

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.160 of 2021

Arising Out of PS. Case No.-58 Year-2020 Thana- BAKHARI District- Begusarai

Hanif Ur Rahman, son of Azhar Rahman, Resident of C-39, East Nizamuddin,
New Delhi.

... .. Petitioner

Versus

1. The State of Bihar (through Chief Secretary, Govt. of Bihar) Main Secretariat, Patna – 800015.
2. Meena Khatoon, wife of Mastan @ Noor Mohammad, Resident of Village- Mansurpur Chaksikandar, P.S.- Bidupur, District- Vaishali (Bihar)
3. The Bihar Police, through Standing Counsel.
4. Child Welfare Committee, through Chairperson, Chanakyanagar, Mahmadpur, Begusarai.
5. The Superintendent, Alpawas Grih, Nirala Nagar, Behind G.D. College, Ratanpur, Begusarai.

... .. Respondents

Appearance :

For the Petitioner	:	Ms. Kriti Awasthi, Advocate Mr. Sambhav Gupta, Advocate Mr. Navnit Kumar, Advocate Mr. Shyam Kumar, Advocate
For the Respondents	:	Mr. Nadim Seraj, G.P.5
For the Resp. No. 2	:	Ms. Archana Sinha, Advocate
For the Resp. No. 4	:	Mr. Prabhu Narain Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT

Date : 14-12-2021

Heard Ms. Kriti Awasthi, learned counsel for the petitioner, Mr. Nadim Seraj, learned G.P.5 for the State, Ms. Archana Sinha, learned counsel for the respondent no. 2 and Mr. Prabhu Narain Sharma, learned counsel for respondent no. 4.

2. This writ application has been preferred seeking quashing of the order dated 19.02.2020 passed by learned



Special Court, Begusarai in POCSO Case No. 3/2020 (arising out of Bakhri P.S. Case No. 58/2020). By the impugned order the learned Special Court has directed release of a minor victim of alleged sexual offences in favour of respondent no. 2 who claims herself the mother of the minor victim.

3. The impugned order has been challenged on various grounds including that of non-compliances with the mandatory provisions of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as the 'Act of 1956'), the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the 'J.J. Act') and the provisions of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO Act').

4. Petitioner is the informant of Bakhri P.S. Case No. 58/2020. It is on the basis of his confidential information to Begusarai Police that a raid was conducted in a brothel (house of the maternal uncle of the victim) situated at Ismailnagar, Ward No. 8 within the jurisdiction of Bakhri Police Station, in the district of Begusarai. In the said raid conducted on 08.02.2020 by a team headed by the then Dy.S.P. (Headquarter) a girl child aged about 15 years was rescued and the house owner Sunita Devi, wife of Mantun Nutt, son of Anandi Natt



and Meera Devi wife of Sunil Nutt were arrested on the spot. They are said to be the relatives of the victim child. Sunita Devi is said to be the Aunt (Mami) of the victim, Mantun Nutt is the uncle (Mama). In course of raid, two empty bottles of wine, medicine of Aids, pregnancy test kits, eleven used condoms and 100 unused condoms as also some money were seized by police.

5. The victim girl disclosed to the Inspector of Police that she was brought in her childhood by one Punam @ Tanuja wife of Mantun Nutt from Patna, she did not remember name of her parents and she further alleged that Sunita Devi, Meera Devi, Punam @ Tanuja and Mantun Nutt were involved in forcibly pushing her in prostitution and they were taking away all the money which were being paid by her customers. On refusal to get involved in prostitution she was being beaten by the accused persons. She disclosed name of another victim girl who had been taken away by Punam Devi at the time of raid. A case under Sections 346/366A/367/370/370A/372/373/376/120B of the Indian Penal Code, Sections 4/6/12/17 of POCSO Act, Sections 46/12/17 of the Act of 1956, Sections 75/80/81 of the J.J. Act and Section 37(c) of the Bihar Prohibition and Excise Act, 2016 was registered.

6. The writ petition further discloses that the



statement of the victim girl was recorded under Section 164 Cr.P.C. in which the victim girl disclosed that her maternal uncle had solemnized two marriages and his wives are Sunita and Punam respectively. She further disclosed that when police conducted the raid one person was with her in her room, she did not know the name of that person, she disclosed that people were coming to her and they were establishing physical relationship with her and all these are within the knowledge of her maternal uncle and she was doing it voluntarily. In answer to the Court's query she further disclosed that right from her childhood nobody came to meet her, her father has died and lastly she made statement that her mother is residing with her for last one month with whom she wanted to go. She disclosed the name of her mother as one Meena Khatoon. Statement under Section 164 Cr.P.C. was recorded after ten days on 18.02.2020.

7. Ms. Kriti Awasthi, learned counsel for the petitioner has drawn the attention of this Court towards the fact that prior to recording of the statement under Section 164 Cr.P.C. one Mina Khatoon came forward claiming herself mother of the victim girl and filed a petition in the POCSO Court on 12.02.2020 seeking permission to meet the victim in the Balika Grih. On the same date a petition was filed for recording of



statement of the victim under Section 164 Cr.P.C., but the learned Special Judge, POCSO firstly heard the parties on the petition by which Meena Khatoon wanted permission to meet the victim girl in the Balika Grih. The learned Special Judge, POCSO allowed that application and permitted her to meet the victim girl subject to proper identification.

8. Learned counsel submits that at this stage no inquiry at all was made by the learned Special Judge, POCSO, to find out the genuineness of the claim of said Meena Khatoon that she happened to be the mother of the victim and the order was passed in complete violation of the mandatory provision to make inquiry in respect of her age, parentage etc. in terms of sub-section (2) of Section 17 of the Act of 1956. By granting permission to said Meena Kumari to meet the victim girl, an opportunity was given to the accused persons to tutor the victim before recording of her statement under Section 164 Cr.P.C.

9. Since the learned Special Judge, POCSO Court had recorded in his order dated 13.02.2020 that Meena Khatoon would be allowed to meet the victim as per rule upon proper identification, when the Aadhar Card was shown and Photograph of said Meena Khatoon caught on CCTV Camera were displayed to the victim girl, she did not identify her. In this



regard, the Balika Grih, Begusarai informed the learned Special Judge, POCSO Court, Begusarai vide letter no. 324/2020 dated 15.02.2020.

