

**IN THE COURT OF ADDL. DISTRICT & SESS. JUDGE-I cum SPECIAL JUDGE,
KAIMUR AT BHABHUA
IA No. 01/2022 A.C. Trial - 06 / 2022
MOHANIA P. S. CASE NO. 552 / 2021
STATE Vs. ISHTIYAK FARUQI**

29.04.22 Present Sri Baldau Singh, Ld. counsel on behalf of the petitioner and learned Spl.P. P. for the State.

ORDER

The present bail petition is filed on behalf of the accused namely, **Ishtiyak Faruqi** who is in custody since 02.12.2021 in connection with Mohania P.S. Case No. 552 of 2021 filed u/s- 377/34 of IPC & Section 4 of POCSO Act. It is submitted that no anticipatory or regular bail application has ever been filed/pending on behalf of the petitioner either in this court or in any superior court and that the petitioner has no criminal antecedents. Both the assertions have been affirmed by the Ld. Spl.P.P.

The prosecution story, in brief, is that on the alleged date and time, the minor son of the informant aged about 10 years informed him about the experience of pain from his anal region. When the informant examined his son, he found an injury on that region from which the blood was oozing out. When he inquired about it from the victim, he was informed that the petitioner and a co-accused established relations with him against the order of nature. On the basis of the information, the FIR in the case was got registered by the informant against the petitioner and the co-accused for having committed an offence under Section 377 read with Section 34 of IPC and Section 4 of POCSO Act.

The Ld. Counsel on behalf of the petitioner has prayed for the grant of bail on the ground that the allegations levelled against the petitioner are false and fabricated. The petitioner is a student who has no concern with the alleged offence. Moreover, there is no direct or specific allegation against this petitioner. He has no criminal antecedent and is lying in custody since 02.12.2021 in connection with the present case. The age of the petitioner has been assessed to be about 17 years on the date of the commission of the offence and his case has been transferred to this court u/s 18(3) of Juvenile Justice (Care and Protection of Children) Act 2015 (here in after call JJ Act). As the petitioner has been

Contd..
29.04.22

found to be a juvenile in conflict with law, the provisions of JJ Act are applicable to the case and no ground for the denial of bail as mentioned in proviso to Section 12 of the Act is made out from the facts and circumstances of the present case.

The learned Spl P. P. opposed the bail petition on the ground of nature and gravity of the offence alleged. It is submitted that the petitioner is alleged of having committed the act in company of his friend. The charge-sheet has been filed against the petitioner and the co-accused for having committed unnatural act with a child of 10 years. The victim in his statement recorded under Section 164 Cr.P.C. has repeated the allegations regarding the alleged offence and the mother of the victim in her statement recorded under Section 164 Cr.P.C. has specifically stated that the petitioner was identified at the instance of the victim only and that when her husband tried to locate the accused, they were found to be engaged in the activity of gambling. Considering the nature and gravity on the allegations and the other material available on the record, the petitioner deserve to be enlarged on bail.

Heard the counsels and perused the record. In this respect, the court finds it pertinent to quote Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2015 which states that “ *When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person.*

*Provided that such person **shall not** be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the persons release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.”*

In the interest of justice, perused the Social Investigation Report prepared

Contd.. by the Probation Officer. According to the report of the Probation Officer, the
29.04.22 cause of the alleged offence is the lack of discipline and parental negligence at home. The petitioner is reported to be living in a large family of 11 persons. He is reported to have left his studies to support his family. Most of friends of the petitioner have been reported to be illiterate and the petitioner is reported to be having committed the alleged offence under the peer group influence.

Keeping in mind the facts and circumstances of the case and the material available on the record, the court is of the view that the continued institutionalization of the petitioner would keep him away from his peer group members who are having negative influence on his personality. Keeping the petitioner under the discipline at the institution would be in the interest of the petitioner. Hence, the present regular bail petition filed by the petitioner Ishtiyak Faruqi stands **rejected**. (Dictated)

Sd./-

Spl. Judge

Kaimur at Bhabua

