



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.1005 OF 2023 WITH
CRIMINAL APPLICATION NO.2713 OF 2023

Aniket s/o Shahadev Labade
Age 24 years, Occu. Education/ Driver
R/o Bhatodi Pargaon, Taluka and
District Ahmednagar

... **APPLICANT**

VERSUS

1. State of Maharashtra
through Ahmednagar Police Station,
Ahmednagar.
2. X.Y.Z.
(Name and address of the mother of victim
is furnished in the sealed envelope)

... **RESPONDENTS**

(Copy of respondent No.1 is to be served
upon the office of the learned Public Prosecutor,
High Court of Bombay, Bench at Aurangabad)

.....
Mrs. Rashmi S. Kulkarni, Advocate with
Ms Namita P. Thole, Advocate for applicant
Mr. A.B. Girase, Public Prosecutor for respondent No.1 – State
Ms. Sangita Sambre, Advocate for respondent No.2 (appointed)

.....

**CORAM : MANGESH S. PATIL,
SMT. VIBHA KANKANWADI &
R.G. AVACHAT, JJ.**

Date of reserving judgment : 08th DECEMBER, 2023

Date of pronouncing judgment : 19th DECEMBER, 2023

JUDGMENT (PER R.G. AVACHAT, J.) :

Learned Single Judge of this Court, relying on Rule 8
of Chapter I of the Bombay High Court, Appellate Side, Rules,

1960, requested the Honourable the Chief Justice to refer the following two issues for decision, by a Bench of two or more Judges. This is how the matter has been referred to this Full Bench for deciding the issues :

- (i) Whether interpretation that Section 42-A of POCSO Act shall prevail over Section 14-A of Atrocities Act, in the matter of grant or refusal of bail, would result into abrogating right of victim, to prefer an appeal under Section 14-A of Atrocities Act against grant of bail to accused ?
- (ii) Whether such interpretation is sustainable having regard to intention of legislature in providing participation of victim and witness of atrocities at all stages of proceedings under Atrocities Act, with specific provision of Section 14-A thereof ?

2. The facts, in brief, giving rise to this reference are as follows :

A crime vide C.R. No.214/2023 was registered against one Aniket Labade for offences punishable under Sections 363, 376, 376(3) of the Indian Penal Code and Sections 3 and 4 of the Protection of Children from Sexual Offences Act (hereinafter referred to as the POCSO Act for short) with Nagar Taluka Police Station, Taluka and District Ahmednagar. Later on, Section 3 of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989 (hereinafter referred to as the S.C. & S.T. Act for short) came to be additionally invoked. His application under Section 438 of the Code of Criminal Procedure (Cr.P.C. for short) was turned down by Additional Sessions Judge, Ahmednagar vide order dated 17/6/2023. He, therefore, preferred application under Section 438 of the Cr.P.C., to this Court. While hearing the application, the informant/ mother of the victim raised objection as to maintainability of the said application. It was her contention that, in view of Section 14-A(2) of the S.C. & S.T. Act, since remedy of appeal is provided against an order of grant or refusal of bail, the application under Section 438 or 439 of Cr.P.C. was not maintainable. In support of her submissions, reliance was placed on amendment to Section 18 and newly introduced Section 18-A of the S.C. & S.T. Act. On hearing learned counsel for the parties to the application, learned Single Judge has been pleased to make the reference.

3. Learned Single Judge is of the view that the Division Bench of this Court in case of **Gorakshnath @ Samadhan Navnath Pagar Vs. The State of Maharashtra & anr. (Criminal Appeal No.362/2021)** and the Madhya Pradesh High Court in case of **Pramod Yadav Vs. State of Madhya Pradesh & ors. (Criminal Appeal No.5180/2020)**, appear to have not considered the vital aspect that introduction of Section 14-A is later in point of time to introduction of section 42-A of the POCSO Act. Moreover,

learned Single Judge observed in paragraph No.11 of the order dated 10/8/2023 as under :

“The importance of Section 14-A of the Atrocities Act of providing appeal against any order cannot be ignored by branding it as a procedural aspect, in view of Section 15-A of the Atrocities Act. By Amendment Act 1 of 2016, Chapter IV A came to be introduced to Atrocities Act, creating right in favour of victims and witnesses. A fruitful reference can be made to the relevant provisions of Section 15-A as under :

Section 15A :

- (1) xxx
- (2) xxx
- (3) xxx
- (4) xxx
- (5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.