10. Learned counsel submits that on 18.02.2020, a petition was filed on behalf of said Meena Khatoon for release of the victim girl in her favour. On the same day the victim girl was produced before the learned Special Judge, POCSO Court, her statement was recorded under Section 164 Cr.P.C. and thereafter she was sent back to the Balika Grih, Begusarai. On 19.02.2020, an application preferred by said Meena Khatoon for release of the victim girl, the application was taken up for consideration and on the same day the victim girl was handed over to Meena Khatoon (respondent no. 2) by just taking note of the fact that the victim had desired in her statement under Section 164 Cr.P.C. that she wanted to go with her mother.

11. Learned counsel submits that the learned Special Judge, POCSO Court had miserably failed to abide by the mandatory provisions of the various legislations such as the Act of 1956, the J.J. Act and the POCSO Act relating to the protections required to be given to a victim of the crime. It is submitted that the learned court did not follow the principles of *parens-patria* to take care of the best interest of the victim child.



In this regard, Ms. Awasthi, learned Advocate refers Sections 15, 16, 17 and 17A of the Act of 1956 to submit that those are mandatory provisions under which the learned Special Judge, POCSO Court was obliged to conduct an inquiry as to the correctness of the information received under sub-section (1) of Section 16 with regard to the fact that the victim girl was being compelled to fall in prostitution by the accused persons, the age, character and antecedent of the persons. The special Judge was also obliged to conduct an inquiry as to the suitability of the parents and guardians of the victim child and the nature of the influence and the conditions in which the victim child may likely to have face in her home if she is sent there and for this purpose the learned Special Judge was required to direct a Probation Officer appointed under the Probation of Offenders Act, 1958 to enquire into the circumstances. The inquiry includes the inquiry as to prospects of her rehabilitation but in complete disregard to these provisions the learned Special Judge directed release of the victim in favour of respondent no. 2.

12. Ms. Awasthi, further submits that Chapter '6' of the J.J. Act provides the procedure in relation to children in need of care and protection. Victim child in this case was aged below 16 years as per the F.I.R., she could not have consented to be a



party to a crime and as such she was only a victim of the crime, thus, she fell into the category of the child in need of care and protection as defined under Clause (14) of Section 2 of the J.J. Act.

13. Learned counsel submits according to Section 31 of the J.J. Act, the victim girl was required to be produced before the Child Welfare Committee without any loss of time and on production of the child the Committee was required to hold an inquiry in terms of Section 36 of the J.J. Act. Further in terms of Section 37 of the J.J. Act the Committee has to satisfy itself with regard to the placement of the child in a suitable children's home or fit facility or specialized adoption agency for purpose of adoption for long term and temporary care. The Committee would have taken such decision to place a child in the children's home despite the fact that the child may have a family but restoration of child to the family would not be in the best interest of the child.

14. Learned counsel submits that Section 46 of the J.J. Act provides for after care of children leaving child care institution. By virtue of this provision, any child leaving a child care institution on completion of 18 years of age may be provided with financial support in order to facilitate child's



reintegration into the main stream of the society in the manner as may be prescribed. It is her submission that all these provisions of the J.J. Act have been violated with impunity.

15. Learned counsel for the petitioner has drawn the attention of this Court towards some of the provisions of the POCSO Act. It is submitted that in terms of clause (d) of Section 2 of the POCSO Act “child” means any person below the age of 18 years. In this case, admittedly the victim girl was less than 18 years of age and as per allegation she was being subjected to prostitution involving her in sexual act and the offences under the POCSO Act were attracted. Section 24, 25 and 26 of the said Act are with regard to recording of statement of the victim. Proviso to sub-section (1) of Section 25 makes it clear that the provisions contained in the first proviso to sub-section (1) of Section 164 of the Code shall, so far it permits the presence of the Advocate of the accused shall not apply in this case, meaning thereby that while recording the statement of a child under Section 164 Cr.P.C. the Advocate shall not be allowed to be present. Section 27 provides for medical examination of a child in respect of whom an offence has been committed under this Act. Such medical examination is to be conducted by a women doctor.



16. Learned counsel submits that the POCSO Act provides the procedures and powers of the Special Court and it talks of a child friendly atmosphere. It is her submission that in the present case the release of the victim girl in favour of respondent no. 2 by virtue of order dated 19.02.2020 has proved fatal to the interest of the victim child.

17. Ms. Awasthi has submitted that after her release in favour of respondent no. 2 the victim was again taken to the same house of her so-called maternal uncle and on 20th March, 2020 a compromise petition signed by Meena Khatoon (respondent no. 2) was filed before the learned POCSO Court, Begusarai and this compromise petition has been filed through the same and one Advocate namely, Vikash Kumar who is conducting the case on behalf of respondent no. 2. It is her submission that it shows hand and glove among the accused persons and Meena Khatoon (respondent no. 2) who is helping the accused persons in getting rid of the cases.

18. It is further pointed out that the arrested accused persons were produced before the learned Special Court but in their respect also no inquiry was conducted. Had a proper inquiry been conducted in accordance with Section 17(2) of the Act of 1956 the true identity of Mantun Nutt and others could



have been found.

19. Learned counsel has further pointed out in her written submissions before this court that in this case the accused persons obtained bail by suppression of material facts. As regards Meena Khatoon (respondent no.2), it is submitted that she obtained bail by making a false statement before this court in Cr. Misc. No. 22427/2020 that she had no criminal antecedents, whereas the fact is that she is an accused in two cases being case No. 226/2012 and case No. 225/2014 both registered with Bakhri Police Station and in both the cases the trial is under way.

20. Learned counsel has further stated that Sunita Devi another co-accused got bail in Cr. Misc. No. 26730/2020 on the condition that she will cooperate in course of trial and shall be properly represented on each and every date fixed by the court and shall remain physically present as directed by the court and on her absence on two consecutive dates without sufficient reason, her bail bond shall be cancelled by the court below and further that if she tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail. It is submitted that this accused failed to serve a copy of the bail application on the victim and then



having obtained bail she is never present on any of the dates before the trial court and only an exemption application is filed every time on behalf of the accused persons. The victim girl was found again in the house of the accused person after the direction of this court vide order dated 20.07.2021.

21. It is submitted that yet another accused Mantun Nutt has got bail in Cr. Misc. No. 26961/2020 on certain conditions including that he shall not be absent from the trial proceedings on two consecutive occasions without seeking prior permission of the trial court, the submission is that the accused is never present on any of the dates before the trial court and only an application for exemption is being filed on behalf of the accused persons.

22. Learned counsel submits that cancellation of bail has been filed by the complainant against these accused persons, however those are still pending.

