

Court No. - 80

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13125 of 2025

Applicant :- Rajan Yadav

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Chandra Kant Tripathi, Raman Pandey

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 21781 of 2025

Applicant :- Vikas Yadav Alias Jainendra Singh

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Shyam Sunder Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Raman Pandey, the learned counsel for applicant- Rajan Yadav, Mr. Shyam Sunder Mishra, the learned counsel for applicant- Vikas Yadav Alias Jainendra Singh and the learned AGA for State-opposite party-1.

2. At the very outset, the learned AGA submits that notice of bail application filed by Rajan Yadav was served upon first informant-opposite party-4 on 18.04.2025 whereas notice in respect of bail application filed by Vikas Yadav Alias Jainendra Singh was served upon first informant-opposite party-2 on 28.05.2025. However in spite of service of notice neither any objection/counter affidavit has been filed on behalf of first informant/opposite party-4 in opposition to this repeat application for bail nor any one has put in appearance on his behalf to oppose this repeat application for bail.

3. Perused the record.

4. These repeat bail applications have been filed by applicant- Rajan Yadav and Vikas Yadav Alias Jainendra Singh seeking their enlargement on bail in Case Crime No.96 of 2023 under Sections 376 (D)(A), 342, 323, 504, 506 IPC and Section 5/6 of POCSO Act, Police Station- Hussainganj, District Fatehpur, during the pendency of trial i.e. Sessions Trial No.506 of 2023 (State Vs. Shailendra Yadav and others) now pending in the Court of Additional Sessions Judge/Special POCSO Act, Fatehpur.

5. The first bail application of applicant- Rajan Yadav was rejected by this Court vide order dated 25.07.2023 passed in Criminal Misc. Bail Application 27766 of 23 (Rajan Yadav Vs. State of U.P. and 3 others). Subsequently, applicant- Rajan Yadav filed his repeat application for bail bearing Criminal Misc. Bail Application No.16085 of 2024 (Rajan Yadav Vs. State of U.P. and 3 others) which was also rejected by this Court vide detailed order dated 22.07.2024. For ready reference the order dated 22.07.2024 is extracted hereinabove:

"Heard Mr. Shiv Singh Yadav, the learned counsel for applicant and the learned A.G.A. for State.

This repeat application for bail has been filed by applicant Rajan Yadav seeking his enlargement on bail in Case Crime No. 96 of 2023, under Sections 376D(A), 342, 323, 504, 506 IPC and Sections 5/6 POCSO Act, P.S. Hussainganj, District Fatehpur, during the pendency of trial i.e. Sessions Trial No. 506 of 2023 (State Vs. Shailendra Yadav and others) now pending in the Court of Additional Sessions Judge/Special Judge, POCSO Act, Fatehpur.

Perused the record.

At the very outset, the learned A.G.A. submits that notice of present repeat application for bail has been served upon first informant opposite party 4 on 1.4.2024. However, despite service of notice, neither any counter-affidavit has been filed nor anyone has put in appearance on behalf of first informant opposite party 4 to oppose the present repeat application for bail.

First application for bail of the applicant was rejected by this Court by a

detailed order dated 25.7.2023 passed in Criminal Misc. Bail Application No. 27766 of 2023 (Rajan Yadav Vs. State of U.P. and 3 others). For ready reference, the same is reproduced herein under:-

"1. Heard Mr. Shiv Singh Yadav, the learned counsel for applicant, the learned A.G.A. for State and Mr. Rajesh Kumar Srivastava, the learned counsel representing first informant/opposite party 4.

2. Perused the record.

3. This application for bail has been filed by applicant Rajan Yadav, seeking his enlargement on bail in Case Crime No. 96 of 2023, under sections 376-D (a), 342, 323, 504, 506 IPC and 5/6 POCSO Act, Police Station- Husainganj, District Fatehpur, during the pendency of trial.

4. Record shows that in respect of an incident which is alleged to have occurred on 12.3.2023, a belated F.I.R. dated 12.3.2023 was lodged by first informant Kallua (father/ uncle of the prosecutrix) and was registered as Case Crime No. 96 of 2023, under section 376-D (a), 342, 323, 504, 506 IPC and 5/6 POCSO Act, Police Station- Husainganj, District Fatehpur. In the aforesaid F.I.R. six persons namely, Shailendra, Pradeep, Vilas, Prabhat, Rajan and Dilip have been nominated as named accused.

