2026:AHC:212098

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 31860 of 2026

Ashish

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite Party(s)

Counsel for Applicant(s)	:	Pramod Kumar Dwivedi
Counsel for Opposite Party(s)	:	G.A.

Court No. - 67

HON'BLE JITENDRA KUMAR SINHA, J.

1. Heard Shri Mrityunjay Dwivedi, holding brief of Shri Pramod Kumar Dwivedi, learned counsel for the applicant and Shri B.P. Maurya, learned A.G.A. for the State and perused the record. At the very outset, learned AGA submits that the notice has been served on the first informant.

2. The instant bail application has been filed with a prayer to release the applicant on bail in Case Crime No. 179 of 2026, under Sections 191(2), 333, 115(2), 74, 65(1), 351(3) of B.N.S. and Section 3/4(2) of POCSO Act, Police Station Kotwali Hathras Junction, District Hathras, during the pendency of the trial.

3. Learned counsel for the applicant has submitted that the applicant has been falsely implicated in the present case though there is no incriminating material against him. It is further submitted that there is no allegation of rape in the first information report and there is allegation of sexual harassment and outraging modesty and attempt to commit rape on the victim. It is further submitted that there are material contradictions in the statement of the victim recorded under Sections 180 and 183 BNSS as the victim in her statement recorded under Section 180 BNSS has stated that the applicant committed rape on her, whereas, the victim in her statement recorded under Section 183 BNSS has stated that the applicant and four other persons committed gang rape on her. It is further submitted that the age of the victim has been found to be 14 years as per school records of Class V, however, there is no certificate of high school or certificate of

school first attended and no radio-logical examination has been conducted for her age determination. It is further submitted that the applicant is aged about 19 years and the real age of the victim is 18 years and both were in relationship, which is evident from the statements of the independent witness Anar Singh. It is further submitted that the applicant is having no criminal history and the applicant has been languishing in jail since 30.06.2026, in case, he is granted bail, he will not misuse the liberty of bail and would cooperate in the trial proceedings.

4. Per contra, learned A.G.A. has vehemently opposed the prayer for bail and it has been submitted by him that the victim is a minor girl aged about 14 years as per school records of Class V and the victim in her statements recorded under Sections 180 and 183 BNSS has stated that the applicant committed rape on her.

5. There is no allegation of rape in the first information report and there is allegation of sexual harassment and outraging modesty and attempt to commit rape on the victim. It is further submitted that there are material contradictions in the statement of the victim recorded under Sections 180 and 183 BNSS as the victim in her statement recorded under Section 180 BNSS has stated that the applicant committed rape on her, whereas, the victim in her statement recorded under Section 183 BNSS has stated that the applicant and four other persons committed gang rape on her. It is further submitted that the age of the victim has been found to be 14 years as per school records of Class V, however, there is no certificate of high school or certificate of school first attended and no radio-logical examination has been conducted for her age determination. It is further submitted that the applicant is aged about 19 years and the real age of the victim is 18 years and both were in consensual relationship, which is evident from the statements of the independent witness Anar Singh. It is further submitted that the applicant is having no criminal history and the applicant has been languishing in jail since 30.06.2026.

6. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view the nature of offence, evidence, complicity of the accused and taking into account overcrowded jails and heavy pendency of criminal cases before the trial

courts as well as considering the mandate of the judgement of the Apex Court in the case of ***Kapil Wadhawan vs Central Bureau of Investigation*** reported in 2025 SCC OnLine SC 3038 as well as guideline of this Court in the case of ***Maya Tiwari Vs. State of U.P.*** reported in 2024 SCC Online All 6765 regarding grant of bail and without expressing any opinion on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Accordingly, the present application is **ALLOWED**.

8. Let the applicant- **Ashish** involved in the aforementioned crime be released on bail, on his 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 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.

(ii) The applicant shall cooperate in the trial/investigation sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

(iv) The applicant shall attend in accordance with the conditions of the bond executed by him.

9. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

10. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted. Verification of mobile number and Aadhaar card of the applicant as well as sureties should be verified by the court concerned.

11. It is further directed that the trial court shall send the release order to the concerned jail through Bail Order Management System (BOMS) to

ensure early release of the applicant.

12. Office is directed to send a copy of this order to the applicant through **Jail Superintendent**, Hathras via e-mail or e-prison portal within 24 hours in compliance of the order of the Apex Court in the case of **Policy Strategy for Grant of Bail, In Re: Suo Motu Writ Petition (Crl.) No.4 of 2021 decided on 31.01.2023** reported in (2024) 10 SCC 685.

(Jitendra Kumar Sinha,J.)

October 9, 2026
RKM

Digitally signed by :-
RAJESH KUMAR MAURYA
High Court of Judicature at Allahabad