

# Ashish Kumar vs The State Of U.P. Thru. Addl. Chief Secy. ... on 1 April, 2025

**Author: Manish Mathur**

**Bench: Manish Mathur**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:18050

Court No. - 13

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12399 of 2024

Applicant :- Ashish Kumar

Opposite Party :- The State Of U.P. Thru. Addl. Chief Secy. Lko And 4 Others

Counsel for Applicant :- Manoj Kumar Gupta,Dinesh Kumar Mishra

Counsel for Opposite Party :- G.A.,Ashish Kumar Singh

Hon'ble Manish Mathur,J.

1. Heard learned counsel for applicant, learned Additional Government Advocate appearing on behalf of State, Mr. Ashish Kumar Singh, learned counsel for complainant/victim and perused the record.

2. This first bail application has been filed with regard to Case Crime No. 157 of 2019 under Sections 147, 148, 149, 307, 308, 323, 325, 452, 354B IPC & 7/8 POCSO Act, Police Station Kohdaur, District Pratapgarh.

3. As per contents of First Information Report, the incident is said to have taken place on 15.11.2019 at about 05:50 AM when the applicant alongwith co-accused allegedly barged into the house of the informant and inflicted injuries upon his family members. obscene acts was also allegedly committed upon the minor daughters of the informant.

4. It has been submitted that applicant has been falsely implicated in the charges levelled against him only out of earlier enmity between the parties pertaining to immovable property for which purpose Regular Suit No. 1543 of 2011 is also pending consideration in which interim protection has also been granted vide order dated 30.08.2011.

5. It is submitted that general allegations against all the co-accused have been indicated of having inflicted injuries upon the family members of informant. It is submitted that except for one person, only simply nature of injuries have been indicated against the other family members. He has also indicated to the fact that one Pradeep Dubey, family member of the applicant has also sustained injuries. He, therefore, submits that instigator of the incident cannot be ascertained at this stage particularly in view of statement of the daughter of informant. He further submits that co-accused Ravindra Bhusan Dubey and Shyam Sundari have already been enlarged on bail by this Court in Bail Applications No. 11010 of 2023 and 8470 of 2023 respectively. He submits that the applicant previous criminal history had already been explained. It is further submitted that there is no possibility of the applicant of fleeing away from the judicial process or tampering with the witnesses. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail. The applicant is in jail since 27.08.2024.

6. Learned counsel for opposite parties have opposed bail application with the submission that the allegations levelled in the First Information Report and injury report clearly corroborate the allegations levelled against informant of inflicting serious injuries upon family members of the informant particularly since one person has sustained serious head injury as well. It is submitted that minor daughter of the informant has also corroborated charges levelled against applicant.

7. Learned AGA submits on the basis of instructions that except for Ravindra Bhusan Dubey, Shyam Sundari and one Ajeet @ Banti, all the others were absconding due to which non-bailable warrant were issued against them as well as proclamation under Sections 82 and 83 Cr.P.C. were also issued whereafter the applicant surrendered. It is, therefore, submitted that the aforesaid conduct is in important aspect required to be kept in mind.

8. Hon'ble the Supreme Court in Sanjay Chandra v. Central Bureau of Investigation, reported in (2012) 1 SCC 40 has specifically held that bail is to be a norm and an under-trial is not required to be in jail for ever pending trial. Relevant paragraphs of the judgment are as under :-

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe

more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty."

"27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution."

9. Upon consideration of submissions advanced by learned counsel for parties, prima facie, subject to evidence being led in trial, at this stage, it appears that general allegations of inflicting injuries upon family members of the informant has been indicated in the First Information Report which appear to be corroborated by the injury report. It, however, also appears that a person from family of the applicant has also sustained injuries. Therefore, at the stage, the instigator of the incident cannot be ascertained. Although the aspect of conduct of applicant is required to be seen but it is also evident from record and admitted that as of now only one witness of fact has been examined whereas there are a total of 27 witnesses indicated in the charge-sheet with 10 witnesses of fact. In such circumstances there does not appear to be any hope of early conclusion of trial. Co-accused Ravindra Bhusan Dubey and Shyam Sundari have already been enlarged on bail by Co-ordinate Bench of this Court in bail applications number has indicated hereinabove. The aspect of instigator of the incident and explanation with regard to injuries would definitely be a subject matter of trial.

10. Considering the submissions of learned counsel for the parties, nature of accusation and severity of punishment in case of conviction, nature of supporting evidence, prima facie satisfaction of the Court in support of the charge, reformatory theory of punishment and considering larger mandate of the Article 21 of the Constitution of India and, without expressing any view on the merits of the case, I find it to be a fit case of bail.

11. Let applicant, Ashish Kumar, involved in the aforesaid case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court, absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

Order Date :- 1.4.2025 Satish