

S.V. vs State on 10 December, 2024

Bench: Prathiba M. Singh, Amit Sharma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 10th De

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CRL.A. 728/2024 & CRL.M.(BAIL) 1343/2024

S.V.

Through: Mr. Sudarshan Rajan (D
Hitain Bajaj, Advs. (M

versus

STATE

Through: Mr. M.A. Niyazi, Stand
for CBSE with Ms. Anam
Niyazi, Ms. Kirti Bhar
Nehmat Sethi, Mr. Arqu
for CBSE.
Mr. Abhinav Pandey, Se
(Litigation), DSLSA.
SI Manoj Kumar, PS Nih
Mr Ritesh Kumar Bahri
Lalit Luthra, Adv. (M:
Ms. Harpreet Kalsi, ld
Curaie with Mr. Vashis
Survivor and her mothe

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present appeal has been filed under Section 415 read with 528 BNSS challenging the judgment dated 30th January, 2024 and the accompanying order of sentence dated 22nd March, 2024. The case against the Appellant had been registered under Sections 363/376(2)(i) and (n) of Digitally Signed By:DHIRENDER KUMAR Signing Date:21.12.2024 23:18:41 the IPC and Sections 6 and 12 of the POCSO Act at PS Nihal Vihar. The Appellant is the real father of the survivor, who had allegedly committed penetrative sexual assault, repeatedly upon her.

3. On 13th August, 2024, the ld. APP had informed the Court that the interim compensation awarded by the Trial Court had yet not been released to the survivor. Considering the facts of the case, the Court had directed that urgent steps be taken to trace the survivor and pay her the compensation. The Court had also directed the concerned District Legal Services Authority to file a status report with regard to the delay in disbursing the compensation to the survivor.

4. In compliance of the directions passed on 13 th August, 2024, the West District Legal Services Authority had filed a status report dated 27 th August, 2024. As per the said report, an amount to the tune of Rs. 4,12,500/- had been awarded as the interim compensation to the Survivor. In addition to this, the final compensation had been computed at Rs. 13,00,000/- .

5. On 2nd September, 2024, the Court had interacted with the Survivor and her mother. The Court had passed various directions, including, in respect of the medical treatment of the Survivor. The relevant portion of the order dated 2nd September, 2024 reads as under:

□9. The facts which have emerged after interaction with the parties in Chamber are that, at the time of the incident, the survivor was a student pursuing her studies in 12th grade, however, she could not complete her 12th grade exams because of the incident. In this view of the matter, she has expressed her intention to complete her Class 12th education. It is also seen after the interaction, that she needs some medical treatment and consultation.

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10. The survivor lives with her mother and other two sisters and brother in Nangloi in a tenanted accommodation. The mother works in a school and is earning approximately Rs.5,000/- to Rs.6,000/- per month. The mother and the daughter have expressed that if some amounts may be released to them, it would help in her pursuing her studies as also in getting some treatment.

11. Under such circumstances, after interaction with them in Chamber, the following directions are issued:-

i) Out of the total amount of interim compensation i.e., Rs. 13,00,000, the Union Bank of India, Nangloi shall retain a sum of Rs.5,00,000/- in a fixed deposit in the name of the survivor for a period of two years.

ii) A further sum of Rs. 5,00,000/- shall be retained in a fixed deposit by the Union Bank of India, Nangloi for a period of one year in the name of the survivor.

12. The remaining amount of Rs.3,00,000/- shall be disbursed in the following manner:-

a) A sum of Rs.1,00,000/- shall be released to the survivor within one week from today.

b) Thereafter, a sum of Rs.10,000/- be released to the survivor by 10th of every month w.e.f. November 2024.

13. The mother of the survivor has assured this Court that she would ensure that the aforesaid amounts are used for the well-being of the daughter.

14. The PLV/DSLSEA, who has already been nominated by the DSLSEA, shall continue to help the survivor and assist her in filling up her admission form for the Class 12th examinations through the National Institute of Open Schooling (NIOS). If the DSLSEA is of the opinion that any order is required to be passed by this Court, an application may be moved or the matter may be mentioned.

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15. The DSLSEA shall also assist the survivor in getting her medically examined in a hospital and also, getting the test conducted such as ultrasound etc., which may be required. If any medicines are to be procured and given to her, she may be assisted in the same.

