

## Shobhit Kumar Vs State Of Uttarakhand

**Court:** Uttarakhand High Court

**Date of Decision:** Jan. 16, 2023

**Acts Referred:** Indian Penal Code, 1860 " Section 363, 366A, 376  
Protection Of Children From Sexual Offences Act, 2012 " Section 5, 6

**Hon'ble Judges:** Ravindra Maithani, J

**Bench:** Single Bench

**Advocate:** Akshay Pradhan, Lalit Miglani, Mamta Joshi

**Final Decision:** Dismissed

### Judgement

Ravindra Maithani, J

1. Applicant Shobhit Kumar is in judicial custody in Case Crime No.356 of 2020, under Sections 363, 366-A, 376 IPC and Section 5/6 of the Protection

of Children from Sexual Offences Act, 2012, Police Station-Nehru Colony, District- Dehradun. He has sought his release on bail.

2. Heard learned counsel for the applicant through video conferencing and perused the record.

3. According to the FIR, the victim, a young girl of 14 years of age and the daughter of the informant, was enticed by the applicant. The informant

first moved a missing report before the police. Subsequently, when he came to know that it is the applicant, who enticed his daughter, he lodged a

report. They both were recovered.

4. Learned counsel for the applicant would submit that the statement of the victim has already been recorded at the trial; she has stated that on the

date of incident, she, on her own, left her house; based on this statement, it is argued that no offence of kidnapping is made out; with regard to the

offence of rape, it is submitted that, in fact, the victim did not tell it to the doctor even that they established physical relations. It is argued that

according to the statement of the victim given to the doctor, once the applicant tried to establish physical relations with her, but they failed; the

applicant is in custody for a long. Hence, it is a case fit for bail.

5. Learned State Counsel would submit that in her statement given before the court, the victim has categorically stated that the applicant established

physical relations with her. Moreover, it is argued that even an attempt to establish physical relations amounts to rape or penetrative sexual

intercourse.

6. The trial is already underway. Therefore, much of the discussion is not expected of. The discussion is being made with a caveat that any

observation made in this order should not have any bearing at the trial.

7. The victim has already been examined. At the court, she has stated against the applicant that the applicant, in a hotel, established physical relations

with her. She was examined by the Doctor, and according to the medical report, at that time, she revealed that once the applicant tried to establish

physical relations with her, but they failed. What it reflects, was it a partial penetration or what else? Perhaps, it would fall for scrutiny during trial.

According to the prosecution, the victim was born in the year 2007. The incident is of 2020. It means, the victim was hardly 13 years of age.

8. Having considered, this Court is of the view that there is no reason to grant bail to the applicant. Accordingly, the bail application deserves to be

rejected.

9. The bail application is rejected.