



2026:AHC:61379

A.F.R.

Reserved on 27.02.2026

Delivered on 25.03.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482
BNSS No. - 2198 of 2026

Swami Avimukteshwaranand Saraswati Jagatguru
Shankaracharya Jyotishpeethadheeshwar And
Another

.....Applicant(s)

Versus

State Of U.P. And 5 Others

.....Opposite
Party(s)

Counsel for Applicant(s) : Sri Prakash, Sr. Advocate, Rajrshi Gupta,
Sudhanshu Kumar, Varad Nath.
Counsel for Opposite Party(s) : G.A.

Court No. - 69

HON'BLE JITENDRA KUMAR SINHA, J.

1. Written submissions filed on behalf of the applicants and the State are taken on record. The first informant appeared on 17.03.2026 and submitted his written submissions with the delay condonation application stating therein that he was attacked with some identified person in a train when he came to Prayagraj, therefore, he could not file written submission within time. In the interest of justice, written submission along with two Volumes of documents filed by him are taken on record.

2. Heard Shri Dilip Kumar, learned Senior Counsel assisted by Shri Rajshri Gupta, Sudhanshu Kumar and Shri Varad Nath, learned counsel for the applicants and Shri Manish Goyal, learned Additional Advocate General assisted by Shri Patanjali Mishra, learned Government Advocate and Shri Roopak Chaubey, learned AGA-I for the State respondents and Ms.Reena N. Singh, leaned counsel for the first informant through Video Conferencing.

3. Present application has been moved seeking anticipatory bail in Case Crime No.58 of 2026, under Sections 351(3) of B.N.S. and Sections 5(1), 6, 3, 4(2), 16 and 17 POCSO Act, Police Station Jhunsi, District Prayagraj, with the prayer that in the event of arrest,

applicants may be released on bail.

Arguments on behalf of the Applicants

4. It is contended by learned Senior Counsel for the applicants that the applicants have been falsely implicated in this case. It is further submitted that the first information report has been lodged after a direction of the learned Additional Sessions Judge/ Special Judge (POCSO) Act, Prayagraj on an application filed by the first informant U/s 173(4) of BNSS.

5. It is further contended by learned Senior Counsel that the allegations contained in the application under Section 173(4) of BNSS are wholly unbelievable as the victims have never been students of the applicant no.1 and they have never resided in his ashram as is evident from the Educational Certificate, which is from one of the School of District Hardoi and the victims studied there as institutional students. It is further submitted that there are material improvements in the statement of the victims regarding place of incident as well as date of incident. It is further submitted that as per first information report, the alleged incident is said to have taken place sometime between 14.01.2026 to 18.01.2026 in the Magh Mela and also during Mahakumbh Mela in January and February, 2025 and it is highly unbelievable that if the incident of such nature had taken place with the victims during Maha Kumbh then they visited the place of the applicants in Magh Mela. It is further submitted that the victims have never been produced before the Investigating Officer or team during inquiry under Section 175(3) of BNSS and their statements have not been recorded and their written statements have been handed over to the inquiry officer. It is further alleged that the victims were not placed in a proper custody as required under the Juvenile Justice Act and they were allowed to remain with the first informant and the victims were under his influence.

6. It is further contended by learned Senior Counsel that during arguments, learned Additional Advocate General informed the Court that the victims have been placed in the custody of their natural guardian by order passed by CWC on 25.02.2026. It is further submitted that in view of the above, they were in illegal custody of the first informant before 25.02.2026. It is further submitted that a dispute arose between the administration and the applicant no.1 on 18.01.2026 regarding taking bath in the Sangam on the holy occasion

of Mauni Amavasya and on 21.01.2026, the first informant gave a written report to the police authorities, which has not disclosed the commission of the said offence, whereas, he had come to know about the commission of the alleged offence from the victims on 18.01.2026 itself. It is further submitted that for the first time, the first informant gave a written report regarding the commission of the alleged offence with the victims on 24.01.2026 and when the inquiry team asked him about the delay in reporting the matter, the first informant gave a reply that he was engaged in "Pooja". It is further submitted that there is a delay in making the report and the fact that prior to reporting the present incident, the first informant had filed a report on 21.01.2026, in which, there was no mention of the alleged offence raises serious doubt on the truthfulness of the allegations levelled in the application.

7. It is further contended by learned Senior Counsel that one of the victim has become major in the month of August, 2024 itself as his date of birth is 01.08.2006 as per his Class 12th marksheet and in order to bring the case within the purview of the POCSO Act, the victim has stated that the alleged incident also took place in the month of June, 2024, which also raises serious doubt on the truthfulness of the allegations. It is further submitted that the allegations levelled against applicant no.1, who is highly revered Guru are with the intention to humiliate and harass him and to bring down his image in the public opinion. It is further submitted that the medical opinion given by the doctor is without any basis as the doctor has opined that the sexual violence cannot be ruled out whereas as per the statement of the victims, the applicants are said to have indulged in penetrative oral sexual assault and any sign of penetrative oral sexual assault cannot last for such a long period of 40 days as per Modi's Book of Medical Jurisprudence and Toxicology, 28th Editions. It is further submitted that no external injury or any sign has been found on the person of the victims and the doctor's opinion, it appears, has been obtained on the pressure of the Investigating Officer.

