

Shiv vs State Of U.P. And 3 Others on 1 April, 2025

Author: Krishan Pahal

Bench: Krishan Pahal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:44520

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5545 of 2025

Applicant :- Shiv

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Srijan Pandey

Counsel for Opposite Party :- G.A., Vishal Agarwal

Hon'ble Krishan Pahal, J.

1. List has been revised.

2. Heard Sri Srijan Pandey, learned counsel for the applicant and Sri Vishal Agarwal, learned counsel for the informant as well as Ms. Ifrah Islam, learned State Law Officer and perused the record.

3. Applicant seeks bail in Case Crime No.557 of 2024, under Sections 137(2), 87, 64(1) of BNS and Section 3(2)V of SC/ST Act and Section 3/4 of POCSO Act, Police Station Shamli, District Shamli, during the pendency of trial.

PROSECUTION STORY:

4. The applicant in collusion with other co-accused person is stated to have enticed away the minor daughter of the informant aged about 17 years on 21.09.2024 at about 2:30 a.m. ARGUMENTS ON BEHALF OF APPLICANT :

5. The applicant has been falsely implicated in the present case and he has nothing to do with the said offence.

6. The FIR is delayed by about more than one day and there is no explanation of the said delay caused.

7. The time of enticing away of the victim i.e. 2:30 a.m. speaks volume of her consent.

8. The victim has stated that she remained with the applicant and one Nikhil at Roorkee but she has categorically stated that she has established corporeal relationship with one Nikhil only and not with any other person, as such the applicant is entitled for bail.

9. The victim by her looks seems to be major, although, as per ossification test report, age of the victim is 17-18 years old, as such leverage of two years may be granted to the applicant on the upper side.

10. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length.

11. There is no criminal history of the applicant. The applicant is languishing in jail since 28.09.2024. The applicant is ready to cooperate with trial. In case, the applicant is released on bail, he will not misuse the liberty of bail.

ARGUMENTS ON BEHALF OF INFORMANT :

12. The bail application has been opposed on the ground that the victim in her statement recorded under section 180 BNSS has categorically allayed the allegation against the applicant only and she has not nominated any other person, as such the applicant is the sole accused person. The victim was aged about 17 years at the time of incident and was minor, as such her consent, if any, loses significance.

CONCLUSION:

13. In light of the judgement of the Supreme Court passed in Niranjana Singh and another vs Prabhakar Rajaram Kharote and others AIR 1980 SC 785, this Court has avoided detailed examination of the evidence and elaborate documentation of the merits of the case as no party should have the impression that his case has been prejudiced. A prima facie satisfaction of case is needed but it is not the same as an exhaustive exploration of the merits in the order itself.

14. As per ossification test report, the age of the victim is 17-18 years and a leverage of two years may be granted to the applicant on the upper side in the light of the judgement of Supreme Court passed in *Jaya Mala Vs. State of J & K*, (1982) 2 SCC 538 and *Mohd. Imran Khan vs. State (Govt. of NCT of Delhi)*, (2011) 10 SCC 192, whereby it has been opined that the radiologist cannot predict the correct date of birth rather there is a long margin of 1 to 2 years on either side.

15. The well-known principle of "Presumption of Innocence Unless Proven Guilty," gives rise to the concept of bail as a rule and imprisonment as an exception.

16. A person's right to life and liberty, guaranteed by Article 21 of the Indian Constitution, cannot be taken away simply because the person is accused of committing an offence until the guilt is established beyond a reasonable doubt. Article 21 of the Indian Constitution states that no one's life or personal liberty may be taken away unless the procedure established by law is followed, and the procedure must be just and reasonable. The said principle has been recapitulated by the Supreme Court in *Satender Kumar Antil Vs. Central Bureau of Investigation and Ors.*, 2022 INSC 690.

17. Reiterating the aforesaid view the Supreme Court in the case of *Manish Sisodia Vs. Directorate of Enforcement* 2024 INSC 595 has again emphasised that the very well-settled principle of law that bail is not to be withheld as a punishment is not to be forgotten. It is high time that the Courts should recognize the principle that "bail is a rule and jail is an exception".

18. Learned State Law Officer could not bring forth any exceptional circumstances which would warrant denial of bail to the applicant.

19. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned State Law Officer.

20. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

21. Let the applicant-Shiv involved in aforementioned case crime number be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions.

(i) The applicant shall not tamper with evidence.

(ii) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C./351 B.N.S.S. 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.

22. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

23. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 1.4.2025 Sumit S (Justice Krishan Pahal)