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**(2005) 09 AHC CK 0250**

**Allahabad High Court**

**Case No:** Criminal Miscellaneous Bail Application No. 12661 of 2005

Puran Singh @ Bankan (In Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Sept. 28, 2005

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 164
- Penal Code, 1860 (IPC) - Section 376

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

**Bench:** Single Bench

**Advocate:** R.K. Khanna, for the Appellant; A.G.A., for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Ravindra Singh, J.

Heard Shri Raj Kumar Khanna, learned counsel for the applicant and learned A.G.A.

2. This application Is filed by the applicant Puran Singh alias Bankan with a prayer that he may be released on bail in Case Crime No.56/05, u/s 376, I.P.C., P.S. Raya, District Mathura. From the perusal of the record it reveals that in the present case F.I.R.was lodged by one Mohan Singh on 25.3.2005 at about 11:50 a.m. in respect of incident which had occurred on 25.3.2005 at 5:30 a.m; the distance of police station was 12 1/2 km. from the alleged place of the occurrence. According to prosecution version the allegation against the applicant is that, he has committed the rape with Km. Manju aged about 13 years, forcefully in a field of wheat. When the first informant came to the house it was disclosed by the prosecutrix then the F.I.R. was lodged. According to the medical examination report the prosecutrix was medically examined on 26.3.2005 at 10:30 a.m., she was brought by constable Ganesh Kumar.No mark of injury was seen on the external body of the prosecutrix, but on internal examination it was found that her hymen was torn, old healed tears were present and a single perineal tear was seen at 6 o'clock position (midline) 04 mm x

02 mm and mucosa deep There is slight bleeding from this tear. This bleeding was fresh and the duration was of six hours, According to the supplementary medical examination report the age of the prosecutrix was about 15 years and no spermatozoa was seen dead or alive in vaginal region. According to the opinion of the Doctor the injury was caused by hard and blunt object, which could be penis. It is contended by the applicant that the allegation made against the applicant is false and baseless and the prosecution story is not corroborated by the medical evidence because, according to the prosecution version, the alleged incident has taken place on 25.3.2005 at about 5:30 a.m., but the prosecutrix was medically examined on 26.3.2005 at 10:30 a.m. This examination was done after one day and five hours but according to the medical examination report the duration was mentioned as six hours. It shows that the alleged injury was not caused in the alleged incident dated 25.3.2005 occurred at 5:30 am.

3. It is further contended that according to the supplementary medical examination report no sperm was found in vaginal region. It shows that the rape was not committed. The injury was caused by some hard or blunt object in some other manner.

4. It is opposed by learned A.G.A by submitting that in the present case the applicant has committed the rape with a minor girl, aged about 15 years and on internal examination there was a perineal tear at 6 o'clock position and there was a slight bleeding from this tear and this bleeding is fresh So far as the duration of six hours, as mentioned by the Doctor, is concerned it is based on the self-assessment because there was a bleeding In mentioning the duration of the injury the mistake may be committed by the Doctor. It is further submitted that there is a definite opinion of the Doctor that injury was caused by hard and blunt object which could be by penis and the applicant has committed the rape forcefully by taking the prosecutrix in a Held of wheat, therefore, the prosecution story is fully corroborated by medical evidence as well as the statement of the prosecutrix recorded under Sections 161 and 164, Cr. P.C.

5. Considering the facts and the circumstances of the case and submission made by the learned counsel for the applicant and the learned A.G.A., I am of the view that in cases of rape where hymen is torn and there is bleeding from the tears, sometimes it is marked as red also. The redness and the bleeding sustains for about two days according to the Modi's Medical Jurisprudence, in such circumstances a mistake can be committed in assessing the duration of the injury by the Doctor by mentioning the injuries as fresh. Such mistake has been committed in the present case also. According to the medical examination report the rape has been committed with the prosecutrix and the applicant is the sole accused. The prosecution story is fully corroborated by the prosecutrix in her statement recorded under Sections 161 and 164, Cr. P.C, but without expressing any opinion on the merits of the case, the applicant is not entitled for bail.

6. Accordingly this bail application is rejected.