज्जा भंग करने के उद्देश्य से निर्वस्त्र करने लगा। बादल कुमार और सूरज कुमार ने जान मारने की नियत से उसकी पुत्री पर अपने-अपने हाथ में लिए लोहे के छड़ से हमला कर दिया जिसका ईलाज सदर अस्पताल, खगड़िया में चल रहा है। सूचिका का कथन है कि इन अपराधकर्मियों की बुरी नजर पूर्व से उसकी पुत्री पर रही है।

उभयपक्षों को जमानत के बिन्दु पर सुना एवं अभिलेख का अवलोकन किया। अभिलेख अवलोकन से विदित होता है कि सूचिका द्वारा दिये गये आवेदन के आधार पर आवेदक अभियुक्तगण एवं अन्य के विरुद्ध प्राथमिकी दर्ज किया गया है। अनुसंधानकर्ता ने अपने अनुसंधान के क्रम में मूल केस डायरी के कंडिका-2 में वादिनी का पुनः बयान व कंडिका-5, 9, 10, 11 में अन्य साक्षियों का बयान अंकित किया गया है जिसमें सभी ने अभियोजन कथन का समर्थन किया है। पूरक केस डायरी के कंडिका-26 में पीड़िता का जख्म प्रतिवेदन में वर्णित तथ्यों को अंकित किया गया है जिसमें उसके जख्म को साधारण प्रकृति का दर्शाया गया है एवं शरीर के संवेदनशील हिस्से में कोई गंभीर जख्म नहीं है। आवेदकगण सूचिका के किरायेदार हैं एवं उनमें पूर्व से रुपये की लेन-देन को लेकर विवाद चला आ रहा है। अभिलेख अवलोकन से यह भी विदित हो रहा है कि उनमें भूमि विवाद है जिसके कारण टाइटिल सूट नं०-24/2023 लंबित है। **वर्तमान में अभिलेख पर उपलब्ध साक्ष्य के अवलोकन से आवेदकगण के विरुद्ध पॉक्सो एक्ट के तहत आरोप बनता हुआ प्रतीत नहीं हो रहा है।** आवेदकगण स्वेच्छा से न्यायालय में आत्मसमर्पण किये हैं।

वाद के तथ्यों एवं परिस्थितियों को देखते हुए आवेदक अभियुक्तगण को जमानत की सुविधा प्रदान किया जाना न्यायोचित प्रतीत होता है।

अतः आवेदक अभियुक्तगण को मो० 10,000/- (दस हजार) रुपये के साथ समान राशि के दो प्रतिभुओं द्वारा बंधपत्र दाखिल करने पर एवं जांचोपरान्त उसे सही पाये जाने पर जमानत पर मुक्त करने का आदेश दिया जाता है। आवेदकगण अनुसंधान/विचारण में पूर्ण सहयोग करेंगे।

(लेखापित एवं शुद्धित)

विशेष न्यायाधीश, पॉक्सो, खगड़िया।"

7. Aggrieved by the impugned order, the



petitioner-informant has approached this Court by way of the present application. Notice came to be issued to the opposite parties nos.2 to 5 *vide* the order dated 05.01.2026. The opposite parties nos.2 to 5 have entered appearance and have contested the application by filing a counter affidavit.

8. The learned counsel for the petitioner has submitted that the impugned order dated 19.07.2025 is vitiated at its very inception, having been passed without any notice to, or hearing of, the petitioner-informant, who is the mother and guardian of the child victim, in a case registered under the POCSO Act. It is submitted that the POCSO Act and the Rules made thereunder secures to the child and to her family the right to engage counsel and the right to be informed of every development in the case, including the bail proceedings, and that the right of the victim to be heard at every crucial stage of the criminal proceeding, including the stage of bail, is now firmly entrenched in our criminal jurisprudence, as recognised by the Hon'ble Supreme Court in ***Jagjeet Singh & Ors. v. Ashish Mishra @ Monu & Anr.***, reported as **(2022) 9 SCC 321**. It is pointed out that neither the order dated 15.07.2025 nor the impugned order dated 19.07.2025 records any notice to, or any appearance on behalf of, the informant or the victim, and that



both the orders record the hearing of only two parties, namely, the learned counsel for the accused and the learned Special Public Prosecutor for the State.

