



2026:AHC:129403

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 13950 of 2025

Dilshad And 2 Others

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite
Party(s)

Counsel for Applicant(s)	: Chitranshu Srivastav, Tabish Yusufi
Counsel for Opposite Party(s)	: G.A., Vijay Prakash Chaturvedi

Court No. - 68

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Chitranshu Srivastava, learned counsel for the applicants, who are three in number, as well as Sri Anuj Kumar Mishra, learned AGA for the State, and Sri Vijay Prakash Chaturvedi, learned counsel for opposite party no.2.

2. A joint statement has been made by the learned counsel for the parties that they do not propose to file any further affidavit and the application be decided on the basis of the documents available on record. With the consent of the parties, the application is being decided at the fresh stage.

3. The case of the applicants, who are three in number, is that the informant lodged a first information report bearing No.0022 of 2023 on 09.02.2023 before the Police Station- Itwa, District- Siddharth Nagar, at 13:01 hours, under Sections 506, 504, and 354 IPC, with an allegation that the first informant happens to be mother of the victim, who was shown to be 19 years old in the first information report.

4. It is alleged in the first information report that on 07.02.2023, the daughter of the first informant had gone for some work and the applicant no.1 caught hold of the hand of the victim, and the other applicants were also present. When the applicants tried to impose themselves onto overpower the victim, then the same was resisted and then the applicants hurled abuses and threatened to take the life of the victim. Post recording of the statements under Section 161 and 164 Cr.P.C., the applicants came to be summoned, and thereafter, on 03.10.2023, the charges came to be framed under Sections

354-Kha, 504 and 506 IPC read with Section 7/8 of the POCSO Act.

5. Learned counsel for the applicants has sought to argue that the applicants have been falsely implicated. According to the first information report so lodged by the mother of the victim, as also the statement of the victim under Section 161 Cr.P.C., the age of the victim was shown to be 19 years, meaning thereby that there was no question of invocation of the provisions of the POCSO Act. It is contended that, in order to falsely implicate the applicants, a new case was set-up whereby, on the basis of a document which is not worth consideration as there is no semblance of the name itself. The age has been shown to be 17 years, 10 months, and 19 days. It is also contended that neither in the first information report nor in the statement under Section 161 Cr.P.C. any specific role been assigned; however, in the statement under Section 164 Cr.P.C., a specific role has been assigned, which shows that improvements have been made only in order to falsely implicate the applicants.

6. Further contention is that there happens to be animosity and a motive to falsely implicate the applicants. It is also contended that the incident is alleged to have taken place on 07.02.2023, as marked in the first information report, whereas the FIR came to be lodged on 09.02.2023, and in the statements under Section 161 and 164 Cr.P.C., the incident has been shown to be of 06.02.2023. It is also contended that the applicants are youngsters and, though they have obtained bail, the continuance of the proceedings would, in fact, create difficulties and jeopardize their academic careers.

7. Countering the submissions so made by the learned counsel for the applicants, learned AGA as well as the learned counsel for opposite party no.2 submits that whatever might be, this Court, at this stage in proceedings under Section 528 BNSS, is not required to delve into the question of age, particularly when the same is a subject matter of trial. Further, according to them, on 03.10.2023 the charges have been framed, and the present application has been presented before this Court in the month of April, 2025. Further, the applicants are already on bail and, thus, they are to contest the proceedings.

8. I have heard the submissions so made across the Bar and perused the documents available on record.

9. Apparently, the allegations so levelled against the applicants, who are three in number, is regarding commission of offences under Sections 354-Kha, 504, 506 IPC read with Section 7/8 of the POCSO Act. The FIR has been lodged by the mother of the victim, and in the statements under Section 161 and 164 Cr.P.C., the incident has been shown to be of 06.02.2023, though the incident in the FIR is stated to be of 07.02.2023, while the FIR itself came to be lodged on 09.02.2023. Since it would not be appropriate for this Court, at this stage, particularly when charges have already been framed on 03.10.2023. Moreover, what would be relevant is that Section 29 of the POCSO Act, 2012, which provides for a presumption as to certain offences. According to the said provision, where a person is prosecuted for committing, abetting, or attempting to commit any offence under Sections 3, 5, 7, and 9 of the Act, the Special Court shall presume that such person has committed, abetted, or attempted to commit the offence, as the case may be, unless the contrary is proved.

10. Implying the words "*unless contrary is proved*" personifies trial. Thus, once presumption is there, then the issue is triable in nature. This Court, in the present jurisdiction at this stage, is also not required to delve into the age of the victim, as evidences would be required to be adduced, and the same can only be done when the trial commences and is given a logical conclusion. Nonetheless, the allegation regarding the discrepancy in the dates, namely 06.02.2023 and 07.02.2023, creating a cloud over the occurrence of the incident, is also a matter of defence. Consideration thereof would be necessitated when the trial commences. Likewise, the plea of animosity and motive is also a matter of defence. Thus, this Court, at this stage, abstains from delving into the merits of the allegations. Accordingly, interference is declined.

11. The present application stands ***disposed of***, leaving it open for the applicants to raise all legal and factual issues before the court below, and once the said legal and factual grounds are raised, this Court has no reason to disbelieve that the same would be considered in the correct perspective.

(Vikas Budhwar,J.)

June 25, 2026
Vikas Verma