23. Learned counsel for the petitioner submits that in course of hearing of this case, after noticing the fact *prima-facie* that the learned Special Judge, POCSO Court, Begusarai had directed release of the victim girl in favour of Meena Khatoon (respondent no. 2), while issuing notice to respondent no. 2, this court called upon the Child Welfare Committee, Begusarai to



take some suitable action to protect the interest of the child. Further as regards the whereabouts of the victim girl, this Court vide its order dated 19.07.2021 directed the Superintendent of Police, Begusarai to inform this court about the whereabouts of the victim girl whose interest is to be protected. On 20.07.2021, this court was informed that the victim girl was found in the house of her maternal uncle who is accused in the case, she was presented before the Child Welfare Committee, Begusarai and the Child Welfare Committee, Begusarai through its Chairman wrote to the Assistant Director, District Child Protection Unit for conducting social audit and also to make investigation of social, economical and family background of the victim girl.

24. It is further pointed out that by virtue of the court's order when a medical board was constituted and the age of the victim girl has been assessed, she has been found aged between 16-17 years, therefore she is still minor and her interest must be protected by passing such appropriate orders as may be deemed just and proper and in accordance with law.

25. It is submitted that considering the nature of the grievances pressed by the petitioner in this application, while passing order in the context of the present case and issuing appropriate directions, the same be brought to the notice of all



the learned courts dealing with the cases of the child victims in order to sensitize them and to take utmost caution while dealing with the cases of the minor victims of crime.

26. Ms. Awasthi has relied upon the Hon'ble Division Bench judgment of this court in the case of **Apne Aap Women Worldwide Trust India and Ors. Vs. The State of Bihar and Ors.** reported in **2015 (1) PLJR 268**; the judgment of Hon'ble Delhi High Court in the case of **Delhi High Court Legal Services Committee Vs. Union of India and Anr. (Crl. Rev. No. 443/2009 & Crl. M.A. No. 3071/2010)** and the two judgments of Hon'ble Bombay High Court in the case of **Prerana Vs. State of Maharashtra and Ors.** reported in **2003(2) MHLJ 105** and in the case of **Arjun Kishanrao Malge Vs. State of Maharashtra and Ors.** reported in **2021 Cri LJ 2269 = (2021) 2 Bom CR (Cri) 677.**

Stand of the the State.

27. In this case, the respondent no. 4 i.e. the Child Welfare Committee, Begusarai has filed a counter affidavit in which it is stated that after the order of this court the Child Welfare Committee directed the concerned authority of the girl's home to place the victim girl and the Bakhri Police brought the victim girl before the Child Welfare Committee, Begusarai.



Counselling of the victim girl was done by the Counselor on 24.07.2021 who submitted a report as contained in Annexure 'A' to the counter affidavit. A perusal of report shows that the victim girl disclosed to the Counselor that she was living with her Mama and Mami from her childhood. She admitted that she was caught earlier while being involved in wrong act but presently she was not involved in any wrong act and for earning her livelihood and the livelihood of her mother (respondent no. 2) she was engaged in stage performance and dancing. The victim girl was handed over to Balika Grih on 20.07.2021 by Begusarai Police and since then she was residing there.

28. An another detailed counter affidavit has been filed by respondent no. 4. It is stated that one social worker has conducted social investigation of the victim as per direction of the Assistant Director, D.C.P.U. Begusarai and according to this report father of the victim has died and she is living with her mother Meena Khatoon, the economic condition of the family is very poor and she is involved in performing stage shows and dance programme.

29. In this case respondent no. 2 has entered appearance and by filing Interlocutory Application being I.A. No. 3/2021 she has prayed for release of the victim in her



favour.

30. Ms. Archana Sinha, learned counsel for respondent no. 2 submits that petitioner has no *locus standi* to maintain this writ application, further the victim has been wrongly put in the remand home even though this court had only directed the Superintendent of Police, Begusarai to inform the court about the whereabouts of the victim whose interest is to be protected. It is submitted that the victim was never produced before the Medical Board for assessment of age of the victim and vide letter no. 313 dated 21.08.2021 the Chairman, Child Welfare Committee requested the Civil Surgeon cum Chief Medical Officer, Begusarai to constitute a medical board for assessment of age of the victim.

31. Contesting the stand of respondent no. 2, learned counsel for the petitioner has contended that the fact that respondent no. 2 is the actual mother of the victim girl is still a mystery and the genuineness of her claim may only be found in a duly constituted inquiry in accordance with law. Learned counsel submits that *locus standi* of the petitioner lies in the fact that this petitioner is the informant of Bakhri P.S. Case No. 58/2020, based on his information only the raid was conducted and the victim girl was rescued, therefore he has a locus standi



to contest the release of the victim girl in favour of respondent no. 2 without following the established procedure of law.

32. It is contended that the victim girl was not major at the time when the offence was being committed upon her and the fact that the victim girl has again been taken to the house of the accused persons against whom she had earlier made statement as recorded in the F.I.R. that she was being compelled to be involved in prostitution. It is submitted that at the stage of 164 Cr.P.C. statement, though the victim claimed that she was doing it voluntarily but given the minor status of the victim what is important is to note her reiteration that she was being subjected to sexual act in the house of the accused persons. Further fact that she is now being engaged in performing stage shows and dances at this age only shows that the interest of the minor is not being taken care of by respondent no. 2. Respondent no. 2 has connived with the accused persons and filed a compromise petition on her own to favour the accused persons.

Consideration

33. Having heard learned counsel for the parties and upon perusal of the records, this court finds that in this case on a bare perusal of the impugned order it appears that the learned



Special Judge, POCSO Court, Begusarai has acted in hot haste in passing the order of release of the victim minor girl in favour of respondent no. 2. This Court agrees with the submission of learned counsel for the petitioner that prima facie the identity of respondent no. 2 as mother of the victim girl is still shrouded by mystery. There is a reason to say so which may be found from the chain of events which are matters of record. In this case, the raid was conducted on 08.02.2020 in the house of the accused who is said to be the maternal uncle of the victim girl, the victim girl was found inside the room with an unknown person, a large number of used condoms and unused condoms with pregnancy test kits etc. were found from there and the victim girl herself admitted before police that she was being subjected to prostitution forcibly and her maternal uncle and aunt were taking away the money. She did not disclose about her parents as she did not know who were her parents. At this stage, the respondent no. 2 did not claim that she happened to be the mother of the victim girl. She was not found there, though at the time of making her statement under Section 164 Cr.P.C. the victim girl claimed that her mother was living with her for last one month. The Statement under Section 164 Cr.P.C. was recorded ten days after she was produced before the Magistrate



