

# Medicolegal and Social issues of False implication and Abuse of Process of Law in POCSO Cases: A Critical Review

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## ABSTRACT

Allahabad High Court in a recent judgment observed that a Medical Report determining the age of a POCSO Act offence is an imperative requirement of law and an absolute necessity of justice. Allahabad High Court issued the following directions: The police authorities/ investigation officers shall ensure that in every POCSO Act offence, a medical report determining the victim's age shall be drawn up at the outset under Section 164A of the Criminal Procedure Code read with Section 27 of the Protection of Children from Sexual Offences Act, 2012. The report may be dispensed with if medical opinion advises against it in the interests of the victim's health; The medical report determining the age of the victim shall be created as per established procedure of law and in adherence to the latest scientific parameters and medical protocol; The medical report determining the age of the victim shall be submitted under Section 164-A of the Code of Criminal Procedure to the Court without delay; The Director General (Health), Government of Uttar Pradesh, Lucknow shall also ensure that the doctors who comprise the Medical Board are duly trained and follow the established medical protocol and scientific parameters for determining the age of the victims in such cases. Constant research shall be done in this field to keep the reports in line with the latest scientific developments. This case study emphasizes the dynamic nature of law and medicine with the passage of time and the demands of the society and administration of the criminal justice system in the larger public interest.

**Keywords:** False Case, Rape, Marriage, Pregnancy, Abortion, MTP, Adoption, Juvenile, Bail, Quashing of Criminal Proceedings/ FIR, Medical Protocol, Expert Medical Board.

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## INTRODUCTION

### Issue of Bail Application: Background of the Case

The State contends that the police authorities in compliance with the directions issued by this Court in Criminal Misc. Bail Application No.46998 of 2020 (Junaid vs. State of U.P. and Another) reported at 2021 (6) ADJ 511 and intends to implement the provisions of POCSO Act, 2012 read with POCSO Rules, 2020, have served the bail application upon the victim/legal guardian as well as upon the CWC.<sup>1</sup>

Utilizing the bail application the applicant has prayed to be enlarged on bail in Case Crime No.419 of 2023 at Police Station-Shalimar Garden, District-Ghaziabad under Sections 363, 376 IPC and Sections 3/4 of the POCSO Act. The applicant has been in jail since 05.12.2023.

### Rejection of Bail Application by Trial Court: Issue of Disputed Age of Victim

The bail application of the applicant was rejected by the learned trial court on 21.12.2023. The following arguments made by Shri Vikash Chandra Tiwari learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Ajay Singh Yadav, learned counsel for the informant and Shri Paritosh Kumar Malviya, learned AGA-I from the record, entitle the applicant for grant of bail:

- The victim was wrongly shown as a minor of 16 years in the F.I.R. only to falsely implicate the applicant under

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the stringent provisions of the POCSO Act and cause his imprisonment.

- The age of the victim set out in the prosecution case is refuted in the light of the judgement of this Court in *Monish vs. the State of U.P. and others* (Criminal Misc. Bail Application No. 55026 of 2021) and on the following grounds:<sup>2</sup>
  - There are material contradictions in the age of the victim as recorded in various prosecution documents.
  - The age of the victim was incorrectly registered in the school records by the victim's parents to give her an advantage in life. There is no lawful basis for the age-related entry of the victim in the school records. The school records disclosing her age as 16 years and 10 months are unreliable.
  - The victim in her statement under Section 161 Cr.P.C. has stated that she is 15 years of age respectively.

### **Case Law on Issue of Medical Examination of Victim /Accused in POCSO Act**

The medical examination to determine the age of the victim was not drawn up at the time of arrest of the applicant. The medical examination of the victim was subsequently drawn up on the order passed by this Court on 12.03.2024 in the instant Criminal Misc. Bail Application No.2322 of 2024 (Aman @ Vansh vs. State of U.P. and 3 others).<sup>3</sup> The medical report opines that the age of the victim is about 17 years.

### **Issue of Range of Error: Issue of Latest Medical Protocol**

Two submissions are made regarding the aforesaid medical report. Firstly, the range of error in determining the age is about two years and the same should be read in favour of the applicant at this stage. Secondly, the relevant scientific parameters as per the latest medical protocol which would establish the majority of the victims have been excluded from consideration in the medical report. The medical report is flawed. The victim is a major. [Para 2]

### **Issue of Delay in FIR**

The incident occurred on 09.11.2023 and the F.I.R. was registered on 13.11.2023. [Para 3] Delay of 4 days in the lodgment of the F.I.R. in the facts of this case is fatal to the prosecution case. [Para 4] The victim and the applicant were intimate. [Para 5] The F.I.R. is the result of opposition of the victim's family to the said relationship with the applicant. [Para 6]

