

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL****Bail Application No.1794 of 2025**

Shivam

...Applicant

Vs.

State of Uttarakhand

...Respondents

Presence: Mrs. Neelima Mishra Joshi, learned counsel for the applicant.
Mr. Vijay Khanduri, learned Brief Holder for the State.

Hon'ble Rakesh Thapliyal, J.

1. Present applicant Shivam, S/o Ram Kishan praying for bail in reference to the first information report dated 13.12.2024 bearing FIR No.0332 of 2024, P.S. I.T.I. Kashipur, District Udham Singh Nagar, lodged against unknown person for the offence punishable under Section 140(3) of BNS, 2023.

2. The FIR was lodged by one Anil Kumar with regard to missing of his daughter from 11.12.2024. During investigation, the victim daughter of the informant was recovered from the custody of the present applicant on 21.01.2025 and thereafter her statements were recorded under Section 180 and 183 of BNSS, 2023. She was also medically examined and the hymen was found to be old torn though there was no injury mark; the statement of the doctor was also recorded and on completion of the investigation the charge sheet was filed and the present applicant is charge sheeted for the offences punishable under Sections 137(2), 87, 64(1) of BNS 2023 read with Section 5/6 of POCSO Act.

3. The statement of the victim, recorded under Section 183 of BNSS, 2023 alongwith the recovery memo and the medical report are also enclosed alongwith the counter affidavit. The victim in her statement recorded under Section 183 of BNSS 2023 stated that when she reached Delhi then she called the applicant, her friend; they both married in a temple and thereafter for 10-15 days they both live in the house of the applicant. The family members of applicant also advised to the victim to inform about their marriage to the family members but in the meantime the police arrested the applicant.



4. After the commencement of trial the victim was examined. In her cross examination she admits about her marriage with the applicant.

5. It is argued by learned counsel for the applicant that as per the statement of the victim, recorded under Section 183 of BNSS, 2023 as well as during her cross examination- in-chief before the trial court she admits that the applicant is her friend to whom she married without any compulsion and in such view of the matter when the victim herself admits that she married with the applicant, applicant deserves for bail. She further submits that though the marriage in between the applicant and victim is not a valid marriage because of the age of the victim, who admittedly, at the time of the incident as well as on the date of the marriage was minor but this aspect can be looked into while considering the bail, since the applicant already suffered long incarceration as he is languishing in jail since 22.01.2025.

6. On the other hand Mr. Vijay Khanduri, learned Brief Holder for the State submits that no doubt the victim in her statement recorded under Section 183 of BNSS, 2023 as well as in her cross examination admits about her marriage with the applicant but the said marriage is voidable in the eye of law since the victim was minor at the time of the said marriage. He further submits that trial has already been commenced; the victim has also been examined and there is no need of further interrogation since the investigation has already been completed but taking into consideration that the offence, as alleged, is a heinous offence that too with a minor girl though both of them married with each other, as admitted by the victim in her cross examination, the applicant does not deserve for bail.

7. After hearing the rival submission of learned counsel for the parties and taking into consideration that the present applicant is languishing in jail since 22.01.2025 and the trial has already been commenced and the victim though minor consistently admitted in her testimony in her cross-examination that she married with the applicant though it is voidable under the Prohibition of Child Marriage Act, this Court is of the view that denying bail at this



stage disrupt the social security and long term family stability of the victim and further the applicant already suffered a long incarceration as he is languishing in jail since 22.01.2025 and prolonged pre-trial detention violates the right to a speedy trial under Article 21 of the Constitution of India and as such this Court is of the view that the applicant deserves for bail.

8. Accordingly, without expressing any opinion on the merit of the case, the bail application is allowed.

9. Let the applicant Shivam be released on bail on his executing a personal bond and furnishing two reliable sureties of the like amount to the satisfaction of the court concerned subject to the following conditions:-

- i. After being released on bail applicant shall not make any attempt to induce any witness or to temper with the evidence
- ii. The applicant shall join the trial court proceeding on each and every date without seeking any unnecessary adjournment.
- iii. The applicant shall not leave the country without leave of the trial court and shall surrender his passport, if any, within a week after being released to the trial court.

(Rakesh Thapliyal, J.)

01.07.2026

Arti