8. It is further contended by learned Senior Counsel that the applicants have not been medically examined so as to corroborate the allegations levelled in the first information report and the medical examination of the accused persons are very important in cases involving sexual assault. It is further submitted that after lodging of

the application under Section 173(4) of BNS, the first informant has filed successive application against the applicants, which shows his malafide intention. It is further submitted that the first informant is a person of criminal antecedent having criminal history of 21 cases and he is in the habit of lodging false cases against various persons. It is further submitted that the applicants have directly approached this Court for grant of anticipatory bail as the first information report has been lodged on the direction of the learned Additional Sessions Judge / Special Judge (POCSO) Act, Prayagraj on an application filed under Section 173(4) of BNS by the first informant.

9. Learned Senior Counsel has placed reliance on the judgement of Hon'ble Supreme Court in the case of **Harshad S. Mehta & Ors vs The State Of Maharashtra, 2001 (8) SCC 257**, in which, the Hon'ble Supreme Court has held that the Special Court enjoys all the powers of the Court of original jurisdiction and it holds dual capacity and powers both of Magistrate and Court of Session depending upon the stage of the case.

10. Learned Senior Counsel further submits that since the learned Special Judge has directed the registration of the first information report, the present case comes within the purview of the special circumstance for directly approaching this Court. It is further submitted that the present case has received extensive attention from the media and has been widely publicized in both print and electronic media; consequently, due to procedural delays, the expeditious disposal of the anticipatory bail application before the learned Special Judge (POCSO) cases is not feasible.

11. Learned Senior Counsel has also placed reliance upon the judgement in the case of **Ankit Bharti Vs. State of U.P. and another** and other connected matters, in which, five judges Bench of this Court has held that a person can approach the High Court for grant of anticipatory bail directly in "special circumstances" and special circumstances can be left to be decided by the judge dealing with the case.

12. Learned Senior counsel has placed reliance upon the judgement in the case of **Manjeet Singh Vs. State of Uttar Pradesh**, arising out of SLP No.11679 of 2025, in which, the Hon'ble Supreme Court has remanded back the matter to the High Court for fresh consideration for entertainment of the anticipatory bail directly and

to decide whether the special circumstance existed for entertaining the anticipatory bail application directly.

13. Learned Senior counsel has also placed reliance upon the judgement in the case of **Mohammed Rasal C. and another Vs. State of Kerala and another**, Special Leave to Appeal (Crl.) No.6588 of 2025, in which, the Hon'ble Supreme Court has appointed one amicus curiae to suggest the criteria for special / extraordinary circumstances and the amicus curiae has submitted suggestions and one of the suggestion regarding special circumstances for directly approaching the High Court for grant of anticipatory bail is where the matter is cognizable by special Courts of rank of Sessions Court / Additional Sessions Judge.

Arguments of State of U.P.

14. Learned Additional Advocate General appearing for the State has vehemently opposed the anticipatory bail of the applicants and they have raised preliminary objection that the applicants have directly approached this Court for grant of anticipatory bail and they have not approached the Sessions Court first for grant of anticipatory bail. It is further submitted that only in exceptional circumstances, the High Court can be approached directly for grant of anticipatory bail without availing the remedy first before the Sessions Court. It is further submitted that though the jurisdiction of the High Court and the Sessions Court to entertain anticipatory bail application under Section 482 BNSS is concurrent, however, the various judicial pronouncements have mandated that the Sessions Court are to be approached first and the High Court can be approached only in exceptional circumstances. It has further been submitted by him that the applicants have approached the Special Judge (POCSO) Act, Prayagraj and have filed an application in the present case and they have not approached the Special Judge (POSCO) Act for grant of anticipatory bail. It is further submitted that the applicants have made contemptuous allegations against the Special Judge (POCSO), Prayagraj, which come within the purview of contempt of Courts Act.

15. Learned Additional Advocate General has placed reliance upon the judgement of Hon'ble Supreme Court in the case of **Jagdeo Prasad Vs. The State of Bihar**, 2025 SCC Online SC 2108, in which, the Hon'ble Supreme Court has set aside the anticipatory bail

granted by the High Court, where the application for grant of anticipatory bail was directly entertained by the High Court without giving any cogent reasons.

16. Learned Additional Advocate General has also raised other preliminary objection that the applicant no.1 has not sworn the affidavit in support of the anticipatory bail and the same has been sworn by the applicant no.2 and the supplementary affidavit has been sworn by the stranger, which is against the mandate of the Allahabad High Court Rules, which has been framed under Article 225 of the Constitution of India and has overriding effect on any other procedural law.

17. Learned Additional Advocate General has also placed reliance upon the judgement of Hon'ble Supreme Court in the case of **Mohammad Rasal.C. and another Vs. State of Kerala and another**, arising out of SLP (Crl.) No.6588 of 2025 vide order dated 12.11.2025, in which, the Hon'ble Supreme Court has condemned the practice adopted by certain High Courts of directly entertaining the applications for anticipatory bail and learned Additional Advocate General has also relied upon the judgement of Hon'ble Supreme Court in State of **Uttar Pradesh Vs. Batuk Deo Pati Tripathi and another (1978) 2 Supreme Court Cases 102**.

