

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

S.B. Criminal Miscellaneous Bail Application No. 14824/2025

Dilipdas S/o Shri Radheshyam, Aged About 30 Years, Kalbeliya Colony, Mallatalai, P.S. Ambamata, Distt. Udaipur (Raj.)
(Presently Lodged In Central Jail Udaipur)

-----Petitioner

Versus

1.

State Of Rajasthan, Through Pp
2.

Gopal Bairwa S/o Shri Bhagwanlal Bairwa, Badi Phalasiya,p.s. Bhupalsagar, Distt. Chittorgarh

-----Respondents

For Petitioner(s)

:

Mr. Ojas Shakdwipeeya

For Respondent(s)

:

Mr. Hanuman Prajapati, PP

HON'BLE MR. JUSTICE SUNIL BENIWAL
Order

Conclusion of Arguments &

Reserved on : **25/02/2026**

Pronounced on : **27/02/2026**

1.

This application for bail has been filed by the petitioner under Section 483 of BNSS (old Section 439 of Cr.P.C.). The requisite details of the matter are tabulated herein below:

S.No.	Particulars of the Case	
1.	FIR Number	52/2025
2.	Date of lodging FIR	10.05.2025
3.	Concerned Police Station	Mavli
4.	District	Udaipur
5.	Offences alleged in the FIR	Under Section 137(2) of BNS, 2023
6.	Offences added, if any	Section 64(2)(m), 65(1), 127(4), 61(2) (a) of BNS, 2023 and Sections 4 & 6 of the POCSO Act, 2012 and Sections 3(2)(v) & (va) of the SC/ST (Prevention of Atrocities) Act.

2. As per the prosecution story, the complainant lodged an FIR on 10.05.2025 alleging that her minor daughter aged about 16 years is missing since 08.05.2025 who left the house at 10 A.M. The police started investigation and recovered the minor daughter and her statement under Section 180 of the BNSS was recorded, wherein she stated that she voluntarily left her home with the petitioner – Dilip Das and she is intending to marry him, however, she could not marry as she is not 18 years of age. She further stated that she had a consensual relation with the present petitioner and is having fetus of five months.

2.1 Later, statement under Section 183 of the BNSS was recorded, wherein she stated that she voluntarily went with the present petitioner-Dilip Das to Mount Abu on 10.10.2025 and stayed in a rented accommodation. She also stated that she is having fetus of six months, which is result of consensual relation with the present petitioner. In her statement, she further stated that her parents wanted to settle the matter with the petitioner and marry her to petitioner – Dilip Das after she attained majority.

2.2 After filing of the challan and commencement of the trial, statement of the victim was recorded as PW-1, wherein she asserted that she never went to Mount Abu along with the present petitioner. She further asserted that she got married to one Rajveer and fetus is out of the wedlock with her husband Rajveer. In her statement, she also stated that she had though not divorced with her husband Rajveer, but a settlement had been arrived at between them in the *Jati Panchayat*. She had also shown her willingness to marry with the present petitioner.

3. Learned counsel appearing for the petitioner while referring to the above statements contended that the victim has categorically stated that she had never gone to Mount Abu along with the petitioner on 10.05.2025 in her statement recorded before the court. He further submitted that in the statement recorded before the court, the victim has claimed herself to be aged about 21 years. Her statement was recorded on 20.02.2026 and that being so, it can be assumed that on the date of incident i.e. 10.05.2025, the victim was not minor. The statements of the victim recorded under Sections 180 and 183 of the BNSS and the court statement, are contradictory and she has turned hostile. The petitioner is in judicial custody since 17.11.2025.

Based on the above submissions, it is contended by learned counsel for the petitioner that he may be enlarged on bail.

4. Per contra, learned Public Prosecutor vehemently opposed this bail application and submitted that the age of the victim at the time of incident is about 16 years and therefore, the question of having physical relation with consent becomes immaterial and in view of Section 29 of the POCSO Act, the presumption would be against the accused. More so, considering the fact that the victim has specifically asserted in her statement recorded under Section 183 of the BNSS, that she is having fetus of six months old, which is on account of having physical relation with the present petitioner.

Based on the above submissions, it is contended by learned Public Prosecutor that the petitioner may not be enlarged on bail.

5. Considering the submissions made by learned counsel for the parties, after perusing the challan papers, considering the

statements of victim recorded under Sections 180 and 183 of the BNSS and before the court as PW-1 so also the fact that the victim has turned hostile and she has specifically asserted that she never went with the present petitioner to Mount Abu nor she, in her statement recorded before the court, has alleged any forceful penetrative sexual assault upon her by the petitioner so also considering the fact that on the date when victim's statements were recorded before the court i.e. 20.02.2026, she has claimed herself to be aged about 21 years, this Court, without expressing any opinion on merits/demerits of the case, is of the opinion that the bail application filed by the petitioner deserves to be accepted.

6. Accordingly, the bail application filed under Section 483 of BNSS is allowed. It is ordered that petitioner- **Dilip Das S/o Radheyshyam** shall be released on bail in connection with the aforesaid FIR; provided he executes personal bond in the sum of Rs.50,000/- with two sound and solvent sureties of Rs.25,000/- each to the satisfaction of learned trial Court for his appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial.

7. It is however, made clear that findings recorded/observations made above are for limited purposes of adjudication of bail application. The trial court shall not get prejudiced by the same.

(SUNIL BENIWAL),J

Rmathur/-