

# Paramjeet @ Pappu vs State Of U.P. And 3 Others on 3 March, 2025

**Author: Rajeev Misra**

**Bench: Rajeev Misra**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:29475

Court No. - 71

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5368 of 2025

Applicant :- Paramjeet @ Pappu

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Shamsher Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Shamsher Singh, the learned counsel for applicant and the learned A.G.A. for State-opposite party-1.

2. Perused the record.

3. This third application for bail has been filed by applicant-Paramjeet @ Pappu seeking his enlargement on bail in Case Crime No. 219 of 2023 under Sections 363, 376 I.P.C., Sections 3/4 POCSO Act and Section 3 (2) v SC/ST Act, Police Station-Mandawar, District-Bijnor, during the pendency of trial i.e. Sessions Case No. 1930 of 2023 (State Vs. Nitin @ Bhola) under Sections 363,

376 I.P.C., Sections 3/4 POCSO Act and Section 3 (2) v SC/ST Act, Police Station-Mandawar, District-Bijnor, now pending in the Court of Special Judge (POCSO Act), Bijnor.

4. At the very outset, the learned A.G.A. submits that notice of present third application for bail has been served upon first informant/opposite party-4 on 15.02.2025. However, in spite of service on notice, neither any counter affidavit has been filed on behalf of first informant/opposite party-4 nor anyone has put in appearance on his behalf to oppose this third application for bail.

5. The first bail application of applicant was rejected by this Court by a detailed order dated 20.09.2023 passed in Criminal Misc. Bail Application No. 36672 of 2023 (Paramjeet @ Pappu Vs. State of U.P. and 3 Others). Thereafter, applicant filed his repeat application for bail, which was registered as Criminal Misc. Bail Application No. 1664 of 2024 (Paramjeet @ Pappu Vs. State of U.P. and others). The aforesaid repeat application for bail filed by applicant also came to be rejected vide order dated 02.02.2024. For ready reference, the order dated 02.02.2024 is reproduced herein-under:

"Heard Mr. Devesh Kumar Shukla, Advocate, holding brief of Mr. Vinod Kumar Tripathi, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This repeat application for bail has been filed by applicant Paramjeet @ Pappu, seeking his enlargement on bail in Case Crime No. 219 of 2023, under Sections 363, 376 IPC and Section 3/4 The POCSO Act, and Section 3(2)(V) SC/ST Act, Police Station- Mandawar, District- Bijnor, during pendency of trial.

The first bail application of applicant i.e. 36672 of 2023 (Paramjeet @ Pappu) was rejected by this Court by a detailed order dated 3.10.2023. For ready reference, the same is reproduced herein under:

"1. Heard Mr. Amit Rai, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. Present application for bail came up for orders on 29.08.2023 and this Court passed the following order:-

"1. Heard Mr. Amit Rai, the learned counsel for applicant and the learned A.G.A. for State.

2. This application for bail has been filed by applicant-Paramjeet @ Pappu seeking his enlargement on bail in Case Crime No. 219 of 2023, under Section 363, 376 IPC, Sections 3/4 POCSO Act and Section 3(2)(V) SC/ST Act, Police Station-Mandawar,

District-Bijnor during the pendency of trial.

3. At the very outset, the learned A.G.A. submits that during the course of investigation, Investigating Officer has not collected any such document which may be in-consonance with the provisions contained in Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The only document recovered by the Investigating Officer qua the age of the prosecutrix is the school certificate issued by the Principal of the institution. Copy of same is on record as Annexure-2 to the affidavit. However, the said certificate does not contain the recital that the prosecutrix first attended the said institution.

4. In view of above, no reliance can be placed upon the same.

5. Accordingly, the Chief Medical Officer, Bijnor is directed to conduct the radiological test/ossification test of both the prosecutrix and determine their age accordingly. The age determination report shall be sent to this Court in a sealed envelope on or before 19.09.2023.

6. Similarly, the Investigating Officer shall file an application under Section 173(8) Cr.P.C. before court below and seek the permission of the Court for conducting further investigation and shall endeavour to collect such document qua the date of birth of the prosecutrix which may be in-consonance with the provisions contained in Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The said exercise shall be completed by the Investigating Officer before the next date fixed. The copy of the supplementary case diary shall also be transmitted to this Court.

7. Matter shall, accordingly, re-appear for orders as fresh on 20.09.2023.

Order Date :- 29.8.2023"

4. Pursuant to aforesaid order, the medical examination of the prosecutrix was conducted. The learned A.G.A. has placed the sealed envelope containing the medical determination of age of the prosecutrix. The same is taken on record.