18. Learned Additional Advocate General has opposed the prayer for grant of anticipatory bail and it has been submitted by him that the allegations against the applicants are of very serious and heinous in nature and the victims in their statement recorded under Sections 180 and 183 BNSS have supported the allegations of the first information report. It is further submitted that the applicant no.1 is highly influential person and if released on anticipatory bail, it would have an adverse impact on the trial proceedings; there is a likelihood that the victims may become intimidated and subjected to pressure.

19. Learned Additional Advocate General has submitted a pen drive showing the media coverage of the applicant no.1 after 27.02.2026 when the hearing of the case concluded and submits that the applicant no.1 has indulged in giving interviews to various Hindi News Channels and has been holding the political and religious meetings, which can have adverse effect on the investigation / trial, if they are granted anticipatory bail. It is further submitted in the written statement that during investigation independent witness has

supported the presence of the victims at the place of occurrence i.e. the Maghamela Camp and from their school documents, the victims have been found absent from their school during relevant period.

20. Learned Additional Advocate General has lastly submitted that Section 29 of the POCSO Act raises a presumption against the applicants. In this background, learned Additional Advocate General has also placed reliance upon the judgement of the Hon'ble Supreme Court in the case of **Sumitha Pradeep Vs. Arun Kumar C.K. and another** (2022) 17 SCC 391 and also the judgement of Hon'ble Supreme Court in the case of **State of Bihar Vs. Rajballav Prasad @ Rajballav Prasad Yadav @ Rajballabh Yadav** (2017), 2 SCC 178 and **Suraj Kumar alias Vishapratap Singh Vs. State of U.P. and others** passed in Criminal Misc. Bail Application No.39835 of 2024 dealing with Section 29 of the POCSO Act.

Argument on behalf of first informant

21. Ms. Reena N. Singh, learned counsel for the first informant requested a V.C. link to appear through video conferencing in the morning on 27.02.2026, which was granted, and a video conferencing link was sent to her; thereafter, she appeared through video conferencing before a packed courtroom, and she was heard at length. It is submitted that she appeared on behalf of the first informant and she has opposed the prayer for grant of anticipatory bail and it has been submitted by her that the applicants are highly influential person and if they are released on anticipatory bail that can prove detrimental to a fair trial in the POCSO case. Furthermore, it has been submitted that, apart from the victims, there are several other minor children who have also been subjected to sexual exploitation and custodial interrogation of the applicants is necessary.

22. It is further contended by her that Section 29 of the POCSO Act raises a presumption of commission of the offence and in this view of the matter, the applicants are not entitled for grant of anticipatory bail.

23. The first informant Ashutosh Brahmachari Maharaj has filed written submission in person and he has mentioned that on 21.02.2026, a first information report no.58 was registered in the Police Station Jhunsi, District Prayagraj under Sections 351(3) of

BNS 2023 along with Sections 5(1), 6, 3, 4(2), 16, 17, 127(2) of POCSO Act, which discloses serious allegations of sexual offence against the applicants. It has further been mentioned in the written submissions that the Additional / Special Judge (POCSO) Act, Prayagraj vide order dated 21.02.2026 passed in Criminal Misc. No.88 of 2026 has directed for registration of the first information report under the various provisions of B.N.S. and POCSO as quoted in the written submissions and it has further been stated that the applicants are highly influential persons and if they are granted anticipatory bail, they are most likely to threaten the victims and their families and the informant, the applicants can further tamper with evidence and influence the witnesses, which can seriously prejudice and influence the fair investigation and trial. It has further been mentioned that the first informant was attacked by unknown person on 08.03.2026 when he was travelling in train Rewa Express towards Prayagraj while crossing Sirathu and an FIR in this regard was registered on 08.03.2026 FIR No.81, under Section 118(1) B.N.S. 2023 at Police Station Prayagraj and it has been further submitted by him that after registration of the said FIR, the close aide of applicant no.1 and 2 took the responsibility for the grievous hurt and for the attempt to kill the informant on her personal social media account. It is further stated that the incident clearly establishes that both the applicants are leaving no stone unturned to influence the proceedings by attacking the informant and causing danger to his life.

24. It is further submitted that after the interim protection from arrest was granted to the applicants in the present case they have left the State of Uttar Pradesh despite the said order and Chief Secretary (Home), Uttar Pradesh is requested to ensure fairness of the investigation in this case. It is further submitted that the applicants are trying to influence, threaten and harm the victims and their families as the applicants along with their various supporters reached one of the district of Uttar Pradesh in the name of Gau Sanrakshak Yatra, large crowds are being gathered along with local influential people of political parties, like Congress and Samajwadi Party to facilitate the applicants. Such acts of applicants whose arrest is being stayed by this Court till disposal of this application, by reaching the victim's district in public vicinity with huge crowd with local netas of that district clearly amount to trying to create pressure on local administration and police to influence the investigation and to

threaten victims, informant and witnesses along with creating social and political pressure on the families of victims, which is in clear violation of POCSO Act and provisions of Section 31 and rules 4 and 12 of POCSO Act, 2012 along with provisions of BNSS 2023, due to such acts of the applicants, the anticipatory bail application of the applicants deserves to be dismissed.

