



2026:AHC:59685

HIGH COURT OF JUDICATURE AT ALLAHABAD

**CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482
BNSS No. - 2496 of 2026**

Sachin Kumar

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite
Party(s)

Counsel for Applicant(s) : Geeta Kushwaha, Sunil Kumar
Kushwaha
Counsel for Opposite Party(s) : Nitin Kumar Srivastava, G.A.

Court No. - 72

HON'BLE RAJIV LOCHAN SHUKLA, J.

1. Heard Sri Sunil Kumar Kushwaha, Learned counsel for the applicant; Sri Nitin Kumar Srivastava, Learned counsel for the opposite party No.2 and Sri Surendra Singh, Learned A.G.A. for the State.

2. The present anticipatory bail application has been filed on behalf of the applicant in Case Crime No. 57 of 2026, under Sections 64(1), 351(2), 123 of the B.N.S., 2023, Police Station – Ali Nagar, District Chandauli, with a prayer to enlarge him on anticipatory bail, till the conclusion of the trial.

3. The learned counsel for the applicant states that the applicant has been falsely implicated in the present case. He seeks anticipatory bail on the following grounds :-

i. The applicant has been falsely implicated in the present case due to the machinations of the uncle of the victim, against whom the applicant had lodged a case under Section 138 of the Negotiable Instruments Act, being Complaint Case No.11067 of 2025, which has been referred to the Mediation Centre.

ii. This false case has been registered only to create pressure on the applicant so that the liability to pay may be avoided.

iii. The victim is major, and for this he relies upon a certificate issued by the Basic Shiksha Adhikari, Jalaun at Orai, dated 10.03.2026 wherein an inquiry was conducted by the Block Education Officer. It was found that the victim's date of birth, as per the SR Register/Leaving Certificate, was 05.08.2005. On this basis, he contends that the victim was major on the relevant date.

iv. The applicant has no criminal antecedents.

4. The Learned counsel for the informant, on the other hand, contends that the victim is a minor aged about 17 years. In support, he relies upon the High School Certificate of the victim, in which her date of birth is mentioned as 14.09.2008, and therefore, she was a minor on the date of occurrence. Sri Srivastava further states that the applicant is specifically named in the First Information Report (FIR), the allegations of rape have been made against him. The Learned counsel for the informant also contends that the allegation of the applicant that the FIR was lodged to create pressure on him to withdraw his case under Section 138 of the Negotiable Instruments Act, is not borne out from the record, as in the proceedings under Section 138 of the N.I. Act, Rs.4,25,000/- has already been paid, which is half the amount due from the brother of the victim. He further contends that the documents relied upon by the applicant are absolutely forged, as the marriage of the victim's parents took place in the year 2006; therefore, by no stretch of imagination could the victim have been born in the year 2005. He submits that the offence is grave and heinous, and therefore no indulgence should be granted to the applicant.

5. Learned A.G.A. has supported the contentions raised by Sri Srivastava.

6. I have considered the submissions made by the learned counsel for the parties and perused the material available on record.

7. The FIR was lodged against the applicant and his family members on 05.02.2026. The incident alleged against the applicant is dated 04.02.2026. The medical examination report does not show any mark of injury on the person of the victim. The only notable finding in the medical examination report is that the hymen being torn, with mild inflammation. During the investigation, the police recovered some condoms and a used condom from the alleged place of occurrence. The victim, in her statement recorded under Section 183 B.N.S.S., as taken down by the Investigating Officer in the case diary, has deposed as follows :-

"अवलोकन बयान पीडिता अन्तर्गत धारा 183 बीएनएसएसपीडिता उम्र करीब 17 वर्ष के द्वारा माननीय न्यायालय के समक्ष सशपथ बयान किया कि मेरी उम्र 18 वर्ष है पर पेपर में कम है मैं बी0ए0 की छात्रा हूँ। मैं सचिन से तीन साल से प्यार करती हूँ। मैं 04.02.26 को सुबह 10.00 बजे सचिन से मिलने गयी जयसवाल टावर के पास रूम में। पहले भी मैं सचिन से किराये वाले रूम में मिल चुकी हूँ। हम दोनों के बीच मेरी रजामंदी से शारीरिक सम्बन्ध बना है। 4.02.26 को मैं रूम में गयी तब मेरे मामा पीछे से आ गये और झूठा रेप का केश दर्ज करने को दबाव बनाया। सचिन ने कुछ नहीं किया। मैं अपनी मर्जी से गयी थी। सचिन के साथ जाना चाहती हूँ। मैं उससे प्यार करती हूँ। कल भी मेरे

पापा व बड़े पापा ने बहुत मारा मैं जाऊँगी तो जान से मार देंगे। यह मेरा बयान है। और कुछ नहीं कहना।”

(The identity of the victim is being withheld)