after her recovery from the brothel house of her maternal uncle. In the meantime, after about four days respondent no. 2 had filed an application before the learned Special Judge to allow her to meet the victim girl in the Balika Grih, Begusarai which was allowed by the learned Special Judge vide order dated 12.02.2020 subject however to proper identification. The Superintendent, Balika Grih, Begusarai informed the learned Special Judge that respondent no. 2 could not be identified in CCTV Camera by the victim girl. This letter of the Superintendent, Balika Grih, Begusarai should have been an eye opener for the learned Special Judge, POCSO because by that time the victim girl had not been approached, she could not be tutored and therefore she had not recognized respondent no. 2. In such circumstance after six days from 12.02.2020 if the victim girl had disclosed the name of her mother as Meena Khatoon (respondent no. 2), there is a possibility that during these six days the accused persons would have been able to influence her to make statements favourable to the accused, but these are *prima-facie* views of this court only to conclude that these were the circumstances which would have made the learned Special Judge, POCSO Court to take up the application for release of the victim girl in favour of respondent no. 2 with



more circumspection and care.

34. Sub-Section (4) and Sub-Section (5) of Section 15, Section 16 and Section 17(1) and 17(2) as also Section 17A of the Act of 1956 are quoted hereunder for a ready reference:

“15(4) The special police officer or the trafficking police officer, as the case may be, entering any premises under sub-section (1) shall be entitled to remove therefrom all the persons found therein.

15(5) The special police officer or the trafficking police officer, as the case may be, after removing the person under sub-section (4) shall forthwith produce him before the appropriate Magistrate.

16. Rescue of person—(1) Where a Magistrate has reason to believe from information received from the police or from any other person authorised by the State Government in this behalf or otherwise, that—

any person is living, or is carrying on, or is being made to carry on, prostitution in a brothel, he may direct a police officer not below the rank of a sub-inspector to enter such brothel, and to remove therefrom such person and produce him before him.

(2) The police officer, after removing the person, shall forthwith produce him before the Magistrate issuing the order.

17. Intermediate custody of persons removed under section 15 or rescued under section 16.—

(1) When the special police officer removing a person under sub-section (4) of section 15 or a police officer rescuing a person under sub-section (1) of section 16, is for any reason unable to produce him before the appropriate Magistrate as required by sub-section (5) of section 15, or before the Magistrate issuing the order under



sub-section (2) of section 16, he shall forthwith produce him before the nearest Magistrate of any class, who shall pass such orders as he deems proper for his safer custody until he is produced before the appropriate Magistrate, or, as the case may be, the Magistrate issuing the order:

Provided that no person shall be—

- (i) detained in custody under this sub-section for a period exceeding ten days from the date of the order under this sub-section; or
- (ii) restored to or placed in the custody of a person who may exercise a harmful influence over him.

(2) When the person is produced before the appropriate Magistrate under sub-section (5) of section 15 or the Magistrate under sub-section (2) of section 16, he shall, after giving him an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received under sub-section (1) of section 16, the age, character and antecedents of the person and the suitability of his parents, guardian or husband for taking charge of him and the nature of the influence which the conditions in his home are likely to have on him if he is sent home, and, for this purpose, he may direct a probation officer appointed under the Probation of Offenders Act, 1958 (20 of 1958), to inquire into the above circumstances and into the personality of the person and the prospects of his rehabilitation.

17-A. Conditions to be observed before placing persons rescued under section 16 to parents or guardians—Notwithstanding anything contained in sub-section (2) of section 17, the Magistrate making an inquiry under section 17 may, before passing an order for handing over any person rescued under section 16 to the parents, guardian or husband, satisfy himself about the capacity or genuineness of the



parents, guardian or husband to keep such person by causing an investigation to be made by a recognised welfare institution or organisation.”

35. Section 17(2) casts an obligation *inter-alia* upon the learned court before whom the victim has been produced to protect his/her interest. The Court is required to conduct an inquiry as to the correctness of the information received under sub-section(1) of Section 16, the age, character and antecedents of the person and the suitability of his parents, guardian or husband for taking charge of him and the nature of the influence which the conditions in his home are likely to have on him if he is sent home and for this purpose the court may direct a Probation Officer appointed under the Probation of Offenders Act, 1958 to enquire into the above circumstances and into the personality of the person and the prospects of his rehabilitation.

36. Here the word ‘he’ and ‘him’ is required to be read as ‘she’ and ‘her’. The victim in this case is a girl child. She was produced before the learned Magistrate but unfortunately no inquiry as to her age was ordered, no medical examination in terms of section 27 of the POCSO Act was ordered and despite the fact that the victim was the child and she would fall in the category of a child in need of care and protection as envisaged under clause 14 of section 2 of the J.J.



Act, she was not sent to be produced before the Child Welfare Committee under the provisions of Section 31 of the J.J. Act. A child in need of care and protection was necessarily required to be produced before the Committee whereupon the Committee would have proceeded to place her in the children's home or shelter home or a fit facility or with a fit person and would have directed for social investigation etc. The committee was also competent in terms of clause (c) of sub-Section (1) of Section 37 of the J.J. Act to satisfy itself whether to place the victim child with respondent no. 2 or not and that what would be in the best interest of the child.

37. The arrested persons who were produced before the learned Magistrate/Special Court, in their respect also inquiry was required to be held, but as it appears no inquiry as envisaged under Section 17(2) of the Act of 1956 was held.

38. Ms. Kriti Awasthi, learned counsel for the petitioner has relied upon the Hon'ble Division Bench judgment of this Court in the case of **Apne Aap Women Worldwide Trust India and Ors. Vs. The State of Bihar and Ors.** reported in **2015 (1) PLJR 268**. In this case the Hon'ble Division Bench was considering the prayer of the petitioner to direct the respondents to carry out their constitutional



obligations enshrined under Article 23 of the Constitution by strictly enforcing the provisions of the Act of 1956 and to conduct operations in red light area/other areas in presence of women social worker, to direct the State respondents to appoint Special Police Officers not below the rank of Inspector for dealing with the offences under the Act of 1956 and to maintain the victims rescued in shelter homes certified by the State Social Welfare Department as per IT(P)A norms. Further prayer was made in the writ petition to direct the respondents to enforce the directions of the Hon'ble Supreme Court issued in the case of Budhadev Karmaskar v. State of West Bengal reported in AIR 2011 SC 2636. After taking note of the fact that India became signatory and ratified International Convention for the suppression of immoral traffic in persons and the exploitation of the prostitution of others at New York on 09.05.1950, enacted suppression of immoral traffic in Women and Girls Act, 1956 for punishing those who indulge in trafficking of women and girls for immoral purposes. Later, India became signatory and ratified the convention for elimination of all forms of discrimination against women. It provides for prohibition of discrimination against women in all its forms. Later the legislatures amended the nomenclature of the aforesaid Act by



enacting Amending Act No. 44 of 1986 providing for substitution of words “Suppression of Immoral Traffic of Women and Girls” from the nomenclature of the said Act with the word “Prevention” to provide for prevention of trafficking and rehabilitation of victims by ensuring minimum standard for correctional treatment as also to make the Penal provisions more stringent.

