



2026:AHC-LKO:58932

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW
CRIMINAL MISC. BAIL APPLICATION No. - 221 of 2026**

Jitendra

.....Applicant(s)

Versus

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

.....Opposite Party(s)

Counsel for Applicant(s)	: Jay Kumar Soni, Nevedita Gupta, Santosh Kumar Yadav
Counsel for Opposite Party(s)	: G.A.

Court No. - 28

HON'BLE RAJEEV BHARTI, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material available on record.
2. This is first bail application filed on behalf of the applicant who is involved in FIR/Case Crime No.117/2025, under Sections 115(2), 351(3) of B.N.S. and Section 5M/6 of POCSO Act, Police Station- Mohanlalganj, District- Lucknow.
3. In brief, the prosecution case, as disclosed in the FIR, is that on 13.04.2025 at about 7:00 p.m., the accused-applicant, a resident of village Belhiyakheda, allegedly lured the victim, who is eight-year's old to a nearby garden on the pretext of giving him a bicycle. It is alleged that the accused subjected the victim to an unnatural sexual act, tore his clothes, and threatened to kill him. The victim was also allegedly assaulted. Somehow, the victim managed to escape and returned home, where he narrated the incident to his family members.
4. It is to be noted that in the counter affidavit which was filed on behalf of State, FSL report was not filed and in this regard this Court vide order dated 03.08.2026 had granted some time to the learned State Counsel to file the FSL report. Today, when the status report was filed, this Court surprised to see such grave lapses on the part of the Medical Officer. For a ready reference, the detailed status report which was filed by the State is reproduced hereinunder:-

सेवा में,

शासकीय अधिवक्ता,
रिपोर्ट थाना-मोहनलालगंज, कमिश्नरेट-लखनऊ।
मा० उच्च न्यायालय लखनऊ खण्डपीठ

लखनऊ।

विषय: किमिनल मिस सूचना सं0-16377/2025 (जमानत) अन्तर्गत धारा 483 बीएनएसएस, जितेन्द्र बनाम राज्य सरकार उ०प्र० व एक अन्य । सम्बन्धित मु०अ०सं०-117/2025 धारा-115(2)/351(3) बीएनएस व दाखिल किये जाने विषयक। 5एम/6 पाक्सो एक्ट थाना-मोहनलालगंज, जनपद-लखनऊ में FSL REPORT/ प्रगति आख्या/ स्टेटस रिपोर्ट महोदय,

निवेदन है कि दिनांक 14.04.2025 को पीडित xxxxx को पारिवारिकजन के साथ CHC मोहनलालगंज मेडिकल परीक्षण हेतु भेजा गया जहां से पीडित झलकारी भाई अस्पताल रेफर हुआ परंतु झलकारी बाई हॉस्पिटल में परीक्षण नहीं हो सका। पुनः दिनांक 15.05.2025 को पीडित झलकारी बाई अस्पताल भेजा गया जहां से परीक्षण हेतु सिविल अस्पताल लखनऊ रेफर कर दिया गया। वहां भी परीक्षण नहीं हो सका। दिनांक 17.04.2025 को पुनः CHC मोहनलालगंज रेफर किया गया जहां से पीडित xxxxx का मेडिकल परीक्षण हुआ। वह आंतरिक परीक्षण / मेडिकल परीक्षण के लिए CHC मोहनलालगंज से सिविल अस्पताल लखनऊ रवाना किया गया लेकिन पीडित xxxxx के आंतरिक चोट ना होने के कारण परीक्षण नहीं हो सका। दिनांक 19.04.2025 को पुनः परीक्षण हेतु पीडित xxxxx को CHC मोहनलालगंज भेजा गया एवं चिकित्सा अधीक्षक से मिलकर पीडित का SWAB लेकर प्रदान करने को कहा गया जिस पर SWAB KIT में लैब टेक्नीशियन द्वारा SWAB निकालने के लिए पीडित का परीक्षण किया गया। SWAB KIT वापस प्रदान किया गया पीडित के साथ SWAB KIT वापस थाना भेजा गया व मालखाने में रखवाया गया।

