

114. Ms. Richa Upadhyay, Additional District Judge/Secretary, DLSA, Gautam Budh Nagar shall in coordination with District Probationary Officer, Ghaziabad prepare an individual child care plan for the daughter of the applicant in light of this judgement. The child care plan shall be prepared within two months from the date of receipt of a copy of this order after due consultation with various authorities and experts.

115. The State Government to provide necessary support to Ms. Richa Upadhyay, HJS/Secretary, DLSA, Gautam Budh Nagar and the District Probationary Officer, Ghaziabad to accomplish this task. Copy of the said individual child care plan shall be provided to the jail authorities, CWC and BSA. The District Magistrate, Ghaziabad shall also ensure that the aforesaid child care plan is duly implemented by the concerned authorities of the local administration.

116. The CWC, Ghaziabad shall prepare a regular report regarding implementation of the aforesaid plan and submit a report to the concerned authorities.

X. Circulation of copies for compliance

117. Learned Additional Advocate General to ensure service of copy of this judgement for necessary compliance upon the following authorities:

- i. Principal Secretary, Women and Child Development, Government of U.P.
- ii. Principal Secretary, Law/Legal Remembrancer, Government of U.P.
- iii. Director General of Police, Government of UP

- iv. Principal Secretary, (Prisons), Government of UP
- v. Principal Secretary (Basic Education), Government of UP
- vi. Principal Secretary, Health and Medical Education, Government of UP
- vii. CWC members in all districts
- viii. District Jail Superintendents of all district jails
- ix. Police Chiefs of all districts
- x. District Probationary Officers of all districts
- xi. Director, JTRI, Lucknow
- xii. District Magistrate, Ghaziabad

118. Registrar General to ensure that a copy of this order is provided to Ms. Richa Upadhyay, Additional District Judge/Secretary, DLSA, Gautam Budh Nagar.

119. A copy of this order translated in Hindi to be served to the applicant.

(2025) 4 ILRA 795
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.04.2025

BEFORE

THE HON'BLE KRISHAN PAHAL, J.

Criminal Misc Bail Application No. 40524 of 2024

Amarjeet Pandey ...Applicant
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Applicant:
Sri Devottam Pandey, Sri Mrityunjay Singh

Counsel for the Respondents:
G.A.

Criminal law- Bail – Applicant arrested U/S 137(2), 61(2), 65(1) B.N.S. and 3/4(2) POCSO Act Minor girl enticed – POCSO Act – Consent – Contradictory St.ments of victim – FIR delayed – Victim declared herself adult in 180 B.N.S.S. St.ment – Ossification test not conducted – No injury or medical corroboration – Victim accompanied applicant voluntarily to another St. – Promise of marriage – Bail granted – Red tape and systemic failure in age determination process deprecated – Directions issued to health and police authorities. (Paras 5,15, 16, 17, 18, 20 and 32)

HELD:

In light of the judgement of the Supreme Court passed in Niranjn Singh & anr. Vs Prabhakar Rajaram Kharote & ors. AIR 1980 SC 785 this Court has avoided detailed examination of the evidence and elaborate documentation of the merits of the case as no party should have the impression that his case has been prejudiced. A prima facie satisfaction of case is needed but it is not the same as an exhaustive exploration of the merits in the order itself. (Para 15)

The well-known principle of "Presumption of Innocence Unless Proven Guilty," gives rise to the concept of bail as a rule and imprisonment as an exception. (Para 16)

It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA. (Para 20)

Application allowed. (E-14)

List of Cases cited:

1. Niranjn Singh & anr. Vs Prabhakar Rajaram Kharote & ors. AIR 1980 SC 785

2. Satender Kumar Antil Vs Central Bureau of Investigation & ors., 2022 INSC 690
3. Manish Sisodia Vs Directorate of Enforcement 2024 INSC 595

(Delivered by Hon'ble Krishan Pahal, J.)

1. List has been revised.
2. Affidavit of compliance filed by learned A.G.A. today, is taken on record.
3. As informed by learned A.G.A., notice to the informant has been served on 4.11.2024.
4. Heard Sri Mrityunjay Singh, learned Advocate holding brief for Sri Devottam Pandey, learned counsel for the applicant and Sri V.K.S. Parmar, learned A.G.A. for the State and perused the material placed on record.

5. Applicant seeks bail in Case Crime No. 197 of 2024, U/S 137(2), 61(2), 65(1) B.N.S. and 3/4(2) POCSO Act, Police Station Gadwar, District Ballia, during the pendency of trial.

