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2026:AHC:217466

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 36167 of 2026

Mohd Saakir @ Mohd Sakir

.....Applicant(s)

Versus

State of U.P.

.....Opposite Party(s)

Counsel for Applicant(s)	:	Krishna Gopal
Counsel for Opposite Party(s)	:	G.A.

Court No. - 66

HON'BLE ARUN KUMAR SINGH DESHWAL, J.

1. Heard Sri Krishna Gopal, learned counsel for the applicant and Sri Ram Kumar Verma, learned A.G.A. for the State and perused the record.

2. The instant bail application has been filed with a prayer to release the applicant on bail in Case Crime No.0728 of 2026, under Sections-69, 352, 351(3) of BNS, Police Station-Izzatnagar, District-Bareilly, during the pendency of the trial.

3. Learned counsel for the applicant has submitted that FIR has been lodged by the first informant with the allegation that the first informant is a transgender woman and she was in relationship with the applicant for more than one and a half year, on his promise to marry the first informant. Subsequently, the applicant, after taking money of more than five lakhs, refused to marry the first informant and his family members also scolded the first informant. It is further mentioned in the FIR that the applicant also established physical relationship with her under false promise of marriage.

4. Learned counsel for the applicant has further submitted that the victim in her/his statement under Section 180 BNSS admitted the fact that initially she was born as male and after conducting surgery of vulval reconstruction on 11.04.2023, she became female and when the applicant met her in a marriage, then he proposed her. Thereafter, both of them got in relationship and also established physical relationship. Subsequently, applicant as well as family

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members refused to marry. It is further submitted that the victim in her statement u/s 183 BNSS for the first time stated that prior to coming into relationship with the applicant, she informed the applicant that she is a transgender woman, but the applicant was ready to have relationship and also established physical relationship and subsequently refused to marry her despite taking huge amount.

5. Learned counsel for the applicant has submitted that as per the panel of doctor report dated 19.08.2026, victim was not actually found to be female, but a male with the changed genital part without having uterus. It is further submitted that to attract the ingredients of Section 69 of BNSS, there is specific condition, the victim should be woman, and word 'woman' has been defined under Section 2(35) of BNS wherein only female human being is considered as a woman. It is further submitted that as per Section 2(10) of BNS, gender means pronoun 'he' and its derivatives, used for any person, including the male, female or transgender. The word 'transgender' has been defined under Section 2K of Transgender Persons (Protection of Rights) Act, 2019. Therefore, alleged 'transgender' means who despite being a male human being became woman by changing her genital, will not come within the definition of woman as per Section 2(35) of BNS. Therefore, Section 69 of BNS would not be attracted and applicant has been falsely implicated. It is also submitted that victim refused to conduct her medical examination for the purpose of ascertaining sexual assault. Therefore, there is no material showing that applicant established physical relationship with the victim.

6. Per contra, learned A.G.A. has vehemently opposed the prayer for bail and submitted that after changing the genital, a male who was having hormones of female would come within the definition of woman despite the fact that he or she does not have uterus. It is further submitted that word 'transgender' female would not exclude a person from the definition of woman even though she became woman after changing her genitals through surgery despite being born as a male and there are allegations that applicant has established physical relationship with the first informant on the false promise of marriage, therefore, case is made out against the applicant.

7. This Court considering the important legal question that arises in this case, appointed Ms Mayuri Mehrotra as amicus curiae. Ms Mayuri Mehrotra, has submitted that as per the judgement of Andhra

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Pradesh High court in **Viswanathan Krishnamurthy Vs. State of Andhra Pradesh** reported in **MANU/AP/0884/2025** it has been held that transgender woman cannot be excluded from the definition of woman despite being she does not have reflected capacity. It is also submitted that as per the latest amendment made in Transgender Persons (Protection of Rights) Amendment Act, 2026, that a person after changing his gender through surgery has to obtain certificate from the District Magistrate regarding changing of gender, therefore, if certificate has been obtained by the first informant regarding change of her gender from male to female then she would be covered within a definition of woman.