25. It is further stated that the recent unfortunate incidents with the informant and attempts to threaten victims and their families, the custodial interrogation of the applicants is extremely necessary for verification of facts, recovery of electronic evidences and confrontation of the witnesses. It is extremely important to mention that grant of anticipatory bail at this stage will hamper the investigation. It is further stated in the written submissions that the victims have supported the allegations of the first information report in their statement recorded under Section 183 BNSS and medical and other evidences clearly establish that the applicants have committed the alleged offence. It is further submitted that the applicant no.1 is not yet the Shankracharya of Jyotimath/ Jyotishpeeth Badarikashram. As per 796 pages order dated 16.01.2018 by this Court in First Appeal No.309 of 2015, a Division Bench of this Court gave a finding that the Guru of applicant no.1, Swami Swaroopanand Saraswati Ji Maharaj, who was the petitioner in the stated first appeal was never authorized to function as Shankaracharya of Jyotirmath/ Jyotishpeeth since he was never validly installed in the said position. The said facts were further stated by Division Bench of this Court passed in Writ-C No.1272 of 2018 vide order dated 16.01.2018. It is further submitted that by the same order, the High Court had rejected the application of the applicant no.1's Guru as Shankracharya of Jyotirmath for allotment of land in Mela Prayagraj, which was earlier rejected by Mela Authority on 09.01.2018. The said FA No.309 of 201 was challenged by applicant no.1 Guru Swami Swaroopanand Saraswati Ji Maharaj before Hon'ble Supreme Court in SLP No.34253 of 2017, which is still pending for disposal, where it is still in dispute that who is the Shankracharya of Jyotirmath/ Jyotishpeeth, as guru of applicant no.1 was undisputedly the Shankracharya of Shardaapeeth Dwarka but not of Jyotipeeth, therefore, the claim of the applicant to be called as Shankaracharya should be supported by any verifiable facts as the pending dispute is also about disputed wills that whether Shankracharya can be made through wills or not. It is further stated that the title of Shankracharya of Jyotirmath is in

dispute and is pending before Hon'ble Supreme Court and the same can not be denied. It has further been stated in the written submissions that the investigation is still going on and the applicants have started yatra through Varanasi to Lucknow from 7th March to 11th March, 2026 despite knowing the fact that the police is doing the investigation against the applicants in the sensitive matter of POCSO. It is further submitted in the written submission that the applicant no.1 is self proclaimed Shankarcharya, his responsibility rises further than any ordinary citizen of the country, being called Shankarcharya (though disputed) does not make him exempt from laws and constitution of the country as no one is allowed to do any sort of crime or to harass any child or individual. It is further stated that the case of Asaram Bapu demonstrates the heightened responsibility that spiritual leaders and religious teachers carry in society. It is further stated that the title of Shankarcharya, which applicant no.1 claims is presently disputed as that can not be conferred by the testamentary succession i.e. will. The first informant has placed reliance upon the judgement of Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt, AIR 1954, SC 282. The first informant has filed detailed para-wise reply in his written submissions to the averments made and the grounds taken in the anticipatory bail application filed by the applicants.

Analysis

26. At the very outset, a preliminary objection has been raised by the learned Additional Advocate General on the maintainability of the anticipatory bail application as the applicants have approached this Court directly for grant of anticipatory bail under Section 482 BNSS. Section 482 BNSS gives concurrent powers to the High Court and the Court of Session to entertain and grant anticipatory bail application to an accused, who is apprehending his arrest in a non bailable case, however, in order to prevent the docket explosion of the High Court and also to give two chance to the applicant, various judicial pronouncements have held that normal rule is that an applicant should first approach the Sessions Court, however, the jurisdiction of the High Court is not barred to directly entertain an application for grant of anticipatory bail. A five judges Bench of this Court in **Ankit Bharti Vs. State of U.P. and another**, passed in Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C.

No.1094 of 2020 along with connected matters has held that normally, the applicants should approach the Sessions Court first for grant of anticipatory bail, however, the High Court may be approached directly for grant of anticipatory bail in "special circumstances" and the Bench has also left it open for the judge dealing with the application to decide whether special circumstances exist or not for entertaining anticipatory bail application directly.

27. The Hon'ble Supreme Court in **Manjeet Singh Vs. State of Uttar Pradesh**, Special Leave Petition (Crl.) No.11667 of 2025 has held that " This Court's decision in "*Kanumuri Raghurama Krishnam Raju Vs. State of A.P.*" and "*Arvind Kejriwal Vs. Director rate of Enforcement*" made this position clear and declared that it would not be necessary for an accused to approach the Sessions Court in the first instance, as a rule, before approaching the High Court. The Hon'ble Supreme Court in the above case has remanded the matter back to the High Court to decide whether special circumstances exist or not before allowing or refusing the anticipatory bail application.

28. The Hon'ble Supreme Court in **Mohammed Rasal. C. and another Vs. State of Kerala and another**, Special Leave to Appeal (Crl.) No(s).6588 of 2025 has held that though the concurrent jurisdiction is conferred upon the Sessions Court and the High Court to entertain a prayer for pre-arrest bail under Section 482 of the BNSS (formerly, Section 438 Cr.P.C.), the hierarchy of the Courts demands that no person seeking such remedy should be encouraged or allowed to directly approach the High Court for exercising jurisdiction under Section 482 of the BNSS (formerly, Section 438 Cr.P.C.) by bypassing the jurisdiction of the concerned Sessions Court.

