



2026:AHC:67563

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 12934 of 2026

Durgesh Maurya

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Avinash Mani Tripathi
Counsel for Opposite Party(s)	:	Sunil Kumar Chaudhari, G.A.

Court No. - 80

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard Sri Avinah Mani Tripathi, learned counsel for the applicant, Sri Sunil Kumar Chaudhari, learned counsel for the opposite party no. 4/first informant and Sri Rabindra Kumar Singh, learned A.G.A. for the State.

2. Present application under Section 528 of the BNSS has been filed to quash the entire proceedings of Sessions Case No. 1623 of 2025 (State of U.P. vs. Durgesh Maurya), arising out of Case Crime No. 159 of 2023, under Section 363, 366, 376(2)(n) of I.P.C. and Section 5/6(j)(2) of POCSO Act, Police Station Khajni, District Gorakhpur, as well as chargesheet dated 11.05.2025 and summoning order dated 13.06.2025, pending in the court of Sessions Judge/Special Judge (POCSO Act), Court No. Ist, Gorakhpur.

3. The following submissions have been made by the learned counsel for the applicant:

(i) The applicant and the victim of the present case have entered into matrimonial alliance on 26.02.2024 and their marriage was registered on 22.03.2024. Copy of marriage registration certificate has been appended as Annexure No. 4 to this application.

(ii) A male child was born out of the wedlock of the applicant and the victim on 29.09.2024, copy of which has been appended as Annexure No. 5 to this application.

(iii) The applicant and the victim, after solemnization of their

marriage, started living together as husband and wife under the same roof, however, the applicant was arrested by the police on 06.05.2025 and since then he has been languishing in jail.

(iv) First informant of the present case has also accepted the marriage and victim is now residing with the first informant since the applicant is in jail in connect with the aforesaid case.

(v) The parties have solemnized their marriage a long way back and a child has also born out.

(vi) The victim did not level any allegation against the applicant when her statement was recorded under Section 161 of Cr.P.C. and 164 of Cr.P.C. In both the statements, she stated that she left her house on her own will and she has entered into marriage with the applicant. In her statement recorded under Section 161 of Cr.P.C., the victim stated that she is a mother of a seven months boy and she was aged about 18 years. The boy was born out of the wedlock of the applicant and the victim.

4. Learned counsel for the opposite party no. 4 has put his appearance and accepted the contentions of the learned counsel for the applicant and admitted this fact that the marriage of the victim has been solemnized with the applicant and a baby boy was born out of the wedlock of the applicant and victim.

5. The learned A.G.A. opposed the prayer made by the learned counsel for the applicant, but could not dispute the fact of marriage and birth of a child.

6. On perusal of record, it is clear that the victim did not level any allegation against the applicant when her statement under Section 161 of Cr.P.C. and 164 of Cr.P.C. was recorded, however, the Investigating Officer submitted chargesheet in this case keeping in mind the age of the victim. As per High-school Certificate of the victim, her date of birth is 05.07.2007, therefore, she was aged about 15 years and ten months at the time of alleged incident. It is admitted case of the prosecution that after elopement, victim solemnized marriage with the applicant and a child was born out of the wedlock of the applicant and the victim and they were

living together as husband and wife unless the applicant was arrested by the police on 06.05.2025.

7. Reliance is placed by the learned counsel for applicant on **Juhi Devi vs. State of Bihar and Others, 2005(13) SCC 376; Suhani and Another vs. State of U.P. and Others, 2018 (3) AICLR 183** and this Court's decisions in **Reena vs. State of U.P., 2012 (2) ACR 2349; Shaheen Parveen and Another vs. State of U.P. and Others, 2015(7) ADJ 713 and Sunil Tiwari vs. State of U.P. and Another, (Application under Section 482 Cr.P.C. No. 5471 of 2016)**, decided on 21.10.2016.

8. The applicant is accused of committing an offence under Sections 363 and 366 of the IPC. Section 363 of the IPC provides that whoever kidnaps any person from lawful guardianship shall be punished in terms of sentence provided in the provision.

9. "Kidnapping from lawful guardianship" has been defined under Section 361 of the IPC. The provision when extracted reads as under:-

*"Whoever takes or entices any minor under *[sixteen] years of age if a male, or under **[eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.*

Explanation : The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception : This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose."