5. Record shows that in respect of an incident, which is alleged to have occurred on 26.06.2023, a delayed FIR dated 27.06.2023 was lodged by first informant-Raju (father of both the prosecutrix) and was registered as Case Crime No. 219 of 2023, under Section 363 IPC, Police Station-Mandawar, District-Bijnor. In the aforesaid FIR, 2 persons namely (1) Nitin @ Bhola and (2) Pappu (applicant herein) have been nominated as named accused.

6. The gravamen of the allegations made in the FIR is to the effect that named accused enticed away the minor daughters of the first informant namely Akanksha and Nikita, who are twins and are aged about 16 years.

7. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. Both the prosecutrix were recovered on 28.06.2023. Thereafter, the statement of the prosecutrix namely Akanksha was recorded under Section 161 Cr.P.C. Same is on record at page 33 of the paper book. The prosecutrix in her aforesaid statement has not supported the FIR. She has further stated that physical relations were maintained between herself and Bhole upon her consent. Thereafter, the statement of another prosecutrix namely Nikita was recorded under Section 161 Cr.P.C. The prosecutrix, in her aforesaid statement has stated that she and her sister called the named accused on telephone and thereafter accompanied the named accused on 27.06.2023. The sister of this prosecutrix namely Akanksha went with Bhole whereas this prosecutrix came home. She has further admitted that physical relations were established between herself and Pappu upon her consent. Subsequent to above, the prosecutrix were requested for their internal medical examination. Both the prosecutrix, however, refused for their internal medical examination. Ultimately, the statement of the prosecutrix Akanksha was recorded under Section 164 Cr.P.C. Same is on record at page 43 of the paper book. The prosecutrix in her aforesaid statement has clearly stated that she wants to marry with Bhole. She has further reiterated her previous statement under Section 161 Cr.P.C. Thereafter, the statement of another prosecutrix Km. Nikita was recorded under Section 164 Cr.P.C. Her statement is similar to that of another prosecutrix Km. Akanksha. However, the prosecutrix in her aforesaid statements has stated that no illegal act was committed by Bhole and Pappu.

8. During course of investigation, Investigating Officer examined first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have supported the FIR. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of named accused is established in the crime in question. He, accordingly, submitted the charge sheet dated 22.07.2023 whereby named accused i.e. Nitin @ Bhole and Pappu have been charge sheeted under Sections 363, 376 IPC, Sections 3/4 POCSO Act and Section 3(2)(V) SC/ST Act.

9. Learned counsel for applicant contends that though the applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. According to the learned counsel for applicant, there is no medical evidence to support the charge sheet inasmuch as, the prosecutrix has herself refused for her internal medical examination. As per the statement of prosecutrix namely Nikita, she was in relationship with the applicant. The prosecutrix herself came and joined the applicant. As such, the prosecutrix Nikita is a willing and consenting party. On the above premise, he contends that no offence under Section 363 IPC can be said to have been committed by the applicant, as the applicant has neither abducted nor kidnapped the prosecutrix. With regard to the offence under Section 376 IPC and Sections 3/4 POCSO Act, the learned counsel for applicant contends that since the prosecutrix is a willing and consenting party, as such, no deliberate or forceful sexual assault was committed by the applicant upon the prosecutrix. He, therefore, submits that no offence under Section 376 IPC and Sections 3/4 POCSO Act as alleged can be said to have been committed by applicant.

10. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 15.07.2023. As such, he has undergone

more than 4 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, he submits that applicant is liable to be enlarged on bail. In case, the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

11. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that subsequent to the order dated 29.08.2023, the medical examination of the prosecutrix was conducted for determining her age. As per medical opinion, the prosecutrix is said to be aged about 16 years. With reference to the statement of the prosecutrix under Section 161 Cr.P.C., the learned A.G.A. contends that the prosecutrix in her aforesaid statement has admitted that physical relations were developed in between herself and the applicant upon the consent of the prosecutrix itself. However, according to the learned A.G.A., since the prosecutrix is about 16 years of age, therefore, her consent, if any, is wholly immaterial. Referring to the judgment of the Supreme Court in X (Minor) Vs. The State of Jharkhand and Another 2022 LiveLaw (SC) 194, the learned A.G.A. contends that since the prosecutrix is below 16 years of age, therefore, her consent, if any, is of no relevance and therefore, the applicant does not deserve any sympathy of this Court. As such, the bail application of applicant is liable to be rejected.

