



2026:AHC-LKO:42354

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL MISC. BAIL APPLICATION No. - 1764 of 2026

Sushil Kumar

.....Applicant(s)

Versus

State Of U.P. Thru. Prin. Secy. Home Lko.
And 4 Others

.....Opposite
Party(s)

Counsel for Applicant(s) : Shailesh Kumar Singh, Amit
Kumar Awasthi

Counsel for Opposite Party(s): G.A.

Court No. - 16

HON'BLE SHREE PRAKASH SINGH, J.

1. Heard learned counsel for the applicant and learned AGA for the State.
2. In the present case, notices were issued to the respondent nos.2 and 3 by passing an order dated 12.03.2026.
3. As per office report dated 01.05.2026, the notices have been served upon respondent nos.2 and 3 in person and through heirs respectively.
4. When the case was taken up today, neither respondent nos.2 and 3 are present nor any counsel has put in appearance on their behalf.
5. By means of this application, the applicant, who is involved in Case Crime No.34 of 2026, under sections 70 (2), 137 (2), 352, 351 (3) and under Section 5 G/6 POCSO Act, Police Station - Khamaria, District Kheri is seeking enlargement on bail during the trial.
6. The brief facts of the present case are that an FIR dated 17.01.2026 under sections 70 (2), 137 (2), 115 (2), 352, 351 (3), 303 (2) of the BNS (old Sections 376, 363, 323, 504, 506, 379 of IPC) and under Section 5G/6 of POCSO Act has been lodged against three named accused persons including the present applicant alleging therein that named accused persons forcibly took fifteen years old daughter of informant to the house of Shailendra Kumar and there they had done wrong thing with her. It is further alleged therein that on hearing her cries, sister of victim namely Shivani went to save her but she was also beaten and abuses were hurled upon her and her locket was also snatched.

7. Learned counsel for the applicant has submitted that in the statement of prosecutrix recorded under section 180 of BNSS, 2023, she has made a statement that all the accused persons dragged her to a hut outside the house of co-accused Shailendra Kumar where co-accused Shailendra Kumar did wrong thing with her and neither the name of applicant was taken nor any allegation was made against him. It is further stated therein by prosecutrix/ alleged victim that her sister and cousin brother came there and when they tried to save her, they were also beaten by the named accused persons in FIR and her sister's locket was also snatched.

8. It is further submitted that in her statement recorded under Section 183 BNSS, 2023, she has assigned the role of gagging her mouth and holding her hands to present applicant, which is not possible for a person to gag the mouth and hold both the hands at the same time, whereas role of guarding (chowkidari) was assigned to Susheel (co-accused) two months ago relating to agricultural field.

9. it is further submitted that in the medical examination of prosecutrix/ victim there is no injury even abrasion is not there as she has alleged that she was dragged to the hut and as per medical opinion, there is no sign of use of force, so there is no physical violence, and on local examination of genital parts/ other orifices there is no sign of use of force.

10. It is further submitted that sister of the prosecutrix/ victim had complained about back ache and pain in right leg and there is no injury found in the medical examination.

11. It is further submitted that applicant has falsely been implicated in the present case due to enmity of the family of victim with the cousin brother of the applicant.

12. It is further submitted that applicant has no criminal history and he is in jail since 22.01.2026.

13. On the other hand, learned AGA on the basis of counter affidavit has vehemently opposed the prayer for grant of bail but unable to dispute the submissions made by learned counsel for the applicant.

14. After hearing learned counsel for the parties and going through the record of the case, prima facie, it appears that the alleged victim/ prosecutrix while recording her statement under Section 180 of BNSS has taken the names of co-accused person and role of outraging her modesty was assigned to Shailendra Kumar (co-accused). In the said statement, name of applicant was not taken; while in her statement recorded under section 183 of BNSS, 2023, she has improved her case by taking the name of applicant in the

present case by making allegation that he gagged her mouth and held her hands, this allegation was not there initially against the applicant but introduced later on at the stage of recording of her statement under Section 183 BNSS; the medical evidence neither shows any mark of external or internal injury nor any mark of dragging has been shown in the medical report; therefore, it is a fit case in which the applicant may be enlarged on bail.

15. Accordingly, the applicant **Sushil Kumar** be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions :-

- (i) The applicant will cooperate with the prosecution during trial.
- (ii) The applicant will not tamper with the evidence during trial.
- (iii) The applicant will not pressurize/ intimidate the prosecution witness(es).
- (iv) the applicant shall not commit an offence.
- (v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence.
- (vi) The applicant shall remain present before the trial court on each date fixed, either personally or through counsel.
- (vii) The applicant will not seek any adjournment on the dates fixed for evidence when the witnesses are present in court.
- (viii) The applicant shall remain present, in person, before the trial court on the dates fixed for recording of statement under Section 313 CrPC.

17. In case of default of above conditions it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

18. As this order relates to enlargement of the applicant on bail, it is clarified that observations made in this order shall have no bearing on the merits of the case and the trial court shall not be influenced by any observations made in this order.

June 30, 2026

mks

(Shree Prakash Singh,J.)