



2026:AHC:129754-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. WRIT PETITION No. - 8465 of 2026

(Along with Criminal Misc. Writ Petitions Nos. 2789 of 2026, 3132 of 2026 and 6019 of 2026)

Tayyab

.....Petitioner(s)

Versus

State of U.P. and others

.....Respondent(s)

Counsel for Petitioner(s)	: Mr. Shashi Kant Shukla, Senior Advocate along with Mr. Mohd. Shakib, Advocate
Counsel for Respondent(s)	: Mr. Shyam Kumar Yadav, Advocate for respondent no. 5 Mr. Shashi Shekhar Tiwari, Additional Government Advocate for respondents nos. 1 to 4

RESERVED

Court No. - 2

**HON'BLE J.J. MUNIR, J.
HON'BLE TARUN SAXENA, J.**

(DELIVERED BY : J.J. MUNIR, J.)

This judgment will decide the present petition and connected Criminal Misc. Writ Petitions Nos. 6019 of 2026, 2789 of 2026, and 3132

2. This writ petition, along with the connected writ petitions, has been instituted seeking to quash the FIR dated 09.12.2025, giving rise to Crime No. 348 of 2025, under Sections 85, 115(2), 64, 351(2), 61(2)(a), 70(2) of the Bharatiya Nyaya Sanhita, 2023², Section 3/4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 and Sections 5(1)/6 and 17/18 of the Protection of Children from Sexual Offences Act, 2012³, Police Station Saidnagli, District Amroha.

3. The first informant, according to the FIR, was forced to marry one Azhar Nawaz, a resident of Village Dhakka, Tahsil Hasanpur, Mohalla Mahal, District Amroha. The informant⁴, as she says, was coerced to enter into this marriage under threat and by force on 25.04.2015, when her *nikah* was performed with Azhar Nawaz. She says that she was aged barely 15 years at the time. After the marriage of parties, Azhar would beat up the prosecutrix. In the month of January, 2016, Azhar ended the marital bond with the pronouncement of a Triple *Talaq*. After the passage of a few months, Azhar Nawaz came back to the prosecutrix with a proposal to marry her a second time. Next, in the month of November, 2016, Azhar got the informant to perform a *halala nikah* with co-accused Maulana Qayyum. The *nikah* was performed by Murtza *alias* Kari Murtza

Amjad Hussain⁶, and a cousin, Asim son of Mohammad Ghufra⁷. After the *halala nikah*, a second *nikah* of the prosecutrix with Azhar Nawaz was performed in the month of April, 2017. The parties cohabited, and of the wedlock of parties, a daughter was born on 01.04.2018 at Moradabad.

4. After birth of the daughter, Azhar's behaviour towards the prosecutrix changed for the worse and went downhill. He resumed beating her. On 24.01.2021, he divorced the informant a second time, and during the period of her *iddat* and within eleven days of the divorce, he married another woman, Nayab Akhtar. The prosecutrix says that she was aware of the illicit relationship between Azhar Nawaz and the other woman, while the two were married. After the second divorce with the prosecutrix and his own second marriage, Azhar would find pretexts to resume his relationship with the prosecutrix, sometimes citing their daughter as the cause and at others, the matter of paying maintenance etc. Sometimes, he would say that his other wife (Nayab Akhtar) was barren. It was also said by the informant that Azhar told her that he had divorced his second wife and that he wishes to stay with her and their daughter, resuming their family. His brothers and co-accused Shahnawaz Chaudhary and Hakim Nishat *alias* Nishat⁸ would convince the prosecutrix about the wisdom of

