**A.F.R.**

Neutral Citation No. - 2025:AHC:5388

**Court No. - 64**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 39835 of 2024

**Applicant :-** Suraj Kumar Alias Vishwapratap Singh
**Opposite Party :-** State Of U.P. And 3 Others
**Counsel for Applicant :-** Akhilesh Kumar Dwivedi
**Counsel for Opposite Party :-** R. A. Ram, Shyam Chandra, G.A.

**Hon'ble Sanjay Kumar Singh,J.**

**1-**By means of this bail application, applicant-Suraj Kumar alias Vishwapratap Singh, who is involved in Case Crime No. 188 of 2024, under Sections 65(2), 351(2), 332(c) of B.N.S. and Sections 3/4 POCSO Act, Police Station Cantt, District Prayagraj seeks enlargement on bail during the pendency of trial.

**2-**Heard Mr. Akhilesh Kumar Dwivedi, learned counsel for the applicant, Mr. Deepak Mishra, learned Additional Government Advocate representing the State, learned counsel appearing on behalf of the informant/complainant and perused the record.

**3-**The facts that formed the bedrock of the instant bail application are that the informant, who is father of the victim, got a first information report lodged on 05.09.2024 at about 23:20 hours with regard to an incident which took place on the same day at about 05:30 hours for the alleged offence under Sections 65(2), 351(2) B.N.S. and Sections 9/10 POCSO Act against the applicant making allegations inter-alia that in the morning, when he woke up, he did not find his daughter on the bed. However, he noticed that another room was locked from inside and when he peeped through the window, he saw that the applicant was committing rape upon his daughter by pressing her mouth. F.I.R. further alleges that when the informant shouted and

called his wife, applicant by opening the door, ran away by pushing him extending threat of dire consequences. Thereafter, the informant took the assistance of women helpline number 1090.

**4-**The main substratum of argument of learned counsel for the applicant is that in this case, first information report was lodged after delay of 17 hours, without any plausible explanation. It is next submitted that though the informant in his statement under Section 180 BNSS has reiterated the prosecution case as mentioned in the F.I.R. but there are contradictions in the statements of the victim recorded under Section 180 and 183 BNSS. In this regard, it is further pointed out that the informant, in the F.I.R., has stated that the applicant was committing rape upon his daughter whereas the victim in her statement under Section 180 BNSS has stated that the applicant, after disrobing her forcefully, started molesting and committed misdeed with her. The victim in her statement under Section 183 BNSS has stated that the applicant, after disrobing her started touching her inappropriately and when her father came, applicant fled away from the place of incident extending threat to her father. On the strength of the aforesaid facts, much emphasis has been given by contending that the victim, in her statements, has not specifically stated that there was any penetration of penis in her vagina, hence there was no sexual intercourse, therefore, no offence of rape is made out against the applicant. Referring the medical examination report as recorded by the investigating officer in case diary, it is argued that no sign of any force was found in the medical report, hence, the prosecution case is not corroborated from the medical evidence. Referring the paragraph nos. 16 and 17 of the bail application, it is submitted that the applicant was shown to be arrested on 06.09.2024 whereas correct fact is that on 05.09.2024 at about 05:00 AM, the first informant and his family members forcibly dragged him inside the house and thereafter, they called the police and falsely implicated in the present case.

Learned counsel for the applicant, in support of his submission, placed reliance upon the judgment of the Apex Court in the case of **Ram Swaroop vs. State of Rajasthan**, 2004 Law Suit (SC) 293. Lastly, it is submitted by the learned counsel for the applicant that there is no chance of the applicant of fleeing away from the judicial process or tampering with the prosecution evidence. The applicant has no criminal antecedents to his credit. The applicant who is a student of law is languishing in jail since 06.09.2024, therefore he is entitled to be released on bail.

**5-**On the other hand, learned A.G.A. as well as learned counsel appearing on behalf of the complainant vehemently opposed the submissions of learned counsel for the applicant by contending that the victim was aged about 11 years, 7 months and 27 days on the day of incident dated 05.09.2024, therefore as per Section 2(1)d of POCSO Act, she is a small child. The father of the victim is an eye witness of the incident, which took place in his own house. Much emphasis has been given by contending that the victim, in her statements under Section 180 and 183 BNSS has supported the prosecution case and made specific allegation of outraging her modesty against the applicant giving vivid description of the incident. It is also contended that the act and conduct of the applicant, as mentioned in the F.I.R. and statements of the victim, clearly comes under the preview of definition of rape. Learned A.G.A. placing reliance upon the judgment of the Apex Court in the case of **Attorney General for India vs. Satish and Another**, (2021) 4 SCC 712 submits that to constitute an offence of rape, penetration of penis is not required. It is also submitted that in view of Section 29 of POCSO Act, the Court shall presume that the accused has committed offence unless the contrary is proved by the offender. Considering the gravity of the offence, bail application of the applicant is liable to be rejected.

