



SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			<u>BA2/344/2025</u> Irfan Salmani --Applicant Versus State Of Uttarakhand --Respondent <u>Hon'ble Rakesh Thapliyal, J.</u> 1. Mr. Mukesh Kumar Kaparuwan, learned counsel for the applicant. 2. Mr. Himanshu Sain, learned A.G.A. for the State. 3. The instant second bail application has been moved by the applicant Irfan Salmani, S/o Kabir Salmani for seeking regular bail in connection with FIR dated 03.02.2024 bearing Case Crime No. 08 of 2024, P.S. Dharchula, District Pithoragarh lodged against unknown person for the offence punishable under Section 365 IPC. On completion of investigation the present applicant was charge sheeted for the offences punishable under Sections 363, 376 and 377 IPC read with Section 3/4 of the POCSO Act wherein the Trial Court took cognizance on 03.04.2024. In this investigation one another person, namely, Irfan S/o Fida Hussain was also charge sheeted for the offences punishable under Section 354 and 363 IPC read with Section 7/8 of the POCSO Act. At present, matter is pending in the court of learned District and Sessions Judge, Pithoragarh in Special Session Trial No. 14 of 2024. 4. The first bail application was rejected by this Court on 28.02.2025. 5. Learned counsel for the applicant argued that the applicant and the victim who



		belongs to different religion were in a mutual romantic relationship and the victim has admitted consensual relationship. He also submits that the applicant was also minor at the time of the incident, however, this aspect has been completely overlooked by the investigating officer while submitting the charge sheet. He also submit that the trial is pending since 2024 and up till date only 11 prosecution witnesses have been examined and the applicant is languishing in jail since 07.02.2024 and have no criminal antecedent. 6. On the other side, Mr. Sain, learned A.G. A. for the State strongly opposed the bail application by submitting that the first bail application was rejected on 28.02.2025 and no new substantial grounds are available to the applicant. He also submits that the offences involve the sexual assault of a minor girl which constitutes a grave and heinous crime against the society. He also submits that victims were kidnapped while on their way to school under the false pretext of being provided employment. He further submits that the victim was minor at the time of the incident, consequently, any plea of "consent" or mutual relationship is irrelevant and vitiated under the POCSO Act. 7. Heard rival submission of the learned counsel for the parties and closely examined the materials available on record. A law regarding successive bail application is well established and second bail application cannot be treated as an appeal or review of the earlier rejection and it is maintainable only if there is substantial material, change in the facts, situation or law. The first bail application was rejected on merit on 28.02.2025, and mere fact that only 11 prosecution witnesses have been examined does not constitute a fresh ground of bail. On the contrary it indicates that the trial is
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progressing and most of the star witnesses have been examined and releasing the applicant at the crucial stage of the trial when material witnesses actively deposing before the trial court may increase the risk of witness intimidation. Furthermore, admittedly the victim was minor on the date of the incident and under the POCSO Act "consent" of minor is completely immaterial and the allegation against the applicant is trapping the school going girl under the false pretext of employment and forced her to sexual assault.

8. Considering the gravity of the offence and absence of any fresh and compelling ground, this Court finds no merit in the instant second bail application.

9. Accordingly, without expressing any opinion on the merit of the case, the instant second bail application is hereby rejected.

10. The Trial Court is directed to expedite the proceeding of Special Session Trial No. 14 of 2024 and conclude the same as expeditiously as possible without being influenced by any observation as above.

(Rakesh Thapliyal, J.)

30-06-2026

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