

**HIGH COURT OF UTTARAKHAND AT NAINITAL****First Bail Application No. 1927 of 2025****27 July, 2026**

Sonu Joshi

--Applicant

Versus

State Of Uttarakhand

--Respondent

Presence:-

Mr. Piyush Sammal, learned counsel for the applicant.

Mr. Tumul Nainwal, learned A.G.A. for the State.
-----**Hon'ble Mr. Justice Rakesh Thapliyal, J.**

1. The instant regular bail application has been preferred by the applicant 'Sonu Joshi' S/o Shri Om Prakash Joshi seeking bail in connection with the First Information Report dated 01.08.2025 bearing Case Crime No. 98 of 2025 P.S. Kathgodam, District Nainital, wherein, he has been implicated for the offences punishable under sections 5(m), 5(n) and 6 of POCSO Act r/w section 65(2) of BNS, 2023.

2. Briefly stated, a First Information Report was lodged by one Ganga Devi W/o Manoj Joshi with the allegations regarding sexual assault with her minor daughter on 11.07.2025 by giving reference that on 12.07.2025 a counseling was done in CWC (Child Welfare Committee) but due to the pressure of other family members she had not take any action and now she has decided to lodge the FIR. At this juncture, it is relevant to mention here that the present applicant is the brother of the



husband of the informant and after investigation the applicant chargesheeted for the offences punishable under sections 5(m)/5(n)/6 of POCSO Act r/w section 65(2) of BNS, 2023. The deponent, who filed this bail application on behalf of the applicant Sonu Joshi, is the mother of applicant Smt. Bhagwati Joshi (Mother-in-law of the informant).

3. First of all learned counsel for the applicant seriously attacking on the credibility of the prosecution's case and submits that there are great lapses on the part of the Investigating Agency while conducting the investigation.

It is further argued that the applicant that the applicant is innocent and with malafide intent the informant implicated the applicant since there was some family dispute as reflected from the statement of the informant where she admits about family dispute due to which she was not ousted from the house but now living in the same roof. He submits that the entire case of prosecution rest heavily on two Out Patient Department (OPD) Slips. He submits first OPD slip was prepared at 2:35 PM explicitly recording no redness in the private part of the four year old victim and second OPD slip was generated from a different hospital just after an hour at about 3:40 PM which discloses the redness on the private part of the body of the victim.

By referring these two OPD slips, which are part of record, it is argued by the learned counsel for the applicant that the prosecution shown the Doctor, who generated OPD slip at 3:40 PM as a prosecution witness but the Doctor who prepared earlier OPD slip on the same date at 2:35 PM was neither examined nor made as a prosecution witness. He submits that it



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is mathematically and medically improbable for localized trauma or redness to materials within an hour without external intervention and it may be caused due to acute inflammatory responses, allergic reactions or mild pressure making it biologically and medically possible without external physical violence but cannot be due to any sexual assault.

In addition to this, learned counsel for the applicant further submits that the applicant has been chargesheeted for the offence punishable under section 5/6 of POCSO Act (Aggravated Penetrative Sexual Assault); however, the Medico/Legal report (MLR) prepared after 20 days of lodging of the First Information Report shows no sign of **Penetrative Assault** and, therefore, at the best the prosecution's case would fall under section 9(m) of the POCSO Act but in any manner it does not fall under section 5/6 of POCSO Act.

4. Learned counsel for the applicant further submits that victim during her cross-examination in paragraph-20 explicitly conceded that she was met by "Aunty wearing black coat" give suggestion to whom she met through her father, caused serious doubt on the credibility of her testimony, therefore, the victim witness appears to be a tutored witness.

He submits that the implication of the applicant by the informant is nothing but glaring example of malicious prosecution, which is evident from the fact that the informant is the wife of the applicant's brother and they all reside together in a joint family and the PW2 (informant) in her examination-in-chief discloses about some family dispute due to which she ousted from the house and, therefore, easily an inference can be



drawn that the minor victim has been used as a tool to settle the family dispute.

5. Learned counsel further submits that the Investigating Officer have not conducted the investigation on the angle of false implication and it's a great lapse which was pointed out on the previous date and now an additional affidavit has been filed in order to make an attempt to twist the statement of Doctor (PW8) by justifying that the Doctor deposes about "redness marks".