16. Let the paper book be prepared and tagged along with the present appeal. Copies of the same may be provided to the Id. Counsels for the parties by the Registry, upon request.

6. On the last date of hearing i.e., 23rd October, 2024, the Court had considered the status report dated 22nd October, 2024, filed by Mr. Abhinav Pandey, Secretary (Litigation), Delhi State Legal Services Authority (DSLSEA). As per the said report, the final compensation of Rs. 13,00,000/- had been deposited in the account of the survivor on 7th September, 2024, and that the further steps are being taken towards enrolment of the survivor in the 12th standard. It was also mentioned therein, that the Survivor had been medically examined on 13th September, 2024.

7. Further, it was stated in the said report that the Survivor is being trained as a Para Legal Volunteer (hereinafter "PLV") and if she was found fit to work as PLV, then the Survivor may be engaged with DSLSEA/DLSA in that capacity. The relevant portions of the order dated 23rd October, 2024 are reproduced below:

3. In terms of the above order, a detailed status report dated 22nd October, 2024 in the form of compliance report has been filed by Mr. Abhinav Pandey, Secretary, (Litigation), DSLSEA. The same has been taken on record. As per the said report, following details have been furnished by Mr. Abhinav Pandey:

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(i) The final compensation amount of Rs.

13,00,000/-in terms of the previous order dated 02nd September, 2024 has been released to the survivor and has been credited into the survivor's bank account on 7th September, 2024.

(ii) Insofar as the enrolment of the survivor in the 12th standard examination in National Institute of Open Schooling ('NIGS') is concerned, steps are being taken by the Id. Secretary and the Id. Amicus Curiae for getting the survivor's 10th standard board marksheet, which appears to be delayed.

(iii) Insofar as the direction to provide assistance to the Survivor to avail medical examination as also to conduct various tests at a hospital near her residence, the Survivor has been medically examined at xxxxxxxxxxxxxxxxxxxx, on 13th September, 2024 during which she was accompanied by a female police official to ensure her safety and support. The Survivor was called for a follow-up and further analysis of her test reports on 24th September, 2024.

4. Mr. Pandey submits that an application has already been filed in the Central Board of Secondary Education ('CBSE') for releasing the Class 10th certificate/marksheet. Considering the nature of the matter, the Secretary, CBSE is directed to issue the Class 10th certificate to the survivor within one week from today. The details of the survivor are as under:

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5. The present order be communicated to Mr. M.A. Niyazi, Id. Counsel (+91 9810413706), who regularly appears for the CBSE, for immediate action.

6. Insofar as the rehabilitation of the survivor is concerned, Mr. Pandey submits that she is being given training as a Para Legal Volunteer ('PLV') under the DLSA and she will be enrolled as a PLV with the DSLSA/DSLA. Accordingly, if she is found fit to work as a PLV the survivor may be engaged as a PLV. Let a further status report be filed by the next date of hearing.

8. Today, the Survivor has appeared along with her mother and the Court has interacted with them in Chamber. It is stated by the Survivor that the sum of Rs. 13,00,000/- has already been released. She and her mother have informed the Court that out of the said amount, two FDs have been created for Rs. 5,00,000/- each, in terms of the directions of this Court on 2nd September, 2024. Further, it is stated that Rs. 1,00,000/-, has been used by the Survivor for paying some coaching fee and for day to day expenses.

9. Insofar as the 10th Standard Board marksheet of the Survivor is concerned, the same has also been procured and has been given by the CBSE through the school. The survivor wishes to now be enrolled into class 12th through open schooling. She may do so through the National Institute of Open Schooling.

10. Upon being queried, the Survivor submits that she is happy to continue to work as a PLV so as to remain busy. She would be paid remuneration as a PLV.

11. The Survivor may remain in touch with the Id. Amicus Curiae for any further issues she may encounter.

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12. The Survivor need not appear on the next date of hearing, unless any particular directions are being sought by her.