PROSECUTION STORY:

6. The FIR was instituted by the informant stating that his 16-year old daughter had left for college on 10.9.2024 at 9.00 am and did not return till the evening. After taking up frantic search, it was revealed that the applicant in collusion with the co-accused person Rikhimuni Pandey had enticed away his minor daughter.

ARGUMENTS ON BEHALF OF THE APPLICANT:

7. The applicant is absolutely innocent and has been falsely implicated in

the present case with a view to cause unnecessary harassment and to victimize him. He has nothing to do with the said offence.

8. The FIR is delayed by four days and there is no explanation of the said delay caused.

9. The victim is the consenting party, as is evident from her statement recorded u/s 183 B.N.S.S., whereby she has categorically stated that she was in love with the applicant. She has also stated that the applicant had promised to marry her, as such, she left her house in the morning of 10.9.2024 at about 10.00 am and went with the applicant to Gujarat and stayed there in the house of his maternal uncle. She had established corporeal relationship with the applicant on the said promise of marriage only.

10. The victim in her statement recorded u/s 180 B.N.S.S. has categorically stated that she is 18 years old and she had left her house after being scolded by her parents. The said statement is contradictory to the FIR and her statement recorded u/s 183 B.N.S.S.

11. There is no medical corroboration of the incident, as the victim had not sustained any injury, whatsoever.

12. The applicant alongwith his maternal aunt and uncle had taken her back to her native place after coming to know about the instant FIR. She has further stated that her parents are also ready to marry her off.

13. There is no criminal history of the applicant. The applicant is

languishing in jail since 25.9.2024. In case, the applicant is released on bail, he will not misuse the liberty of bail.

ARGUMENTS ON BEHALF OF INFORMANT/STATE:

14. The bail application has been opposed but the fact that there is no criminal history of the applicant has not been disputed.

CONCLUSION:

15. In light of the judgement of the Supreme Court passed in *Niranjan Singh and another vs. Prabhakar Rajaram Kharote and others AIR 1980 SC 785* this Court has avoided detailed examination of the evidence and elaborate documentation of the merits of the case as no party should have the impression that his case has been prejudiced. A prima facie satisfaction of case is needed but it is not the same as an exhaustive exploration of the merits in the order itself.

16. The well-known principle of "Presumption of Innocence Unless Proven Guilty," gives rise to the concept of bail as a rule and imprisonment as an exception.

17. A person's right to life and liberty, guaranteed by Article 21 of the Indian Constitution, cannot be taken away simply because the person is accused of committing an offence until the guilt is established beyond a reasonable doubt. Article 21 of the Indian Constitution states that no one's life or personal liberty may be taken away unless the procedure established by law is followed, and the procedure must be just and reasonable. The

said principle has been recapitulated by the Supreme Court in *Satender Kumar Antil Vs. Central Bureau of Investigation and Ors.*, 2022 INSC 690.

18. Reiterating the aforesaid view the Supreme Court in the case of *Manish Sisodia Vs. Directorate of Enforcement* 2024 INSC 595 has again emphasized that the very well-settled principle of law that bail is not to be withheld as a punishment is not to be forgotten. It is high time that the Courts should recognize the principle that ?bail is a rule and jail is an exception?.

19. Learned AGA could not bring forth any exceptional circumstances which would warrant denial of bail to the applicant.

20. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA.

21. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, the applicant having no criminal history, the fact that the victim had stated herself to be 18 years old in her statement recorded u/s 180 B.N.S.S. before the investigating officer and also the fact that she is the consenting party as per her statement recorded u/s 183 B.N.S.S., and also taking note of the fact that the victim had gone with the applicant all the way to Gujarat and stayed there and did not raise any alarm during the said sojourn, coupled by the fact that the victim has not sustained

any injuries, whatsoever, and despite efforts, the ossification test of the victim could not be conducted, without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

22. Let the applicant- **Amarjeet Pandey** involved in aforementioned case crime number be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions.

(i) The applicant shall not tamper with evidence.

(ii) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C./351 B.N.S.S. 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.

23. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

24. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

OSSIFICATION TEST REPORT:

25. This Court vide its order dated 10.2.2025 had directed the C.M.O. to constitute a medical board to conduct ossification test of the victim, so as to ascertain her age. C.M.O., Ballia, did not comply with the said order, as such, on 4.3.2025, a reminder was sent to him to comply with the said order dated 10.2.2025. This case was again taken up on 19.3.2025. Learned A.G.A. had submitted that the C.M.O. Ballia, has reported that despite several letters being sent to the S.H.O. concerned, the victim is not being produced before him for the ossification test, as such, earlier orders dated 10.2.2025 and 4.3.2025 could not be complied with.