which she has mentioned in the FIR as a second marriage. As soon as the prosecutrix agreed to this proposal, Azhar's brothers told her that since her marriage with Azhar had already ended twice, it would require a *halala* twice over. Under the pretext of doing a *halala*, the prosecutrix says that co-accused Shahnawaz Chaudhary and Hakim Nishat ravished her and upon resistance, threatened her with death. And they also said that her dead body and that of her daughter would not be recovered if she endeavoured to stop them. This offence happened on 19.02.2025. In the evening, the same day, Azhar, Shahnawaz, Maulana Nadim son of Masroor, Aquil son of Mohammad Gufran and Hakim Nishat did the show of a *nikah* with Azhar, which the prosecutrix says was bogus. It was represented to her that a *nikah* with Azhar had been performed, but later on, she came to know that the represented *nikah* was falsehood and it was just a pretext to resume carnal relations with her. So long as this fraud was believed to be true by the prosecutrix, she and Azhar Nawaz lived together as man and wife. The prosecutrix also says that her consent to the *nikah* was given in a false belief, rendering her consent as one obtained by fraud. The prosecutrix says that all these accused, to wit, Azhar Nawaz, Shahnawaz Chaudhary, Maulana Nadim, Aquil, Hakim Nishat, Kari Murtza and Maulana Qayyum had come together to defraud the

requested registration of a crime against all the named men and strict action in accordance with law.

5. There is mention of a medico-legal examination, where there is an ossification test report dated 12.12.2025 and a dental evaluation dated 16.12.2025 on record. In the year 2025, the prosecutrix has been estimated to be above 25 years. The statement of the prosecutrix was also recorded under section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023⁹ before the Judicial Magistrate. We would allude to it later in this judgment.

6. After the prosecutrix's statement under Section 183 as also under Section 180 BNSS were recorded *vide* C.D. No. 6 dated 24.12.2025, the Investigating Officer added six other co-accused, including the petitioner. Section 61(2)(a) BNS and Sections 5(l)/6 and 17/18 POCSO Act were added to the cart of offences. The number of accused went up to nine. C.D. No. 6 records the names of the nine accused, and they are, Azhar Nawaz, Shahnawaj Chaudhary, Hakim Nishat, Asim, Maulana Qayyum, Tayyab, Maulana Nadim, Aquil and Kari Murtza. It is on this profile of the accused, five of whom are petitioners in the present writ petition and the connected petitions, the contents of the FIR, the medico-legal reports,

and the informant, exchanging affidavits in the present writ petition as also some of the writ petitions, all of which stand more or less on common edifice, except for the admitted distinction based on roles of individual petitioners endeavoured to be drawn during the very detailed submissions advanced by learned Counsel for parties.

7. Heard Mr. Shashi Kant Shukla, learned Senior Advocate assisted by Mr. Mohammad Sakir, learned Counsel for the petitioner in support of this petition, Mr. Shyam Kumar Yadav, learned Counsel for respondent no. 5 and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate appearing on behalf of respondents nos. 1 to 4. The same learned Counsel have addressed us in Criminal Misc. Writ Petitions Nos. 2789 of 2026 and 3132 of 2026. In Criminal Misc. 6019 of 2026, we have heard Mr. Sandeep Kumar Srivastava, learned Counsel for the petitioner, Mr. Shyam Kumar Yadav, learned Counsel appearing for respondent no. 5 and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate appearing on behalf of respondents nos. 1 to 4.

8. It is submitted by Mr. Shashi Kant Shukla, learned Senior Advocate appearing on behalf of the petitioner in the present writ petition, besides Criminal Misc. Writ Petitions Nos. 2789 of 2026 and 3132 of 2026, that

allegation against Murtza *alias* Kari Murtza is that when the first *halala nikah* was performed with Maulana Qayyum, he acted as the *Qazi* to perform the *halala nikah*. The allegations against petitioners Shahnawaz Chaudhary and Hakim Nishat *alias* Nishat are that when the prosecutrix wanted to solemnise a *nikah* again with her ex-husband, Azhar Nawaz, they told her that as she had been divorced twice over, she would have to perform *halala* also twice over. It is the prosecutrix's allegation that on the pretext of *halala*, Shahnawaz Chaudhary and Hakim Nishat ravished her on 19.02.2025.

9. It is argued by Mr. Shashi Kant Shukla, learned Senior Advocate that in the year 2016, by the time all this had happened, Triple *Talaq (Talaq-e-Biddat)* was permissible as per *Shariat* law in India, and now, it has been abolished by the Act of 2019, which came into force with retrospective effect on 19.09.2018. He points out that *nikah halala* is a valid ritual, according to the Islamic Law. It is treated a *Sunnat*, if a Muslim woman wants to remarry her husband. It is also pointed out that in the year 2021, while securing a divorce decree by mutual consent, the prosecutrix has mentioned her age to be 24 years, and therefore, working it back in time, at the time of her *nikah* in the year 2015, she was 18 years

by filing a petition within one year, then the marriage, which was initially voidable, *ipso facto* becomes valid and binding on the parties upon the expiry of one year from the date she attains majority. It is submitted that marriage with a minor is never void.