13. Mr. Pandey, who is present before the Court, has brought to the attention of the Court that despite the directions of this Court vide order dated 2nd September, 2024 in respect of free medical treatment of the Survivor, in terms of Section 397 BNSS, earlier 357 C of the Cr.P.C, the Survivor could not avail the same without repeated intervention of the DSLSA. The relevant paragraph of the status report dated 22nd October, 2024, filed by the DLSA are reproduced below:

"8.1 That, so far as to provide assistance to the survivor in getting her medically examined in a hospital and also, getting the necessary tests/investigations conducted is concerned, undersigned requested Ld. Secretary, West DLSA to ensure treatment of the survivor in the best hospital near her residence and as per choice of the survivor, and to ensure treatment in a private super-speciality hospital, if required, and for that purpose, to make use of the provisions of Section 357C of Cr.P.C./Section 397 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). In this regard, Ld. Link Secretary, West DLSA has further stated that in compliance thereto, vide letter dated 06.09.2024 (sent through email), the Director, Sri Balaji Action Medical Institute was requested to arrange free medical treatment for the survivor in view of 357C of Cr.P.C./Section 397 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), but no positive response was received at initial instances, despite being contacted telephonically.

Copy of the said letter dated 06.09.2024 alongwith the aforesaid email is annexed herewith as Annexure-'B1' and 'B2' respectively. Nevertheless, on persistent efforts of West DLSA, the letter sent through email was taken note of by the Hospital wherein Order of this Digitally Signed By:DHIRENDER KUMAR Signing Date:21.12.2024 23:18:41 Hon'ble Court was also referred and finally an affirmation was received from the Hospital on 11.09.2024.

14. Mr. Pandey, submits that it took some convincing on his part to enable the concerned private hospital to extend free treatment to the Survivor. He, thus, submits that it is necessary for all hospitals to be sensitized about this treatment provision under the BNSS.

15. Considering these submissions, this Court has deemed it appropriate to reiterate the legal position in this regard and issue specific directions.

16. Section 397 of BNSS, Section 357C of CrPC are reproduced here for ease of reference:

397. Treatment of victims.--All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 64, section 65, section 66, section 67, section 68, section 70, section 71 or sub-section (1) of section 124 of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023) or under sections 4, 6, 8 or section 10 of the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), and shall immediately inform the police of such incident. 357C. Treatment of victims.--All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Indian Penal Code (45 of 1860), and shall immediately inform the police of such incident. Digitally Signed By:DHIRENDER KUMAR Signing Date:21.12.2024 23:18:41

17. In addition Rule 6(4) of the POCSO Rules, 2020 is also relevant and the same reads as under:

6. Medical aid and care.-- [...] (4) The registered medical practitioner rendering medical care shall attend to the needs of the child, including:

- (a) treatment for cuts, bruises, and other injuries including genital injuries, if any;
- (b) treatment for exposure to sexually transmitted diseases (STDs) including prophylaxis for identified STDs;
- (c) treatment for exposure to Human Immunodeficiency Virus (HIV), including prophylaxis for HIV after necessary consultation with infectious disease experts;
- (d) possible pregnancy and emergency contraceptives should be discussed with the pubertal child and her parent or any other person in whom the child has trust and confidence; and,
- (e) wherever necessary, a referral or consultation for mental or psychological health needs, or other counseling, or drug de-addiction services and programmes should be made.

18. It is also noted that the Ministry of Health and Family Welfare, Government of India, (hereinafter "MoHFW") had released in 2014, Guidelines for Medico-Legal Care for Survivors/Victims of Sexual Violence . The relevant portion of the said guidelines are as under:

[...] Survivors of sexual violence should receive all services completely free of cost. This includes OPD/inpatient registration, lab and radiology investigations, Urine Pregnancy Test (UPT) and medicines. The casualty medical officer must label the case papers for any sexual violence case as free so that free treatment is ensured.

Medicines should be prescribed from those available in the hospital. If certain investigations or medicines are Digitally Signed By:DHIRENDER KUMAR Signing Date:21.12.2024 23:18:41 not available, the social worker at the hospital should ensure that the survivor is compensated for investigations/ medicines from outside. [...] As per the above provisions of law, it is incumbent upon all hospitals, nursing homes, clinics, medical centres to provide free medical care and treatment to rape victims/survivors, POCSO case survivors and similar victims/ survivors of sexual attacks etc.,

19. It is observed that a large number of rape cases and POCSO cases come up before the Courts on a regular basis. The survivor/s in these cases sometimes need urgent medical intervention and sometimes need medical assistance over a longer period of time including admission, diagnostics, surgical intervention, medicines and other treatment including counselling services.