9. The learned counsel for the petitioner has next submitted that the impugned order amounts, in substance, to a review by the Special Judge of his own reasoned order dated 15.07.2025, which is impermissible in law. It is emphasised by the learned counsel for the petitioner that on 15.07.2025 the Special Judge had rejected the anticipatory bail of the very same accused persons upon a consideration of the case diary, recording, *inter alia*, that the victim and the witnesses had supported the prosecution case and that the injury report of the victim was on record. Further, the Special Judge had recorded that specific accusations existed against the accused and that the charge-sheet had been submitted. It is the submission of the learned counsel for the petitioner that the same Judge had recorded that offence was grave in nature and thereafter declined anticipatory bail to the same accused persons on 15.07.2025 yet, within four days i.e. on 19.07.2025 *vide* the impugned order based on the same material, and without the emergence of any new circumstance save and except the surrender of the accused, the same Court took a diametrically



opposite view and enlarged the accused on bail on the very day of their surrender. It is submitted that an unexplained somersault of this nature renders the impugned order perverse, attracting the principles laid down by the Hon'ble Supreme Court in *Puran v. Rambilas & Anr.*, reported as (2001) 6 SCC 338, *Neeru Yadav v. State of U.P. & Anr.*, reported as (2014) 16 SCC 508, *Mahipal v. Rajesh Kumar @ Polia & Anr.*, reported as (2020) 2 SCC 118, *Deepak Yadav v. State of U.P. & Anr.*, reported as (2022) 8 SCC 559, *Ajwar v. Waseem & Anr.*, reported as (2024) 10 SCC 768, and *State of Karnataka v. Sri Darshan etc.*, reported as 2025 SCC OnLine SC 1702.

10. It is further submitted that the findings recorded in the impugned order that no charge under the POCSO Act appears to be made out against the accused is a finding which was wholly impermissible at the stage of bail, amounting, as it does, to conduct a mini-trial and a premature pronouncement upon the very question which is required to be determined at the stage of framing of charge. Pertinently, that too in the face of the statements of the victim and the witnesses supporting the prosecution case and the statutory presumptions engrafted in Sections 29 and 30 of the POCSO Act. Reliance in this behalf has been placed upon *Kanwar Singh Meena v. State*



of Rajasthan & Anr., reported as **(2012) 12 SCC 180**, wherein it has been held that at the stage of bail a detailed and meticulous examination of the evidence and an elaborate documentation of the merits of the case is to be avoided, and that the High Court or the Sessions Court is not expected to record a finding tantamounting to acquittal.

11. The learned counsel for the petitioner has also submitted that the concession made by the Special Public Prosecutor for the State, to the effect that no case under the POCSO Act appeared to be made out, could neither bind the victim, who was not before the Court, nor relieve the Special Judge of his obligation to apply his own judicial mind to the material in the case diary, which material, on the Court's own showing four days earlier, supported the prosecution case. It is submitted that the observation in the supplementary case diary that the injuries of the victim are simple in nature has no bearing upon the offence of sexual assault under Section 8 of the POCSO Act, which is not dependent upon the severity of any physical injury sustained by the minor child.

12. *Lastly*, it is submitted that the accused persons are the immediate neighbours and erstwhile tenants of the petitioner, who is a widow living with her daughter, and the



parties reside in close proximity within the same police station, and therefore the petitioner entertains a genuine apprehension of threat to herself and to the child victim, so long as the accused remain at large under the cover of an order obtained in the manner aforesaid.

13. The learned Additional Public Prosecutor for the State has not been able to dispute that neither the order dated 15.07.2025 nor the impugned order dated 19.07.2025 records any notice to, or appearance on behalf of, the informant or the victim.