39. The Hon’ble Division Bench, in the case of ‘Apne Aap’ further recorded that “India having ratified U.N. Convention on the right of Child in 1992 prescribing a set of standards to be adhered by all State functionaries in securing the best interests of the child and for giving effect to the relevant constitutional provisions of Article 39, 45 and 47 imposing primal responsibility on the State and its functionaries to ensure due care and protection to every child so that his basic needs during childhood is fulfilled and his childhood is not only protected but he is able to grow realizing his full potentiality, enacted the Juvenile Justice (Care and Protection of Children) Act, 2000. Having enacted the aforesaid Act respondent no. 9 adopted National Charter for Children in February, 2004 underlining intent to secure for every child its inherent right to be a child and enjoy healthy, happy childhood to address the



root causes that negate the healthy growth and development of children.”

40. Thereafter, the Hon’ble Division Bench issued number of directions which are contained in paragraph 25, 26, 27 and 28 of the judgment. The relevant parts under which the directions of the Hon’ble Division Bench are contained are being reproduced as under:

“**25.....** In order to provide better and longer educational facility to the girls Government should upgrade Kasturba Gandhi Balika Vidyalaya from Class-VIII to XII as early as possible, in any case, within a reasonable time so that girl child of those who are marginalized or disadvantaged may have longer period of time to learn, study in a residential school. The District Magistrate of each district may also not grant licence for travelling theatre or Nautanki. It shall be the responsibility of District Magistrate, Superintendent of Police of each revenue, police district to maintain the list of Non-Government Organisation, social workers engaged, serving in connection with rescue, rehabilitation of trafficked victim for the needful.

26.(i) To eliminate the menace of trafficking for sexual purposes there should be regular raid/ search and rescue from brothel(s) as defined under Section 2(a) of the Act as also in other premises wherever women, children are in distress by the Special Police Officers appointed under Section 13 of the Act and duly trained so that while conducting search they comply with the requirement of sub-section (2) of Section 15 of the Act and conduct search of the premises in presence of two or more respectable inhabitants of the area. One of whom should



be a woman need not be a resident of the same area. During search Special Police Officer leading the search party should also observe the mandate of sub-section (6A) of Section 15 of the Act which require the raiding team to consist of at least two women police officers. In case, women or girl removed from the searched premises is required to be interrogated, interrogation must be made by a woman police officer. If no woman police officer is available, interrogation be done only in presence of a lady member of a recognized welfare institution/ organization. Special Police Officer leading the team to conduct search should also ensure production of the person removed under Section 15 or rescued under Section 16 within the time provided for production under Section 17 of the Act. Learned Magistrate/ Special Judge while conducting enquiry in terms of Section 17 of the Act before passing order for interim custody of the person rescued under Section 16 of the Act in favour of the parents, guardian, husband must satisfy himself to the hilt about the capacity or genuineness of the parents, guardian, husband to keep the rescued person by causing investigation to be made by a recognized welfare institution or organization or P.R.I. representatives.

(ii) The rescued victim shall be placed in Reception/ One Stop Crisis/ Nirbhaya Centre and attended to by the Trauma Counsellor followed by her medial examination after placing the victim before C.W.C. in case, the victim is a child.

(iii) The Government shall notify the Standard Operating Procedure (SOP) for safe rescue, care, protection and rehabilitation of trafficked victim within one month from the date of this judgment.

(iv) It shall be the responsibility of the Director General of Police, Bihar and I.G. Weaker Section to draw annual calendar for training of the Special Police Officers and



other police officers dealing with the offences of human trafficking, as provided under amended Sections 370, 370-A of the Penal Code on regular basis for ensuring better handling, registration, investigation of the trafficking cases to deter the traffickers from indulging in trafficking of human being. It shall be the responsibility of the Director, Bihar Judicial Academy to provide a slot for training of Judicial Magistrate/ Special Judge dealing with trafficking cases in its Annual Calendar so as to acquaint them with the nuances of the provisions of Sections 15, 16, 17, 17-A of the Act for better handling, disposal of the cases relating to trafficking.

27. In order to protect, provide vocational training to the trafficked victims Social Welfare Department should establish adequate number of Protective Homes, Corrective Institutions in each district of the State. To begin with the Department must establish one Protective Home, Corrective Institution and One Stop Crisis/ Nirbhaya Centre in each district as early as possible, in any case within a reasonable time. The Protective Home, Corrective Institution, One Stop Crisis/ Nirbhaya Centre must be managed by a person or authority who is licensed under sub-section (3) of Section 21 of the Act with the help of trained staff. It shall be the responsibility of the Welfare Department/ Directorate and the Licensing Authority to ensure that the person managing the Protective Home, Corrective Institution does not violate any of the terms of the licence. Rescue of the trafficked victim is meaningless if the victim is not provided protective care, vocational training to enable her to stand on her own feet and become economically self reliant. In absence of adequate vocational training the rescued victim is again likely to go back in the same black hole from where she has been rescued. Reference in this connection is made to the case of Raushni Khatoon,



daughter of Md. Luna Master and victim of Mahila Police Station (Araria) Case No. 40/13 dated 03.12.2013. It shall be the responsibility of the Directorate of Social Welfare to ensure regular training of the Assistant Director and other care givers working in Protective Homes, Corrective Institutions and One Stop Crisis/ Nirbhaya Centre. The trafficked victims be issued identity card like B.P.L., AADHAR etc. which will immediately link her to the various social security schemes of the Government including housing scheme.

28. For successful prosecution of the trafficker, it is necessary that the cases registered under the Act are investigated by the Special Police Officer and also prosecuted before the Special Court constituted under Section 22-A of the Act within a time frame so as to ensure that the prosecution witnesses do not become hostile. From Paragraph 7 of the supplementary counter affidavit filed on behalf of respondent no. 2, it appears that Special Courts for trial of cases instituted alleging offences under the Act have already been notified. It shall be the responsibility of the Special Court concerned to take up trial of the cases alleging offences under the Act on priority basis so as to conclude the same within shortest possible time. During investigation, trial trafficked victim be allowed the services of Para-Legal Volunteer as also panel lawyer to avoid any harassment, legal expenses by her and for ensuing such services to the victim District Legal Services Authority concerned be alerted about registration of the case no sooner the same is registered by the Police Station as also by the Special Court after receipt of the First Information Report by it.”

