

# Dilshad vs State Of U.P Thru. Prin. Secy. Deptt. ... on 3 March, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:12740

Court No. - 15

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6144 of 2024

Applicant :- Dilshad

Opposite Party :- State Of U.P Thru. Prin. Secy. Deptt. Home Govt. Lko. And 3 Others

Counsel for Applicant :- Mohammad Hamza Beg, Suchindra Yadav

Counsel for Opposite Party :- G.A., Iqbal Ahmad, Mohd. Kumail Haider

Hon'ble Shree Prakash Singh, J.

Heard Sri Mohammad Hamza Beg and Sri Suchindra Yadav, counsels for the applicant, Sri Iqbal Ahmad, counsel for the complainant, learned A.G.A. for the State and perused the record.

The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail during the trial in Case Crime No. 055 of 2024 under sections 363, 367, 354 and 323 of IPC and under section 9m/10 Pocso P.S.- Tulsipur District - Balrampur.

As per the prosecution story on 08.03.2024, the grand daughters and daughter of neighbour of the informant went to fetch water from water tank and suddenly, one of the grand daughters namely, Baseera Bano came shouting and informed that two unknown persons are forcefully taking away Ikra, Mariyam and Naseemun towards Jarwa whereafter, Jameel Ahmad, Imam Ali, Hakeek Ullah, Gyaneshwar, Arif and Pintu Verma chased them and caught them near Nangai Chauraha.

It is argued by counsel appearing for the applicant that the applicant was not involved in committing any offence and due to some animosity, his name has been implicated in the first information report. He submits that in fact there are material contradictions in the story of the prosecution as from perusal of the narration in the first information report, it is apparent that Baseera Bano came to the informant and intimated with respect to the incident whereas, on subsequent stage, all the witnesses have stated that the incident was intimated by Ikra Bano. He next added and has drawn attention towards the statement of the victim appended at page 41 and submits that one of the victim namely, Baseera Bano has stated that when she was went for taking water, a 'tampo wala' came and tried forcibly her to sit in the tampo, whereafter, one didi came over there and started shouting and thereafter, one of the accused was caught by the persons of the vicinity.' He submits that the story of prosecution is highly doubtful as it has been alleged that Ikra and Naseemun was kidnapped and Baseera Bano intimated the incident to the informant whereas, as per the statement of the victim, Baseera Bano was kidnapped and on shouting, one of the accused was arrested and therefore, it is apparent that Naseemun was not kidnapped which also creates the doubt in the story of prosecution. He next added that the the chargesheet has been filed thus, there is no possibility that he would tamper the evidence or would threaten the witnesses coupled with the fact that he has no previous criminal history and he is languishing in jail since 08.03.2024 and he undertakes that in case, he is granted bail, he will not misuse the liberty of the same and would cooperate in the trial proceedings.

Learned counsel appearing for the complainant has opposed the contentions aforesaid and submits that there are several witnesses of the incident of kidnapping and the allegation against the applicant is very serious in nature and if he is released on bail, there would be possibility that he would tamper the evidences and threaten the witnesses thus, submission is that he is not entitled for bail.

Learned counsel appearing for the State has supported the version of counsel for the complainant and submits that there are specific allegation against the applicant for kidnapping the victim and as per the provisions of Pocso Act, the presumption is against the applicant which is not satisfactory been explained or rebutted thus, he is not entitled for any relief.

Having heard learned counsels for the parties and after perusal of material placed on record, it transpires that prima facie, there is material doubt with respect to the requisition of one of the witness namely, Baseera Bano; further all the witnesses have stated that the incident was intimated by Ikra Bano though, the first information report says otherwise which also creates doubt in the story of prosecution; the applicant is languishing in jail since 08.03.2024; the applicant has no previous criminal history; chargesheet has been filed and there is no possibility of conclusion of trial in near future coupled with the fact that the applicant has undertaken that in case, he is granted bail, he will not misuse the liberty of same and would cooperate in the trial proceedings.

Considering the submissions of learned counsels for the parties, nature of accusation and severity of punishment in case of conviction, nature of supporting evidence, prima facie satisfaction of the Court in support of the charge, reformatory theory of punishment and considering larger mandate of the Article 21 of the Constitution of India and, without expressing any view on the merits of the case,

I find it to be a fit case of bail.

Let the applicant-Dilshad involved in the aforementioned crime be released on bail, on his furnishing a personal bond and two sureties each in the like amount, to the satisfaction of the court concerned, with the following conditions:-

- (1) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, or otherwise during the investigation or trial;
- (2) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. He shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code;
- (3) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C.; and (4) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, the trial court shall initiate proceedings against him, in accordance with law under Section 174-A of the Indian Penal Code.

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

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

Order Date :- 3.3.2025 Mayank