It is thus clear that this provision recognises rights of victim and witness, and they shall have the right to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceeding. Undisputedly, an unequivocal right has been vested in the victim even to prefer an appeal under Section 14-A against the order of grant of bail. If the interpretation as done in judgments cited supra about maintenance of application against refusal of bail is accepted, then on the same analogy, victim would not be allowed to prefer an appeal against even order of grant of bail to the accused and will be required to file application for cancellation of bail under Section 439(2) of Code of Criminal

Procedure. Needless to record that the principle made applicable in case of order of refusal of bail shall apply with same rigour to the case where bail is granted to the accused. Thus, it will amount to taking away valuable right vested by Statute in the victim to prefer appeal against such order, in case, such interpretation is adopted.

4. Heard. Mrs. Rashmi Kulkarni, learned counsel representing the applicant – Aniket first referred to Articles 13, 15 and 39 of the Constitution of India. She also brought to our notice the United Nations Convention on Child Rights. She then heavily relied on a judgment of Allahabad High Court in case of **Rinku Vs. State of Uttar Pradesh (Criminal Misc. Bail Application No.33075 of 2018)**. She first took us through certain paragraphs of the judgment and then relied on a host of the following authorities, to ultimately submit that, in a case wherein offences under both, POCSO Act and S.C. & S.T. Act are charged, it would be the Court constituted under Section 28 of the POCSO Act to have jurisdiction to inquire into and try the same. According to her, provisions of POCSO Act would prevail over the relevant provisions of S.C. & S.T. Act.

The authorities relied on by her are as follows :

- (1) In Re- Registrar (Judicial) High Court, Madras
CDJ 2017 MHC 3871
- (2) Guddu Kumar Yadav etc. Vs. The State of Bihar
Criminal Misc. No.52792 of 2019

- (3) Sarfaraz Ahmed @ Sarfaraz Alam @ Sarfaraz Ansari Vs. The State of Jharkhand (B.A. No.7931 of 2020)
- (4) Suraj S. Paithankar Vs. State of Maharashtra 2020 SCC OnLine Bom 11696
- (5) Vikrambhai Amrabhai Malivad Vs. State of Gujarat R/Criminal Misc. Application No.11014 of 2020
- (6) Renoj R.S. Vs. State of Kerala & anr. Bail Appl. No.6688 of 2022
- (7) Deepak Prakash Singh @ Deepak Singh Vs. State of U.P. (Criminal Misc. Anticipatory Bail Application No.10246 of 2023)

5. According to learned counsel for the applicant, all the proceedings in relation to such crime from the date of its commencement till the conclusion of trial would, therefore, be governed by the provisions of POCSO Act. According to her, as the Act has come into being later in point of time, the provisions of the S.C. & S.T. Act shall yield to the provisions of the POCSO Act. According to learned counsel, all the provisions introduced in the S.C. & S.T. Act for the benefit of a victim could very well be invoked in a proceeding held before a Special Court under POCSO Act. Comparison of the provisions of both the Acts would indicate that the provisions suggesting participation of the victim at every stage of a proceeding are more or less analogous to each other. According to her, while introducing Sections 14-A and 15-A into S.C. & S.T. Act, the legislature did not introduce any other provision giving effect to those added provisions overriding the provisions of POCSO Act. According to her, provisions of

Section 14-A(2) of the S.C. & S.T. Act would, therefore, have no application in a proceeding wherein offences under both the Acts have been invoked.

6. Learned Public Prosecutor would, on the other hand, submit that, it is a cardinal principle of interpretation of Statute that, in case of a conflict between provisions of two similar Statutes (i.e. General or Special), the later in point of time shall prevail. According to him, Sections 14-A, 15-A and 18-A have been introduced in the recent past. Post introduction of those provisions on the Statute, the provisions of the POCSO Act have not been amended to give them effect overriding the provisions of Sections 14-A, 15-A and 18-A of the S.C. & S.T. Act. According to the learned Public Prosecutor, only a remedy of appeal is available against an order granting or refusing bail in a case involving offence/s under the S.C. & S.T. Act. According to him, provisions of both the Statutes need to be interpreted harmoniously. The learned Public Prosecutor too relied on the following host of authorities :

