



2026:AHC:129384

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 18854 of 2026

Gaurav

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Ajay Kumar Pathak
Counsel for Opposite Party(s)	:	G.A.

Court No. - 73

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Ajay Kumar Pathak, learned counsel for the applicant, as well as Sri Rajesh Kumar Shukla, learned AGA for the State.
2. Sri Rajesh Kumar Shukla, learned AGA for the State has produced before this Court a compilation of documents in which one of them shows that the service upon the first informant has been effected on 25.05.2026.
3. Till the dictation of the order, nobody is present on behalf of opposite party no. 2.
4. This is an application under Section 483 of the BNSS-2023 filed on behalf of the applicant-Gaurav son of Pratap Singh for enlarging on bail in connection with Case Crime No. 108 of 2025, under Section 64(1) of BNSS and 3/4 of POCSO Act, Police Station Kotwali, Musharan, District Hathras.
5. Learned counsel for the applicant has submitted that a first information report stood lodged by the first informant, opposite party no. 2, against 3 accused and not against the applicant under Sections 64, 62, 351(2), 333 of the BNSS-2023 and Sections 3, 4, and 18 of the POCSO Act by the sister of the victim on 17.05.2025 at 19:11 hours, being FIR No. 0108 with the allegation that the sister of the first informant/victim is 17 years and she is the sister of the applicant. As per the allegation contained in the first information report, the first informant/sister/victim had informed telephonically the first informant on 16.05.2025 at 10:00 in the night that on 15.05.2025, the brother of the victim along with the accused named in the

first information report, Ramu, Rahul and Dhansu had come to the house and they were doing party with the brother of the victim and the brother of the victim after consuming liquor became unconscious and then Shivu and Dhansu went back and thereafter Ramu son of Rajendra came in the room and without the consent of the victim committed the bad act and thereafter Rahul son of Satyaveer attempted to commit rape and when the victim screamed both of them ran away. Allegation is to the extent also that the victim on 16.05.2025 at 9.15 P.M. had telephonically apprised the first informant that Dhansu and Rahul who had marked as accused in the first information report had administered threat to the first informant and the applicant-accused who happens to be the real brother that in case, they reveal the said incident then they have to face the consequences. Learned counsel for the applicant has submitted that the applicant happens to be the brother whose identity is not under cloud as the victim very well knew about the face and the physic of his brother applicant, however, just in order to falsely implicate the applicant, his name stood surfaced in the statement recorded under Section 161 CrPC / Section 180 BNSS and 164 Cr.P.C./183 BNSS. Learned counsel for the applicant further submits that the basic reason attributable for falsely implicating the applicant is that the applicant had resisted and was not agreeable for the marriage of the first informant with one of the person which became the motive for falsely implicating the applicant. Learned counsel for the applicant also submits that even in the statement on 17.06.2025, it has been alleged that the applicant used to commit the offence even earlier also on couple of occasions but there is nothing on record to substantiate the same and further while inviting attention towards the statement of the doctor, it is contended that the victim had narrated the fact that the friends had committed the offence and while further inviting attention towards page 57 it is submitted that the age certificate so issued by the department of Medical Health and Family Welfare shows that the age of the victim was 18-19 years when the inspection stood conducted on 22.05.2025. It is also contended that the applicant is in jail since 30.05.2025 and the applicant does not possess any criminal history.

6. Learned AGA, on the other hand, submits that whatever might be offences are made out and here there are grave offences particularly when the allegation is that the brother has committed bad act with the real sister.

However, he could not dispute that the applicant does not possess criminal history and in the FIR, there is no reference about commission of the crime by the applicant particularly when the recital is that the applicant after consuming liquor became unconscious.

7. Having heard the submissions made across the bar, bearing in mind the overall fact situation and the complicity of the matter, and also the fact that the applicant has not been named in the first information report and the first information report stood lodged by the first informant on the allegation so made by the real sister of the applicant. Further, there is no recital in the statement under Section 161 or 164 that despite naming the applicant as an accused, his name was not finding place in the first information report and further, the fact that the applicant does not possess criminal history and is languishing in jail since 30.05.2025. Prima facie, the applicant is entitled for enlargement on bail.

8. Let applicant-Gaurav be released on bail in case crime No. 108 of 2025, under sections 64 (1) of B.N.S. and 3/4 of the Protection of Children from Sexual Offences, Act, 2012, Police Station Kotwali Mursan, District Hathras on his furnishing a personal bond with two sureties each of the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as an abuse of liberty of bail and pass orders in accordance with law.

(iii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the IPC/269 of BNS.

(iv) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C./84 BNSS is

issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the IPC/209 of BNS.

(v) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C./351 of BNSS. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

(vi) The applicant shall appear before the concerned Police Station on 1st Monday of each month.

9. It is further directed that the identity, status and residence proof of the sureties be verified by the authority concerned before they are accepted.

10. In case of breach of any of the above conditions, the trial court will be at liberty to cancel the bail. Any observations made in granting bail to the applicant shall not in any way affect the learned Trial Court Judge in forming his independent opinion based on the testimony of the witnesses.

11. Accordingly, the bail application is **allowed**.

12. The compilation of the documents submitted today is taken on record and marked as Appendix 'A'.

(Vikas Budhwar,J.)

June 29, 2026

Rajesh