29. The Hon'ble Supreme Court has further held that the High Court may entertain an application for pre arrest directly in special / extraordinary circumstances and the Hon'ble Supreme Court has appointed Amicus Curiae to assist this Court in this matter. The learned Amicus Curiae has made various suggestions and has prescribed various categories of the cases, in which, the applicants may approach the High Court directly for grant of anticipatory bail under Section 482 of the BNSS (formerly, Section 438 Cr.P.C.) and one of the categories that has been suggested is where the special courts dealing with offences under special acts are of the rank of

Sessions Court. Though, the above suggestions are not binding and they have not received approval by the Hon'ble Supreme Court as yet and the matter is pending before Hon'ble Supreme Court, however, the said categorization is still persuasive.

30. In the present case, the first information report has been lodged on the order passed by the Special Judge (POCSO)/ Additional Sessions Judge, Prayagraj on an application filed by the first informant under Section 173(4) of the BNSS.

31. In view of the judgement of the Hon'ble Supreme Court in **Harshad S. Mehta and others Vs. State of Maharashtra** as relied upon by the learned Senior Counsel for the applicants that the Special Judge acts in dual capacity as the Magistrate and the Sessions Court.

32. In view of the above, the present application comes within the purview of special / extra-ordinary circumstances, therefore, the preliminary objection of learned Additional Advocate General is not sustainable.

33. The first information report has been lodged by one Ashutosh Brahmachari claiming to be the guardian of the victim boys and for the first time, he filed an information disclosing that he had received information about the commission of alleged offence from the victims. The victims have stated that they had informed the first informant about the commission of the offence on 18.01.2026 and therefore, there is delay of 6 days in lodging information to the police for the first time and for this, the first informant has assigned the reason that he was engaged in "Pooja / Yagya". Moreover, the first informant had lodged a complaint regarding commission of an offence with him relating to the offence under Section 109 and other Sections of the BNS on 21.01.2026 to the police authorities, in which, no mention of commission of the instant offence has been made by him to the police authorities.

34. Moreover, the victims have been in constant company with the first informant and they have never been made over to proper custody or in the custody of their parents before 25.02.2026.

35. The first information report has been lodged on 21.02.2026 by order of the Special Judge (POCSO) Act/ Additional Sessions Judge, Prayagraj on an applicaiton filed under Section 173(4) of BNSS and

after lodging of the first information report, the statements of the victims have been recorded, in which, they have stated that the incident with them has taken place since June, 2024 in various Ashram of applicant no.1, namely, Narsingh Pur and Badrinath, whereas in the first information report, the duration of the offence has been mentioned from January, 2025 to February, 2026 i.e. Mahakumbh 2025 to Magh Mela 2026 and that too at Prayagraj.

36. As per first information report, the applicants and some unknown persons are alleged to have subjected two victim boys to penetrative sexual assault. The pen drive, which has been submitted by the learned Additional Advocate General along with his written submissions in order to show that the applicant no.1 has given interviews and has held religious rally also shows that the victims were found giving interviews to leading Hindi News Channels, which is highly condemnable and deplorable in the facts and circumstances of the case and not consistent with law and procedure related to POCSO cases.

37. It is also noteworthy that the victims have not stated anything regarding commission of the offence with them to their parents and they have confided to one stranger, the first informant, Ashutsh Brahmachari. The reason for confiding to the first informant as given by the victims is that the first informant used to visit the applicant no.1 and used to garland him and touch his feet, therefore, he was a right person to be informed about the commission of the offence. The above reasoning given by the victims also appears to be unusual and not consistent with a normal course of human conduct.

38. So far as the medical report of the victims as prepared by the doctor is concerned, the doctor has opined that the sexual offence cannot be ruled out, however, no external injury has been found on the person of the victims and the doctor has not found anything on the basis of which, the same report has been given as the medical jurisprudence suggests that normally the sign of any sexual assault does not survive on the victim after a delay of 40 days and particularly in cases of penetrative sexual assault involving mouth.

39. The victims are admittedly the institutional students of a School in the District of Hardoi and they are not the students of the Schools of the Ashram of the applicant no.1 as is evident from their Educational Certificate i.e. the marksheet and the date of birth of one

of the victim is 01.08.2006 as per his Class 12th marksheet and he was major when the incident is said to have taken place as mentioned in the first information report, however, the said victim in his statement has stated that the incident took place with him in the month of June, 2024 at Narsinghpur (Ashram of applicant no.1) in Madhya Pradesh, which is material improvements.

40. Learned Additional Advocate General has also submitted that presumption of commission of the offence can be raised as per provisions of Section 29 of the POCSO Act.

41. Learned Additional Advocate General in support of his argument has placed reliance upon the judgment of Hon'ble Supreme Court in **Sumitha Pradeep Vs. Arun Kumar C.K. and another (2022)**, 17 SCC 391, in which, the Hon'ble Supreme Court has held in case relating to minor victim girl coupled with legislative intent especially reflected through Section 29 of the POCSO Act, are sufficient to dissuade a court from exercising its discretionary jurisdiction in granting pre-arrest bail and in paragraph 14, it has been held that *"We are not going in to the issue of Section 29 of the POCSO Act in the present case. Even without the aid of Section 29 of the POCSO Act, we are convinced that the High Court committed a serious error in exercising its discretion in favour of respondent no.1 herein (original accused) while granting anticipatory bail."*

42. On reading the above judgement of the Hon'ble Supreme Court that Hon'ble Supreme Court has not laid down any law that presumption under Section 29 of the POCSO Act is applicable at the stage of pre-arrest bail/ bail.

