

### PRACTICE DIRECTION

Section 439 of the Code of Criminal Procedure, 1973 stood amended by the Criminal Law (Amendment) Act, 2018 (No. 22 of 2018) w.e.f. 21.04.2018 vide which, amongst others, it has been mandated that the presence of the informant or any person authorized 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 and that the High Court or the Court of Session shall, before granting bail, give notice of such application to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.

The relevant provisions of “The Criminal Law (Amendment) Act, 2018” in this respect are reproduced herein below:-

“23. In Section 439 of the Code of Criminal Procedure-

(a) In sub-section(1), after the first proviso, the following proviso shall be inserted, namely:-

“Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-Section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code (45 of 1860), give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.”

(b) After sub-section(1), the following sub-section shall be inserted, namely:-

“(1-A) The presence of the informant or any person authorized 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 376-AB or section 376-DA or section 376-DB of the Indian Penal Code (45 of 1860).”

In order to ensure better and effective compliance of the above provisions, Hon’ble the Chief Justice has been pleased to direct as under:-

(a) Before granting bail to a person who is accused of an offence triable under sub-Section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code, the High Court or the Court of Session shall give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application; and

(b) The Courts shall ensure that the Investigating Officer has, in writing as per **Annexure A**, communicated to the informant or any person authorized by her that her presence is obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code. **Annexure A** shall be filed by the I.O. along with the Reply / Status Report to such bail application and the Courts shall make all endeavour to ensure presence of the informant or any person authorized by her.



ANNEXURE A

**NOTICE TO INFORMANT OF OBLIGATION TO BE PRESENT AT THE TIME OF HEARING OF THE APPLICATION FOR BAIL TO THE PERSON ACCUSED OF THE OFFENCE UNDER SUB-SECTION (3) OF SECTION 376 OR SECTION 376-AB OR SECTION 376-DA OR SECTION 376-DB OF THE INDIAN PENAL CODE, 1860**

You are hereby informed that the person accused in FIR No. \_\_\_\_\_ dated \_\_\_\_\_ PS \_\_\_\_\_ under Section \_\_\_\_\_ has filed an application for grant of bail which is listed for hearing in the Hon'ble High Court of Delhi / Hon'ble Court of Sh. / Smt. \_\_\_\_\_, Additional Sessions Judge, \_\_\_\_\_ District, Delhi.

Kindly take notice that as per Section 439 (1-A) of the Code of Criminal Procedure, 1973 your presence / presence of any person authorised by you is obligatory at the time of hearing of the above mentioned bail application.

(S/d)

Informant

(S/d)

Investigating Officer

I, \_\_\_\_\_, SHO of P.S. \_\_\_\_\_ do hereby certify that the I.O. of the above mentioned FIR has duly communicated the informant that her presence / presence of any person authorized by her is obligatory at the time of hearing of the bail application of the person accused in FIR No. \_\_\_\_\_ dated \_\_\_\_\_.

(S/d)

SHO, P.S. \_\_\_\_\_