12. When confronted with above, the learned counsel for applicant could not overcome the same.

13. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, complicity of accused, accusations made coupled with the fact that as per the medical opinion, the prosecutrix is aged about 16 years, therefore, her consent, if any, is wholly irrelevant, the judgment of the Supreme Court in X (Minor) (Supra), therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of the present application for bail, but without making any comments on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

14. As a result, present application for bail fails and is liable to be rejected.

15. It is accordingly rejected.

16. The documents placed by the learned A.G.A. regarding medical determination of age of the prosecutrix shall be transmitted to court below after obtaining photo copies of the same to be kept on record. "

Learned counsel for applicant submits that co-accused Nitin @ Bhola has already been enlarged on bail vide order dated 7.12.2023, passed in Criminal Misc. Bail Application No. 49378 of 2023 (Nitin @ Bhola Vs. State of U.P. and 3 Others). For ready reference, the order dated 7.12.2023 is extracted herein under:

"1. Sri Imran Khan, learned AGA, for the State, apprised the Court that notice has been served to the informant of the case on 16.11.2023.

2. Despite service of notice, none appeared on behalf of the informant.

3. Heard Sri Anil Kumar Bind, learned counsel for the applicant and Sri Imran Khan, learned AGA, for the State.

4. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Sessions Trial No.1930 of 2023 in Case Crime No.219 of 2023, under Sections 363 and 376 IPC, Section 3/4 POCSO Act and Section 3(2)(5) SC/ST Act, Police Station Mandawar, District Bijnor during pendency of the trial.

5. FIR of the present case was lodged against the applicant and co-accused Pappu and according to the FIR, applicant and co-accused Pappu enticed away the twins daughters of the informant aged about 16 years.

6. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and this fact is evident from the statements of the victims recorded under Sections 161 and 164 Cr.P.C.

7. He further submits that when the statement of one of the victim was recorded under Section 164 Cr.P.C. then she categorically stated that she herself had left her paternal home and applicant also told her to go back but she did not return to her home.

8. He further submits that in the statement under Section 164 Cr.P.C. victim categorically stated that no physical relationship were ever developed between her and applicant but in her statement under Section 161 Cr.P.C. on query made by Investigating Officer she stated that for the last one year several times physical relationship were developed between both of them.

9. He further submits that the sister of one of the victim also stated similar story and stated that applicant and her sister was having friendship.

10. He further submits that even as per school record the victim was more than 17 years old and during investigation her ossification test was not conducted.

11. He further submits, however applicant is having criminal history of Section 302 IPC but in that case he was implicated after the present case through the statement of co-accused, who was brother of one of the victim and in that case he has already been released on bail.

12. He further submits that applicant is in jail in the present matter since 20.7.2023.

13. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by the learned counsel for the applicant.

14. I have heard learned counsel for the parties and perused the record of the case.

15. From the school record of the victims, who were twins, it appears that they were more than 17 years old and they in their statements under Section 164 Cr.P.C. did not make any allegation of rape against the applicant.

16. However, one of the victim in her statement under Section 161 Cr.P.C. stated that since last year several times physical relationship were developed between applicant and her but from the statement of both the victims, it also reflects that they herself had left their paternal home and applicant insisted them to return back.

17. However, applicant is also having a criminal history of Section 302 IPC but criminal history of the applicant has been explained in the instant bail application and it appears that in that case he was made accused after lodgement of FIR of the present case through the statement of co-accused and in that case he is on bail.

18. Further, law is settled that bail application of an accused should not be dismissed merely on the basis of his criminal history if otherwise case of bail is made out.

19. Further, applicant in the present matter is in jail since 20.7.2023.

20. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

21. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

22. Let the applicant-Nitin @ Bhola be released on bail in the aforesaid case on 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 appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make 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 any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

23. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

24. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial."

On the above premise, it is urged by learned counsel for applicant that since co-accused has already been enlarged on bail and the case of present applicant is similar and identical to that of co-accused, therefore, the present applicant is liable to be enlarged on bail on the ground of parity.