5. The gravamen of the allegations made in the F.I.R. is to the effect that Roshini aged about 16 years, daughter of first informant Reshma, aged about 12 years, also daughter of first informant Archana aged about 14 years, niece of first informant and Pradeep nephew of first informant went to Shobhan Sarkar Mela in the evening of 12.3.2023. When the aforesaid persons were returning from the fair at around 11:00 pm, then near the chak road, 7 to 8 young boys aged about 18-22/24 years molested the girls named above. They caught hold of the nephew of first informant and the niece Reshma. Thereafter the modesty of the daughter of first informant namely Roshni was dislodged. However, three accused thereafter dislodged the modesty of the niece of the first informant namely Archana repeatedly. The FIR also records that named accused could be identified in the light of the vehicles passing by.

6. After above mentioned F.I.R. was lodged, Investigating Officer proceeded with the statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. The statement of the prosecutrix Archana was recorded under sections 161 Cr.P.C. The same is on record at page 36 of the paper book. The prosecutrix in her aforesaid statement has supported the F.I.R. According to prosecutrix, three of the named accused namely Prashant, Rajan and Dileep, deliberately and forcibly dislodged her modesty by committing rape upon her. She has further stated that modesty of her cousin Reshma was dislodged by five persons. Subsequent to above, the prosecutrix was requested for her medical examination. Same has been brought on record as Annexure-5 to the affidavit. The prosecutrix in her statement before the Doctor who examined her has reiterated her previous statement recorded under section 161 Cr.P.C. The Doctor who examined the prosecutrix opined as follows with regard to private part of the prosecutrix:

"Torn and ocdemasous and tender"

7. The Doctor further found following external injuries on the body of the prosecutrix;

"Look for bruises, Physical torture injuries, nail abrasions, teeth bite marks, cuts, lacerations, nature, tenderness, another injury, boils, lesions, discharge specially on scalp, face neck, shoulder, breast wirts, forearms, medical aspect of upper arms, thighs and buttocks "

8. Certain samples were taken from the body of prosecutrix for pathological examination. Supplementary medico legal report of the prosecutrix has been brought on record as Annexure- S.A.1 to the supplementary affidavit. As per final opinion of the Doctor sexual assault appears to have been committed upon the prosecutrix. For ready reference, the final opinion is reproduced herein under:

"UPT- Negative on clinical physical examination vatina is tender and edematous and post fourchette is tear. There are sign of forceful penetration present because there are sign of suggestive of recent use of force/forceful penetration of vagina present sexual violence cannot be rule out."

9. Ultimately, the statement of the prosecutrix was recorded under section 164 Cr.P.C. which is on record at page 39 of the paper book. The prosecutrix in her aforesaid statement has rejoined her earlier statement previously recorded under section 161 Cr.P.C.

10. The details of the other prosecutrix namely Roshini are not being stated as they do not relate to present applicant. In the occurrence which occurred on 12.3.2023, two persons namely, Reshma and Pradeep also sustained injuries. As per medico legal report of the injured Reshma, which is on record at page 98 of the paper book, she complained pain. However, no visible sign was seen on her body. The medico legal report of the injured Pradeep is on record at page 100 of the paper book. The doctor found following injuries on the body of the aforesaid injured:

"1. Contusion of size 4 x 3 cm present on left side of face, 3 cm below from lateral cantus of right eye.

2. Complain of pain in back."

11. Named accused Shailendra, Pradeep, Vilas, Prabhat, Rajan and Dilip were arrested on the same date and the undergarments of the prosecutrix and the accused were recovered by the Police and send to F.S.L Bhopal for clinical examination. The F.S.L. report has not yet been received. During course of investigation, Investigating Officer examined other witnesses also who have supported the F.I.R. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of named accused is established in the crime in question. He, accordingly, submitted the charge sheet dated 11.4.2023, whereby all the named accused have been charge sheeted under sections 376-D (a), 342, 323, 504, 506 IPC and Section 5/6 POCSO Act.

12. Learned counsel for applicant contends that applicant is innocent. He has been falsely implicated in above mentioned case crime number on account of enmity. Applicant is in jail since 14.3.2023. As such he has undergone more than three months of incarceration. Even though applicant is a named and charge sheeted accused, yet he is liable to be enlarged on bail. The police report in terms of Section 173 (2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. However, no such circumstance has emerged necessitating the custodial arrest of applicant during course of trial. The prosecutrix is major and therefore, provisions of POCSO Act are not applicable. Applicant has been wrongly charge sheeted under section 5/6 POCSO Act. Even otherwise, applicant is a man of clean antecedents inasmuch as he has no criminal history to his credit except the present one. It is thus urged that applicant is liable to be enlarged on bail. In case, the applicant is enlarged on bail he shall not misuse the liberty of bail and shall co-operate with the trial.

13. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named as well as charge sheeted accused, therefore he does not deserve any indulgence by this Court. Referring to the statement of the prosecutrix under section 161 Cr.P.C., before the Doctor and under section 164 C.P.C. learned A.G.A. submits that prosecutrix has remained clear, categorical and consistent in her aforesaid statements. The prosecutrix has clearly implicated applicant, Rajan and Dileep for dislodging her modesty deliberately and repeatedly. Medical evidence on record clearly supports the ocular version of the occurrence. The prosecutrix is a young girl aged about 15 years approximately. Her date of birth as recorded in the School record of Composite Vidya Vihar Shiksha Shetra Bhitora, District Fatehpur is 6.9.2008. The occurrence took place on 12.3.2023. As such, prosecutrix was aged about 14 years and six months on the date of occurrence. As such, provisions of POCSO Act are clearly attracted. He, therefore submits that no sympathy be shown by this Court in favour of applicant. Learned A.G.A. has further submitted that occurrence giving rise to present criminal proceedings cannot be said to be false as two persons namely, Reshma and Dileep received injuries which is established from their medico legal report, which is on record at page 98 of the paper book. Applicant has failed to establish that aforesaid injured sustained injuries in another incident. He, therefore, contends that the bail application is liable to be rejected.

14. When confronted with above, the learned counsel for applicant could not overcome the same.

15. Having heard the learned counsel for applicant, the learned A.G.A. for State, upon consideration of material on record, evidence, gravity and nature of offence, accusations made as well as complicity of applicant and also the fact that the submissions urged by the learned A.G.A. could not be dislodged by the learned counsel for applicant with reference to the record at this stage but without making any comments on the merit of the case, this Court does not find any good ground to enlarge the applicant on bail.

16. As a result, present application for bail fails and is liable to be rejected.

17. It is accordingly rejected. "

Learned counsel for applicant contends that subsequent to above order dated 25.7.2023, the statement of the prosecutrix was recorded before Court below as P.W. 1. However, the prosecutrix in her deposition before Court below could not identify the applicant. On the above premise, the learned counsel for applicants contends that applicant is liable to be enlarged on bail.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 14.03.2023. As such, he has undergone more than 1 year and 4 months of incarceration. On the above conspectus, it is thus urged by the learned counsel for applicant that applicant is liable to be enlarged on bail. In case, the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that the statement of the prosecutrix stands recorded before Court below as P.W. 1. However, even though, this Court is a superior Court, dictates of prudence require that this Court should not undertake the exercise of evaluating the evidence, which has emerged during the course of trial. Any such exercise undertaken by this Court shall amount to pre-empt the trial affecting the prosecution or the defence. On the above premise, the learned A.G.A contends that no good or sufficient ground has emerged so as to enlarge the applicant on bail.

When confronted with above, the learned counsel for applicant could not overcome the same.

Having heard the learned counsel for applicant, the learned A.G.A. for state, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that the learned counsel for applicant could not dislodge the objections raised by the learned A.G.A. in opposition to this repeat application for bail, therefore irrespective of the varied submissions urged by the learned counsel for applicant with reference to the record, but without making any comment on the merits of the case, this Court does not find any new good or sufficient ground so as to enlarge the applicant on bail.

As a result, this repeat application for bail fails and is liable to be rejected.

Accordingly, this repeat application for bail is rejected."

6. Thus, applicant- Rajan Yadav has again approached this Court by filing this repeat application for bail. Applicant- Vikas Yadav

Alias Jainendra Singh has approached this Court for the first time seeking his enlargement on bail.

7. Mr. Raman Pandey, learned counsel for applicant submits that though applicant is a named as well as charge-sheeted accused and facing trial before court below, however, in view of the subsequent events which have now emerged on record, applicant is liable to be enlarged on bail during the pendency of trial. He submits that the statement of the first informant who deposed before court below as PW-2 and that of the prosecutrix who deposed before court below as PW-1 have been recorded. In view of above, in case the applicant is enlarged on bail during the pendency of trial then in that eventuality it cannot be said that applicant shall hamper the course of trial or shall terrorize the witnesses.

