

(2025) 03 UK CK 0875

In the Uttarakhand High Court

Case No : First Bail Application No. 1931 Of 2024

Mukesh Singh Bora

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

Date of Decision : 19-03-2025

Acts Referred:

Indian Penal Code, 1860 — Section 376(2)(n), 506
Protection Of The Children From Sexual Offences Act, 2012 — Section 9(m), 10
Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 180, 183

Citation : (2025) 03 UK CK 0875

Hon'ble Judges : Alok Mahra, J

Bench : Single Bench

Advocate : M.S. Pal, Arvind Vashishta, Lalit Sharma, Manisha Rana Singh, Girish Chandra Lakhchaura

Final Decision : Allowed

Judgement

Alok Mahra, J

1. Applicant-Mukesh Singh Bora, who is in judicial custody in connection with F.I.R. No.170 of 2024, under Section 376(2)(n), 506 I.P.C & Section 9(m)/10 of POCSO Act, registered at Police Station Lalkuan, District Nainital, has sought his release on bail.

2. Heard learned counsel for the parties and perused the material available on record.

3. In the F.I.R., it is stated that, after the death of complainant's husband, she said to have in search of job in the year 2021 and she contacted the applicant for job in Nainital Dugdh Sangh, Lalkuan, as the applicant is the Chairman of the Sangh. It is further stated that, on the pretext of giving her permanent job, applicant called her at Zaika Hotel, Nariman Chauraha, Kathgodam on 10.11.2021, where applicant forcefully made physical relations with her and committed rape upon her and threatened her that he is having her obscene

photographs and videos of the said day and if she discloses this thing to anyone, he will viral the photographs and videos and will get her removed from the daily wages. It is further stated in the F.I.R. that again on 26.12.2021, the applicant called her in the aforesaid Hotel and, without her consent, made physical relations with her and raped her. It is further stated that, thereafter, the applicant asked the complainant to make physical relations with his friends, but she refused to do so; thereafter, it is alleged that applicant's driver, namely, Kamal Belwal extended threat to the complainant that if she raises her voice against the applicant, he will do away her life. It is stated that, thereafter several times, applicant called the complainant in the office and extended threat to her that if she raises her voice, then, he will do away her life.

4. Learned Senior Counsel for the applicant submits that the applicant is innocent, has no criminal history and has been falsely implicated in the crime; that there is considerable delay in lodging the First Information Report, as the incident is shown to have occurred on 10.11.2021 and 26.12.2021, however, F.I.R was filed on 01.09.2024 after almost elapse of 3 years; that when the prosecution thought that allegations against the applicant are not possible to be proved then prosecution again developed a different story to make a more grievous offence against the applicant by creating a tutored victim, who is none else but the own daughter of the complainant, who alleged that the applicant has committed an offence by misbehaving with her by touching her breast and private parts. He submits that the Investigating Officer later on added Section 9(m)/10 POCSO Act, which is nothing but clear abuse of the provision of the Act; that in case, the applicant would have committed such offence, then the said allegation also would have find place in the First Information Report and also the said allegations are not supported by any cogent material and medical evidence. Learned Senior Counsel for the applicant submits that the FIR was lodged on 01.09.2024, thereafter, applicant filed anticipatory bail application on 02.09.2024, which was heard on 03.09.2024, 04.09.2024, 05.09.2024 and 09.09.2024, by that time, the statement of the complainant was already recorded, but allegation of POCSO was not made. He submitted that, in order to resist the anticipatory bail application, POCSO Act was added against the applicant on 04.09.2024, which was on the basis of the second statement of the complainant and the statement of minor victim recorded by the Police on 05.09.2024 under Section 183 BNSS; that there is stark difference in statements of minor. He submits that though in the statement recorded under Section 180 BNSS, complainant has reiterated the facts mentioned in the F.I.R., however, she further added that, on 26.12.2021, she went to Hotel Zaika along with her daughter, where applicant also made physical relations with her 2 or 3 times; that applicant lastly made physical relations with her on 14th July 2023 in the Dairy Quarters, where she was residing. Learned Senior Counsel for the applicant submits that when learned trial Court asked the complainant as to on which date she met with the applicant in Crazy Kitchen Hotel, she replied that she does not remember the date, but in the year 2023, they met several times. He submitted

that that complainant added new facts and added new locations every time on each and every statement just to improve her case. He submits that applicant is a law abiding citizen and in case he is granted bail, he will not misuse the same and will furnish the bail surety as per the satisfaction of this Court.

5. Learned Deputy Advocate General appearing for the State vehemently opposed the bail application, and submitted that, during investigation, statements of complainant and daughter of complainant under Section 183 BNSS were recorded by learned trial Court, in which both of them fully supported their earlier statements recorded under Section 180 BNSS. She submits that cogent and credible evidence was found against the applicant and, on the basis of which, after completion of investigation, charge sheet was filed against the applicant on 01.11.2024 in the aforesaid Sections. She submitted that, in the additional statement, complainant have stated that the applicant also harassed her minor daughter, as the applicant had sat her daughter on his lap and touched her breast and private parts. She submits that the applicant did not cooperate with the investigation and was throughout absconding. She submits that in case applicant is granted bail, there is likelihood of misusing the liberty granted to him.

6. Considering the submission of learned counsel for the parties and without expressing any opinion as to the final merits of case, this Court is of the view that applicant deserves bail at this stage.

7. Accordingly, the bail application is allowed.

8. Let the applicant, namely, Mukesh Singh Bora, be released on bail, on executing personal bond and furnishing two reliable sureties, each of like amount, to the satisfaction of Court concerned, subject to the following conditions:-

(i) The applicant shall cooperate with the Investigating Agency and he will make himself available at the time of interrogation by the Investigating agency, as and when required.

(ii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of this case especially the complainant and her minor daughter.

(iii) The applicant shall not leave the country without prior permission of the concerned Court.

(iv) Applicant shall surrender his passport before the trial Court, if he has one. In case, he does not possess passport, then he shall file an affidavit to that effect.