Even otherwise, applicant is a man of clean antecedents inasmuch as he has no criminal history to his credit except the present one. Applicant is in jail since 15.7.2023. As such, he has undergone more than six months of incarceration. It is thus urged that applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with trial.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named as well as charge sheeted accused, therefore he does not deserve any indulgence by this Court. He submits that while deciding the bail application of co-accused Nitin @ Bhola, the order dated 3.10.2023, passed in first bail application of applicant was not brought to the notice of the Court. It is then contended by learned A.G.A. that in view of law laid down by Apex Court in Pradhani Jani Vs. State of Odisha dated 15.5.2023, passed in Criminal Appeal No. 1503 of 2023 (Arising out of SLP (Crl.) No. 3241 of 2023) and Sajid Vs. State of U.P. dated 31.7.2023, passed in Special Leave to Appeal (Crl.) No. 7203 of 2023 the bail application of co-accused Nitin @ Bhola ought to have been placed before this Court. However, irrespective of the law laid down by Apex Court, the bail application was decided by a co-ordinate Bench, which is prima facie is not good in law. On the above premise, the learned A.G.A. contends that no new or good ground has emerged to enlarge the applicant on bail. According to learned A.G.A., prosecutrix is young girl aged about 16 years, therefore, judgement of Supreme Court in X(minor) Vs. The State of Jharkhand and Another 2022 Live Law(SC) 194 is attracted in the present case. Even if there is consent of the prosecutrix, no benefit can be derived from the same, therefore present application is liable to be rejected.

When confronted with above, the learned counsel for petitioner could not overcome the same.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that objections raised by the learned A.G.A. in opposition to the present application for bail could not be dislodged by learned counsel for applicant, therefore irrespective of the varied submissions urged by learned counsel for applicant in support of the present application for bail, but without making any comment on the merits of the case, this Court does not find any good ground to enlarge the applicant on bail.

In view of above, the application fails and is liable to be rejected.



It is accordingly rejected.

Order Date :- 2.2.2024 "

6. Learned counsel for applicant submits that during course of trial, the prosecutrix has deposed before court below as P.W.-2. However, the prosecutrix in her deposition before court below has not supported the F.I.R.. Co-accused-Nitin @ Bhola has already been enlarged on bail vide order dated 07.12.2023, as noted herein above. On the above premise, the learned counsel for applicant submits that applicant is liable to be enlarged on bail. According to the learned counsel for applicant, once the statement of the prosecutrix has been recorded then in that eventuality it cannot be said that if the applicant is enlarged on bail, he shall either terrorize the witnesses or shall hamper the course of trial. He therefore contends that no justifiable ground now exists to prolong the custodial arrest of applicant. He therefore submits that since the prosecutrix has not supported the prosecution story as unfolded in the F.I.R., therefore no useful purpose shall be served in keeping the applicant under incarceration. It is thus urged that applicant is liable to be enlarged on bail.

7. Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in custody since 15.07.2023. As such, he has undergone more than one year and seven months of incarceration. The police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, upto this stage, no such incriminating circumstance has emerged on the record necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, it is thus urged that applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

8. Per contra, the learned A.G.A. has vehemently opposed the present third application for bail. He submits that since the applicant is a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

9. Having heard the learned counsel for applicant, the learned A.G.A. for State, upon consideration of material on record, evidence, nature and gravity of offence, accusations made as well as complicity of applicant and coupled with the fact co-accused Nitin @ Bhola has already been enlarged on bail, the case of present applicant is on better footing than that of co-accused Nitin @ Bhola, the prosecutrix has deposed before court below as P.W.-2, the prosecutrix in her deposition before court below has not supported the prosecution story as unfolded in the F.I.R., once the statement of prosecutrix has been recorded before court below then in that

eventuality, if the applicant is enlarged on bail then it cannot be said that applicant shall either terrorize the witnesses or shall hamper the course of trial, once the prosecutrix has herself not supported the F.I.R. then no useful purpose shall be served in prolonging the judicial custody of applicant, the police report (charge sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized, yet in spite of above, no such incriminating circumstance could be pointed out by learned the A.G.A. from the record necessitating the custodial arrest of applicant during the pendency of trial, the judgement of Apex Court in Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373 (Paragraph 6), the clean antecedents of applicant, the period of incarceration undergone, therefore irrespective of the objections raised by learned A.G.A. in opposition to present third application for bail but without expressing any opinion on the merits of the case, applicant has made out a case for bail.

10. Accordingly, present third application for bail is allowed.

11. Let the applicant-Paramjeet @ Pappu involved in aforesaid case crime number 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 which are being imposed in the interest of justice:-

(i) Applicant will not tamper with prosecution evidence.

(ii) Applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) Applicant will not indulge in any unlawful activities.

(iv) Applicant will not misuse the liberty of bail in any manner whatsoever.

12. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail of applicant and send him to prison.

Order Date :- 3.3.2025 YK