- (1) Shri Sarwan Singh & anr. Vs. Shri Kasturi Lal
(1977) 1 Supreme Court Cases 750
- (2) Maharashtra Tubes Ltd. Vs. State Industrial & Investment Corporation of Maharashtra Ltd. & anr.
(1993) 2 Supreme Court Cases 144
- (3) Union of India Vs. Harnam Singh
(1993) 2 Supreme Court Cases 162

- (4) A.P. State Financial Corporation Vs. Official Liquidator (2000) 7 SCC 291
- (5) Paramjit Kumar Saroya Vs. The Union of India & anr. etc. AIR 2014 P & H 121
- (6) KSL & Industries Limited Vs. Arihant Threads Limited & ors. (2015) 1 Supreme Court Cases 166
- (7) Pegasus Assets Reconstruction (P) Ltd. Vs. Haryana Concast Ltd. [(2016) 4 Supreme Court Cases 47]
- (8) Madras Petrochem Limited & anr. Vs. Board for Industrial and Financial Reconstruction & anr. (2016) 4 Supreme Court Cases 1
- (9) Sharat Babu Digumarti Vs. Government (NCT of Delhi) (2017) 2 Supreme Court Cases 18
- (10) Gorakshnath Vs. State of Maharashtra & ors. 2021 SCC OnLine Bom 12131

7. Considered the submissions advanced. Both the issues referred for decision are interconnected. A reference to Sections 4 and 5 of the Cr.P.C. would not be out of place. For better appreciation, therefore, we reproduce both the Sections below :-

4. Trial of offences under the Indian Penal Code and other laws :-

(1) All offences under the Indian Penal Code (45 of 1960) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in

force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Saving:- Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

8. Reading of both the aforesaid provisions would indicate that the offences under Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with in accordance with the provisions of the Cr.P.C. Offences under other laws shall also be dealt with according to the provisions of the Cr.P.C., but subject to any enactment (Statute) for the time being in force regulating the manner of investigation, inquiring into, trying or otherwise dealing with such offences. The Apex Court, in case of **Maru Ram Vs. Union of India (1980 Cri.L.J. 1140)**, observed that:

2. Scope of the Section :- The anatomy of this saving Section is simple, yet subtle. Broadly speaking, there are three components to be separated. Firstly, the Procedure Code generally governs matters covered by it. Secondly, if a special or local law exists covering the same area, this latter law will be saved and will prevail. . . . If there is a specific provision to the contrary, then that will override the special or local law.”

9. Both the S.C. & S.T. Act and the POCSO Act are Special Statutes and penal as well. The S.C. & S.T. Act, 1989 came into force w.e.f. 30/1/1990, whereas the POCSO Act was brought into effect on 14/11/2012. POCSO Act being a Statute, brought into effect subsequent to the enactment of the S.C. & S.T. Act, would necessarily have overriding effect on the S.C. & S.T. Act. It is true, in case of a conflict between provisions of two similarly placed Statutes and even containing competing non-obstante clause/s, a question, provision/s of which of the Act shall prevail, is decided considering the object and purpose of both the Statutes. The Hon'ble Supreme Court, in case of Sarwan Singh (supra), observed :

“20. Speaking generally, the object and purpose of a legislation assume greater relevance if the language of the law is obscure and ambiguous. But, it must be stated that we have referred to the object of the provisions newly introduced into the Delhi Rent Act in 1975 nor for seeking light from it for resolving an ambiguity, for there is none, but for a different purpose altogether. When two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will over-ride those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration. A piquant situation, like the one before us, arose in *Shri Ram Narain v. The Simla Banking & Industrial Co. Ltd.*, [AIR 1956 SC 614 : 1956 SCR 603] the competing statutes being the Banking Companies Act, 1949 as

amended by Act 52 of 1953, and the Displaced persons (Debts Adjustment) Act, 1951. Section 45A of the Banking Companies Act, which was introduced by the amending Act of 1953, and s. 3 of the Displaced Persons Act 1951 contained each a non-obstante clause, providing that certain provisions would have effect "not- withstanding anything inconsistent therewith contained in any other law for the time being in force" This Court resolved the conflict by considering the object and purpose of the two laws and giving precedence to the Banking Companies Act by observing:

"It is, therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein."