8. Ms. Mayuri Mehrotra, appearing as Amicus Curiae, has relied upon the judgment of the Uttarakhand High Court in ***X v. State of Uttarakhand and Others*****, Writ Petition (Criminal) No. 28 of 2019**, **2019 Supreme (UK) 445**, wherein the learned Single Judge of the Uttarakhand High Court has observed that, in view of the judgment of ***National Legal Services Authority v. Union of India*** reported in **(2014) 5 SCC 438**, the identity of a transgender person cannot be decided on the basis of biological categorisation alone, and the psyche of a person should also be considered in determining the gender of a transgender person.

9. Relying upon paragraphs 8 and 10 of the said judgment, it is further submitted by Ms. Mayuri Mehrotra, State Law Officer that, in the judgment of ***Viswanathan Krishna Murthy (supra)***, it was observed in paragraph 21 that, for the purpose of Section 498A IPC, cruelty committed against a transgender woman shall be treated as cruelty against a woman and the offence under Section 498A IPC would be attracted. However, she further submitted that Section 2(k) of the Act, 2019, further defines the definition of transgender, which includes a person after sex reassignment surgery. Therefore, a trans woman is also a transgender person as per Section 2(k) of the Act, 2019. It is further submitted that punishment for sexual abuse of a transgender person has been provided under Section 18(d) of the Act, 2019, which is punishable with imprisonment for a term of up to two years.

10. Learned A.G.A. has also submitted that no application has been filed by the first informant to change his/her gender and that he is still recorded as Sudhir Das, having male gender in the records.

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11. After considering the submission of learned counsel for the parties and amicus curiae, Ms Mayuri Mehrotra, the legal question arises, "Whether transgender woman would be deemed to be woman for the purpose of Section 69 of BNS".

12. Section 69 of BNS provides punishment for having sexual intercourse with a woman under the false promise of marriage. Section 69 BNS is being quoted as under:

*"**69. Sexual intercourse by employing deceitful means, etc**.—Whoever, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.*

Explanation.—"deceitful means" shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity."

13. The word 'woman' has been defined u/s 2(35) of BNS which includes female human being. Section 2(35) of BNS is being quoted as under:

*"**2. Definitions**.—In this Sanhita, unless the context otherwise requires,—*

(35) "woman" means a female human being of any age;"

14. Similarly the word 'gender' has been defined u/s 2(10) of BNS which includes male, female or transgender. In explanation of Section 2(10) of BNS, it has been mentioned that the word 'transgender' shall have the meaning as assigned to it u/s 2(k) of the Act, 2019. Section 2(10) of BNS is being quoted as under:

*"**2. Definitions**.—In this Sanhita, unless the context otherwise requires,—*

(10) "gender".—The pronoun "he" and its derivatives are used of any person, whether male, female or transgender.

Explanation.—"transgender" shall have the meaning assigned to it in clause (k) of Section 2 of the Transgender Persons (Protection of Rights) Act, 2019 (40 of 2019);"

15. From the above definition of gender, it is clear that transgender is neither male or female, it has separate identity as mentioned in Section 2(k) of the Act, 2019. As per Section 2(k) of the Act, 2019, transgender person would include a person whose gender does not

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match with the gender assigned to him at the time of birth and the transgender includes trans-man or trans-woman, even if such person has undergone sex reassignment surgery, though, Section 2(k) of the Act, 2019 has been amended on 30.03.2026 but in the present case unamended Section 2(k) of the Act, 2019 would apply as the date of incident is prior to amendment. Section 2(k) of the Act, 2019 is being quoted as under:

*"**2. Definitions**.— In this Act, unless the context otherwise requires,—*

(k) "transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta."

16. The above definition of transgender person clearly shows that even if a person was assigned gender as a male at the time of birth and after sex reassignment surgery, he became female or if a person was assigned gender as a female at the time of birth and after sex reassignment surgery, he became male then it is clear that transgender man/woman will still be a transgender and not the male human being or female human being. The word 'woman' mentioned in Section 69 of BNS includes only female human being.

17. Further, the question arises even if any person sexually abuses by deceitful means a transgender woman, then what would be the offence committed by him?

18. Section 18 (d) of the Act, 2019 provides that any harm, injury, including physical abuse, sexual abuse, would be punishable under that section with the imprisonment of up to two years. Therefore, specific provision providing punishment for sexual abuse of a transgender has been made under Section 18(d) of Act, 2019.