### **Statements under Section 161 Cr.P.C. and Section 164 Cr. P.C of Victim**

The victim in her statements under Section 161 Cr.P.C. and Section 164 Cr.P.C. has admitted to intimacy with the applicant. She has also asserted that she eloped with the applicant to Delhi of her own volition. The victim has lastly asserted that she got married to the applicant. [Para 7]

### **No Allegation of Rape: Consenting Party and Conduct**

No allegation of commission of rape by the applicant with the victim was made in the F.I.R. or the statements of the victim under Sections 161 Cr.P.C. and 164 Cr.P.C. [Para 8] The victim was never confined or bound down in any manner. The victim was present in public places. She did not raise an alarm nor did she resist the applicant. Her conduct shows that she was a consenting party. [Para 9]

### **Issue of Major inconsistencies in the statements of the victim**

Major inconsistencies in the statements of the victim under Sections 161 Cr.P.C. and Section 164 Cr.P.C., as well as the recitals in the F.I.R., discredit the prosecution case. [Para 10] The victim has declined to undergo the medical examination. [Para 11]

The applicant does not have any criminal history apart from the instant case. [Para 12] The applicant is not a flight risk. The applicant being a law-abiding citizen has always cooperated with the investigation and undertakes to join the trial proceedings.

### **Conditional Bail Allowed/Granted**

There is no possibility of his influencing witnesses, tampering with the evidence or reoffending. In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant-Aman @ Vansh be released on bail in the aforesaid case crime number, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:

- The applicant will not tamper with the evidence or influence any witness during the trial.
- The applicant will appear before the trial court on the date fixed unless personal presence is exempted.

The learned trial court is directed to fix the sureties after due application of mind in light of the judgement rendered by this Court in Arvind Singh vs. State of U.P. Thru. Prin. Secy. Home Deptt. (Application U/S 482 No.2613 of 2023).<sup>4</sup>

The learned trial court shall ensure that the right of bail of the applicant granted by this Court is not frustrated by arbitrary demands of sureties or onerous conditions which are unrelated to the socioeconomic status of the applicant.

### **Important Observations of the High Court**

High Court observed that before parting some observations have to be made which arise in the facts of this case but also become applicable to a large number of matters arising before this Court.

### **Issue of Bail Jurisdiction**

This Court has consistently held that while sitting in the bail determination the High Court is not denuded of its constitutional status. The bail jurisdiction though created under the statute is also a constitutional jurisdiction of first importance since the most precious rights of life and liberty are engaged in the process of consideration of bail.

### **Case Law Relied**

Consequently, when legal issues which directly impact the life and liberty of a citizen arise during consideration of a bail application, the Court has to squarely deal with this issue.

[See: 1. (Anil Gaur @ Sonu @ Sonu Tomar vs. State of U.P. reported at 2022 SCC Online All 623) (Criminal Misc. Bail Application No.16961 of 2022)<sup>5</sup>

2. (Bhanwar Singh @ Karamvir vs. State of U.P. reported at 2023 SCC Online All 734) (Criminal Misc. Bail Application No.16871 of 2023)<sup>6</sup>

3. Criminal Misc. Bail Application No.53159 of 2021 (Noor Alam v. State of U.P.).<sup>7</sup>

High Court observed that in the instant case as in a large number of bail applications under the POCSO Act, issues

relating to the age of the victims having serious consequences on the life and liberty of accused persons arise for consideration.

### Age Determination by Expert Medical Board

This Court has been finding that in a large number of cases, the age of the victim set out in the prosecution case is often at variance with the age determined by the expert medical boards under the latest medical protocols. At times there are multiple contradictions in age-related documents available to the prosecution.

Issue of False Implication and Abuse of POCSO Act

Numerous cases of false implication and abuse of the POCSO Act have also been noticed. Runaway couples of young age are criminalized in the process.

### Benefits of Age Determination

The age determined by the Medical Board has several benefits:

- The said report may prove to be a reliable piece of evidence in the case.
- The said medical reports will assist the process of law and enable the courts to make a conclusive finding on the victim's age after considering all pieces of evidence in the record.
- The said medical reports determining the victim's age at the very outset will also help prevent misuse of the POCSO Act.
- The said medical reports are relatable to specific provisions of law.

The importance of medical reports in the criminal investigation process was recognized by the legislature while incorporating Section 164-A of the Code of Criminal Procedure. The provision is extracted hereunder:

*"Section 164A. Medical examination of the victim of rape*

(1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely:

- the name and address of the woman and of the person by whom she was brought;
- the age of the woman;
- the description of material taken from the person of the woman for DNA profiling;

- marks of injury, if any, on the person of the woman;
  - the general mental condition of the woman; and
  - other material particulars in reasonable detail,
- (3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent, to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay forward the report to the investigating officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of Sub-Section (5) of that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf."