41. Learned counsel has also relied upon the judgment of Hon’ble Delhi High Court in the case of **Delhi**



High Court Legal Services Committee Vs. Union of India and Anr. (Crl. Rev. No. 443/2009 & Crl. M.A. No. 3071/2010), in this case the Hon'ble Delhi High Court was considering a challenge made to the order passed by the Metropolitan Magistrate with regard to custody of two minors recovered in police actions in violation of the provisions of Section 17(A) of the Act of 1956 and other related provisions. The petition was filed by the Delhi High Court Legal Services Authority as per the mandate. In the said case also one person was claiming to be the father of one of the young girls who had been compelled into prostitution, filed an application before the Metropolitan Magistrate seeking her custody. The learned Magistrate scrutinized the voters list, identification card, ration card and transfer certificate of the applicant, there was no objection by the Investigating Officer, therefore the learned Magistrate handed over the custody of the child to the father. No inquiry at all was held in terms of the provisions of the Act of 1956.

42. While considering the said case it was argued before the Hon'ble Delhi High Court that in the case of **Kumari Sangeeta Vs. State and Another** reported in **1995 JCC 509** the contention that the use of expression 'may' under Section 17(5)



of the Act of 1956 gave ample option and latitude to the Magistrate and left it to his judicial discretion to avail the services of five persons for the purposes of discharging functions under the said Act or to ignore the same was rejected. The Hon'ble Court observed that having regard to the well established principles of legislative interpretation, the word 'may' in Section 17(5) of the Act is to be read as 'shall' and that the legislature has used the same in mandatory sense. The inquiry under sub-section (5) was therefore mandatory and the statutory provision was not merely an enabling one. In conclusions the Hon'ble Delhi High Court held as under:

“(i) A child is incapable of giving consent and any sexual behavior or activity involving a child renders the participating adult open to stringent penal action under several enactments. No penal liability vests on the child for the same.

(ii) A bare reading of the statutory provisions, International Conventions & Treaties as well as the available jurisprudence manifests the statutory intendment that such child (i.e. a child found begging is a street child, a working child or a child being or likely to be grossly abused, tortured, or exploited for the purpose of sexual abuse or illegal acts as well as a CrI Rev. No. 443/2009 & CrI. M.A. No.3071/2010 163 child who is found vulnerable and likely to be inducted into drug abuse or trafficking) is not to be treated as an offender but is only to be treated as a victim hence as a child in need of care and protection' within the meaning of the expression under the



JJ Act.

(iii) A person under the age of eighteen years, if found involved in any aspect of trafficking or prostitution, within the meaning of the expression in the IT Act, 1956, or is rescued in police action under Section 15/16 of the IT Act cannot be treated as a juvenile in conflict with law as defined Section 2(1) and has to be treated as a child in need of care and protection as defined under section 2(d) of the JJ Act, 2000.

(iv) Notwithstanding the provisions of Section 17 and 17(A) of the Immoral Traffic (Prevention) Act, 1956 by virtue of Section 31(1) and 39(3) of the Juvenile Justice (Care and Protection of Children) Act, 2000, it is only the Child Welfare Committee constituted under Section 29 of the enactment which has the final authority in respect of the custody and restoration of a child victim - a child in need of care and protection. Crl Rev. No. 443/2009 & Crl.M.A.No.3071/2010 164.

(v) If a person rescued by the police under the IT Act, 1956 and produced before the Magistrate appears to be under 18 years of age, such person must forthwith be transferred to the Child Welfare Committee which shall proceed in the matter in accordance with the provisions of Sections 30, 31, 33 and other relevant provisions. If the child is found to be hailing from a place outside the jurisdiction of the Committee, the Committee shall ensure compliance with the provision of Section 38 of the JJ Act, 2000.”

43. Reliance has also been placed from the judgment of Hon’ble Bombay High Court in the case of **Prerana v. State of Maharashtra and Ors.** reported in **2003(2) MHLJ 105**. The directions issued in the said case are being reproduced as under:



“37. We feel that the following directions may prevent recurrence of such events in future.

(A) No Magistrate can exercise jurisdiction over any person under 18 years of age whether that person is a juvenile in conflict with law or a child in need of care and protection, as defined by Section 2(1) and 2(d) of the Juvenile Justice (Care and Protection of Children) Act, 2000. At the first possible instance, the Magistrates must take steps to ascertain the age of a person who seems to be under 18 years of age. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a juvenile in conflict with law, or to the Child Welfare Committee if such a person is a child in need of care and protection.

(B) A Magistrate before whom persons rescued under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place are produced, should, under Section 17(2) of the said Act, have their ages ascertained the very first time they are produced before him. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a Juvenile in conflict with law, or to the Child Welfare Committee if such person is a child in need of care and protection.

(C) Any juvenile rescued from a brothel under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place should only be released after an inquiry has been completed by the Probation Officer.

(D) The said juvenile should be released only to the care and custody of a parent/guardian after such parent/guardian has been found fit by the Child Welfare Committee to have the care and custody of the rescued



juvenile.

(E) If the parent/guardian is found unfit to have the care and custody of the rescued juvenile, the procedure laid down under the Juvenile Justice (Care and Protection of Children) Act, 2000 should be followed for the rehabilitation of the rescued child.

(F) No advocate can appear before the Child Welfare Committee on behalf of a juvenile produced before the Child Welfare Committee after being rescued under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place. Only the parents/guardian of such juvenile should be permitted to make representations before the Child Welfare Committee through themselves or through an advocate appointed for such purpose.

(G) An advocate appearing for a pimp or brothel keeper is barred from appearing in the same case for the victims rescued under the Immoral Traffic (Prevention) Act, 1956.”

44. Learned counsel has further relied upon the Hon’ble Division Bench judgment of the Bombay High Court in the case of **Arjun Kishanrao Malge v. State of Maharashtra and Ors.** Reported in **(2021) 2 Bom CR (Cri) 677 = 2021 Cri LJ 2269**; paragraph 15, 17, 18, 19, 20 and 21 are being reproduced as under:

“**15.** On a conjoint reading of Section 40 of the POCSO Act read with Rule 4 of the POSCO Rules the legislative mandate is that of complete information to be made available, of all the proceedings and its progress in relation to the offences under the said Act, to the parent



or the guardian of the child, with the sole object to safeguard the interest and well being of the child at every stage of the judicial process, to give effect to the mandate of Articles 15 and 39 of the Constitution. On behalf of the petitioner, we have been shown several orders passed by the Courts trying such offences. We see from such orders, that the concerned Courts have completely overlooked the mandate of Section 40 of the POCSO Act read with Rule 4 of the POCSO Rules.

