

Ashish vs State Of U.P. And 3 Others on 30 April, 2025

Author: Samit Gopal

Bench: Samit Gopal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:67127

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5813 of 2025

Applicant :- Ashish

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

Counsel for Applicant :- Ronak Chaturvedi

Counsel for Opposite Party :- G.A., Santosh Kukmar Tiwari

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Ronak Chaturvedi, learned counsel for the applicant, Sri Santosh Kukmar Tiwari, learned counsel for the first informant and Sri Birendra Pratap Singh, learned counsel for the State and perused the material on records.

3. This bail application under Section 483 of B.N.S.S., 2023 has been filed by the applicant- Ashish, seeking enlargement on bail during trial in connection with Case Crime No. 473 of 2024, under Sections 64(1), 137(2), 351(2) B.N.S. and Section 3/4 POCSO Act, Police Station Anoopshahar, District Bulandshahr.

4. The first information report of the present matter was lodged on 05.12.2024 by Ram Babu against the applicant alleging therein that on 04.12.2024 at about 8 am his daughter aged about 17 years went for coaching but did not return back in time. A search was started during which Sanjeev of the village told him that he saw his daughter with the applicant Ashish going on a motorcycle. He then went to the father of Ashish and asked him to which he kept mum. His daughter was being searched who was then found near Valmiki Basti and on seeing him she started crying and then was brought to the house who then told him that Ashish took her on a motorcycle to Ganga Restaurant where he committed rape upon her and threatened her of not telling it to anyone. He has come with his daughter at the police station and his report be lodged and action be taken.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is submitted that the victim as per the educational records is having her date of birth as 22.01.2007 and as such was aged about 17 years 10 months 10 days at the time of occurrence. It is further submitted that as per the radiological opinion the victim was opined to be of age between 17-18 years which corresponds with the age of her school records. It is submitted that the statements of the victim recorded under Section 180 B.N.S.S. and under Section 183 B.N.S.S. would go to show that on the saying of the applicant she went with him on his motorcycle after which she was taken to a guest house / hotel where she was forcibly raped. It is submitted that the same is an exaggerated version of the prosecution. It is submitted that the victim went on motorcycle and in her statement recorded under Section 183 B.N.S.S. she has stated that there were shops on the road and there was also a CCTV recording but even then she did not make any resistance or opposed the same. It is submitted that the investigation in the matter has concluded and a charge-sheet dated 17.01.2025 has been submitted, the copy of which is annexed as Annexure-SA-1 to the supplementary affidavit dated 06.04.2025. It is submitted that the medical examination of the victim although suggests that there were no signs of use of force on her but the doctor opined that sexual violence cannot be ruled out, however, the internal examination of the victim would go to show that the hymen was old torn and was having well healed margins. It is submitted that the applicant and the victim were having love relationship and there were love letters written by the victim to the applicant. The applicant has no criminal history as stated in para 39 of the affidavit and is in jail since 07.12.2024.

6. Per contra, learned counsel for the first informant and learned counsel for the State opposed the prayer for bail and submitted that the victim is a minor. It is submitted that the applicant is named in the first information report and statements of the victim recorded during investigation and there are allegations against him. It is submitted the prayer for bail be rejected.

7. After having heard learned counsel for the parties and perusing the record, it is evident that the victim went with the applicant on motorcycle to a guest house / hotel and in between there were shops on the road, there was no resistance or opposition done by her.

8. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

9. Let the applicant- Ashish, be released on bail in the aforesaid case crime number on 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 will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 84 B.N.S.S., 2023 may be issued and if 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 209 B.N.S., 2023.

(v) 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 351 B.N.S.S., 2023. 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 and the trial court may proceed against him under Section 269 B.N.S., 2023.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

11. The bail application is allowed.

12. Pending application (s), if any, shall stand disposed of.

Order Date :- 30.4.2025 AS Rathore (Samit Gopal,J.)