



2026:AHC:168869

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 22333 of 2026

Shivam Yadav @ Chhotu

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite
Party(s)

Counsel for Applicant(s)	:	U.C. Chaturvedi
Counsel for Opposite Party(s)	:	Durgesh Kumar Mishra, G.A.

Court No. - 66

HON'BLE ARUN KUMAR SINGH DESHWAL, J.

1. Heard Sri U.C. Chaturvedi, learned counsel for the applicant, Sri Durgesh Kumar Mishra, learned counsel for the first informant, Sri Anand Pratap Singh, learned A.G.A. for the State and perused the record.

2. This matter was heard on 30.07.2026, and on that date, it was also found that as per the ossification test report, the age of the victim was found between 18-20 years, however, the school leaving certificate issued by the Headmaster, Narayan Junior High School, Paigambarpur, Hetapatti, Bahariya Block, Prayagraj, showing the date of birth of the victim as 12.11.2012, then the Headmaster of the school was directed to appear before this Court in person on the next date of listing along with scholar register/school record.

3. In compliance of the order of this Court dated 30.07.2026, Headmaster, Narayan Junior High School, Paigambarpur, Hetapatti, Bahariya Block, Prayagraj, appeared before this Court in person on 04.08.2026 and informed the Court that he mentioned the date of birth of the victim in his school record on the basis of transfer certificate issued by Kuldeep Gram Samaj Kalyan Junior High School by the parents of the victim. Therefore, this Court directed the Investigating Officer of the case to verify the aforesaid T.C. from the Kuldeep Gram Samaj Kalyan Junior High School and apprise the Court on the next date of listing.

4. Today, the Investigating Officer of the case has produced a letter of the Headmaster of Kuldeep Gram Samaj Kalyan Junior High School, and in

that letter, the Headmaster of the school has clearly stated that the victim was never enrolled as a student in his school and the alleged T.C. was not issued by his school. The above fact shows that a forged T.C. was prepared in the year 2023, alleged to have been issued by the Headmaster, Kuldeep Gram Samaj Kalyan Junior High School, to obtain admission in Narayan Junior High School, Paigambarpur, Hetapatti, Bahariya Block, Prayagraj. In such circumstances, the school leaving certificate issued by Narayan Junior High School, Paigambarpur, Hetapatti, Bahariya Block, Prayagraj, mentioning the date of birth of the victim as 12.11.2012 on the basis of forged transfer certificate issued by Kuldeep Gram Samaj Kalyan Junior High School, cannot be taken into consideration. In such circumstances, the ossification test is the only option to be considered in the absence of any other document.

5. The instant bail application has been filed with a prayer to release the applicant on bail during trial in Case Crime No. 59 of 2026, under Sections 65(1), 137(2), 87 B.N.S. and Section 3/4 (2) POCSO Act, Police Station-Tharvai, District-Prayagraj.

6. Contention of learned counsel for the applicant is that though in the FIR allegation of enticing away the daughter of the first informant has been made against the applicant, however, the victim girl in her statement recorded under Section 180 BNSS clearly stated that she herself left her house and started living in Aashram as her parents scolded her and thereafter the victim in her statement recorded under Section 183 BNSS has stated that she herself left her house on her own freewill along with the present applicant as she was in relationship with the present applicant. It is further submitted that as per the ossification test report, the age of the victim was found between 18-20 years. Therefore, the applicant has not committed any offence. It is lastly submitted that the medical examination report of the victim does not support any kind of assault or mark of injury. It is further submitted that the applicant has no criminal history. It is further submitted that charge sheet has been filed in the present case, therefore, there is no requirement of custodial interrogation. The applicant is a law abiding citizen and he is languishing in jail since 01.05.2026. In case he is granted bail, he will not misuse the liberty of bail and would cooperate in the trial proceedings.

7. Per contra, learned counsel for the first informant as well as learned A.G.A. for the State have vehemently opposed the prayer for bail but could not dispute the aforesaid facts.

8. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view the nature of offence, evidence, complicity of the accused and taking into account overcrowded jails and heavy pendency of criminal cases before the trial courts as well as considering the mandate of the judgement of the Apex Court in the case of **Kapil Wadhawan vs Central Bureau of Investigation** reported in **2025 SCC OnLine SC 3038** as well as guideline of this Court in the case of **Maya Tiwari Vs. State of U.P., 2024 SCC Online All 6765** regarding grant of bail and without expressing any opinion on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail. Accordingly, the present application is **allowed**.

9. Let the applicant- **Shivam Yadav @ Chhotu**, 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.
- iv. The applicant shall attend in accordance with the conditions of the bond executed by him.

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

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

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

13. 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.

14. 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.

15. Office is directed to send a copy of this order to the applicant through **Jail Superintendent, Prayagraj** 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**.

16. Application, if any, stands **disposed of**.

17. This Court came across a number of cases, including the case of the present applicant, where the parents of the victim submitted forged school certificates, like transfer certificates or letters of the Headmaster, showing the age of the victim below 18 years to attract the stringent provisions of the POCSO Act, even in those cases where the victim herself left her house with the alleged accused. These incidents show clear misuse of the POCSO Act just to punish a boy by the parents of the victim girl, who herself left her house being in a romantic relationship. Section 94 of the Juvenile Justice Act, 2015 prescribes the procedure for consideration of proof of age. Section 94(2) of the Juvenile Justice Act, 2015 is being reproduced hereinbelow:

"94. Presumption and determination of age: (2) In case, the Committee or the Board

has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order."

18. Section 94(2) of the Juvenile Justice Act, 2015 prescribes that where the Committee or the Board has reasonable grounds for doubt regarding the age of the person brought before it, the process of age determination should be followed by considering, firstly, the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned Examination Board, if available, and in the absence thereof, secondly, the birth certificate given by a corporation or a municipal authority or a panchayat, and only in the absence of (i) and (ii) above, the age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board. In many cases, where the victim does not have any matriculation certificate, the only document relied upon for determining the age, in view of Section 94(2) of the J.J. Act, 2015, is the date of birth certificate issued by the school, though there is no format or procedure mentioned regarding issuance of the date of birth certificate by the school, which has been widely misused by the parties and resulted in false implication of several young boys, which resulted in difficulty to obtain the bail and also easy conviction in view of the presumption provided under the POCSO Act.

19. Accordingly, this Court feels it appropriate to direct the Principal Secretary, Basic Education, U.P., to issue necessary guidelines, including the format for issuance of the date of birth certificate by the school where the student has not passed matriculation, as expeditiously as possible, preferably within a period of two months from the date of production of a certified copy of this order before them.

20. In the aforesaid guidelines, the Principal Secretary, Basic Education, U.P., shall also prescribe the documents required to be submitted by the parents/guardian before the school at the time of taking admission.

21. Let a copy of this order be communicated to the **Principal Secretary, Basic Education, U.P.**, through the **Registrar (Compliance)**, for compliance.

(Arun Kumar Singh Deshwal,J.)

August 12, 2026
SA