### *Medical examination of a child UNDER POCSO Act*

In this context reference to Section 27 of the Protection of Children from Sexual Offences Act, 2012 can also be profitably made in support of the narrative. Section 27 of the POCSO Act reads as under:

"Section 27. Medical examination of a child:<sup>8</sup>

- The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted following section 164A of the Code of Criminal Procedure, 1973 (2 of 1973).
- In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.
- The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child trusts or has confidence.
- Where, in case the parent of the child or other person referred to in subsection (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution."

## MATERIAL AND METHODS

Various case laws and court judgments have been studied and suitable material from these cases has been incorporated.

## DISCUSSION

### Who should do a medical examination?

The wide ambit of the provision embraces various kinds of medical reports including a medical report determining the victim's age in POCSO Act offences. The provision contemplates that medical reports to determine the age of victims be drawn up by competent professionals from eminent institutions under the latest scientific parameters and medical protocols.



Further, the said medical reports have to be presented to the Court at the earliest to assist the process of law.

### **Complications caused by false depiction of a victim as minor**

False depiction of a victim as a minor in POCSO Act cases is an abuse of the process of court. Complications caused by the false depiction of a victim as minor and contradictions in age-related documents were also examined by this Court in *Monish vs. State of U.P. and others* (Criminal Misc. Bail Application No. 55026 of 2021).<sup>2</sup>

In numerous cases, the age determined by the Medical Board contradicted the minority of the victims set up in the prosecution case.

### **Case Law on Age of Victim**

This Court is finding that in many instances the accused applicants have argued that medical determination of the victim's age was not done deliberately as it would establish the majority of the victim and repudiate the prosecution case.

By falsely depicting the victim as a minor the accused persons are wrongly implicated under the stringent regime of the POCSO Act only to cause their indefinite imprisonment.

### **Statutory mandate the medical report to determine the victim's age is not drawn up**

There is a third category of cases. Despite the statutory mandate the medical report to determine the victim's age is not drawn up and made part of investigations in a majority of cases. The absence of a medical report determining the age of a victim came in the way of the Court dispensing equal justice. In these cases, this Court has developed a practice to call for such reports.

### **Authorities Responsible for Compliance**

A copy of this order is communicated by the learned Government Advocate to the Director General of Police, Lucknow, Uttar Pradesh for compliance and Director General (Health), Government of Uttar Pradesh, Lucknow.

### **CONCLUSIONS**

Allahabad High Court observed that Medical Report determining the age of a POCSO Act offence is an imperative

requirement of law and an absolute necessity of justice.

Allahabad High Court added that in the wake of the preceding discussion the following directions were issued:

- The police authorities/investigation officers shall ensure that in every POCSO Act offence, a medical report determining the victim's age shall be drawn up at the outset under Section 164A of the Criminal Procedure Code read with Section 27 of the Protection of Children from Sexual Offences Act, 2012. The report may be dispensed with if medical opinion advises against it in the interests of the victim's health.
- The medical report determining the age of the victim shall be created as per the established procedure of law and in adherence to the latest scientific parameters and medical protocol.
- The medical report determining the age of the victim shall be submitted under Section 164-A of the Code of Criminal Procedure to the Court without delay.
- The Director General (Health), Government of Uttar Pradesh, Lucknow shall also ensure that the doctors who comprise the Medical Board are duly trained and follow the established medical protocol and scientific parameters for determining the age of the victims in such cases. Constant research shall be done in this field to keep the reports in line with the latest scientific developments.

### **REFERENCES**

1. *Junaid vs. State of U.P. and Another*, Criminal Misc. Bail Application No.46998 of 2020. 2021 (6) ADJ 511.
2. *Monish vs. State of U.P. and others* (Criminal Misc. Bail Application No. 55026 of 2021)
3. *Aman @ Vansh v. State of U.P. and 3 others*, Criminal Misc. Bail Application No.2322 of 2024. Date of Judgment: 12.03.2024. Allahabad High Court.
4. *Arvind Singh vs. State of U.P. Thru. Prin. Secy. Home Deptt.* (Application U/S 482 No.2613 of 2023).
5. *Anil Gaur @ Sonu @ Sonu Tomar vs. State of U.P.*, (Criminal Misc. Bail Application No.16961 of 2022) 2022 SCC Online All 623.
6. *Bhanwar Singh @ Karamvir vs. State of U.P.*, Criminal Misc. Bail Application No.16871 of 2023). 2023 SCC Online All 734.
7. *Noor Alam vs. State of U.P.*, Criminal Misc. Bail Application No.53159 of 2021
8. Section 27 of the Protection of Children from Sexual Offences Act, 2012.