2026:AHC:208414

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 31275 of 2026

Nirvikar

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite Party(s)

Counsel for Applicant(s)	:	Dr. Kamlesh Kumar, Rakesh Kumar
Counsel for Opposite Party(s)	:	G.A.

Court No. - 67

HON'BLE JITENDRA KUMAR SINHA, J.

1. Heard Dr. Kamlesh Kumar, learned counsel for the applicant, Sri Uma Shankar Mishra, learned AGA for the State-respondents and perused the record.

2. The present bail application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, has been filed on behalf of applicant with a prayer to release him on bail in Case Crime No. 60 of 2026 under Sections 65(1), 351(2), 89, 61(2) BNS, 5/6 POCSO Act registered at Police Station Adampur, District Amroha during pendency of the trial.

3. At the very outset, learned A.G.A. states that notice has been served upon the first informant.

4. It is contended by learned counsel for the applicant that applicant has been falsely implicated in the present case and the FIR has been lodged after delay of six months. It is further submitted that age of the victim has been found to be 16-17 years as per her ossification test and if benefit of two years is given on the higher side, then she will be major. It is next submitted that the victim was found pregnant, therefore, her pregnancy was aborted. It is further submitted that the victim is aged about 14 years as per her certificate of Class VIth, however, there is no High School certificate or the certificate of school first attended, therefore, radiological age of the victim shall prevail. It is also submitted that applicant has criminal history of one case in which he is on bail and he has been languishing in jail since 04.4.2026. It is lastly submitted that in case applicant is granted bail, he will

not misuse the liberty of bail and would cooperate in the trial proceedings.

5. On the other hand, learned A.G.A. opposed the prayer for grant of bail to the applicant and submits that victim is a minor girl aged about 14 years as per her certificate of Class VIth and 16-17 years as per ossification test and she has stated in her statements recorded under sections 180 and 183 BNSS that applicant took her to an agricultural field and committed rape on her.

6. FIR has been lodged after delay of six months alleging therein that applicant committed rape on the victim aged about 14 years. The victim is aged about 16-17 years as per her ossification test and it is submitted if benefit of two years is given to her on the higher side, then she will be major. The victim was found pregnant, therefore, her pregnancy has been aborted. The victim is aged about 14 years as per her certificate of Class VIth, however, there is no High School certificate or the certificate of school first attended. It is submitted that on perusal of the statements of the victim and her conduct, it appears that she is consenting party. Applicant has criminal history of one case in which he is on bail and he has been languishing in jail since 04.4.2026.

7. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view the nature of offence, evidence, complicity of the accused and taking into account overcrowded jails and heavy pendency of criminal cases before the trial courts as well as considering the mandate of the judgement of the Apex Court in the case of ***Kapil Wadhawan vs Central Bureau of Investigation*** reported in ***2025 SCC OnLine SC 3038*** as well as guideline of this Court in the case of ***Maya Tiwari Vs. State of U.P.*** reported in ***2024 SCC Online All 6765*** regarding grant of bail and without expressing any opinion on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

8. Let the applicant **Nirvikar** involved in the aforementioned crime be released on bail, on his furnishing a personal bond and two sureties each in the like amount, to the satisfaction of the court concerned, with the following conditions:-

(i) The applicant shall not directly or indirectly make any inducement, threat

or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

(ii) The applicant shall cooperate in the trial/investigation sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

(iv) The applicant shall attend in accordance with the conditions of the bond executed by him.

9. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

10. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted. Verification of mobile number and Aadhaar card of the applicant as well as sureties should be verified by the court concerned.

11. It is further directed that the trial court shall send the release order to the concerned jail through Bail Order Management System (BOMS) to ensure early release of the applicant.

12. Office is directed to send a copy of this order to the applicant through concerned Jail Superintendent via e-mail or e-prison portal within 24 hours in compliance of the order of the Apex Court in the case of ***Policy Strategy for Grant of Bail, In Re: Suo Motu Writ Petition (Crl.) No.4 of 2021*** decided on 31.01.2023 reported in ***(2024) 10 SCC 685.***

(Jitendra Kumar Sinha,J.)

October 6, 2026
Madhurima

Digitally signed by :-
MADHURIMA GARG
High Court of Judicature at Allahabad