8. From the entire facts and circumstances appearing before this Court, prima faice, it appears that the victim had a consensual relationship with the applicant. Although the High School Certificate of the victim indicates that she is a minor below 18 years of age, in the opinion of the Court, that alone may not disentitle the applicant from consideration of bail. The victim is stated to be aged about 17 years, being on the cusp of majority. From her statement recorded under Section 183 B.N.S.S., it transpires that she was in a consensual relationship with the applicant and claims to be 18 years of age. The applicant is also a young man aged about 23 years. The Learned counsel for the informant has, however, contended that her statement under Section 183 B.N.S.S. was recorded after she had been subjected to threats by the accused. A complaint has been made before the Chief Judicial Magistrate, Jalaun at Orai, for recording her statement again under Section 183 B.N.S.S., upon which the learned Magistrate, on 11.03.2026, passed an order directing that the matter be placed before the POCSO Court.

In the opinion of this Court, once a statement of the victim has been recorded by the concerned Magistrate on oath, in which she has made specific allegations of being beaten by her father and uncle, the subsequent application for recording her second statement under Section 183 B.N.S.S. would not prejudice the applicant. The applicant has no criminal antecedents. The solemn proceedings before the Magistrate, wherein the statement of a victim has been recorded, cannot be called into question merely on the basis of an application alleging that the applicant threatened the victim by stating that he would make the video, that has been recorded by him, viral. The application has been moved under the signatures of the informant, against whom allegations of physical assault have been made in statement recorded before the Magistrate under Section 183 B.N.S.S.

9. The Learned Special Judge, POCSO Act, while rejecting the anticipatory bail application of the applicant, has observed as follows:-

“स्पष्ट है कि जहाँ तक अग्रिम जमानत का प्रश्न है, इस संदर्भ में अभियोजन पक्ष की ओर से सरकारी गजट उत्तर प्रदेश (संसदीय अनुभाग) संख्या 1410/वि०स०/संसदीय / 130 (सं)-2022 लखनऊ, 22 सितम्बर 2022 दाखिल किया है, जिसमें यथा संशोधित दण्ड प्रक्रिया संहिता, 1973 की धारा 438 में उपधारा (6) की उप उपधारा (5) लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 (अधिनियम संख्या 32 सन् 2012) से उद्भूत होने वाले अपराधों के अनुसार अग्रिम जमानत प्रदान किये जाने के लिए निषेधित किया

गया है। अतः सरकारी गजट उत्तर प्रदेश संख्या 1410/वि०स०/संसदीय / 130 (सं)-2022 लखनऊ, 22 सितम्बर 2022 दाखिल किया है, जिसमें यथा संशोधित दण्ड प्रक्रिया संहिता, 1973 की धारा 438 में उपधारा (6) की उप उपधारा (5) लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 (अधिनियम संख्या 32 सन् 2012) से उद्भूत होने वाले अपराधों के अनुसार अग्रिम जमानत प्रदान किये जाने लिए निषेधित किया गया है, उपरोक्त गजट को दृष्टिगत रखते हुए मामले के गुणदोष पर न जाते हुए प्रार्थी / अभियुक्त सचिन कुमार का अग्रिम जमानत हेतु प्रस्तुत प्रार्थनापत्र स्वीकार होने योग्य नहीं है।”

10. In the opinion of this Court, the amendment referred to by the Learned Special Judge, POCSO Act, applies to anticipatory bail applications filed under Section 438 Cr.P.C., as amended in the State of U.P. Since the enforcement of the B.N.S.S., 2023, no such amendment has been brought to the notice of this Court which excludes the operation of Section 482 B.N.S.S. for offences under the POCSO Act or other sexual offences, except Section 65 B.N.S. and Section 70(2) B.N.S.

11. In the opinion of this Court, the anticipatory bail application of the applicant ought to have been considered on its own merits, and the refusal to entertain the same on the basis of the aforesaid amendment was clearly illegal.

12. Taking into account all these facts, and considering that the applicant has no criminal antecedents, I deem it appropriate to enlarge the applicant on anticipatory bail.

13. The anticipatory bail application of the applicant is **allowed**.

14. In the event of the arrest of the applicant- **Sachin Kumar**, involved in the aforesaid case crime, he shall be released on anticipatory bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the Station House Officer of the police station/Court concerned, with the following conditions:-

- i. The applicant shall make himself available for interrogation by a police officer as and when required;
- ii. 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;
- iii. The applicant shall not leave India without the previous permission of the Court;
- iv. The applicant shall not pressurize/intimidate the prosecution witness;

15. In case of breach of any of the above conditions, the Court concerned shall be at liberty to cancel the bail.

16. It is made clear that observations made hereinabove are exclusively for deciding the instant anticipatory bail application and are not to be considered to be an opinion on the merits of the case.

March 23, 2026
Kushal

(Rajiv Lochan Shukla,J.)