11. It is next urged that because some disputes arose between Azhar Nawaz and the prosecutrix relating to the custody of their daughter, though it is still with Azhar Nawaz, the prosecutrix created disturbance, leading Azhar to move complaints on the Integrated Grievance Redressal System¹⁰ Portal on 02.12.2025 and 04.12.2025. Acting on these complaints, it is pointed out by the learned Senior Advocate that the Police, after inquiry, have made reports that both the husband and the wife have separated and a divorce decree has been passed by the Court. It is also reported that custody of the daughter is with Azhar Nawaz. It is also urged that once the ex-husband of the prosecutrix made an IGRS complaint against her, the impugned FIR has been lodged as an abuse of process of Court to implicate him and his distant relatives in order to bring oblique pressure upon the husband to give custody of the minor daughter as also annex five *bigha* of land that Azhar Nawaz owns, and to which, the prosecutrix has no right. So far as the petitioner Murtza *alias*

is not a *Qazi* who solemnises a *nikah*. He is a *Kari*, which the learned Senior Advocate describes as one who holds a degree in Islamic studies.

12. It is next contended that the dispute between the prosecutrix and her ex-husband, co-accused Azhar Nawaz, has been going on for the last ten years. For the sake alone that the petitioners in the connected writ petitions, namely, Shahnawaj Chaudhary and Hakim Nishat are the brother and nephew, respectively of the prosecutrix's ex-husband, they have been falsely implicated in the present case in order to harass them and bring oblique pressure upon Azhar Nawaz to fulfill the prosecutrix's unjust demands. The petitioner, Tayyab, is said to be a super senior citizen, aged 71 years, with no criminal antecedents. He has been falsely implicated in the present case, because, he is a collateral of the prosecutrix's ex-husband one degree removed (in common parlance, an uncle).

13. Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate, has opposed the submissions of the learned Senior Advocate appearing on behalf of the petitioner and submits that serious offences, involving rape and gang rape, against the petitioners are disclosed, including those under the POCSO Act, going by the victim's age, when

14. Mr. Shyam Kumar Yadav, learned counsel appearing for the informant/respondent no. 5 has also been at considerable pains to address us on all aspects of the matter. He submits that in the month of November 2016, the informant was a minor, aged 16 years. The petitioner in the present petition, Tayyab, as well as co-accused Azhar Nawaz, the prosecutrix's ex-husband, Asim, Kari Murtza and Maulana Qayyum orchestrated a *halala* for her. It is submitted that Maulana Qayyum acted as the principal offender and rapist, while others abetted him and acted as conspirators. It is emphasised that the allegations in the FIR, put in the proper temporal context, clearly show a pattern of sexual exploitation under the guise of *nikah halala*, involving a minor, at the time of the first incident, and subsequently, a case of gang rape, masked as a double *halala* in order to enable the prosecutrix to remarry her husband with whom her marital bond had been ruptured twice over.

15. It is argued that at the inception of it all, the *halala* in November, 2016 involved the prosecutrix, then a minor of 16 years. Learned Counsel for the informant says that going by the settled law in **Independent Thought v. Union of India**¹¹, any sexual act with a minor, even under the umbrella of a personal law, constitutes rape. Consent obtained from a

men, acting in concert. He submits that under Section 69 BNS, sexual intercourse by deceitful means is an offence. He argues that whatever the prosecutrix has gone through is the result of inherently tainted acts constituting offences that are *mala in se*, and not merely *mala prohibita*. (wrongs because they are prohibited by the statute). Such acts offend the collective conscience of the society and violate the right to dignity, which flows to a person from Article 21 of the Constitution. It is argued that the defense of personal law is inapplicable here, because the mandatory period of *iddat* was not observed, rendering the subsequent relations a nullity, even under the personal laws. Personal Laws cannot be used as a shield to commit acts that constitute gang rape under the BNS. The civil decree for divorce would not ameliorate the rigour of the offence of rape, which affects the life and dignity of a woman. It is a crime against a person as well as the society and humanity.