20. However, despite the provisions under the BNSS or CrPC, as also the guidelines formulated by the MoHFW, the Court has been informed that survivors of sexual violence and acid attacks face difficulties in availing free medical treatment.

21. Thus, all Central Government/State Government aided and unaided hospitals as also private hospitals, clinics, nursing homes would be required to comply with the above provisions in order to ensure that survivors/rape victims and survivors in POCSO cases etc., are not refused medical treatment, or any other services which may be required. The word "treatment" would include first aid, diagnosis, in-patient admission, continued out-patient assistance, diagnostic tests, lab tests, surgery if required, physical and mental counselling, psychological help, family counselling, etc. The Court accordingly deems it fit to issue directions which Digitally Signed By:DHIRENDER KUMAR Signing Date:21.12.2024 23:18:41 shall apply in respect of the victims/survivors of the following offences:

- a. Rape (Section 64 read with Section 71 of Bharatiya Nyaya Sanhita, 2023 (BNS); Section 376 read with Section 376E of IPC).
- b. Rape of woman under the age of sixteen or twelve years (Section 65 read with Section 71 of BNS; Section 376AB read with Section 376E of IPC).
- c. Rape resulting in persistent vegetative state (Section 66 read with Section 71 of BNS; Section 376A read with Section 376E of IPC).
- d. Sexual intercourse by husband upon his wife during separation (Section 67 read with Section 71 of BNS; Section 376B of IPC).
- e. Sexual intercourse by a person in authority (Section 68 read with Section 71 of BNS; Section 376C of IPC). f. Gang Rape (Section 70 read with Section 71 of BNS; Sections 376D, 376DA & 376DB read with Section 376E of IPC). g. Voluntarily causing grievous hurt by use of acid, etc. (Section 124(1) of BNS; Section 326A of IPC).

h. Penetrative sexual assault (Section 4 of POCSO Act). i. Aggravated penetrative sexual assault (Section 6 of POCSO Act).

j. Sexual assault (Section 8 of POCSO Act). k. Aggravated sexual assault (Section 10 of POCSO Act).

Directions:

Digitally Signed By:DHIRENDER KUMAR Signing Date:21.12.2024 23:18:41 i. Whenever any victim/survivor of any of the said offences approaches a medical facility, diagnostic facility, diagnostic lab, nursing home, hospital, health clinic etc., whether private and public/Government, such victim/survivor shall not be turned away without providing FREE medical treatment, including first aid, diagnostic tests, lab tests, surgery and any other required medical intervention; ii. Such victim/survivor shall be immediately examined and if required, be given treatment even for sexually transmitted diseases such as HIV etc.;

iii. Such victim/survivor shall be provided physical and mental counselling as may be required;

iv. Such victim/survivor shall be checked for pregnancy, and provided with contraception, if required;

v. Further, if any tests are required to be conducted including ultrasound, etc., the same shall also be conducted. Proper medical advice shall be given to such victim/survivor by the concerned gynaecologist who shall also counsel the victim/survivor and her family members; vi. If the victim/ survivor has been brought in an emergent situation, the concerned medical establishment that is approached by or on behalf of such victim/survivor, shall not insist on ID proofs in order to admit the said victim/survivor and administer immediate treatment to the same;

vii. If such a victim/survivor requires in-patient medical treatment, no payment shall be demanded and admission shall be provided to the said victim/survivor;

viii. Every medical facility shall put up a board in the following terms:

Digitally Signed By:DHIRENDER KUMAR Signing Date:21.12.2024 23:18:41 "Free out-patient and in-patient medical treatment is available for victims/ survivors of sexual assault, rape, gang rape, acid attacks, etc.".