As indicated by us the special and specific purpose which motivated the enactment of S. 14A and Chapter IIIA of the Delhi Rent Act would be wholly frustrated if the provisions of the Slum Clearance Act requiring permission of the competent authority were to prevail over them. Therefore, the newly introduced provisions of the Delhi Rent Act must hold the field and be given full effect despite anything to the contrary contained in the Slum Clearance Act.

21. For resolving such inter se conflicts, one other test may also be applied though the persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. The test is that the later enactment must prevail over the earlier one. Section 14A and Chapter IIIA having been enacted with effect from December 1, 1975 are

later enactments in reference to Section 19 of the Slum Clearance Act which, in its present form, was placed on the statute-book with effect from February 28, 1965 and in reference to Section 39 of the same Act, which came into force in 1956 when the Act itself was passed. The legislature gave overriding effect to Section 14A and Chapter IIIA with the knowledge that Sections 19 and 39 of the Slum Clearance Act contained non-obstante clauses of equal efficacy. Therefore the later enactment must prevail over the former. The same test was mentioned with approval by this Court in *Shri Ram Narain's case* at page 615.”

10. The statement and object of the S.C. & S.T. Act indicates that, in spite of there being various measures to improve the socio-economic conditions of the S.C. & S.T. Act, they remain vulnerable. They were denied number of civil rights and were subjected to various offences, indignities, humiliation and harassment. They have, in several incidents, been deprived of their life and properties. Serious crimes were committed against them for various reasons. A special legislation in the nature of this Act has, therefore, been brought into effect with a view to check and deter crimes against them committed by members of non-S.Cs. and S.Ts.

11. The statement and object and reasons of Amendment Act of 2016 indicates that, it was enacted with a view to prevent commission of offences of atrocities against the members of Scheduled Castes and Scheduled Tribes and to

establish Special Courts for trial of such offences and for providing relief and rehabilitation of the victims of such offence, a new Chapter IV-A relating to rights of victims and witnesses has also been introduced conferring on them a variety of rights. True, post Amendment Act of 2016, POCSO Act also came to be amended in 2019 with a view to protect children from offences of sexual assault, sexual harassment etc. and provide for establishment of Special Courts for trial of such offences and matters connected therewith or incidental thereto. The Amendment Act, however, does not provide for overriding effect over the newly introduced provisions of Sections 14-A and 15-A of the S.C. & S.T. Act.

12. Clause 4 of the statement of objects and reasons of the POCSO Act, 2012 suggests it to be a **self contained** comprehensive legislation inter alia to provide for protection of children from the offence of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Court for speedy trial of such offences.

13. Section 2(2) of the POCSO Act reads thus :

The words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860), the Code of Criminal Procedure, 1973 (2 of 1974), the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) and the Information Technology Act, 2000 (21 of 2000) shall have the meanings respectively assigned to them in the said Codes or the Acts.

14. Similar provision we find in Section 2(f) of the S.C. & S.T. Act. The terms “exclusive Special Courts” and “Special Courts” for trial of offences under the S.C. & S.T. Act have been provided in clause (bd) and clause (d) of Section 2 of the said Act to mean a Special Court constituted under sub-section (1) of Section 14 **exclusively to try the offences under this (S.C. & S.T.) Act**. Chapter IV of the S.C. & S.T. Act speaks of constitution of Special Courts. The provisions thereof are reproduced below :

14. Special Court and Exclusive Special Court :-

(1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts :

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the

Court of Session to be a Special Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible.

(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing:

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet.

15. Similarly, Chapter VII of the POCSO Act speaks of constitution of Special Courts. Section 2(1)(1) of the POCSO Act defines a Special Court to mean a Court designated as such under Section 28. The Section reads as follows :

28. Designation of Special Courts :-

(1) For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for

each district, a Court of Session to be a Special Court to try the offences under the Act :

Provided that if a Court of Session is notified as a children's Court under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006), or a Special Court designated for similar purposes under any other law for the time being in force, then, such Court shall be deemed to be a Special Court under this Section.