26. The office report indicates that the learned C.J.M. has informed that the victim is in Kolkata, West Bengal with her paternal aunt, as such, her ossification test could not be conducted.

27. As per the said compliance affidavit filed by learned A.G.A., the victim was taken to District Hospital, Mau on 5.3.2025 and her X-ray report was prepared there. The said X-ray report has been annexed as Annexure-2 to the compliance affidavit. The informant had categorically stated to the S.H.O. on 17.3.2025 that he shall not take his daughter further for any medical examination and he had given an application to him to the effect, as the victim is living in Himachal Pradesh.

28. The lady constable and one S.I. had gone to the office of the C.M.O. Ballia on 9.3.2025 with the X-ray report but the C.M.O. concerned refused to give the ossification test report on account of non-availability of the victim before him.

29. The aforesaid averments made in the compliance affidavit indicates that the

authorities are not serious in getting the orders of the High Court complied. The red tape approach is but evident from the attitude of the authorities at large, as such, with a heavy heart, this Court has no other option but to dispose of the instant bail application without the said ossification test report. There is no documentary evidence to indicate the age of the victim.

30. The victim was taken from Ballia to Mau for her X-ray report but the ossification test was not completed the same day. The victim was asked to be present before the C.M.O. on a subsequent date. The said callous approach is deprecated, as the proceedings ought to have been completed the same day.

31. The said matter regarding non-availability of radiologist at Ballia, which causes hardship to the poor victims, is being dealt with separately by this Court in Criminal Misc. Bail Application No. 19345 of 2024 (Prakash Kumar Gupta vs. State of U.P. & 3 others).

32. It has come to the attention of this Court that there exists a disturbing pattern in the manner in which the age of individuals, particularly in criminal proceedings, is being misrepresented and inadequately verified. The issue has multiple dimensions involving litigants, law enforcement, and the health department, all contributing to a systemic failure.

1. Fudging of Date of Birth by Litigants:

This Court has observed with concern that some litigants are intentionally manipulating their date of birth in order to obtain favourable legal outcomes, such as

being declared a juvenile. This malpractice undermines the integrity of the justice delivery system and calls for stricter scrutiny and penalties for submission of false documents.

2. Failure of Police Authorities in Age Verification:

Despite clear provisions under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 which mandates that the age of a person claiming to be a juvenile must primarily be determined on the basis of documentary evidence, law enforcement agencies routinely fail to conduct proper age verification by ossification test in the absence of such documents. This laxity reflects a serious neglect of statutory duty and results in miscarriage of justice.

3. Inaction by Health Department Due to Lack of Radiologists/Infrastructure etc.:

In cases where documentary evidence is unavailable, the Act allows for medical tests to determine age. However, in the district of Ballia, such procedures are rendered impossible due to the absence of a qualified Radiologist since long. This lapse in healthcare infrastructure not only delays justice but also affects the credibility of the juvenile justice system.

Recommendations:

The above situation reveals a chain of administrative and procedural failures. It is imperative that:

(i) For developing a mechanism for stringent verification of documents submitted for age determination, the police is directed to strictly adhere to Section 94

of The Juvenile Justice (Care and Protection of Children) Act, 2015 and be trained accordingly.

(ii) Immediate steps be taken by the Health Department to appoint or depute at least one Radiologist in the district of Ballia to ensure compliance with the provisions of the Act.

Failure to address these issues may lead to continued abuse of legal provisions intended to protect genuinely vulnerable juveniles, thereby eroding public trust in the justice system.

33. Let a copy of this order be sent to the Principal Secretary for Medical Health and Family Welfare, Uttar Pradesh forthwith.

(2025) 4 ILRA 800

**ORIGINAL JURISDICTION
CRIMINAL SIDE**

DATED: ALLAHABAD 21.04.2025

BEFORE

**THE HON'BLE ARUN KUMAR SINGH
DESHWAL, J.**

Application U/S 528 BNSS No. 44720 of 2024

Nisha Kushwaha **...Applicant**
Versus
State of U.P. & Anr. **...Respondents**

Counsel for the Applicant:
Ronak Chaturvedi

Counsel for the Respondents:
G.A.

(A) Criminal Law - Cognizance - Magistrate's Power to Add or subtract any section - Code of Criminal Procedure, 1973 - Sections 190(1)(b), 204, 216, 218 & 228 - Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 210 - Indian Penal Code, 1860 - Sections 376/511, 406, 354, 498-A,