14. *Per contra*, the learned counsel appearing on behalf of the opposite parties nos.2 to 5 has opposed the present application and has submitted that the same is devoid of merit and is fit to be rejected.

15. Elaborating his submissions, the learned counsel has submitted that the opposite party no.2 has been running a grocery shop as a tenant in the premises belonging to the family of the petitioner for more than two decades and the late husband of the petitioner had executed an agreement dated 28.10.2019 in respect of the shop and godown against the advances taken by him. It is submitted that after his death the petitioner herself executed a fresh agreement dated 06.03.2023



on the terms of the earlier agreement and when the opposite party no.2 demanded his money, he was threatened with eviction and with implication in false cases, apprehending which he had submitted a written representation to the Deputy Superintendent of Police, Khagaria Sadar, on 28.12.2024, followed by an Informatory Petition No.18 of 2025 dated 06.01.2025 before the Sub-Divisional Magistrate, Khagaria, in both of which he specifically expressed the apprehension that he would be falsely implicated, including in a case of outraging of modesty. It is further submitted that the opposite party no.2 thereafter instituted Title Suit No.24 of 2025 before the learned Sub-Judge-I, Khagaria, on 28.02.2025, against the petitioner and her daughters, for specific performance of the agreement.

16. It is next submitted that on 02.03.2025 itself, at about 10:45 A.M., the petitioner, her son-in-law and her daughters committed a daylight assault upon the shop and family of the opposite party no.2, in respect whereof Chitragupt Nagar P.S. Case No.24 of 2025 came to be registered against them on 02.03.2025 at 21:50 hours, and that the Mahila P.S. Case No.09 of 2025 was lodged only on the following day, at 12:50 P.M., without any explanation for the delay, as a clear counterblast to the aforesaid prior case and to the title suit. It is



therefore the submission of the learned counsel for the opposite party nos. 2 to 5 that the FIR lodged by the petitioner is, an afterthought, born out of the civil dispute.

17. The learned counsel for the opposite party nos. 2 to 5 has further submitted that the grievance of the petitioner that she was not heard is factually incorrect, inasmuch as the informant was represented before the learned Court below through the office of her engaged advocate, whose junior had filed a *vakalatnama* on her behalf on 17.03.2025, and an advocate from the said office appeared *suo motu* and had opposed both the anticipatory bail application and the regular bail application. Consequently, according to the learned counsel, no separate notice under Section 40 of the POCSO Act was required.

18. It is also submitted that the learned Special Public Prosecutor himself, upon a perusal of the material on record, fairly submitted before the Court below that no case under the POCSO Act appeared to be made out, and the supplementary case diary records the injuries of the victim to be simple in nature and not on any sensitive part of the body. It is further submitted that the opposite parties had voluntarily surrendered before the Court below and have been regularly



cooperating with the trial. It is the categorical submission that the Special Judge, upon a consideration of the entire material, had exercised his discretion judicially in granting bail, which ought not to be interfered mechanically.

19. Lastly, the learned counsel for the opposite parties nos.2 to 5 has submitted that the considerations governing the cancellation of bail stand on a footing entirely different from those governing its grant, and that bail once granted is not to be cancelled in a routine or mechanical manner in the absence of any misuse of liberty, breach of the conditions of bail, interference with the trial, threat to the witnesses or attempt to abscond. It is emphasised that after grant of bail the opposite parties have neither misused the privilege of bail nor is any supervening circumstance even alleged in the present application, save and except a generalised apprehension. Reliance has been placed upon *Dolat Ram & Ors. v. State of Haryana*, reported as (1995) 1 SCC 349, *Himanshu Sharma v. State of Madhya Pradesh*, reported as (2024) 4 SCC 222, and *Abdul Basit @ Raju & Ors. v. Mohd. Abdul Kadir Chaudhary & Anr.*, reported as (2014) 10 SCC 754.

20. I have heard the learned counsel for the parties and have carefully perused the materials available on



record.