10. Section 366 of the IPC inheres that whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, shall be punished with a sentence, as provided in the provision. At the time of considering whether on admitting the allegations made in the F.I.R.,

offence has been committed or not, the ingredients of the offence are required to be considered in context of the evidence collected during the course of investigation.

11. In the peculiar facts and circumstances of this case, the Court has minutely examined the facts that have emerged on investigation of the case. There is sufficient evidence on record to show that the prosecutrix has attained the age of discretion, as also age of majority on the date of the incident.

12. Somewhat similar facts came up for consideration before the Hon'ble Supreme Court of India in **Juhi Devi Versus State of Bihar and Others, reported in (2005) 13 SCC 376**, where Hon'ble Supreme Court observed that prosecutrix who has attained the age of discretion, has a right to enjoy her liberties by virtue of constitutional guarantee. The relevant para is quoted below :-

"2. The petitioner herein is alleged to have married another person of her age and the 5th respondent herein, the father of the petitioner, objected to the said marriage. It seems that the petitioner had eloped with that person and the father of the petitioner-5th respondent, has filed a complaint and the petitioner was produced before the C.J.M., Patna. The petitioner claims that she was major and voluntarily left with her husband. The father of petitioner alleged that the petitioner was a minor and the question of age was referred to a Medical Board. The Medical Board opined that as on 17.05.2003, the petitioner must have been aged between 16 and 17 years. However, the father of the petitioner produced two certificates before the Revisional Court and contended that her date of birth is 12.10.1985 and she has not attained majority. However, the medical report shows that she must have been aged more than 16 years, even on 17.05.2003. Having regard to these facts, we are of the view that she must have attained majority and her stay at the remand home would not be in the interest of justice and we think that her continued stay at the remand home would be detrimental and she would be in a better environment by living with the person whom she had allegedly married.

13. A Division Bench of this Court in **Smt. Reena Versus State of U.P. and Others (Habeas Corpus Writ Petition No. -10180 of 2012)** decided on 24.5.2012 observed that in pure and simple case of elopement of

prosecutrix it is to be seen that her right to enjoy her liberties by virtue of the constitutional guarantees are not curtailed or encroached upon. The relevant paragraphs of the judgment are quoted below:-

"We find from facts of the case that it was a pure and simple case of elopement of petitioner, Smt. Reena with Rabdullah and the petitioner, thereafter went straight away to his house from where she appears recovered. There was some dispute in respect of the age of the girl but we find from argument appearing at page 20 of the present petition that the Chief Medical Officer, Maharajganj had assessed her 18 years of age. Thus, the lady was undisputedly above 18 years of age, if we add three years to the medically assessed age. In our considered view in case of being a conflict between the age recorded in any school document and that assessed by the doctor then only for the present purposes, the court should lean towards acting upon the opinion of the doctor furnished after carrying out scientific tests to assess the age of a victim. This is necessary as liberty of a person has to be protected. No person could be deprived of his liberty unless reasonable procedure has been adopted. Medical opinion on age may not be exact, but it is generally acceptance and it is based on scientific method of assessing the age. As such, inspite of there being some sort of margin in assessing the age and actual age, there could be chances that the assessed age is almost exact.

We have already noted that the personal liberty of a person should be paramount consideration in such cases and keeping that in view and for protecting the personal liberty of a person, the court should lean towards considering the medical age than to consider the age which is recorded in school documents. Besides, there is no dispute in the fact that the petitioner, Smt. Reena had eloped with Rabdullah on 3-3-2011 and had wet into his house and was living there. ...Under the present set of facts, there could not be any doubt that it is a simple and pure case of elopement and as such no offence or offences could be said to be constituted under the admitted facts.

...There is no age, as regards the personal liberty of a person. Anyone who is born as a human being and who is found living in India even if he is not an Indian, has a right to enjoy his or her liberties by virtue of the constitutional guarantees. Any order which curtails or encroaches upon the liberties of such a person and has always to be held falling short of the constitution

requirements and safeguards and, as such, we have to struck down the same in exercise of the powers Under Article 226 of the Constitution of India. "