17. In our opinion, the petitioner is correct in his contention, also referring to the provisions of Section 439 of the Cr.P.C and the amendment made thereto by incorporation of Sub-section (1A) [(by Act 22 of 2018) with effect from 21 April 2019] stipulating that "the presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code." It needs to be noted that such provisions of the Indian Penal Code, 1860 referring to sub-section (1A) of Section 439 of the Cr.P.C. are in relation to the offences under sub-section (3) of Section 376 or Section 376AB or Section 376DA or Section 376DB of the IPC which relate to children. We thus find ourselves in agreement with the contention of the petitioner that akin to the offences which fall under the Indian Penal Code as set out in subsection (1A) of Section 439 of Cr.P.C., with respect to applications for bail under the POCSO Act, the presence of the informant or any person authorised by him shall be made obligatory at the time of hearing of the application for bail. This would certainly be in consonance with the object of Section 40 of the POCSO Act read with Rule 4(13) and 4(15) of the POCSO



Rules. To such extent, we also find ourselves, in agreement with the directions of the Delhi High Court in its orders as noted above.

18. It would be apposite to refer to the decision of the Supreme Court in *Eera Through Dr. Manjula Krippendorf Vs. State (NCT of Delhi) and Anr.* (2017)15 SCC 133 in which the Supreme Court observes that the purpose of bringing such legislation, is to secure the best interest of the child pertaining to the offences against the children. It is held that the interest of the child both as victim as well as witness need to be protected and the stress of the legislation is providing a child friendly procedure, and that the dignity of the child is of immense emphasis, in the scheme of the legislation.

19. The importance of this legislation in the context of the directions which were issued in regard to the speedy disposal of such cases and the sensitivity required in the adjudication of such cases can also be seen from the following observations as made by the Supreme Court in *Alakh Alok Srivastava Vs. Union of India & Ors.* (2018)17 SCC 291:-

“20. Speaking about the child, a three-Judge Bench in *M.C.Mehta V. State of T.N.* (1996)6 SCC 756 , opined that: (SCC p.759, para 1)

“1. ... “child is the father of man”. To enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must received education, acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned.”



21. The Supreme Court Women Lawyers Assn. Vs. Union of India, (2016)3 SCC 680, this Court has observed: (SCC p.685, para 9)

“9. In the case at hand, we are concerned with the rape committed on a girl child. As has been urged before us that such crimes are rampant for unfathomable reasons and it is the obligation of the law and lawmakers to cultivate respect for the children and especially the girl children who are treated with such barbarity and savageness as indicated earlier. The learned Senior Counsel appearing for the petitioner has emphasised on the obtaining horrendous and repulsive situation.”

22. Alice Miller, a Swiss psychologist, speaking about child abuse has said:

“Child abuse damages a person for life and that damage is in no way diminished by the ignorance of the perpetrator. It is only with the uncovering of the complete truth as it affects all those involved that a genuinely viable solution can be found to the dangers of child abuse.”

23. Keeping in view the protection of the children and the statutory scheme conceived under the POCSO Act, it is necessary to issue certain directions so that the legislative intent and the purpose are actually fructified at the ground level and it becomes possible to bridge the gap between the legislation remaining a mere parchment or blueprint of social change and its practice or



implementation in true essence and spirit is achieved.”

20. We are thus of the clear opinion that the POCSO Act read with Rules 4(13) and 4(15) of the POCSO Rules recognize a statutory entitlement to the assistance of and representation by legal counsel for the family or the guardian of the child and entitlement to be present and to participate in proceedings in accordance with the said provision. As a necessary corollary, there is also an entitlement of such persons to be made aware of the filing of applications and the hearings scheduled on such applications at the various stages of the proceedings. We are accordingly inclined to dispose of the petition with the following directions:-

(i) Notwithstanding the duty of the SJPU to intimate the child’s family or guardian or the legal counsel under Rule 4 of the POCSO Rules:-

"a. where an application is made before the Court on behalf of the prosecution, it shall be the duty of the office of the public prosecutor to issue notice of hearing of such application to the child’s family or as the case may be, the guardian, and where a legal counsel on behalf of the child is already on record, to such legal counsel, along with all relevant documents and the record necessary for effective participation in the proceedings;

b. when an application is made before the Court on behalf of the accused, it shall be the duty of the accused to issue notice of hearing of such application to the child’s family or as the case may be, the guardian, and where a legal counsel on behalf of the child is already on record, to such legal counsel, along with all relevant documents and the record necessary for effective



participation in the proceedings."

(ii) When an application is made on behalf of the prosecution, it shall be the duty of the Police Officer to confirm to the relevant Court that service of such application alongwith all relevant documents and the record necessary for effective participation in the proceedings, and the notice of hearing has been undertaken and completed along with proof of service.

(iii) In the event, it has not been possible to serve the child's family, guardian or legal counsel, it shall be the duty of the SJPU to inform the reasons in writing to the relevant court.

(iv) The appropriate Court, before proceeding to hear the application, shall ascertain the status of service of notice, and if it is found that notice has not been issued, the Court may make such reasoned order as it deems fit to secure the ends of justice, taking into account any emergent circumstances that warrant dealing with the application in the absence of the child's family or guardian or legal counsel.

(v) In the event despite issuance of notice, the child's family, guardian or legal counsel, does not attend the hearing, the Court may proceed further without the presence of such noticee, or issue a fresh notice, as the Court may deem fit and proper, considering the interest of justice.

(vi) When the proceedings under the Act would also relate to an offence against Sections 376(3), 376-AB, 376-DA or 376-DB of the Indian Penal Code, 1860, the notice to the victim shall be issued under Section 439(1-A) read with Rule 4(13) and 4(15).

(vii) This order shall be brought to the notice of all the Sessions Judges and Special Court Judges in the State of



Maharashtra.

21. A copy of this order be forwarded to the Director General of Police, the Director of Prosecution, State of Maharashtra, and the Superintendent of Police of each of the districts in the State of Maharashtra, so that all the concerned police personnel dealing with such offences are appraised of the directions for effective implementation of the POCSO Act and the Rules as noted above. It be also forwarded to the Member Secretary, Maharashtra State Legal Services Authority, who shall forward the same to the Secretary of each District Legal Services Authority within the State.”