16. Learned counsel for respondent no. 5 has drawn our attention to the **Convention on the Elimination of all forms of Discrimination Against Women**¹², in particular, CEDAW, 1993, Article 1 whereof says :

"For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or

"Violence against women shall be understood to encompass, but not be limited to the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs."

18. Reference has also been made to Article 5 of the CEDAW.

19. It is next argued that the petitioner and the other co-accused have consistently pressurised and threatened the prosecutrix, leading to the filing of another FIR, being Crime No. 122 of 2026. Learned Counsel has relied on the guidelines of **Neeharika Infrastructure Private Limited v. State of Maharashtra and others**¹³, where it has been observed that the High Court should be extremely slow to quash an FIR, where a *prima facie* case of serious cognisable offences (especially those involving sexual violence) is established. It is also argued that the practice of *halala*, as applied here, is a tool of cruelty and gender-based discrimination. It

disentitling the petitioners to relief. It is pointed out that Criminal Misc. Anticipatory Bail Application u/s 482 BNSS No. 2417 of 2026 preferred by co-accused, Nadim has been dismissed, and Criminal Misc. Anticipatory Bail Application u/s 482 BNSS No. 2522 of 2026 preferred by Tayyab, the petitioner in the present petition, too been dismissed. It is also urged that the petitioners and the other accused continue to exert pressure upon the prosecutrix and threaten her, which has led her to lodge another FIR, giving rise to Crime No. 122 of 2026, under Sections 352(4) and 232 BNS on 30.04.2026. This demonstrates the petitioners' criminal intent and the fact that they are, by nature, outlaws. The prosecutrix has no previous animosity against the accused. Learned counsel for the informant/fifth respondent has relied upon **Punit Beriwal v. The State of NCT of Delhi and others**¹⁴.

20. Upon hearing learned counsel for parties, we are of opinion that this is a case, *prima facie*, where the crime of ravishing a minor girl, taking refuge behind *halala*, and then, much later in life, of gang rape behind the same veil of doing a *halala*, has been committed, on the second occasion, in a far more crude and outlandish manner. When it comes to criminal law, unless the law itself makes exception, which it rarely does, there is

under the garb of doing a *halala*, a minor girl is subjected to carnal relations, relying on her desire to marry a man who has already divorced her, it would certainly attract the provisions of the POCSO Act. After all, sexual relations with a minor have been absolutely prohibited by the Supreme Court in **Independent Thought** (*supra*). In **Independent Thought**, Exception 2 to Section 375 of the Indian Penal Code, 1860 was read down and the provisions of the POCSO Act were given overriding effect over all other laws to mean that there was absolutely no possibility of any carnal relations, within or without marriage, between a man and a woman below the age of 18 years. This view of the law still holds field, and by falling back upon personal laws, the clear mandate of a penal statute, which virtually makes carnal relations statutory rape or violation of a special statute, being the POCSO Act, cannot be warded off. It must be noted that under Exception 2 to Section 63 BNS, in deference to what was read down in **Independent Thought**, the new Code enacts Exception 2, in the following words :

"Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape."

21. A true copy of the report of the Medical Board, dated 16.12.2025

22. The calendar of events shows that the prosecutrix was married on 25.04.2015 and in January, 2016, she suffered the first of her triple divorces. In the month of November 2016, she was made to undergo *halala* with one of the co-accused, Maulana Qayyum. By December, 2016, there can be little doubt that the prosecutrix would have still been a minor. She underwent the *halala* in order to remarry her husband a second time, which happened in April 2017, two years after her first marriage. By this time, she could be regarded as a major; but not at the time when she underwent the *halala*. These are all matters which we gather from the FIR, because, after all, we are hearing a petition to quash the FIR. We cannot undertake an examination of events to determine the truth or falsehood of the allegations. The statement of the prosecutrix under Section 183 BNSS, being a very vital part of the investigation, we have examined in order to determine if there is anything incredible about the prosecution meriting interference. In her statement under Section 183 BNSS, the prosecutrix says that after her first *nikah*, followed by divorce, the principal accused, Azhar Nawaz, perhaps realising his mistake, thought of remarrying the prosecutrix, a second time. She has said in her statement aforesaid that at the time, her age was 16 years and she was told by Azhar Nawaz that the *Mufti* had advised that she would have to undergo a *halala*. She did not