8. Even otherwise applicant- Rajan Yadav is a man of clean antecedents having no criminal history to his credit except the present one. Applicant- Rajan Yadav is under incarceration and has already undergone more than 2 years and 4 months of incarceration, charge-sheet/police report in terms of Section 173(2) Cr.P.C. has already been submitted against applicant as such evidence relied upon by prosecution stand crystalized. In view of above and also the fact that the deposition of the first informant and the prosecutrix who have deposed before court below as PW-1 & PW-2 have already been recorded, therefore, there does not exist any such ground so as to prolong the custodial arrest of applicant during the pendency of trial.

9. It is thus urged by the learned counsel for applicant that applicant- Rajan Yadav is liable to be enlarged on bail during the pendency of trial. In case applicant is enlarged on bail, then in that eventuality he shall not misuse the liberty of bail and shall co-

operate with the trial.

10. Mr. Shyam Sunder Mishra, the learned counsel for applicant- Vikas Yadav Alias Jainendra Singh submits that applicant is named as well as charge-sheeted accused and also facing trial before court below however he is liable to be enlarged on bail during the pendency of trial. Applicant- Vikas Yadav Alias Jainendra Singh has not been charge-sheeted under the POCSO Act. The prosecutrix is aged about 20 years, therefore, she is major, a willing and consenting party. With reference to the deposition of the prosecutrix, the learned counsel for applicant submits that initially it was alleged by prosecutrix that rape was committed upon her by all the accused including the present applicant, however, after the DNA report was received, the prosecutrix has changed her version and role of catching hold has been assigned. It is further submitted that the case of the present applicant is distinguishable from other accused and therefore he is liable to be enlarged on bail during the pendency of trial.

11. Even otherwise, applicant- Vikas Yadav Alias Jainendra Singh is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 13.03.2023. As such applicant has undergone more than 1 year and 4 months of incarceration. It is also contended that the charge-sheet/police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant by the Investigating Officer. As such the entire evidence sought to be relied upon by prosecution against applicant- Vikas Yadav alias Jainendra Singh stands crystalized. Apart from deposition of the informant and the prosecutrix who have deposed before court below as PW-2 and PW-1 respectively have also been recorded. He therefore submits that in view of

above the custodial arrest of applicant- Vikas Yadav Alias Jainendra Singh during the pendency of trial is not absolutely necessary. In view of above and also the period of incarceration undergone by applicant, it is thus urged by the learned counsel for applicant that applicant- Vikas Yadav Alias Jainendra Singh is liable to be enlarged on bail during the pendency of trial. In case applicant is enlarged on bail, then in that eventuality he shall not misuse the liberty of bail and shall co-operate with the trial.

12. Per contra, the learned AGA for State-opposite party-1 has vehemently opposed the prayer for bail. He submits that PW-1 prosecutrix, PW-3 victim and PW-2 brother of the first informant in their depositions before court below have fully supported the FIR. Consequently they have not been declared hostile. It is thus contended by the learned AGA that no bail is liable to be granted on the basis of submission made by Mr. Shyam Sunder Mishra, the learned counsel for applicant- Vikas Yadav Alias Jainendra Singh as irrespective of above, offence under Section 376 (D)(A) IPC shall still subsist against applicant- Vikas Yadav Alias Jainendra Singh. Considering the nature and gravity of offence as well as the period of sentence provided for the same, the learned AGA submits that no new or sufficient ground has now emerged so as to enlarge the applicant on bail during the pendency of trial. In view of above, the period of incarceration undergone by applicants by itself not so sufficient a circumstance so as to enlarge the applicants on bail during the pendency of trial. It is thus urged by the learned AGA that these applications for bail are liable to be rejected.

13. When confronted with above, the learned counsel for applicants could not overcome the same.

14. Having heard the learned counsel for applicants, the learned A.G.A. for State-opposite party-1 and upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused, this Court finds that the objections raised by the learned AGA in opposition to these applications for bail are not only borne out from the record, but furthermore the same could not be dislodged by the learned counsel for applicants with reference to the record at this stage. In view of above and irrespective of the varied submissions by the learned counsel for applicants, this Court does not find any new or sufficient ground so as to enlarge the applicants on bail.

15. As a result, these applications for bail fail and are liable to be rejected.

16. They are, accordingly, **rejected**.

Order Date :- 1.8.2025

R.S. Tiwari