14. In the instant case, the point for consideration is whether the applicant has committed offence in context of the victim or not. It will be appropriate here to mention the judgement dated 23.07.2015 of this Court passed in **Writ Petition No. 3519(MB) of 2015 (Shaheen Parveen and Another Vs. State of U.P. through Principal Secretary, Home Department, and Others)**, where this Court observed that a girl who has attained the age of discretion and was on the verge of attaining majority and is capable of knowing what was good and what was bad for her, cannot be said to be a victim of inducement, particularly when the case of the victim/girl herself is that it was on her initiative and on account of her voluntary act that she had gone with the boy and got married to him. In such circumstances, desire of the girl/victim is required to be seen. Ingredients of Section 361 of the I.P.C. are required to be considered accordingly, and not in mechanical or technical interpretation. In this case the Charge sheet under Sections 363 and 366 of the IPC, was quashed where the prosecutrix was found to have attained the age of discretion and was just below 17 years of age. The prosecutrix gave the statement that she was neither kidnapped nor abducted who went in the company of the accused, willingly and knowingly. She has been living with petitioner No. 2 as his wife and was an expecting mother carrying a pregnancy of 31 weeks. This Court quashed the Charge sheet observing that substantial justice cannot be sacrificed at the altar of technicality. The relevant paragraphs are quoted below:-

"18. Petitioner No. 1 the victim/prosecutrix would be the best witness, rather the only witness of commission of offence under Sections 363/366 of the IPC. Surely, the victim will not support the prosecution case, as has been made evident by her in her statement, recorded in the course of investigation under Section 164 Cr.P.C., and therefore the trial would result in acquittal. During course of trial, considerable number of man hours would be wasted in prosecution/ defending and judging the case. No useful purpose would be served and the entire exercise of trial would be in futility because the victim has declared that she was not victimised or kidnapped.

19. The facts that have emerged from the record make it evident that the

impugned criminal proceedings have been initiated because mother of the Prosecutrix/victim (respondent No. -4) has not accepted the marriage of her daughter with petitioner No. 2.

20. In case, despite the evidence that has come on record, as noted above, proceedings are not quashed, petitioner No. -2 would be required to face criminal charges and undergo the agony of a trial.

21. We have also taken into account the fact that in case the petitioner No. 2 is allowed to be prosecuted, the matrimonial life of petitioner No. 1/the alleged victim would be disrupted. Her husband would be incarcerated and there would be no one to take care of her child, who is yet-to-be-born.

22. If a minor, of her own, abandons the guardianship of her parents and joins a boy without any role having been played by the boy in her abandoning the guardianship of her parents and without her having been subjected to any kind of pressure, inducement, etc and without any offer or promise from the accused, no offence punishable under Section 363 I.P.C. will be made out when the girl is aged more than 17 years and is mature enough to understand what she is doing. Of course, if the accused induces or allures the girl and that influences the minor in leaving her guardian's custody and the keeping and going with the accused, then it would be difficult for the Court to accept that minor had voluntarily come to the accused. In case the victim/prosecutrix willingly, of her own accord, accompanies the boy, the law does not cast a duty on the boy of taking her back to her father's house or even of telling her not to accompany him.

27. The writ Court considering totality of fact and circumstances, cannot ignore or disregard the welfare of the petitioners, particularly when the exercise of trial is going to be in futility, as observed hereinabove.

28. In view of the facts and circumstances of the case noted above, the Court is convinced that the impugned proceedings have been initiated in abuse of process of the Court and process of the law. A personal grudge against marriage of choice of the daughter is being settled by virtue of initiating impugned criminal proceedings, which would not be permissible in law. Such prosecution would abrogate constitutional right vested in the petitioners to get married as per their discretion, particularly when there is no evidence to

indicate that the marriage is void.

29. The stand of the Prosecuting Agency that the victim was a few months below age of majority when she joined the company of the accused/petitioner No. 2, and therefore offence has been committed, cannot be accepted if ground reality is taken into account. It has come on record that the prosecutrix is an expecting mother and is carrying a pregnancy of 31 weeks. Coupled with this fact is the statement of the prosecutrix wherein she has said that she was neither kidnapped nor abducted, rather has been living with petitioner No. 2 as his wife. It is the prosecutrix who went in the company of the accused, willingly, knowingly, and rather than the accused taking the prosecutrix out of the custody of the lawful guardian; the victim herself had eloped with petitioner No. 2. In the considered opinion of the Court, substantial justice cannot be sacrificed at the altar of technicality, as is being concluded by the Investigating Agency.

30. In view of above, petitioner No. 2 cannot be said to have committed offence either under Section 363 I.P.C. read with Section 361 I.P.C. or under Section 366 I.P.C."

