

The relevant paras of the decision of the Apex Court is quoted hereunder:-

"4. The opinion of the High Court, in the impugned order, is that in the event the High Court granted bail to the appellant without compliance of the conditions specified in the earlier order of a Coordinate Bench, that would constitute modification of the order and Section 362 of the Code prohibits such modification of a judgment or final order.

5. An order for refusal of bail however, inherently carries certain characteristics of an interlocutory order in that certain variation or alteration in the context in which a bail plea is dismissed confers on the detained accused right to file a fresh application for bail on certain changed circumstances. Thus, an order rejecting prayer for bail does not disempower the Court from considering such plea afresh if there is any alteration of the circumstances. Conditions of bail could also be varied if a case is made out for such variation based on that factor. Prohibition contemplated in Section 362 of the Code would not apply in such cases. Hence, we do not think the reasoning on which the impugned order was passed rejecting the appellant's application of bail can be sustained. The impugned order is set aside and the matter is remitted to the High Court. The bail petition of the appellant before the High Court shall revive to be examined afresh by the High Court in the light of our observations made in this order"

15. In view of the above, taking note of the fact that the applicant though released on bail vide order dated 12.10.2020 has remained in custody on account of non-fulfillment of the condition of providing one surety of his family

member, I am inclined to grant the prayer for modification of the condition, to meet the ends of justice.

16. In view of the above, the modification application stands **allowed**.

17. Accordingly, in the 4th & 5th line of the order dated 12.10.2020 is modified to the extent that the condition mentioned as **"one of the surety should be of his family member"** is hereby deleted.

(2025) 1 ILRA 57
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.01.2025

BEFORE

THE HON'BLE SANJAY KUMAR SINGH, J.

Criminal Misc. Bail Application No. 35494 of
2024

Om Prakash Kushwaha **...Applicant**
Versus
State of U.P. **...Opposite Party**

Counsel for the Applicant:

Himanshu Mishra, Kamlesh Kumar Dwivedi,
Suvansit Kumar Jaiswal

Counsel for the Opposite Party:

G.A., Vijay Kumar Mishra

A. Criminal Law – Bharatiya Nyaya Sanhita – Sections 64, 74 & 351 – Evidence Act, 1875 – Section 65B – Rape – CCTV footage show the presence of applicant and victim together in a hotel and WhatsApp chatting proof that applicant was taking advantage of withdrawing the case lodged by him against the victim's brother and used it to make physical relation with her – There is no inconsistency in the FIR version and St.ment of victim u/s 180 and 183 of BNSS – Effect – Held, from the medical

examination report, it reflects that on protesting, victim was beaten by the applicant. The said factual aspects of the matter are corroborated from the CCTV footage of hotel – WhatsApp chatting, which is supported by a certificate of victim u/s 65B of the Indian Evidence Act also, the aforesaid allegations of the victim is prima-facie corroborated – The alleged act of the applicant is serious blow to victim's supreme honour and offends her self-esteem and dignity. It degrades and humiliates the victim – High Court found no good ground to disbelieve the St.ment of victim. (Para 6 and 8)

Bail application rejected. (E-1)

(Delivered by Hon'ble Sanjay Kumar Singh, J.)

1. By means of this application under Section 483 of BNSS, applicant Om Prakash Kushwaha, who is involved in Case Crime No. 402 of 2024, under Sections 64, 74, 351 BNS, police station Sikandara, district Agra seeks enlargement on bail during the pendency of trial.

2. Heard Mr. K.K. Dwivedi, learned counsel for the applicant, Mr. Deepak Mishra, learned Additional Government Advocate representing the State and Mr. Vijay Kumar Mishra, learned counsel appearing on behalf of the first informant / complainant.

3. As per prosecution case, in brief, the victim got a first information report lodged on 19.07.2024 for the alleged offence under Sections 64, 74 and 351 BNS against the applicant making allegations inter alia that the applicant had an evil eye on her, but she always used to address him as brother from beginning. The accused's younger daughter Ritika and her younger brother Aman were friends since