19. The Single Bench of Himachal Pradesh High Court in the case of **Bhupesh Thakur versus State of Himachal Pradesh** reported in **2024 SCC OnLine HP 4513,** has observed that woman and transgender were given different identity and separate punishment for sexual abuse. Therefore, transgender woman would not be a woman

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for the purpose of Section 69 BNS. Paragraph no. 12 of the above judgment is being quoted as under:

*"**12.** As per aforesaid provision of law, woman means female human being of any age. Since under BNS, "woman" and "transgender" have been given different identity and have been defined independently, under Section 2 coupled with the fact that physical relationship inter-se victim-prosecutrix and bail petitioner, if any, was developed prior to surgery of victim-prosecutrix, whereby she allegedly got her sex changed, there appears to be force in the claim of the bail petitioner that he could not have been booked under Section 69 of the BNS, rather he is required to be dealt with in terms of the under Section 18 (d) of the Act, which reads as under:*

"(d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine."

20. In the judgment of Uttarakhand High Court in **Ms. X versus State of Uttarakhand and Others** reported in **2019 SCC OnLine Utt 1097**, which was relied upon by the amicus curiae, Ms. Mayuri Mehrotra, though observed that for the purpose of Section 377 IPC, trans-woman would also be included in the definition of woman, if trans-woman identified herself as a female, then she would also be included in the definition of woman. This judgment was passed prior to enforcement of BNS, wherein the transgender has been mentioned as a separate gender from male and female, and a separate definition of transgender has been provided under the Act, 2019. Therefore, ratio of **Ms. X versus State of Uttarakhand (supra)** will not apply in the present case.

21. Similarly judgment of **Viswanathan Krishnamurthy (supra)** relied upon by the amicus curaie is no more relevant because definition of 'gender' and 'women' provided in BNSS were not considered in this judgment

22. In view of the above analysis, it is clear that trans-woman (even through sex reassignment surgery), would still be included in the transgender, not in the definition of woman (female human being), specially for the purpose of Section 69 of BNS, where deceitful means or false promise to marry relates to the woman.

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23. Parliamentary Standing Committee of Home Affairs in its Report No. 246, presented to Rajya Sabha on 04.12.2023 and laid on the table of Lok Sabha on 04.12.2023 had also suggested through recommendation number 17 that in the BNS provision of rape is strictly limited to a woman and does not include a transgender woman and therefore, recommended to bring the transgender woman within the purview of rape by making necessary amendment in BNS, but this report was not accepted by the Parliament and word 'woman' remain as it is in BNS without including transgender woman.

24. Coming to the merit of this case, in the present case, it is not in dispute that first informant himself admitted in her statements under Section 180 BNSS and 183 BNSS that she was born as a male but having psyche of woman, changed herself into a trans-woman through sex reassignment surgery, and at the time of establishing relationship with the applicant she disclosed this relationship, but applicant, despite having sexual relationship with her, refused to marry, and even as per the report of CMO, the applicant has not applied for changing the gender. Therefore, prima facie no case under Section 69 BNS is made out. Therefore applicant is entitled to be released on bail.

25. It is made clear that above observation is confined to the interpretation of woman under Section 69 of BNS and not for any other offence.

26. Let the applicant- **Mohd Saakir @ Mohd Sakir,** 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.

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

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

28. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

29. Verification of mobile number and Aadhaar card of the applicant as well as sureties should be verified by the court concerned.

30. It is made clear that the applicant shall be released on the basis of computer generated copy of this order, downloaded from the official website of High Court Allahabad and verified by the concerned counsel with the undertaking that the certified copy will be filed within 15 days.

31. 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.

32. Office is directed to send a copy of this order to the applicant through **Bareilly Jail Superintendent** via e-mail or on e-prison portal and Trial Court via e-mode 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** as well as **Pila Pahan @ Peela Pahan and others Vs. State of Jharkhand and another,** in **Writ Petition (Criminal) No. 169 of 2025,** decided on **29.05.2026.**

33. This Court records its appreciation for valuable assistance rendered by Ms Mayuri Mehrotra, Advocate as an amicus curiae. Therefore, this Court directs High Court Legal Aid Services Committee to pay Rs.10,000/- to Ms. Mayuri Mehrotra, Advocate towards her fee.

October 15, 2026
S.C.

(Arun Kumar Singh Deshwal,J.)