21. Upon a conspectus of the rival submissions, three questions arise for consideration in the present application. *Firstly*, whether the impugned order dated 19.07.2025 is vitiated for having been passed without issuing notice to the petitioner or hearing her, who is the guardian of the victim child and the informant of the case, which has been registered under the POCSO Act. *Secondly*, whether the Special Judge could, within four days of his own reasoned order rejecting the anticipatory bail of the same accused persons, and based on the same material, take a diametrically opposite view and enlarge the accused on bail on the very day of their surrender and, *thirdly*, whether the finding recorded in the impugned order, that no charge under the POCSO Act appears to be made out, could at all have been recorded at the stage of bail.

22. Before advertng to the aforesaid questions, it would be apposite to notice the settled legal position. The jurisprudence on the subject recognises two distinct categories, as recently restated by the Hon'ble Supreme Court in ***State of Karnataka v. Sri Darshan etc. (supra)***, the first being the annulment or setting aside of an order granting bail on account of a legal infirmity attaching to the order at its very inception,



and the second being the cancellation of bail on account of post-grant misconduct or supervening circumstances. The distinction was lucidly drawn in *Dolat Ram (supra)* and *Neeru Yadav (supra)*, and it is well settled, on the authority of *Puran (supra)*, *Mahipal (supra)*, *Deepak Yadav (supra)* and *Ajwar (supra)*, that where the order granting bail is perverse or is founded upon irrelevant considerations or ignores the relevant material available on record, or suffers from non-application of judicial mind, the superior Courts can, and indeed must, set aside such an order, irrespective of whether the accused has misused the liberty granted to him. In the second category alone does the absence of supervening misconduct assume significance.

23. Equally well settled is the right of the victim to be heard. In *Jagjeet Singh (supra)*, the Hon'ble Supreme Court has held in unequivocal terms that the victim of a crime has unbridled participatory rights at every stage of the criminal proceeding, including the proceedings for the grant of bail, and that a victim cannot be asked to await the commencement of the trial for asserting her right to participate. The bail granted in that case without affording the victims an opportunity of being heard was, for that reason, set aside therein. The POCSO Act and the Rules framed thereunder carry this right further in relation to a



child victim, particularly, the provisions of the POCSO Act and the rules made thereunder, secures to the family or the guardian of the child the right to engage a legal counsel of their choice and cast a positive obligation to keep the child, through its parent or guardian, informed of every development in the case, including the court proceedings, of which the proceedings for bail are the most crucial at the pre-trial stage. No doubt, the statutory scheme of the BNSS makes the presence of the informant obligatory at the hearing of the bail application only in relation to certain enumerated aggravated sexual offences, the scheme of the POCSO Act and the Rules, however, independently secures to the child victim, through her guardian, the right to be informed of, and to be heard in, the bail proceedings, and this right cannot be reduced to a dead letter by disposing of the bail application on the very day of surrender, behind the back of the victim.

24. Tested on the anvil of the aforesaid principles, the impugned order, in the considered opinion of this Court, cannot be sustained.

25. Taking up the first question, a bare perusal of the two orders extracted hereinabove would show that neither of them records any notice to, or even any appearance on behalf of,



the informant or the victim. Both the orders record the hearing of only the learned counsel for the accused and the learned Special Public Prosecutor for the State. From the perusal of the impugned order, it appears that the regular bail application was filed, the accused surrendered, the application was taken up, heard and allowed, all on 19.07.2025 itself, leaving no window whatsoever within which the informant could even have learnt of the surrender, much less arranged to be heard. The plea taken in the counter affidavit, that an advocate from the office of the counsel engaged by the informant had appeared *suo motu* and opposed both the bail applications, is not borne out by the record of either order, and it is trite that a judicial order is conclusive of what transpired before the Court. If the recital was incomplete, it was for the party so asserting to have the record duly corrected by the Court which made it. A *vakalatnama* filed on 17.03.2025 in the main case, months before the bail applications came to be filed, can furnish no evidence of an appearance at a hearing which was convened, conducted and concluded within the span of a single day. The first question is, accordingly, answered in the affirmative, inasmuch as the impugned order was passed without notice to, and without hearing, the guardian of the child victim, in derogation of the



rights secured to the victim under the POCSO Act and the rules made thereunder and the law declared in *Jagjeet Singh (supra)*.

