

Arif 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:15069

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41941 of 2024

Applicant :- Arif

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

Counsel for Applicant :- Maimoona Fatima

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised. As informed by learned A.G.A., notice has been served to the informant on 17.9.2024.
2. Heard Sri Awadh Bihari Pandey, learned counsel for the applicant as well as Sri J.K. Chaurasia, learned State Law Officer and perused the material placed on record.
3. Applicant seeks bail in Case Crime No. 358 of 2024, U/S 313, 506, 376-D IPC, 5(g), 5(1)/6 POCSO Act, Police Station Kotwali Orai, District Jalaun, during the pendency of trial.

PROSECUTION STORY:

4. The named accused person Shanu @ Munna is stated to have enticed away the sister of the informant aged about 17 years and had committed rape with her and had even video-recorded the said act and started blackmailing her and continued the said relationship for a substantial period of time.

ARGUMENTS ON BEHALF OF THE APPLICANT:

5. The applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. He has nothing to do with the said offence.

6. The FIR itself is delayed, as there is no date and time mentioned therein.

7. The applicant is not named in the FIR. His name has come up in the statement of the victim recorded u/s 180 and 183 B.N.S.S., as she has stated that the applicant and co-accused person both have gang-raped her. The said allegations have been made after legal consultation and deliberations. The victim by her looks, seems to be major, although her date of birth is 3.11.2006, as such, her age comes out to be marginally less than 18 years.

8. 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.

9. There is no criminal history of the applicant. The applicant is languishing in jail since 25.5.2024. In case, the applicant is released on bail, he will not misuse the liberty of bail.

ARGUMENTS ON BEHALF OF INFORMANT/STATE:

10. The bail application has been opposed but the fact that there is no criminal history of the applicant has not been disputed.

CONCLUSION:

11. In the judgement of Supreme Court passed in Sushil Kumar vs. Rakesh Kumar, (2003) 8 SCC 673, it has been stated 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.

12. 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.

13. 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.

14. 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.

15. Reiterating the aforesaid view the Supreme Court in the case of *Manish Sisodia Vs. Directorate of Enforcement* 2024 INSC 595 has again emphasized 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?.

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

17. 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.

18. 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.

19. Let the applicant- Arif 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.

20. 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.

21. 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 Shalini (Justice Krishan Pahal)