

Avnish @ Kariya vs State Of U.P. on 3 March, 2025

Author: Manju Rani Chauhan

Bench: Manju Rani Chauhan

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:30287

Court No. - 52

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 34633 of 2024

Applicant :- Avnish @ Kariya

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhishek Kumar Saroj, Kamal Dev Singh Chanchal, Nagendra Bahadur

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Manju Rani Chauhan, J.

1. Heard learned counsel for the applicant as well as learned AGA for the State and perused the material on record.

2. This second bail application has been filed on behalf of the applicant- Avnish @ Kariya with a prayer to release him on bail in Case Crime No. 23 of 2024, under Sections 147, 148, 323, 504, 307, 506, 427, 302, 34 I.P.C., Police Station-Sakaldiha, District-Chandauli, during pendency of trial. The first bail application of the applicant was dismissed by this Court vide order dated 30.05.2024.

3. Learned counsel for the applicant submits that informant's side was the aggressor and a vague and general role has been assigned to the all the accused persons in the assault. He further submits that similarly placed co-accused persons namely, Jai Krishna Kumar @ Punda, Shamsher Lias

Govind Kumar, Sunil, Sarvesh Kumar, Vakil, Ramavatar and Sumit Kumar have already been enlarged on bail by this Court as well as coordinate Benches of this Court vide orders dated 30.08.2024, 19.06.2024 and 16.07.2024 passed in Criminal Misc. Bail Application Nos. 19233 of 2024, 28003 of 2024, 27062 of 2024, 19357 of 2024, 21743 of 2024, 21914 of 2024 and 22394 of 2024, respectively. He further submits that the applicant may also be released on bail on the ground of parity. He next submits that applicant does not have any criminal history apart from this case and is languishing in jail since 05.02.2024. The trial in the aforesaid case is not likely to be concluded in near future.

4. Per contra learned A.G.A. has opposed the bail prayer of the applicant by contending that the innocence of the applicant cannot be adjudged at pre-trial stage, therefore, he do not deserve any indulgence. In case the applicant is released on bail he will again indulge in similar activities and will misuse the liberty of bail. He points out criminal history of one case against the applicant, which is subsequent to the present case.

5. 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. A person's right to life and liberty, guaranteed by Article 21 of the Indian Constitution, cannot be taken away simply because he or she 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 reiterated by the Apex Court in Satyendra Kumar Antil Vs. Central Bureau of Investigation and another, 2022 (10) SCC 51. Learned AGA has not shown any exceptional circumstances which would warrant denial of bail to the applicant.

6. 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 AGA for the State.

7. The object of the bail is to secure the attendance of the accused, the detention of the accused pending trial cannot be punitive in nature as there is presumption of innocence in favour of the accused person. Learned A.G.A. has not brought any facts and circumstances to demonstrate that the character of the accused-applicant (s) is such that his mere presence at large would intimidate the witness. Learned AGA for the State has not brought any fact or circumstances to indicate criminal history or antecedents of the applicant which would disentitle the applicant for Bail.

8. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, the period of detention of the applicant for the alleged offence, submissions of learned counsel for the parties, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

9. Let the applicant involved in the aforesaid case crime be released on bail on her furnishing a personal bond and two sureties each of the like amount to the satisfaction of the court concerned,

subject to the following conditions:-

- (i) The applicant will not tamper with the evidence during the trial.
- (ii) The applicant will not pressurize/intimidate the prosecution witness.
- (iii) The applicant shall remain present before the trial court on each date fixed, either personally or through their counsel.
- (iv) The applicant shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are suspected.
- (v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.
- (vi) The applicant shall not leave India without the previous permission of the Court.
- (vii) In the event, the applicant changes residential address, the applicant shall inform the court concerned about new residential address in writing.
- (viii) In case, the applicant misuses the liberty of bail during trial and in order to secure her presence proclamation under Section 82 Cr.P.C. is issued and the applicant fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against her, in accordance with law, under Section 174-A of the Indian Penal Code.

10. In case of breach of any of the above condition, the prosecution shall be at liberty to move bail cancellation application before this Court.

11. It is clarified that the observations, if any, made in this order are strictly confined to the disposal of the present bail application and must not be construed to have any reflection on the ultimate merits of the case.

Order Date :- 3.3.2025 Abhishek Singh