26. Adverting to the second question, the somersault which the impugned order performs is writ large on its face when the two orders are read in juxtaposition. On 15.07.2025, the Special Judge, upon a perusal of the case diary, recorded that the further statement of the informant and the statements of the victim and the witnesses, in paragraph nos.2, 5, 9, 10 and 11 of the case diary, supported the prosecution case, the injury report of the victim was on record and the accused were named in the FIR with specific accusations under the charged sections with the charge-sheet having been submitted and thereafter the Special Court considering the facts and circumstances and considering the gravity of the offence had declined anticipatory bail. However, on 19.07.2025, on the same case diary, the same Special Judge recorded that no charge under the POCSO Act appeared to be made out, and thereafter had enlarged the accused on bail. Between the two orders, only two things had changed, the accused had surrendered, and the learned Special Public Prosecutor had made a concession. Neither is a change in the fact situation within the meaning of the law laid down in *Kalyan Chandra Sarkar (supra)*.



Surrender is the condition upon which every regular bail application is entertained, not a circumstance in favour of its allowance, and a concession of the prosecutor, contrary to the material in the case diary which the Court itself had noticed four days earlier, could not relieve the Court of its obligation to apply its own mind to that material. What the Special Judge has, in substance, done is to review and recall his own reasoned order dated 15.07.2025 in the guise of deciding the regular bail application, which course was wholly impermissible.

27. The only additional material noticed in the impugned order is the recital in the supplementary case diary that the injuries of the victim are simple in nature and are not on any sensitive part of the body. The nature or simplicity of the injuries may have a bearing upon the offences of hurt under the BNS, but it has none upon the offence of sexual assault under Section 8 of the POCSO Act, of which physical injury is no ingredient at all. The *gravamen* of the accusation of sexual assault upon a child of about fourteen years remains wholly untouched by the nature of the injuries. The impugned order, in treating the simplicity of the injuries and arriving at a finding that no charge under the POCSO Act is made out, has thus founded itself upon considerations which are irrelevant to the



offence in question, while leaving out of account the statements of the victim and the witnesses which the Court had itself noticed only four days earlier. An order which overlooks material evidence or proceeds upon an erroneous premise is perverse, as held by the Hon'ble Supreme Court in ***Sri Darshan (supra)***, and such perversity is a valid ground for setting aside the bail.

28. The third question admits of an equally clear answer. The categorical finding in the impugned order that, on the evidence available on record, no charge under the POCSO Act appears to be made out against the accused, is a finding which travels far beyond the legitimate province of a bail Court. At the stage of bail, the Court is required to form only a *prima facie* view for the limited purpose of deciding the entitlement to bail, avoiding any detailed examination of the evidence, as held in ***Kanwar Singh Meena (supra)***. The question whether the charge under the POCSO Act is or is not made out is the very question which the Special Judge is required to decide at the stage of framing of charge, upon hearing both sides, and, at the trial, in the light of the statutory presumptions under Sections 29 and 30 of the POCSO Act. By pronouncing upon that question at the stage of bail, on the day of surrender, without hearing the



victim's side, and after the submission of the charge-sheet, the Special Judge has virtually pre-judged the charge and pre-empted his own jurisdiction, causing manifest prejudice to the victim. Such a finding, recorded at such a stage, is itself a serious discrepancy vitiating the order granting bail, within the meaning of the principles summarized in ***Deepak Yadav (supra)***.