दिनांक 29.05.2025 को अभियुक्त जितेंद्र कुमार की गिरफ्तारी के बाद खून का नमूना डीएनए सेंपलिंग CHC मोहनलालगंज में करवाई गई अभियुक्त का नमूना व पीडित के SWAB KIT को विधि विज्ञान प्रयोगशाला भेजने हेतु हेडमोहरेर को हिदायत किया गया। डीएनए मिलान हेतु SWAB KIT में एनल स्वाइप सील ना होने के कारण अपूर्ण माल होने के कारण विधि विज्ञान प्रयोगशाला में माल दाखिल नहीं हो सकी है।"

5. In view of the aforesaid report, the victim was being made to rush to one hospital to another. This Court is conscious of the fact that some injuries might not be present on the body of the victim; however, that does not mean that medical examination of the victim could not be conducted solely on that basis. If the *Sexual Assault Evidence Collection Kit* (SAECK) was not available, it was the duty of the Medical In-charge of the concerned Medical Institution to arrange the said Kit from the competent authority, instead of declining to conduct the medical examination of the victim. No explanation whatsoever has been offered by the State for this serious lapse.

6. It is deeply disheartening to witness such a state of affairs. The victim is a minor child who, instead of being provided prompt, sensitive, and coordinated medical examination, was made to rush from one hospital to another. The matter is further aggravated by the fact that the swab kit collected during the medical examination was not properly sealed. Consequently, the DNA analysis could not be undertaken, and the corresponding report could not be generated.

7. The precious 'golden hour' for the collection and preservation of crucial forensic evidence was lost when the victim was made to rush from one hospital to another for medical examination. The delay and lack of coordination at this critical stage assume serious significance, as the efficacy of forensic evidence is intrinsically dependent upon its timely collection, proper preservation, and secure handling. What is even more disturbing is that, thereafter, the swab kit was not properly sealed, resulting in the DNA analysis could not be carried out and the corresponding DNA report also could not be generated. Such lapses cannot be ignored as routine procedural deficiencies; they represent a serious failure in the handling and preservation of vital evidence in a case involving a minor child. In this anxiety, this Court is not alone; a few days ago, a Coordinate Bench of this Court in the case of **Manoj v. State of U.P.**, reported in **2026 LiveLaw (AB) 315**, already highlighted the lack of adequate FSL infrastructure in the State. What has happened in the present case, coupled with the absence of proper handling and preservation of crucial medical and forensic evidence, therefore, cannot be viewed in isolation, but must be seen as part of the larger systemic picture.

8. Now, coming to the case in hand, learned counsel for the applicant submitted that the victim was medically examined by the doctor and the medical report does not support the prosecution story. He further submitted that the statement of the doctor was recorded, in which he stated that no injury was found and opinion of doctor was recorded normal; there is also a delay in lodging the FIR, and the applicant is languishing in jail since 29.05.2025. He further pointed out that the chargesheet has also been submitted. The applicant/accused undertakes that he will not misuse the liberty of bail.

9. On the other hand, learned A.G.A. opposed the prayer for bail and submitted that the allegations against the applicant are serious in nature. He further submitted that mere delay in lodging the FIR does not, by itself, demolish the prosecution case. Learned A.G.A. also pointed out that the charge-sheet has been submitted only upon completion of investigation and that the applicant does not deserve the benefit of bail merely on the ground of his period of incarceration.

10. Considering the submissions advanced by learned counsel for the parties and perusing the material available on record, it is relevant to note that the applicant has been in custody since 29.05.2025 and the charge-sheet has already been submitted. Thus, the applicant has undergone a considerable period of incarceration, while his further custodial detention is not required for the purpose of investigation. The requisite FSL report is also not available on

record. In these circumstances, while keeping in view the nature of the allegations, the period of incarceration already undergone, completion of investigation and the absence of a proper FSL report, without expressing any opinion on the merits of the case, I find this case fit for bail.

11. Accordingly, the bail application is ***allowed***.

12. Let the applicant- ***Jitendra*** be released on bail in the aforementioned case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of Magistrate/Court concerned, subject to 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, either personally or through his counsel.

Any other condition(s) which the trial court/concerned court may deem fit and proper, in the circumstances of the case, may also be imposed.

13. It is clarified that the observations made in this order are confined to the present bail application and shall have no bearing on the merits of the trial.

14. Registrar (Compliance) is directed to send a copy of this order to the Director General of Police and D.G., Prosecution.

August 18, 2026

Anand/-

(Rajeev Bharti,J.)