15. The Honble Apex Court in the case of **S.Varadarajan vs. State of Madras, reported in AIR1965 SC 942**, has interpreted the meaning of Section 361 of the IPC and has held that if the victim had voluntarily joined the accused then in such case it could not be said that the accused had taken her away from the protection of lawful guardian within the meaning of Section 361 of the Code. The judgment of **S.Varadarajan (supra)** is reproduced in its entirety:

"11. It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning the same thing for the purposes of section 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. Something more

has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

12. It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our opinion if evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfillment of the intention of the girl. That part, in our opinion, falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to "taking".

Whatever may be the position with respect to an offence under that section and even assuming that a minor cannot in law abandon the guardianship of her lawful guardian, for the reason which we have already stated, the accused person in whose company she is later found cannot be held guilty of having taken her out of the keeping of her guardian unless something more is established.

After pointing out that there is an essential distinction between the words "taking" and "enticing" it was no doubt observed that the mental attitude of the minor is not of relevance in the case of taking and that the word "take" means to cause to go, to escort or to get into possession. But these observations have to be understood in the context of the facts found in that case. For, it had been found that the minor girl whom the accused was charged with having kidnapped had been persuaded by the accused when she had gone out of her house for answering the call of nature, to go along with him and was taken by him to another village and kept in his uncle's house until she was restored back to her father by the uncle later. Thus, here there was an element of persuasion by the accused person which brought about the willingness of the girl and this makes all the difference. In our opinion, therefore, neither of these decisions is of assistance to the State.

We are satisfied, upon the material on record, that no offence under section 363 has been established against the appellant and that he is, therefore, entitled to acquittal. Accordingly we allow the appeal and set aside the conviction and sentence passed upon him."

16. The Apex Court in the case of **Shriram Urav Vs. State of Chhattisgarh in Criminal Appeal No(S). 41/2021**, decided on 10.01.2025, also quashed the conviction as well as the sentence imposed upon the appellant on the ground that the appellant/accused and the complainant/victim had married each other.

17. Similarly, in the case of **Dasari Srikant vs. State of Telangana reported in (2024) SCC OnLine SC 936**, wherein, under identical circumstances and almost identical provisions the Supreme Court quashed the proceedings instituted against the accused therein. The relevant paragraph 8 to 10 of the **Dasari Srikant (supra)** read as under:-

"8. Since, the appellant and the complainant have married each other, the affirmation of the judgment rendered by the High Court would have the disastrous consequence on the accused appellant being sent to jail which in turn could put his matrimonial relationship with the complainant in danger.

9. As a consequence, we are inclined to exercise the powers under Article 142 of the Constitution of India for quashing the conviction of the accused appellant as recorded by the learned trial Court and modified by the High Court.

10. As a result, the impugned judgment dated 27th June, 2023 passed by the High Court and judgment dated 9th April, 2021 passed by the trial Court are hereby quashed and set aside."

18. The facts of the present case are very similar to the above judgments. Here also I find that the victim has not at all supported the prosecution version instead according to her she voluntarily went with the applicant-accused on the date of alleged offence. Thereafter, she married him. Therefore, by no stretch of imagination, it can be said that no offence under Sections 363, 366 and 376 (2)(n) of the IPC read with Section 5/6(j)(2) of POCSO Act has been made out. The police has submitted

charge-sheet in mechanical manner without due application of mind and unfortunately the trial court has also not considered the matter in correct perspective. Secondly, the question arises here as to whether the proceedings of criminal case under Section 363, 366 and 376 (2)(n) of the IPC read with Section 5/6(j)(2) of POCSO Act can be quashed by the High Court in the Application under Section 482 Cr.P.C. and 528 BNSS, if the parties have settled their dispute amicably and living as husband and wife for a long period and a child was born out of wedlock.

19. The Apex Court in the case of **K. Dhandapani Vs. The State by the Inspector of Police, 2022 SCC onLine SC 1056 and Mafat Lal and Others vs. The State of Rajasthan, 2022 SCC OnLine SC 433**, also quashed the proceedings against the accused therein on the grounds that the accused had solemnized marriage with the prosecutrix and secondly, the court cannot turn a blind eye to the said fact. Since the judgement rendered by Apex Court in the case of **K. Dhandapani (supra)** is a short one, therefore, the same is reproduced in its entirety:

"Leave granted.