(2) While trying an offence under this Act, a Special Court shall also try an offence other than the offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000 (21 of 2000) shall have jurisdiction to try offences under Section 67-B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any Act, or conduct or manner or facilitates abuse of children online.

16. A comparison between the two Sections namely Section 14 of the S.C. & S.T. Act and Section 28 of the POCSO Act would indicate that a Special Court constituted for trial of offences under the POCSO Act has been conferred with a jurisdiction to try an offence other than the offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial. We do not find similar provision in Section 14 of the S.C. & S.T. Act or

under any other Chapter of that Act. Interpretation of both these provisions would suggest that a Special Court constituted for trial of offences under the S.C. & S.T. Act has not been conferred with a jurisdiction to try an offence under any other Act, while a Special Court constituted under Section 28 of the POCSO Act has been conferred with such jurisdiction. Meaning thereby, a Special Court constituted under the POCSO Act has jurisdiction to enquire into and try offences under the very Act and any other Act including offences under the S.C. & S.T. Act. It is again to be stated hereat that, post introduction of Chapter VII into POCSO Act, there is no corresponding amendment in the S.C. & S.T. Act giving overriding effect over provisions of Section 28.

17. Section 31 of the POCSO Act reads thus :

31. Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court :- Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

18. This provision provides for application of Cr.P.C. to

proceedings before a Special Court. It further provides that the provisions of Cr.P.C., including the provisions as to bail and bonds shall apply to the proceedings before a Special Court and such Court shall be deemed to be a Court of Session for the purposes of the said provision.

19. Section 40 of the POCSO Act confers a right to a family or guardian of the child to have the assistance of legal counsel of their choice for an offence under this Act.

20. In case of Arjun Malge (supra), a Division Bench of this Court observed :

“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, 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. The Division Bench of this Court has interpreted Section 40 of the Protection of Children from Sexual Offences Act, 2012 and Rule 4 of the Protection of Children from Sexual Offences Rules, 2020 to mean the family or guardian of a child to have a right to have participation at every stage of a proceeding under the POCSO Act. Somewhat similar or wider rights have been conferred on the victims under the S.C. & S.T. Act by introducing a separate Chapter IV-A, titled, “Rights of victims and witnesses”. Sub-section (5) thereof provides a right of audience to a victim or his dependent at any proceeding under the said Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or

arguments and file written submissions on conviction, acquittal or sentencing. We do not propose to refer to other sub-sections of Section 15-A, which confer a few additional rights on the victim. The term 'victim' has been defined in Section 2(ec) of the S.C. & S.T. Act to mean, "victim" means any individual who falls within the definition of the "Scheduled Castes and Scheduled Tribes" under clause (c) of sub-section (1) of Section 2, and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of any offence under this Act and includes his relatives, legal guardian and legal heirs.

22. Chapter VIII of the POCSO Act provides for procedure and power of Special Court. Sub-sections (1) and 9 of Section 33 read thus :

(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

.....
.....

(9) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the

Code of Criminal Procedure, 1973 (2 of 1974) for trial before a Court of Session.

23. Section 42-A of the POCSO Act has much relevance for deciding this reference. The Section is, therefore, reproduced below :

“42-A. Act not in derogation of any other law :-

The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.

24. Reading of the aforesaid provision would indicate that, provisions of the POCSO Act are in addition to the provisions of any other law for the time being in force and in case of inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of inconsistency. While Section 20 of the S.C. & S.T. Act overrides other laws. The Section reads thus :

20. Act to override other laws :- Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

25. Section 20 of the S.C. & S.T. Act has been on the Statute book since the date on which it came into force i.e. in the year 1990, whereas Section 42-A of the POCSO Act has been introduced long after Section 20 of the S.C. & S.T. Act was brought into effect. Section 20 has not been subjected to amendment thereafter to give overriding effect on the provisions of Section 42-A of the POCSO Act.

26. In case of **Ram Swarup Rajwade Vs. State of Chhatisgarh [2021 Cri.L.J. 1787 (Chh).]**, it has been observed :-

“As per the language of Section 20 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, there is no scope available to incorporate the provision of the other Act. Whereas the Protection of Children from Sexual Offences Act, 2012 harmoniously allows the incorporation of other Acts for their operation by virtue of Section 28(2) of the Protection of Children from Sexual Offences Act, 2012. As such, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Protection of Children from Sexual Offences Act, 2012 can co-exist and stand independently together with each other for operational purpose and as such, ‘Special Court’ designated under the Protection of Children from Sexual Offences Act, 2012 would have exclusive jurisdiction to try the offence of both the Acts if arise out of same crime in one incident.”