43. Learned Additional Advocate General has placed reliance on the judgement of Hon'ble Supreme Court in **State of Bihar Vs. Rajballav Prasad alias Rajballav Prasad Yadav alias Rajballabh Yadav** (2017) 2 Supreme Court Cases 178, in which, the issue was whether grant of second bail by a Division Bench of the High Court soon after the first bail application was rejected by another Bench, the same was justified or not. The facts of the above case relates to the offences under the POCSO Act and the Hon'ble Supreme Court in paragraph 22 of the judgement has held the case was at the stage of trial and the witnesses were being examined by the learned trial Court. The Hon'ble Supreme Court has not laid down any law that presumption under Section 29 of the POCSO Act can be invoked at

the stage of pre-arrest bail before framing of charge.

44. In this regard, the Delhi High Court in **Dharmander Singh @ Saheb Vs. The State (Govt. of NCT, Delhi)** vide order dated 22.09.2020 passed in Criminal Misc. Bail Application No.1559 of 2020, in an elaborate judgement has examined the scope of Section 29 of the POCSO Act and has held that presumption under Section 29 of the POCSO Act cannot be invoked at least before framing of charge by the learned Sessions Court. For ready reference, paragraphs 50, 51, 52, 53, 54, 63, 64, 65, 66,, 67 and 69 are quoted as under :-

" 50. Drawing from the verdict of the Supreme Court and the views taken by the various High Courts in the above cases, in essence, the position 14 (2011) 1 SCC 694 is that to rebut a presumption, first, the presumptive proposition must itself be formulated based on relevant and credible material ; and second, the accused must know what presumption he has to rebut. It is not enough to say that the accused has been implicated by the police on charges under sections 3,5,7 and/or 9 of the POSCO Act. At the very least, the charges should have been framed by court against the accused under one or more of those sections for the presumption to arise; and mere implication by the police is not enough.

51. Only when the trial court frames charges, does it form a prima facie opinion that there is a case for the accused to answer and defend. At the stage of framing charges, the trial court may decide not to frame charges against an accused under any of the sections mentioned in section 29 but under some other provision; or, it may not frame charges against all accused persons under those sections. So, the presumption under section 29 cannot arise before charges are framed.

52. If the presumption of guilt is taken to arise even before charges are framed, say when a court is considering a bail application, then the court will have to afford to the accused an opportunity to prove that he has not committed the offence; which would require the court to conduct a mini-trial, even when it is only considering a bail plea. What then would remain to be done during the trial itself ? In the opinion of this court it is not the purport of Section 29 that a mini-trial should be conducted at the stage of deciding a bail application. No such concept is known to law. Requiring production and analysis of evidence to form an opinion on the merits of the allegations; and to express a view on such evidence, is certainly not within the remit of a court considering a bail plea.

53. Since reasoning is the soul of every adjudicatory process, if a court were to give reasons and express an opinion as to whether an accused had succeeded or failed to rebut the presumption of guilt when hearing a bail plea, even if on a prima facie consideration, it would prejudice the trial itself.

54. Let us consider section 29 from another perspective. Let us assume that the presumption of guilt contained in section 29 applies from the stage of registration of the FIR itself. Let us assume that an accused is told that the moment an FIR under the specific provisions of section 29 is registered, he is presumed to be guilty; and then let us tell him that he, of course, has a right to rebut the presumption. Would the court then allow the accused to marshal defence evidence even before charges are framed at the stage of considering his bail plea ? To demand that an accused lead defence

evidence even before charges are framed and even before prosecution evidence is led, would be anathema to fundamental criminal jurisprudence. It would be anathema to his right of silence. It would also be anathema to the principle that the prosecution must first establish the foundational facts constituting the charge, as held by the Supreme Court and the High Courts in the decisions cited above. Besides, by invoking the presumption of guilt under section 29 before charges are framed, we would be enforcing only a half-portion of section 29, viz. the presumption of guilt, while ignoring the remaining half, viz. by not affording to the accused the opportunity to rebut the presumption.

63. It is pertinent to notice therefore, that in Rajballav Prasad (supra) since charges had already been framed, the Supreme Court Section 29 into account.

64. As held by the Supreme Court in Hardeep Singh (supra), since 'trial' commences when charges are framed against an accused and not before that, it is clear that only at the stage when charges are framed does the court apply its judicial mind to whether there is enough evidence on record to frame a precise allegation, which the accused must answer. Therefore, it is only once charges are framed that the accused knows exactly what he is alleged to be guilty of; and therefore, what guilt he is required to rebut.

65. Since a negative cannot be proved, an accused cannot be asked to disprove his guilt even before the foundational allegations with supporting evidence that suggest guilt are placed by the prosecution before the court. To be sure, at the stage of framing charges, what is seen is if there is evidence (documentary, electronic, oral) on record, not proof of such evidence.