**6-**Before proceeding further, it would be apposite to quote Section 63 of Bhartiya Nyaya Sanhita (B.N.S.).

**Section 63 of B.N.S.**

*A man is said to commit "rape" if he---*

*(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or*

*(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or*

*(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or*

*(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,under the circumstances falling under any of the following seven descriptions:*

*(i) against her will;*

*(ii) without her consent;*

*(iii) with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt;*

*(iv) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;*

*(v) with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome*

*substance, she is unable to understand the nature and consequences of that to which she gives consent;*

*(vi) with or without her consent, when she is under eighteen yearsof age;*

*(vii) when she is unable to communicate consent.*

**7-**Now coming to the instant case, so far as the first contention of learned counsel for the applicant with regard to delay in lodging the first information report is concerned, the same has been discussed by Hon'ble the Apex Court in the case of **State of Punjab vs. Gurmit Singh and Others**, (1996) 2 SCC 384. The relevant paragraph of the said judgment reads as under:-

> *"In our opinion, there was no delay in the lodging of the FIR either and if at all there was some delay, the same has not only been properly explained by the prosecution but in the facts and circumstances of the case was also natural. The courts cannot over-look the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix of her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is also after giving it a cool though that a complaint of sexual offence is generally lodged."*

**8-**So far as the second contention of learned counsel for the applicant that there are contradictions in the statement of the victim under Sections 180 and 183 of BNSS, therefore prosecution case is liable to be disbelieved is concerned, the same is misconceived inasmuch as the victim, in her statements under Section 180 and 183 of BNSS, has specifically stated that the applicant had committed misdeed with her and also threatened her father for dire consequences.

**9-**For better appreciation, the statements of the victim under Section 180 and 183 BNSS are reproduced herein below:-

Statement of the victim under Section 180 BNSS

> *"मैं गौरव पब्लिक स्कूल में पढ़ती हूँ क्लास 4 में पढ़ रही हूँ 3 वर्ष पूर्व में स्कूल आते जाते समय सूरज नाम का लडका मेरा पीछा करता था यह बात मैने अपनी मम्मी पापा को बताया तो मेरे पापा मुझे स्कूल छोडने व लेने जाते थे दि० 05/09/24 की सुबह 5 बजे मैं वशरूम गयी थी वापस आयी तो सूरज मेरे घर में घुस आया और मुंह दबाकर कर पटक दिया और मेरे कपड़े उतार दिये और जोर जबरदस्ती कर अश्लील हरकत करते हुए मेरे साथ गलत काम करने लगा और धमकी दिया कि इस बात को अगर किसी से बताया तो जान से मार दूँगा मैं काफी डरी हुई थी मैं काफी देर तक वशरूम से नहीं आयी तो मेरे पापा मुझे इधरउधर ढूंढन लगे तो दूसरा रूम बन्द था। मेरे पिता जी ने खिड़की से देखा तो सूरज मेरे साथ मुँह दबाकर गलत काम कर रहा था मेरे पापा ने दरवाजा जोरजोर से खटखटाया तो सूरज धमकी देते हुए बोला कि अगर ये बात पुलिस या किसी को बताया तो जान से मार दूंगा मैंने दौड़कर दरवाजा खोल दिया और सूरज धमकी देते हुए मुझे धक्का देकर वहाँ से भाग गया मेरे पापा ने पुलिस को फोन किया हम लोग बहुत डरे हुए थे।"*

Statement of the victim under Section 183 BNSS

> *"दिनांक 05.09.2024 को मै सुबह 5.30 बजे वाशरूम गयी थी फिर जब वापस अपने कमरे मे जाने लगी तो पीछे से सूरज आया मेरे घर का दरवाजा खुला था सूरज ने मुझे पकड लिया बेड पर पटक दिया। मेरे कपड़े उतारे और मुझे छुने लगा तभी मेरे पापा अचानक से आ गये तो उसने पापा को जान से मारने की धमकी दी और भाग गया।"*

**10-**From perusal of statements of the victim under Section 180 and 183 BNSS, it is clear that the applicant had forcibly took her to another room, bolted the room and committed misdeed with her.