consent. Maulana Qayyum forcibly did the *halala* and forcibly established carnal relations with her. The *halala nikah* was performed by Kari Murtza. She has also said that when all that happened, she cried in protest, but to no avail. She was then conveyed to Dhakka, and a second *nikah* was performed with Azhar in the year 2017. In the year 2018, a daughter was born to the parties. After the second *nikah*, Azhar Nawaz's treatment of the prosecutrix again turned foul. After the daughter was born, the treatment became worse. She was taunted with not bearing a male child. Azhar Nawaz's ill-treatment of the prosecutrix became worse in order to marry a woman called Nayab Akhtar.

23. When the prosecutrix was at Aligarh, Azhar Nawaz pronounced a Triple *Talaq* a second time in the year 2021. In the year 2021, a Court-annexed mediation took place, resulting in a decree of divorce etc. While she was in her *iddat*, Azhar Nawaz married Nayab Akhtar. After some time, Azhar Nawaz came to know that Nayab Akhtar could not bear a child. He then contacted the prosecutrix again and told her that he wanted his daughter and that he would divorce Nayab Akhtar. It was on account of her daughter that the prosecutrix started living with Azhar Nawaz again. This time, Shahnawaz Chaudhary and Hakeem Nishat gave her

19.02.2025. Next, a bogus *nikah* was performed with Azhar Nawaz. This bogus *nikah* was performed by Maulana Nadim with the aid of Aquil, Shahnawaz Chaudhary, Hakim Nishat and Azhar Nawaz, all of whom were involved in the process, and all of them present. Next, the two started cohabiting as man and wife. However, when the daughter's school documents were brought up, the prosecutrix's name was absent. When the prosecutrix demanded her name to be there, Azhar Nawaz warded off the demand. Then one day, Azhar Nawaz told the prosecutrix that she was not his wife. She then explored the matter and found out that the *nikah*, that was performed a third time, was bogus, and virtually, Azhar Nawaz was establishing carnal relations with her, making her falsely believe that she was his wife.

24. From all this account that figures in the FIR and the statement of the prosecutrix, her age at the time when she was first married and did the first *halala prima facie* constitute statutory rape and offences under POSCO Act, and then, the allegations about the second *halala*, which, *prima facie*, constitutes a case of gang rape, we are of opinion that this matter requires thorough investigation. It is certainly not a case where the prosecution can be quashed at the threshold.

Constitution stand for. We do not, by any means, intend to say that in this petition, that is not framed that way, that we propose or suggest anything about the constitutionality of a given practice, but the circumstances of this case, and whatever has happened, we say, *prima facie* again, militates against the constitutional aspirations and guarantees, of which we have just now spoken. In fact, the entire facts, that have so far come on record, are shocking to the conscience.

26. We must notice, at this stage, the very persuasive arguments advanced by Mr. Shashi Kant Shukla, learned Senior Advocate appearing for the petitioner in the present petition as also two other connected writ petitions, and Mr. Sandeep Kumar Srivastava, learned Counsel for the petitioner in one of the connected writ petitions, that whatever be the allegations against Azhar Nawaz and the two men initially nominated in the FIR, the others have a marginal role. Some of them performed a *nikah* and some of them are very venerable men. We do not wish say anything about those issues, as all those matters would be thrashed out during investigation. All that we say is that all the accused here, some of whom whose names have surfaced during investigation, were involved in an enterprise, playing whatever roles they did, which, put together,

27. In the result, all the writ petitions **fail** and stand **dismissed**.

28. The interim orders, wherever granted, stand **vacated**.

(J.J. MUNIR, J.)

(TARUN SAXENA, J.)

Allahabad
July 01, 2026
I. Batabyal

Whether the order is speaking : Yes

Whether the order is reportable : Yes