childhood. Due to which applicant managed to send her younger brother to jail in a false case, who is minor. The bail application of her younger brother was rejected by the High Court on 18 September 2023, taking advantage thereof, on 19 September 2023, Om Prakash Kushwaha, called her and asked her to meet him. When she refused to meet him, applicant threatened her that if she did not come to meet him, he would implicate her elder brother Salman and brother-in-law also in a false case. Due to fear, she went to meet the applicant in Subhash Park, where the applicant held her hand and said that he likes her very much. If she marries him, he will buy a separate flat for her and only then he will withdraw the case against her younger brother. When she refused for marriage, then the applicant said that if she cannot marry him, then have physical relation with him and he will take the case back. As such applicant used to call her everyday in this manner and called her to meet at different places. Many time the applicant used to call her to meet him in the car by luring her to withdraw her brother's case and made her to put her hand inside his pant (jeans) and when she went to his house he used to ask her for nude photos and made a video call on WhatsApp and asked her to remove her clothes. Every time he used to say the same thing that if she make him happy, he will take back her brother's case. The F.I.R. further alleges that the victim weeps a lot but applicant used to take advantage of her helplessness every time. The applicant made obscene video of her while sitting in car, and threatened to make them viral and asked her to have physical relation. On 18.07.2024, the applicant called her to meet him and took her to Room No. 206 of Hotel Sikandara Pind Baluchi, Opposite Gurudwara, where he took her into

confidence in the hotel by writing on a paper and making a signature that he will get the case of her brother withdrawn and made physical relation with her. He also done carnal intercourse with her and put his penis in her mouth. Her brother Salman and mother Afsana came at the spot and informed the police at 112 from the hotel, on which police brought the victim and applicant to Sikandra Police Station gate. Applicant's wife and brother took him away from the gate of police station itself.

4. It is argued by learned counsel for the applicant that the applicant has been falsely implicated in this case on account of enmity with the victim and her family members because on 02.06.2022, he had lodged F.I.R. at Case Crime No. 0322 of 2022 at police Station Jagdishpura, Agra under Section 363 and 366 IPC against the victim's brother-Aman Khan for kidnapping his daughter. Much emphasis has been given by contending that victim herself took the applicant to hotel giving prior information to her family members. Otherwise there was no occasion for the family members to reach the hotel. It next submitted that in fact victim was mounting pressure upon the applicant to withdraw his case against her younger brother. Investigating officer has neither conducted fair investigation nor collected any substantive evidence against the applicant. No such incident took place as alleged by the victim in the F.I.R. Medical examination report of the victim is inconsistent with prosecution case. The victim was never blackmailed or terrorized for having physical relation with him. No obscene photographs or video or any electric device was recovered from the possession of the applicant. The applicant does not have any criminal history to his credit, hence he may be released on bail.

5. Per contra, learned A.G.A. for the State as well as learned counsel for the informant vehemently opposed the prayer for bail of the applicant reiterating the prosecution case as mentioned in the F.I.R. by contending that applicant continuously made phone call to the victim and made pressure for compromise putting a condition that in lieu thereof, she would have to make physical relation with him. The victim was medically examined on 19.07.2024 at about 06:15 PM and four external injuries in the nature of multiple soft scabbed abrasion and reddish contusions were found on her body. Duration of the same was about one day old, which corroborate the prosecution case. The accused-applicant (Om Prakash Kushwaha) was apprehended along with the victim at the hotel. The applicant had called the victim on the pretext of withdrawing the case lodged by him against the victim's brother. During investigation, the investigating officer collected the CCTV footage of Hotel Pind Baluchi, in which applicant and victim were seen together at the reception of the hotel and went to hotel room no. 206 at about 12:22 PM and stayed there till 12:43 PM. It is also pointed out that from the contents of WhatsApp chatting between the victim and accused-applicant clearly indicates that applicant was taking advantage of withdrawing the case lodged by him against the victim's brother and used to make physical relation with her. The applicant is a notorious person, hence in case of granting bail, there is every possibility of his misusing the liberty of bail and tampering with the witnesses and evidence, therefore, bail application of the applicant is liable to be rejected.

6. Having heard learned counsel for the parties and examined the matter in its

entirety, I find that main allegation of the victim against the accused-applicant is that the applicant for making comprise and withdrawing his case against the victim's brother put a condition that in lieu thereof she will have to make physical relation with him. The facts of this case is very rare. The modus operandi adopted by the accused to satisfy his lust under the garb of giving assurance of compromising and withdrawing the criminal case lodged against victim's brother by the applicant is an example of dehumanizing and heinous act, which is unlawful intrusion on the right of privacy and chastity of a female. The prosecutrix/ victim has made serious allegations of rape etc. against the applicant giving vivid description of the incident in the F.I.R. and the same has been reiterated by her in her statements recorded under Section 180 and 183 of BNS. There is no inconsistency in the allegation of victim, so far as allegation of rape / making forceful physical relation by the applicant against her wishes is concerned. From the statement of victim, I also find that she has stated inter-alia that applicant lastly on 18.07.2024 called her to meet him at Hotel Pind Baluchi. Then she told her sister Tanisha, who asked her to send her live location and informed her mother and brother, then her mother and brother came there and informed the police at 112. The presence of applicant with prosecutrix / victim in the hotel has been admitted on behalf of the applicant in his bail application. From the medical examination report, it reflects that on protesting, victim was beaten by the applicant. The said factual aspects of the matter are corroborated from the CCTV footage of hotel, medical examination report dated 19.07.2024 of victim and other materials on record. Not only this but from the WhatsApp chatting between