Similar observations we find in case of Rinku Vs.

State of U.P. (supra) and other judgments relied on by Mrs. Rashmi Kulkarni, learned counsel for the applicant.

27. The observations and findings recorded in all these judgments persuade us to take a similar view. We are also of the view that, Special Court constituted for trial of offences under the POCSO Act has jurisdiction to try offences under any other Act including S.C. & S.T. Act. Same is, however, not a case of jurisdiction of a Special Court constituted for trial of offences under the S.C. & S.T. Act. By virtue of Section 42-A of the POCSO Act, the provisions of Section 28(2) would have overriding effect on the provisions of the S.C. & S.T. Act.

28. Let us now turn to Section 14-A of the S.C. & S.T. Act which has been introduced on the Statute book w.e.f. 26/1/2016. The Section provides for a remedy of appeal. We are concerned with sub-section (2) of Section 14-A. Section 14-A is, therefore, reproduced below :

14-A. Appeals : (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1073 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2) Notwithstanding anything contained in sub-section (3) of Section 378 of the Code of Criminal

Procedure, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this Section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from :

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days.

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

29. We find provisions of Section 14-A to be para materia with Section 34 of the Prevention of Terrorism Act, 2002 (since repealed) and Section 21 of the National Investigation Agency Act, 2008. Needless to mention, sub-section (2) above does not confer a victim with a right to prefer appeal against an order granting bail.

30. We fail to understand as to why the provision, "Notwithstanding anything contained in sub-section (3) of Section 378 of the Criminal Procedure Code, 1973" has been prefixed to the further provision of sub-section (2) of Section 14-A. Still we

propose to take the legislature to have intended to give an overriding effect on the provisions of the Cr.P.C. in respect of appeal because provisions of the Cr.P.C. are silent to provide remedy of appeal against an order granting or refusing bail. Even if we read the said provision to mean to have created a remedy of appeal against an order of a Special Court or Exclusive Special Court granting or refusing bail, the same will have to be interpreted to mean that the remedy of appeal is provided against such an order which is passed by the Special Court or Exclusive Special Court having jurisdiction to try offences only under the S.C. & S.T. Act and none other. In a case wherein the accused is charged with offences under both, S.C. & S.T. Act and POCSO Act, the jurisdiction to try the said offence would exclusively be with a Special Court constituted under Section 28 of the POCSO Act. Needless to mention, the POCSO Act does not provide a remedy of appeal against an order granting or refusing to grant bail by such a Court. It is reiterated that, no such appeal has been provided under Cr.P.C. as well. At the cost of repetition, relying on Section 31 of the POCSO Act, we observe that, the provisions of the Cr.P.C. including the provisions as to bail and bonds shall apply to the proceedings before a Special Court inquiring into or trying an offence under the POCSO Act and under any other Statute including S.C. & S.T. Act.

31. Chapter XXIX of the Cr.P.C. speaks of appeal.

Section 372 of the Cr.P.C. reads thus :

“372. No appeal to lie unless otherwise provided :-

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”

The above proviso has been introduced w.e.f. 31/12/2009 conferring a victim with a right to prefer an appeal against an order passed by the Court, acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. We do not propose to reproduce each and every Sections of Chapter XXXI. Suffice to say, except the proviso to Section 372, the relevant Section providing right of appeal speak of such a right to be exercised only by the convict or the prosecution agency, namely the State. A right accrued to the victim to prefer appeal in terms of the said proviso is supposed to be exercised against an order passed by the Court either acquitting the accused or convicting for a lesser offence and none others.

32. For all the aforesaid reasons, our answer to both the issues as under :

(1) No, in a case involving offences under both, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Protection of Children from Sexual Offences Act, a victim thereof does not have a right to prefer appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(2) Such interpretation is sustainable.

We direct the registry to place the application before the learned Single Judge for deciding the same on its own merits.

(MANGESH S. PATIL, J.)

(SMT. VIBHA KANKANWADI, J.)

(R. G. AVACHAT, J.)

fmp/-