45. Learned Special Judge has completely erred in abiding by the mandatory provisions of law as discussed hereinabove. The learned Special Judge, Begusarai had passed the order dated 19.02.2020 on the basis of the desire of the victim girl as expressed in her 164 Cr.P.C. statement. At this stage, the learned court did not appreciate that the child who was being placed in the hand of respondent no. 2 was victim of alleged immoral trafficking as she had categorically stated before Police that she was being subjected to prostitution forcibly. In her 164 Cr.P.C. statement she admits that she was involved in the act of prostitution, though at this stage she tried to save the accused by saying that she was doing it voluntarily, the fact remains that she is minor and was found engaged as alleged in sexual act inside the house of the accused persons. In



such circumstances, it was all the more necessary for the learned Special Judge to treat the victim girl as a child in need of care and protection and she should have been ordered to be produced before the Child Welfare Committee.

46. The order impugned, thus, suffers from illegalities and infirmities rendering the order illegal and bad in law as also against the interest of the victim child.

47. The fact that victim child has been recovered again from the house of the accused persons of Bakhri P.S. Case No. 58/2020 and the report of social worker saying that at this stage of her life she being subjected to perform dance and stage shows to earn her livelihood and also the livelihood of her mother further shows that she is in need of care and protection. In result, the impugned order is liable to be set-aside and is accordingly set-aside.

48. Presently the victim girl is with the Balika Grih at Begusarai, the medical Board had assessed her age between 16-17 years, therefore, this Court is of the considered opinion that until she attains majority, she would continue to stay in the Balika Grih itself. After she attains the age of 18 years, her release would be considered in terms of Section 46 of the J.J. Act with financial support in order to facilitate her reintegration



into the mainstream of the society. The Balika Grih,(Respondent no.4) Begusarai shall work out for the rehabilitation of the victim girl and shall take such measures for this purpose as may be required and in accordance with law. Paragraph '27' of the judgment in the case of '**Apne Aap Women**'(Supra) be referred to.

49. Learned counsel for the petitioner has highlighted in her written notes of submission that the accused persons of the Bakhri P.S. 58 of 2020 have obtained bail by concealment of criminal antecedents and some of them are not abiding by the conditions on which bails have been granted. No opportunity of hearing was given to the victim. Since the petitioner has already taken steps for cancellation of bail, this Court need not enter into this issue as the remedies are open for the petitioner and he is always at liberty to invoke the remedies available to him.

50. So far as the learned trial court is concerned, it is certainly the duty of the learned trial court to ensure that the accused who has been granted bail do not indulge in tampering with the evidence and influence the witnesses as also they abide by the conditions of bail. The fact that the victim girl was taken to the house of the accused persons by respondent no. 2 and the respondent no. 2 has filed a compromise petition signed by herself through the learned Advocate who is representing the



accused persons *prima-facie* shows that in this case the accused persons are indulging in tampering with the evidence and influencing the minor victim of crime to get rid of the case. A lawyer who is representing the accused is said to be engaged by respondent no. 2 as well who has signed the compromise. This is all against the interest of the victim and *de hors* to the aim and object of the legislations. The trial court is, thus directed to examine this aspect of the matter seriously taking into consideration the circumstances in which the victim girl has been recovered from the house of the accused, however, it would be an independent consideration by the learned trial court and decision in this regard must be taken in accordance with law. The trial court, shall pass all such orders which may be necessary to protect the victim girl who is an important witness of the case. The Trial Court shall ensure that the accused persons and their pairvikar do not get access to the victim girl. Proper inquiry in accordance with law as to the genuineness of the claim of respondent no. 2 be held as early as possible.

51. In case, the learned Magistrate/trial court as the case may be, finds that any of the accused has obtained bail by concealment of his criminal antecedents before this court, such information be sent to the learned Registrar General of this



Court to enable him to place such matters before the Hon'ble Court after seeking permission of Hon'ble the Chief Justice.

52. Necessary instructions be given to the Superintendent of the Balika Grih, Begusarai to provide protection to the victim besides giving her opportunities to participate in vocational courses for purpose of rehabilitation.

53. Having discussed the constitutional mandates and some of the judicial pronouncements on the subject as also the various provisions of the Act of 1956, the J.J. Act and the POCSO Act, this Court deems it just and proper to once again sensitize all the stake holders such as the State through it's Chief Secretary, the Home Secretary and the Director General of Police, Bihar as also the judicial officers across the State of Bihar, Bihar State Legal Services Authority and the District Legal Services Authority. The stake holders are directed to ensure that they look into the mandatory provisions of the aforesaid statutes whose aim and objects are to protect the child from all kinds of exploitations. The Chief Secretary, Home Secretary and the Director General of Police, Bihar shall convene a joint meeting at their end to assess as to what are the requirements of laws which the State is obliged to fulfill and thereafter these authorities shall examine that as to what extent



till date the State has been able to meet the expectation of these legislations. What are those areas which are required to be addressed in terms of the provisions of the acts be clearly identified, minuted and a monitoring cell be constituted for ensuring that those left out areas be duly addressed and the mandate of the legislations are fully complied with. Such joint meeting must be held within a period of one month from the date of receipt/production of a copy of this judgment. A copy of this judgment be sent to these authorities separately.

54. The Bihar State Legal Services Authority shall examine as to what extent the directions issued by the Hon'ble Division Bench of this Court in the case of Apne Aap Women (supra) have been complied with. If the directions issued thereunder have not been acted upon, the Bihar Legal Services Authority shall bring it to the notice of Hon'ble the Chief Justice of this Court to consider registering an appropriate proceeding to monitor the implementation of those directions. While examining these issues, it will be open for the State Legal Services Authority to call upon any of the stake holders from the State to provide all such information which may be necessary and also to participate in the meeting, if any, held by the State Legal Services Authority for this purpose.



55. A copy of this judgment be sent to all the learned District Judges in the State of Bihar with a request to organize a workshop in their respective Judgeship with all the judicial officers and Members of the J.J. Board and the Child Welfare Committee present to discuss the laws on the subject and ensure compliances therewith. Request be also made to the Director, Bihar Judicial Academy, Patna to place it before the Hon’ble Governing Body of the Academy to consider incorporating these subjects in the annual programmes of the Academy.

56. Let a copy of this order be sent to all the stake holders as discussed above.

57. This writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	02.11.2021
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