the applicant-Om Prakash Kushwaha and victim, which is supported by a certificate of victim under Section 65B of the Indian Evidence Act also, the aforesaid allegations of the victim is prima-facie corroborated. The said WhatsApp chatting is a part of the case diary and same has been filed on record by the victim through her counter affidavit, but in order to avoid tarnishing the image of the victim, this Court is not mentioning the contents of said inappropriate WhatsApp chatting. The alleged act of the applicant is serious blow to victim's supreme honour and offends her self-esteem and dignity. It degrades and humiliates the victim, it leaves behind a traumatic experience, a rapist not only cause physical injuries, but more indelibly leaves a blot on the most cherished possession of a women i.e. dignity, honor, reputation and not the least her chastity.

7. This Court is also of the view that the applicant's alleged conduct of leveraging the victim's familial challenges and exploiting her for personal gain constitutes a serious offence. The exploitation of a vulnerable individual's circumstances by the accused to achieve ulterior motives and his lust is an act that violates the principles of justice and living with dignity enshrined in the Constitution. The victim's statement outlines a clear picture that accused-applicant misusing the vulnerable situation of victim compelled her to enter into unwilling acts of making physical relation with him, which is apparent from the evidences collected during investigation.

8. In view of the above, at this stage, I do not find any good ground to disbelieve

the statement of victim and presume the false implication of the applicant.

9. Considering the overall facts and circumstances of the case as well as keeping in view the submissions advanced on behalf of parties as noted above, role assigned to applicant, gravity of offence, severity of the punishment and the manner in which the offence has been committed, as well as threat to the safety and dignity of the victim, I do not find any good ground to release the applicant on bail.

10. Accordingly, the bail application is rejected.

11. It is made clear that the observation contained in the instant order is confined to the issue of bail and shall not affect the merit of the trial.

(2025) 1 ILRA 61
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 10.01.2025

BEFORE

THE HON'BLE SANJAY KUMAR SINGH, J.

Criminal Misc. Bail Application No. 39835 of
2024

Suraj Kumar @ Vishwapratap Singh
...Applicant
Versus
State of U.P. & Ors. ...Opposite Parties

Counsel for the Applicant:
Akhilesh Kumar Dwivedi

Counsel for the Opposite Parties:
R.A. Ram, Shyam Chandra, G.A.

**Criminal Law - Bharatiya Nyaya Sanhita,
2023 - Sections 63, 65(2), 351(2) &
332(c) - Rape - The Protection of Children**

from Sexual Offences Act, 2012 - Sections 3/4, 2(1)d, 29 - Bharatiya Nagarik Suraksha Sanhita, 2023 - Sections 180, 183 - Bail - As per FIR, informant woke up in morning, not find his daughter on bed - Noticed that another room locked from inside and when peeped through window, he saw applicant was committing rape upon his daughter by pressing her mouth - When informant shouted and called his wife, applicant by opening door, ran away by pushing him extending threat of dire consequences. (Para 3)

Applicant submitted that FIR was lodged after delay of 17 hours, without any plausible explanation, informant in his St.ment reiterated prosecution case but there are contradictions in St.ments of victim. (Para 4)

Held, from perusal of St.ments of victim, it was clear that applicant had forcibly took her to another room, bolted room and committed misdeed with her. (Para 10)

As per medical examination report of victim, there was no sign of any force was concerned, it was misconceived as in supplementary medico-legal examination report, final opinion was reserved pending on availability of FSL report, sexual violence cannot be ruled out - No any material on record to presume false implication of applicant and to disbelieve St.ments of minor victim, thus no any ground to release applicant on bail. (Para 15, 18)

Bail application rejected. (E-13)

List of Cases cited:

1. Ram Swaroop Vs St. of Raj., 2004 Law Suit (SC) 293
2. Attorney General for India Vs Satish & anr., (2021) 4 SCC 712
3. St. of Punjab Vs Gurmit Singh & ors., (1996) 2 SCC 384
4. St. of Madhya Pradesh Vs Mahendra @ Golu, (2022) 12 SCC 442