29. The learned counsel for the opposite parties nos.2 to 5 laid considerable emphasis upon the civil dispute between the parties, the agreements, the representation to the Deputy Superintendent of Police dated 28.12.2024, the informatory petition before the Sub-Divisional Magistrate, the title suit instituted on 28.02.2025, and the counter case, being Chitragupt Nagar P.S. Case No.24 of 2025, prior in point of time to the FIR of the petitioner. These circumstances, and the plea of false implication founded upon them, are undoubtedly materials on which the defence is entitled to rely, and they may legitimately enter the consideration of a properly constituted bail hearing, as also the trial. But they are, at their highest, matters of defence, to be weighed and tested and they could not sustain, at the stage of bail, a conclusive finding that no offence under the POCSO Act is made out, in the face of the



un-retracted statements of the child victim and the witnesses supporting the prosecution case, nor could they cure the fundamental infirmity of the denial of hearing to the victim. Whether the FIR of the petitioner is the truth, or a counterblast born of the civil dispute, is precisely what the trial is for. It is not what a same-day bail order may decide.

30. This leaves the submissions founded upon *Dolat Ram (supra)*, *Himanshu Sharma (supra)* and *Abdul Basit (supra)*, and upon the conduct of the opposite parties subsequent to their enlargement. These submissions proceed upon a misconception of the nature of the present application. The present is not a case of cancellation of bail on the ground of supervening misconduct, in which event alone the absence of misuse of liberty would have assumed significance. The present application invokes the power of this Court, as the superior Court, to set aside an order granting bail which is illegal and perverse at its very inception, having been passed without hearing the victim, in review of the Court's own four-day-old order, upon irrelevant considerations and upon a finding impermissible at the stage of bail; and, as held in *Puran (supra)*, *Neeru Yadav (supra)* and *Sri Darshan (supra)*, the exercise of such power does not depend upon any supervening



circumstance.

31. For the foregoing reasons, this Court is of the considered opinion that the impugned order dated 19.07.2025 is unsustainable, having been passed without issuing notice to the petitioner or without hearing her, who is the guardian of the child victim and the informant of the case, which has been registered under the POCSO Act, in the teeth of the Court's own reasoned order dated 15.07.2025 passed on the same material only four days earlier. Further, the impugned order having been passed in complete contravention of the statutory presumption under Section 29 of the POCSO Act, and upon a finding, impermissible at the stage of bail, that no charge under the POCSO Act is made out. Therefore, the impugned order suffers from perversity and non-application of judicial mind, and the bail granted thereunder is liable to be set aside.

32. Accordingly, the present application is allowed. The order dated 19.07.2025 passed by the Special Judge, POCSO Act, Khagaria, in B.P. No.47 of 2025, arising out of Mahila P.S. Case No.09 of 2025, corresponding to POCSO Case No.37A of 2025, enlarging the opposite parties nos.2 to 5 on bail, is set aside. Consequently, the regular bail granted to the opposite parties nos.2 to 5 stands cancelled. The bail bonds



furnished by them also stand cancelled. The opposite parties nos.2 to 5 shall surrender before the concerned Court below within a period of two weeks from today, failing which, the Superintendent of Police, Khagaria, shall take all necessary steps, in accordance with law, to take them into custody.

33. It shall, however, be open to the opposite parties nos.2 to 5, upon surrender, to move a fresh application for regular bail, which shall be considered and decided afresh by the learned Court below, on its own merits and in accordance with law, after due notice to the petitioner-informant and after affording her a reasonable opportunity of being heard, uninfluenced by the orders dated 15.07.2025 and 19.07.2025 and by any observation made in this judgment.

34. The learned trial court is directed to proceed with the trial and conclude the same as expeditiously as possible, keeping in view the mandate of speedy trial underlying the POCSO Act, without being influenced by any observation made herein.

35. Before parting, this Court is constrained to observe that the manner in which the Special Judge, POCSO Act, Khagaria, reversed his own considered order dated 15.07.2025 within a span of four days, on the same material,



and enlarged the accused persons on bail on the very day of their surrender, without notice to the guardian of the child victim, in a case under a special statute enacted for the protection of children, reflects a serious want of circumspection. Therefore, it is expected that the concerned Special Judge shall be more vigilant in future while deciding the sensitive cases under the POCSO Act.

36. It is made abundantly clear that the observations made hereinabove are confined to the consideration of the present application and shall not be construed as an expression of any opinion on the merits of the case, which shall be decided by the learned trial court uninfluenced by the same.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
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