The appellant who is the maternal uncle of the prosecutrix belongs to Valayar community, which is a most backward community in the State of Tamilnadu. He works as a woodcutter on daily wages in a private factory. FIR was registered against him for committing rape under Sections 5(j)(ii) read with Section 6, 5(I) read with Section 6 and 5(n) read with Section 6 of Protection of Child from Sexual Offences (POCSO) Act, 2012. He was convicted after trial for committing the said offences and sentenced to undergo rigorous Reason: imprisonment for a period of 10 years by the Sessions Judge, Fast Track Mahila Court, Tiruppur on 31.10.2018. The High Court, by an order dated 13.02.2019, upheld the conviction and sentence. Aggrieved thereby, the appellant has filed this appeal.

Mr. M.P.Parthiban, learned counsel appearing for the appellant, submitted that allegation against him was that he had physical relations with the prosecutrix on the promise of marrying her. He stated that, in fact, he married the prosecutrix and they have two children.

The appellant submitted that this Court should²⁹ exercise its power under

Article 142 of the Constitution and ought to do complete justice and it could not be in the interest of justice to disturb the family life of the appellant and the prosecutrix.

After hearing the matter for some time on 08 th March, 2022, we directed the District Judge to record the statement of the prosecutrix about her present status. The statement of the prosecutrix has been placed on record in which she has categorically stated that she has two children and they are being taken care of by the appellant and she is leading a happy married life.

Dr. Joseph Aristotle S., learned counsel appearing for the State, opposed the grant of any relief to the appellant on the ground that the prosecutrix was aged 14 years on the date of the offence and gave birth to the first child when she was 15 years and second child was born when she was 17 years. He argued that the marriage between the appellant and the prosecutrix is not legal. He expressed his apprehension that the said marriage might be only for the purpose of escaping punishment and there is no guarantee that the appellant will take care of the prosecutrix and the children after this Court grants relief to him.

In the peculiar facts and circumstances of this case, we are of the considered view that the conviction and sentence of the appellant who is maternal uncle of the prosecutrix deserves to be set aside in view of the subsequent events that have been brought to the notice of this Court. This Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix. We have been informed about the custom in Tamilnadu of the marriage of a girl with the maternal uncle.

For the aforesaid mentioned reasons, the conviction and sentence of the appellant is set aside in the peculiar facts of the case and shall not be treated as a precedent. The appeal is accordingly, disposed of. Pending application(s), if any, shall stand disposed of.

In case, the appellant does not take proper care of the prosecutrix, she or the State on behalf of the prosecutrix can move this Court for modification of this Order."

20. In my considered opinion, no offence is made out under sections 363,

366 and 376 (2)(n) of the IPC read with Section 5/6(j)(2) of POCSO Act since the victim has not levelled any allegation against the applicant in relation to the aforementioned sections inasmuch as the victim at no point of time stated that she was sexually assaulted by the applicant. Therefore, the basic ingredient to constitute an offence punishable under Sections 363, 366 and 376 (2)(n) of the IPC read with Section 5/6(j)(2) of POCSO Act is missing. Contrary to this, the victim has solemnized marriage with the applicant and a baby boy was born out of the wedlock and they are living a happy married life for the last several years. If the proceedings of the trial court is not quashed by this Court, the applicant and the victim alongwith the child may sustain legal injury and the case of the applicant is squarely covered with the cases mentioned hereinabove.

21. In view of the discussion made herein above, the present application succeeds and is liable to be allowed. It is accordingly **allowed**.

22. The entire proceedings of Sessions Case No. 1623 of 2025 (State of U.P. vs. Durgesh Maurya), arising out of Case Crime No. 159 of 2023, under Section 363, 366, 376(2)(n) of I.P.C. and Section 5/6(j)(2) of POCSO Act, Police Station Khajni, District Gorakhpur, as well as chargesheet dated 11.05.2025 and summoning order dated 13.06.2025, pending in the court of Sessions Judge/Special Judge (POCSO Act), Court No. Ist, Gorakhpur, against the applicant, are hereby **quashed**.

23. No order as to costs.

24. Since the proceedings as well as impugned chargesheet dated 11.05.2025, have been quashed by this Court, therefore, the learned trial court is directed to release the applicant from jail with immediate effect, if he is not wanted in any other case.

(Vivek Kumar Singh,J.)

March 31, 2026

A.P. Pandey