



2025:UHC:6206

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

Second Bail Application No. 139 of 2025

Kamlesh @ Kamlesh Singh Rawat @ Kamal Singh ...Applicant

Vs.

State of Uttarakhand Respondent

Presence:

Mr. Arun Pratap Sah, learned counsel for the Applicant.

Mr. Akshay Latwal, learned A.G.A. for the State.

Hon'ble Ashish Naithani, J.

1. This is the second application for bail filed on behalf of the Applicant—accused Kamlesh, who is presently incarcerated in connection with Case Crime No. 18 of 2024, registered under Sections 351(2) and 65(2) of the Bharatiya Nyaya Sanhita, 2023, and Sections 3(a) and 4(2) of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). The Applicant was taken into custody on 13.07.2024. His earlier bail application was dismissed by this Court on 28.02.2025.
2. According to the State's case, on 12.07.2024, the complainant, father of the victim, lodged a written report stating that on 07.07.2024, while other family members were out in the fields, his 12-year-old daughter was alone at home when the Applicant entered the house and committed sexual assault upon her. The FIR was filed five days after the incident. During the course of the investigation, the victim gave statements under Sections 180 and 183 of BNSS affirming the incident. However, the medical



examination of the victim did not reveal any internal or external injuries, and her hymen was found to be intact.

3. The Applicant seeks bail primarily on the ground of mental retardation. In support, a disability certificate issued by the Chief Medical Officer, Pauri Garhwal, has been placed on record, certifying that the Applicant suffers from a 40 %(forty percent) mental disability. It is submitted that Section 369 of the Bharatiya Nagarik Suraksha Sanhita, 2023, which provides for the release on bail of persons of unsound mind during investigation or trial, ought to be invoked in the present case. It is further contended that the Applicant has no prior criminal antecedents and that his continued incarceration is causing undue hardship to his aged parents.
4. Opposing the present bail application, learned A.G.A., Mr. Akshay Latwal, submitted that no fresh or substantial grounds have been raised warranting reconsideration at this stage. It was pointed out that all relevant aspects pertaining to the grant of bail were thoroughly considered and dealt with at the time of hearing the first bail application. After hearing the parties and perusing the material on record, the earlier application was rejected by this Court upon finding no sufficient ground for release.
5. The allegations against the Applicant are serious in nature and relate to the sexual assault of a minor. It was pointed out that the victim has consistently named the Applicant in her statements recorded under Sections 180 and 183 of BNSS.
6. It was further contended that the medical certificate placed on record, apart from being general in nature, was issued prior to the date of the alleged incident. As such, it does not establish that the Applicant was of unsound mind at the time of commission of the offence, or that his judgment was impaired so as to attract the protection under Chapter XXVII of the Bharatiya Nagarik Suraksha Sanhita, 2023. Learned A.G.A. emphasized that the trial is at a stage where the victim's evidence is yet to



be recorded, and enlargement of the accused on bail at this juncture may seriously prejudice the prosecution's case. Accordingly, the learned A.G.A. urged that the second bail application also merits rejection.

7. The Court has carefully perused the material on record, including the disability certificate and the statements of the prosecutrix. It is noted that the disability certificate being relied upon was issued before the date of the alleged offence. While it reflects a degree of mental retardation, it does not establish that the Applicant was suffering from such a degree of unsoundness of mind at the time of the offence that would render him incapable of understanding the nature or consequences of his actions.
8. For the protection under Chapter XXVII of BNSS to apply, there must be a credible medical or judicial determination that the accused, at the relevant time, was of unsound mind as defined under the law. In the present case, no such contemporaneous assessment has been placed before the Court. A pre-existing certificate of mental disability alone, without any further clinical findings or behavioural analysis proximate to the offence, does not justify the presumption of legal unsoundness of mind.
9. Furthermore, the victim's version has remained consistent during her examination under Sections 180 and 183 BNSS. Although the medical evidence does not conclusively confirm physical force, it equally does not negate the possibility of sexual assault, and the doctor has not ruled out such a possibility. The discrepancies pointed out by the defence, including delay in lodging the FIR and alleged presence of other children at the scene, are matters that can be evaluated during the trial. The charge sheet has already been filed, and the matter is at the stage where the victim's evidence is yet to be recorded.

ORDER



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In light of the seriousness of the charges, the age of the victim, and the present stage of proceedings, the Court is of the view that no exceptional circumstance has been made out to enlarge the Applicant on bail at this stage. The plea of mental unsoundness is not substantiated to the extent required under law, and hence, cannot serve as a ground for release.

Accordingly, the second bail application of the Applicant–accused Kamlesh is hereby **rejected**.

(Ashish Naithani J.)

Dated:15.07.2025

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