The above board shall be put up at the- entrance, the reception, counters and all prominent places with in the medical establishment, in both English and vernacular language; ix. All doctors, nurses, paramedical personnel, administrative staff of a medical establishment shall be sensitized about the relevant provisions being Section 397 BNSS (Section 357C of CrPC), Section 200 of BNS (Section 166B of IPC) and

Rule 6(4) of POCSO Rules, 2020. Specific circulars shall be issued by the management of the medical establishments informing that anyone violating the above provisions would be liable to be punished with imprisonment for a period of one year or with fine or with both. Thus, non-providing such victim/survivor with required medical treatment is a criminal offence and all doctors, administration, officers, nurses, paramedical personnel etc., shall be informed of the same;

x. If any victim/survivor is required to be transferred from one hospital establishment or medical establishment to another, the transition shall also be made smooth and hassle free by providing ambulance, if required, along with certificate to the effect that the victim/survivor is entitled to free medical treatment as per law; xi. If the police finds that any medical professional, para-medical professional, medical establishment, whether public or private, refuses to provide necessary medical treatment to such victims/survivors, then Digitally Signed By:DHIRENDER KUMAR Signing Date:21.12.2024 23:18:41 a complaint shall be immediately registered under Section 200 of BNS, 2023 (Section 166B of IPC) as the same is a punishable offence. The police may also inform the concerned DLSA or DSLSA to enable assistance to the victim/survivor; xii. The concerned Police Station approached by or on behalf of such victim/survivor shall take the said victim/survivor to the nearest hospital, whether public or private, for obtaining the above medical treatment without any delay and in an expeditious manner; xiii. Such victim/ survivor shall also be referred by the Police to the Delhi State Legal Services Authority (DSLSA) /District Legal Services Authority (DLSA) for providing legal assistance including appointment of a lawyer for the complaint to be filed in respect of the offence committed upon the said victim/survivor; xiv. In the city of Delhi, if such victims/survivors approach the DSLSA/DLSA for seeking assistance for availing free medical treatment, then the Delhi Victims Compensation Scheme (DVCS), requires the DSLSA/DLSA to forward cases of such victims/survivors to Government of NCT of Delhi, to ensure free of cost treatment from any Government hospital, if the need so arises. However, the DSLSA/DLSA is also free to refer such cases to private hospitals, nursing home, laboratories, etc.;

xv. It is clarified that availing of free medical treatment by such victims/survivors from either Government/Public or Private hospitals is not dependent upon a referral by the DSLSA/DLSA under the DVCS, as the same is a statutory right of such victims/survivors under Digitally Signed By:DHIRENDER KUMAR Signing Date:21.12.2024 23:18:41 Section 357C of CrPC, Section 397 of BNSS and Rule 6 (4) of POCSO Rules, 2020.

xvi. The DSLSA upon receiving information on its "Sampark" email-id i.e., sampark.dlsa@gov.in regarding registration of an FIR in respect of any offence mentioned herinabove, shall take necessary action and follow-up with the concerned victim/survivor in respect of receiving free medical aid. Further, the DSLSA shall take urgent steps to process such FIRs and communicate/circulate the same to the concerned DLSAs for taking appropriate steps in terms of the directions herein;

22. The present order shall be circulated to all Courts dealing with, sexual offences including, POCSO Courts, Criminal Courts, Family Courts, etc., so as to ensure that all victim/survivor, in terms of Section 397 of BNS (Section 357C of CrPC), are informed of their rights under law and

proper steps are taken for referring such cases to the concerned medical establishments, whether public/government or private, whenever the courts come across such cases where victims/survivors needs such assistance.

23. Copy of the order be communicated to all District Legal Services Authorities for necessary information and compliance.

24. Copy of the order be communicated to Mr. Abhinav Pandey, Secretary (Litigation) Delhi State Legal Services Authority for necessary information and compliance.

25. The order be also sent to the Commissioner of Police, Delhi for being circulated to all police stations. In addition, the order be also communicated by the Secretary, Ministry of Health and Family Welfare, UOI and Special Secretary (Health) GNCTD for monitoring and being circulated to all Digitally Signed By:DHIRENDER KUMAR Signing Date:21.12.2024 23:18:41 hospitals, nursing homes, medical establishments, clinics, diagnostic centres, laboratories etc., for compliance.

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26. List the application for suspension of sentence on the next date of hearing.

27. List on 23rd December, 2024.

PRATHIBA M. SINGH JUDGE AMIT SHARMA JUDGE DECEMBER 10, 2024/nk/ms (Corrected & released on 21st December, 2024) Digitally Signed By:DHIRENDER KUMAR Signing Date:21.12.2024 23:18:41