

Akash Rajbhar vs State Of U.P. And 3 Others on 4 February, 2025

Author: Krishan Pahal

Bench: Krishan Pahal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:15733

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43888 of 2024

Applicant :- Akash Rajbhar

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

Counsel for Applicant :- Vishveshwar Mani Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Vishveshwar Mani Tripathi, learned counsel for the applicant and Ms. Ifrah Islam, learned State Law Officer and perused the record. Supplementary affidavit filed by the learned counsel for the applicant today is taken on record.
3. As informed by learned State Law Officer, notice to the informant has been served on 30.11.2024 but none is present on behalf of the informant even in the revised call.

4. Applicant seeks bail in Case Crime No. 642 of 2024, under Sections 137(2), 87, 64 of B.N.S. and Section 5/6 of the POCSO Act Police Station Jhangha, District Gorakhpur, during the pendency of trial.

PROSECUTION STORY:

5. The FIR was instituted by the informant stating that the applicant had enticed away her minor daughter aged about 17 years on 05.08.2024 at about 1 p.m. ARGUMENTS ON BEHALF OF APPLICANT :

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

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

8. The victim by her looks seems to be major, although as per High School Certificate, her date of birth is stated to be 02.05.2007, as such her age has come up to be 17 years, 3 months and 4 days. The said age has been suppressed by the informant.

9. The victim is a consenting party as is but evident from her statement recorded under section 183 B.N.S.S. whereby she has stated that she had married the applicant at Gorakhnath temple.

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 19.10.2024. 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 STATE :

12. The bail application has been opposed but the submissions raised by the learned counsel for the applicant could not be disputed.

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. The Supreme Court in the case of Sushil Kumar vs. Rakesh Kumar, (2003) 8 SCC 673, has opined that it is more often in the Indian Society that person shows the age of their wards much below than their actual age. In the case of Brij Mohan Singh Vs. Priya Brat Narain Sinha, AIR 1965 SC 282, this Court, inter alia, observed that in actual life it often happens that persons give false age of the boy at the time of his admission to a school so that later in life he would have an advantage when seeking public service for which a minimum age for eligibility is often prescribed.

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-Akash Rajbhar 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 :- 4.2.2025 Sumit S (Justice Krishan Pahal)