66. That Section 29 has been engrafted in the POCSO Act does not mean that the presumption of innocence, which is a foundational tenet of criminal jurisprudence, is to be thrown to the winds. If Section 29 is so interpreted as to apply it to the stage even before charges are framed, it would not pass constitutional muster since Article 21 of our Constitution requires that all substantive as well as procedural provisions must be reasonable, just and fair, as held inter alia in Maneka Gandhi (supra). Such interpretation of Section 29 would also render the right of the accused to a fair trial nugatory and dead letter, which would again do violence to the constitutional guarantee contained in Article 21.

67. Applying section 29 to bail proceedings at a stage before charges are framed, would in effect mean that the accused must prove that he has not committed the offence even before he is told the precise offence he is charged with, which would do violence to all legal rationality.

69. Therefore, if a bail plea is being considered before charges have been framed, Section 29 has no application ; and the grant or refusal of bail is to be decided on the usual and ordinary settled principles.

45. Similar view has been expressed by a Co-ordinate Bench of this Court in **Monish and others Vs. State of U.P. and three others** passed in Criminal Misc. Bail Application No.55026 of 2021 and other connected matters. For ready reference, paragraph 67 of the said judgement, reads as under :-

"67. Section 29 of the POCSO Act, 2012 creates a presumption of culpable intent against the accused person. The provision cannot be read to mean that the accused shall be presumed to be

guilty at the lodgement of the F.I.R. or criminal complaint till proven innocent at the trial. The presumption of innocence which is a fundamental tenet of criminal jurisprudence cannot be turned on its head by a faulty interpretation of the provision. The prosecution has to establish primary facts after attaining the required standards of evidence to trigger the presumption of culpable intent.

VIII. Right of Bail:

a. Constitutional Perspectives"

46. Learned Additional Advocate General has also raised objection that the affidavit of applicant no.1 has not been filed along with the anticipatory bail application and the supplementary affidavit has been filed by the stranger, which is in violation of Rule 18-A of the Allahabad High Courts Rules framed under Article 225 of the Constitution of India. In this regard, affidavit of applicant no.2 has been filed along with anticipatory bail application and it is well established that the procedural laws are handmaid of justice and they are not meant to defeat the ends of justice. Since, the applicant no.2 has filed an affidavit in support of the anticipatory bail application, in which, he has stated that he is doing pairavi on behalf of Applicant No. 1. By adopting hyper technical approach, the ends of justice cannot be defeated and merely on this ground alone, the application cannot be thrown out.

47. Learned Additional Advocate General has also submitted in his written submissions that the credentials of the applicant no.1 are disputed as the applicant no.1 claims himself to be Sankaracharya of Jyotishpeeth, whereas the same is under dispute and he has raised finger on the State machinery, which will create fear in the mind of the victims. The first informant has also submitted the Division Bench judgment of this Court in 796 pages as well as the proceedings of the Hon'ble Supreme Court regarding the claim of applicant no.1 as Shankaracharya of Jyotishpeeth.

48. In the present matter, this Court is not tasked with the duty to adjudicate whether the applicant no.1 is the real Shankaracharya or disputed Shankaracharya of Jyotishpeeth, rather this Court is concerned only with the allegations contained in the first information report and the material collected during investigation and other attending facts and circumstances of the case and so far as, the interview given by the applicant no.1 to the Media as submitted by learned Additional Advocate General in a pen drive, nothing has been found, which can go on to show that the same will create any

fear in the minds of the victims as the applicant no.1 has defended himself before the Media and he has answered the questions of Media regarding the Court hearing on 27.02.2026 as told to him by his lawyers and the Media persons, whereas the victims have been interviewed by leading Hindi News Channels

49. The Hon'ble Supreme Court in case of **Sushila Aggarwal and others Vs. State (NCT of Delhi) and another**, passed in Special Leave Petition (Criminal) Nos.7281-7282 of 2017, (2020) 5 SCC 1, has summarized the law relating to the grant of anticipatory bail, which reads as under:-

Points need to be kept in mind by courts, dealing with applications Under Section 438, Code of Criminal Procedure:

(1) Consistent with the judgment in Shri Gurbaksh Singh Sibbia and Ors. v. State of Punjab MANU/SC/0215/1980, when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.

(2) It may be advisable for the court, which is approached with an application Under Section 438, depending on the seriousness of the threat (of arrest) to issue notice to the public prosecutor and obtain facts, even while granting limited interim anticipatory bail.

(3) Nothing in Section 438 Code of Criminal Procedure, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified - and ought to impose conditions spelt out in Section 437(3), Code of Criminal Procedure [by virtue of Section 438(2)]. The need to impose other restrictive conditions, would have to be judged on a case by case basis, and depending upon the materials produced by the state or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

(4) Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or

not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.

(5) Anticipatory bail granted can, depending on the conduct and behavior of the Accused, continue after filing of the charge sheet till end of trial.

(6) An order of anticipatory bail should not be "blanket" in the sense that it should not enable the Accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.

(7) An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail.

(8) The observations in Sibbia regarding "limited custody" or "deemed custody" to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the Accused to separately surrender and seek regular bail. Sibbia (supra) had observed that "if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of U.P. v. Deoman Upadhyaya.

(9) It is open to the police or the investigating agency to move the court concerned, which grants anticipatory bail, for a direction Under Section 439(2) to arrest the Accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc.

(10) The court referred to in para (9) above is the court which grants anticipatory bail, in the first instance, according to prevailing authorities.