**11-**This Court is of the view that the meaning of what victim said in her above noted statements recorded under Section 180 and 183 BNSS is same. Even deposition of honest and truthful witnesses may differ in some details because

power of observation, retention and reproduction differ with individuals. It is well known that every person has a different way of expressing their words and feelings in their local language. The disclosure made by the victim clearly denotes the sexual act in common parlance. It is well settled that the minor discrepancies which do not shake the basic version of the prosecution should not be discarded. Hence contention of the learned counsel for the applicant that there are material contradictions and under the facts of the case, no offence of rape is made out are not liable to be accepted at this stage.

**12-**The third contention of learned counsel for the applicant that since the victim, in her statements, has not specifically stated that there was any penetration of penis in her vagina, as such, no offence of rape is made out against the applicant is concerned, this Court is of the view that the said issue has already been discussed by Hon'ble Supreme Court in the case of **State of Madhya Pradesh vs. Mahendra alias Golu**, (2022) 12 SCC 442, where the Supreme Court has laid down the distinction between 'Preparation' and 'Attempt' to commit rape and explained the three stages of commission of a crime, which are as under :-

> *"It is settled proposition of Criminal Jurisprudence that in every crime, there is first, Mens Rea (intention to commit), secondly, preparation to commit it, and thirdly, attempt to commit. If the third stage, that is 'attempt' is successful, then the crime is complete. If the attempt fails, the crime is not complete, but law still punishes the person for attempting the said act. 'Attempt' is punishable because even an unsuccessful commisson of offence is preceded by mens rea, moral guilt, and its depraving impact on the societal values is no less than the actual commission."*

**13-**In the instant case, the allegation against the applicant that he had committed misdeed with the victim comes under the stage beyond attempt to commit it, as such, applicant is

guilty of the offence punishable under Section 63 BNS. Even if, for the sake of argument, it is assumed that there was no penetration, even then the applicant is liable to be punished under Section 65(2) BNS as the victim is aged below 12 years. The said act of the accused is covered by the definition of rape provided under Section 63 of BNS.

**14-**Hon'ble Supreme Court in **State of A.P. vs. Bodem Sundara Rao**, 1995 (6) SCC 230 has cautioned the Courts while dealing with the cases of sexual crime against women in the following words:-

> *"Sexual violence apart from being a dehumanizing act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her suprreme honour and offends her self esteem and dignity. It degrades and humiliates the victim and where the victim is a helpless innocent child, it leaves behind a traumatic experience. The Courts are, therefore, expected to deal with the cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severly."*

**15-** The last contention of learned counsel for the applicant that as per medical examination report of the victim, there was no sign of any force is concerned, the same is misconceived as in supplementary medico-legal examination report of the victim, final opinion is reserved pending on the availability of FSL report and sexual violence cannot be ruled out. As on date, I do not find any material on record to presume the false implication of the applicant and to disbelieve the statements of minor victim, which is primary for considering the bail application of accused in rape cases.

**16-** In **Ram Swaroop (Supra)** relied upon by the learned counsel for the applicant, the nature of assault described by Pws 8 and 9 was inconsistant with medical report. Further the version given by PW 8 in the course of deposition was quite different from that he mentioned in the FIR. Whereas

in the instant case, the statement of the victim and the informant is intact. Therefore, said case is distinguishable on the facts of this case, hence the same is not helpful to the applicant. This Court is also of the view that each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In the light of circumstantial flexibility, one additional or different fact may make a word of difference between conclusion in two cases.

**17-**The Court must keep in mind while appreciating the evidence of the prosecutrix the values prevailing in the country, particularly in rural India. It would be unusual for girl to come up with a false story of being a victim of sexual assault so as to implicate an innocent person. In our country, a minor girl, victim of sexual aggression, would rather suffer silently than to falsely implicate somebody. Any statement of a rape victim is an extremely humiliating experience for her and until she is a victim of sex crime, she would not blame anyone but the real culprit.

**18-**Considering the overall facts and circumstances of the case as well as keeping in view the submissions advanced on behalf of parties, gravity of offence, role assigned to applicant and severity of punishment, I do not find any good ground to release the applicant on bail.

**19-**Accordingly, the bail application is ***rejected***.

**20-**It is clarified that observations made herein above are limited to the extent of determination of this bail application and will in no way be construed as an expression on the merits of the case.

**21-**The trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence to be adduced by the parties.

**Order Date:-** 10.01.2025

Saurabh