6. Learned counsel for the applicant further argued that the FIR discloses about the date of incident is 11.07.2025 but has been reported after 17 to 18 days by explaining the delay that earlier the counseling was done but due to the pressure of family members she could not make complaint but this aspect has also not been investigated.

7. He concluded his argument by submitting that the present applicant has no criminal antecedent and is languishing in jail since 05.08.2025 and though the charge-sheet has already been filed but the Trial has not been concluded and as such the applicant be released on bail.

8. Per contra, Mr. Tumul Nainwal, learned A.G.A., vehemently opposes the bail application by submitting that though there is no penetrative injury but Medico Legal Report distinctively points out mild swelling observed over the perennial region. In reference to two OPD slips he submits that no inference can be drawn on the basis of those two OPD slips and it is completely a subject matter of trial.



Mr. Nainwal further submits as per the testimony of medical expert (PW8) there was substantial redness on the child's private part, therefore, there are sufficient evidences to convict the applicant.

Mr. Nainwal further submits that minor victim and her mother informant have consistently supported the case of the prosecution during trial and the victim's age has also been verified as 4 years as per official school records and in view of the strict statutory provisions under the POCSO Act the applicant does not deserve for bail. Learned A.G.A. further submits that so far as faulty investigation is concerned it cannot be examined meticulously at this stage while considering the bail application and it is completely a subject matter of the pending trial.

9. Having heard both the sides and perusing the records, this court finds several glaring inconsistencies that tilt the balance of equity in favour of the applicant at this stage. Firstly, the prosecution failed to explain how a medical report at 2:35 PM found no redness while an OPD entry at 3:40 PM found redness and even otherwise why first Doctor, who prepared first OPD at 2:35 PM was not shown as prosecution witness there prima-facie no explanation to this which caused serious doubt on the integrity of the investigation. In addition to this, the victim's admission in para-20 of her cross-examination that an Aunty set up by her father caused a stigma on the reliability of the prosecution case.

10. In the counter affidavit the delay in lodging the FIR has been explained also but the fact remains that all were living under one roof in a joint family set up as evident from the



deposition of PW2 (informant), which introduces the malicious implication though that can only be settled at the conclusion of the trial. No doubt the court remains highly sensitive to the nature of crimes against the children but simultaneously it cannot turn a blind eye to structural discrepancies in the investigation. This court is also very cautious while considering the bail application particularly when a victim is of 4 years old and also very cautious so that any observation of this court may not affect the Trial Court proceeding and the submission as made by learned counsel for the parties are completely subject matter of the Trial and no definite opinion can be given at this stage when this court is deciding a bail application but the fact remains that the charge-sheet has been filed, trial has already been commenced and there is no need of any further custodial interrogation and the applicant who has no criminal antecedent is languishing in jail since 05.08.2025 and the Trial has yet not been concluded so far, therefore, at this juncture, this court is of the view that the applicant deserves for bail with some stringent conditions.

11. Thus, without expressing any definite opinion on the ultimate merit of the case, this court is of the view that the applicant deserves for bail.

12. Accordingly, the instant bail application is allowed.

13. Let the applicant 'Sonu Joshi' be released on bail in connection with the FIR No. 0098 of 2025 P.S. Kathgodam upon furnishing a personal bond in the sum of Rs. 50,000/- (Rupees Fifty Thousand Only) with two reliable local sureties, each in the like amount, to the satisfaction of the court concerned subject to the following stringent conditions:



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- i. The applicant shall not directly or indirectly contact, threaten or influence the informant, victim or any prosecution witness.
- ii. The applicant shall strictly refrain from entering in the premises where the informant is residing with the victim during pendency of the trial to avoid any domestic friction.
- iii. The applicant shall cooperate fully with the trial court proceeding and appear before the trial court on each and every scheduled date without seeking any unnecessary adjournment.
- iv. The applicant shall not leave the country without prior permission of the trial court and shall surrender his passport, if any, within three days after being released on bail.

It is made clear that any violation of the above mentioned conditions shall grant the prosecution immediate liberty to move an application for cancellation of bail.

It is further made clear that the Trial Court may proceed with the Trial Court proceeding and expedite the same on it's own merit without being influenced at all with the observations as above.

(Rakesh Thapliyal, J.)

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