(11) The correctness of an order granting bail, can be considered by the appellate or superior court at the behest of the state or investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances. (See Prakash Kadam & Etc. Etc v. Ramprasad Vishwanath Gupta and Anr. MANU/SC/0616/2011 Jai Prakash Singh (supra) State through C.B.I. v. Amarmani Tripathi MANU/SC/0677/2005. This does not amount to "cancellation" in terms of Section 439(2), Code of Criminal Procedure.

(12) The observations in Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors. MANU/SC/1021/2010 (and other similar judgments) that no restrictive conditions at all can be imposed, while granting anticipatory bail are hereby overruled. Likewise, the decision in Salauddin Abdulsamad Shaikh v. State of Maharashtra (MANU/SC/0280/1996) and subsequent decisions (including K.L. Verma v. State and Anr. MANU/SC/1493/1998, Sunita Devi v. State of Bihar and Anr. MANU/SC/1032/2004 , Adri Dharan Das v. State of West Bengal MANU/SC/0120/2005 , Nirmal Jeet Kaur v. State of M.P. and Anr MANU/SC/0695/2004 , HDFC Bank Limited v. J.J. Mannan MANU/SC/1923/2009 , Satpal Singh v. the State of Punjab MANU/SC/0413/2018 and Naresh Kumar Yadav v. Ravindra Kumar

MANU/SC/8067/2007) which lay down such restrictive conditions, or terms limiting the grant of anticipatory bail, to a period of time are hereby overruled.

Conclusion

50. From the above proposition, it is amply clear that the Courts while dealing with the application for anticipatory bail are required to give due weightage to the nature of allegations and the role of the accused and the facts of each case.

51. As discussed above under the heading analysis, the following facts are summarized -

(i) The first information report has been lodged on the order of the Special Judge (POCSO) Act on an application filed by the first informant, who claims to be the guardian of the victims on 21.02.2026.

(ii) The victims are said to have apprised the first informant of the incident dated 18.01.2026, whereas the first informant for the first time gave above information to the police on 24.01.2026 and the reason given by him to the inquiry team as to why the said information has been given after delay of 6 days, he has further stated that he was busy in "pooja / yagya", whereas on 21.01.2026 he had filed an application relating to an alleged incident involving commission of offence under Section 109 and other Sections of BNS.

(iii) The victims have remained in constant touch accompanied with the first informant and they have not been given to any proper custody before 25.02.2026. After lodging of the first information report, the statement of the victims were recorded and the victims have been interviewed by various Hindi News Channels in violation of the established procedure of POCSO and Juvenile Justice Act.

(iv) The victims not narrating the incident to their natural guardian and narrating the same to the first informant, who is a stranger, is also not consistent with normal course of human conduct and behaviour.

(v) The place of occurrence and the period of occurrence mentioned in the first information report has been shown at Prayagraj and from Jaunary, 2025 to February, 2026 i.e. Mahakumbh to Magh Mela, whereas one of the victim has stated that he was subjected to sexual

assault in the month of June, 2024 at Narsinghpur at Madhya Pradesh and Badrinath at Uttrakhand and the date of birth of the said victim as per his educational certificate is 01.08.2006, which means that on the alleged date of incident as described in the first information report i.e. from the January, 2025 to February, 2026, he was major whereas he was minor in June, 2024.

(vi) The victims are not the students of the Asharam of applicant no.1 as from their educational certificate, they are students of one Sanskrit School of District Hardoi.

(vii) The medical report as prepared by the doctor does not find any external injury on the person of the victims and it has been opined that the sexual assault cannot be ruled out and FSL report has been sought, which clearly shows that the conclusive finding has not been given by the doctor regarding commission of sexual assault on the victims. The medical examination of the applicants have not been conducted, which are required in cases involving sexual assault.

(viii) The date of first informant receiving information regarding commission of the offence from victims and the dispute that arose between the applicant no.1 and the administration regarding taking of bath in Sangam on the holy occasion of Mauni Amavasya is the same i.e. 18.01.2026, therefore, the facts are required to be looked into with greater care and caution.

52. Considering the above factual matrix and without expressing any opinion on its merits, a case for grant of anticipatory bail is made out.

53. The foregoing discussion and conclusions are limited for the purpose of deciding this application for anticipatory bail; they shall have no bearing on the investigation / trial.

54. The anticipatory bail application is **allowed**.

55. In the event of arrest of the applicants - **Swami Avimukteshwaranand Saraswati Jagatguru Shankaracharya Jyotishpeethadheeshwar and Swami Pratyakchaitanya Mukundanand Giri**, involved in the aforesaid case crime shall be released on anticipatory bail on their furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Court concerned, with the following

conditions :-

- (i) The applicants shall not tamper with evidence and that they would appear before the trial Court on the date fixed unless exempted by the Court concerned;
- (ii) The applicants 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/her/them from disclosing such facts to the Court or to any police officer;
- (iii) The applicants would co-operate during trial and would not misuse the liberty of bail.
- (iv) The applicants shall not leave India without prior permission of the Court concerned.
- (v) The applicants, victims and the first informant are directed not to give any interview to the media regarding present case during pendency of the investigation / trial.

56. In default of any of the conditions, the prosecution shall be at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicants.

(Jitendra Kumar Sinha,J.)

March 25, 2026
RKM