2026:AHC-LKO:41194

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

CRIMINAL MISC. BAIL APPLICATION No. - 3976 of 2026

Umesh Mali

.....Applicant(s)

Versus

State Of U.P. Thru. Prin. Secy. Home Lko And 3 Others

.....Opposite Party(s)

Counsel for Applicant(s)	:	Ashutosh Kumar Shukla
Counsel for Opposite Party(s)	:	G.A.

[A.F.R.]
Court No. - 11

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Shri Ashutosh Kumar Shukla, the learned counsel for the applicant, and Shri H.S. Maurya, learned A.G.A. for the State, and perused the record.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 0035 of 2026, under Sections 70(2), 351(3) BNS, Section 5/6 of the POCSO Act and Section 3(2)(v) of the SC/ST Act, registered at Police Station Naseerabad, District Raebareli.

3. The learned A.G.A has further stated that although the police has delivered the information of the present application to the complainant on 26.05.2026, as nobody is present on behalf of the complainant/victim, the bail application cannot be heard in view of the provision contained in Section 483(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023, which provides that "*The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under Section 65 or sub-section (2) of Section 70 of BNS, 2023.*"

4. In this regard, it would be appropriate to have a look at the provisions contained in Sub-Rules (13) and (15) of Rule 4 of the Protection of Children from Sexual Offences Rules, 2020, which read as follows: -

> "***4. Procedure regarding care and protection of Child***
>
> *(13) It shall be the responsibility of the SIPU, or the local police to keep the child and child's parent or guardian or other person in whom the child has trust and confidence, and where a support person has been assigned, such person, informed about the developments, including the arrest of the accused, applications filed and Court proceedings.*

* * *

(15) The information to be provided by the SJPU, local police, or support person, to the child and child's parents or guardian or other person in whom the child has trust and confidence, includes but is not limited to the following: --

(i) the availability of public and private emergency and crisis services; (ii) the procedural steps involved in a criminal prosecution;

(iii) the availability of victim's compensation benefits;

(iv) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;

(v) the arrest of a suspected offender;

(vi) the filing of charges against a suspected offender;

(vii) the schedule of Court proceedings that the child is either required to attend or is entitled to attend;

(viii) the bail, release or detention status of an offender or suspected offender;

(ix) the rendering of a verdict after trial; and

(x) the sentence imposed on an offender."

5. In **Rohit v. State of U.P.**: 2021 SCC OnLine All 1071, a Coordinate Bench of this Court referred to the aforesaid Rules and held that the aforesaid Rules make it incumbent upon the SJPU or local police to inform the child and the local guardian regarding the schedule of court proceedings and the Court is required to ensure that the SJPU informs the local guardian/parents of the child about the bail application filed by the accused. This has been done in the present case. However, despite information of the application having been given, the complainant has chosen not to come forward to oppose the bail application.

6. The statutory mandate is to provide an opportunity of hearing to the complainant and, thereafter, it is at the sweet will of the complainant to appear before the Court at the time of hearing of the bail application or not. In case the informant chooses not to appear in spite of having been given information about the application and he reposes trust in the learned Public Prosecutor or the learned A.G.A, who would be there to advance submissions in opposition to the bail application, it cannot be said that the bail application cannot be heard in absence of the informant.

7. In view of the foregoing discussion, the preliminary objection raised by the learned A.G.A. is turned down and the court proceeds to examine the merits of the application.

8. The aforesaid case has been registered on the basis of an FIR lodged on 11.02.2026 by the 14 years old victim herself against the applicant and another person Kuldeep Singh, alleging that when she had gone to attend the call of nature to a field at about 7:00 p.m. on 10.02.2026, both the accused persons pressed her mouth and took her to a place at a distance of about 300 meters, where the other accused person kept shutting her mouth and the applicant forcibly raped her.

9. In the statement recorded under Section 180 BNSS, the victim reiterated the FIR version. While narrating the incident before the doctor during the medico-legal examination, the victim did not mention about the presence of the other accused person. The medico-legal examination report mentions no mark of injury on any part of the victim's body and the hymen was found to be intact. The doctor has mentioned that the clothes of the victim were collected, which were not torn and were not stained.

10. In the statement recorded under Section 183 BNSS, the victim reiterated her earlier version, but she stated that she did not know as to who was the other person involved in the incident.

11. In the affidavit filed in support of the application, it has been stated that the applicant is an innocent young man aged about 20 years, he has been falsely implicated in the present case and he has no criminal history.

12. The learned A.G.A has opposed the bail application and he has submitted that the allegations have been established during investigation and a charge-sheet has already been submitted on 14.04.2026. However, he states that the pathological examination reports of the samples drawn during the medico-legal examination of the victim are not available in the case diary.

13. Having considered the aforesaid facts and circumstances of the case, prima facie it appears at this stage that the victim herself is the complainant in the present case and initially she alleged in the FIR that the named co-accused Kuldeep Singh had shut her mouth and the applicant had forcibly raped her, whereas in her statement recorded before the Magistrate, she stated that she did not know as to who was the other person involved in the incident. Although the victim has alleged that the accused persons forcibly took her away to a place at a distance of about 300 meters and raped her, this allegation is not supported by the findings of the medico-legal examination report as no mark of injury or sign of use of force has been found on any part of the victim's body and the hymen has been found to be intact. The clothes of the victim were also not found to be torn and no stain was found on the

clothes. The investigation stands concluded without pathological examination of the samples drawn during the medico-legal examination of the victim.

14. The facts mentioned in the preceding paragraph, coupled with the facts that the applicant is a young man aged about 20 years, having no criminal history and is languishing in jail since 12.02.2026, whereas the investigation already stands concluded, are sufficient for making out a case for enlargement of the applicant on bail.

15. Accordingly, this bail application stands ***allowed***.

16. Let the applicant- ***Umesh Mali*** be released on bail in aforementioned case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of Magistrate/Court concerned, subject to the following conditions:-

(i) the applicant shall not tamper with the prosecution evidence;

(ii) the applicant shall not pressurize the prosecution witnesses;

(iii) the applicant shall appear on each and every date fixed by the trial court.

June 16, 2026
-Amit K-

(Subhash Vidyarthi,J.)

Whether the order is speaking : Yes √ /No
Whether the order is reportable : Yes √ /No

Digitally signed by :-
AMIT KUMAR
High Court of Judicature at Allahabad,
Lucknow Bench