

Dharmendra vs State Of U.P. And 3 Others on 1 April, 2025

Author: Krishan Pahal

Bench: Krishan Pahal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:44558

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5500 of 2025

Applicant :- Dharmendra

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

Counsel for Applicant :- Prem Chandra

Counsel for Opposite Party :- Chandra Bhan Kushwaha,G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Prem Chandra, learned counsel for the applicant and Sri Chandra Bhan Kushwaha, learned counsel for the informant 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. 136 of 2024, U/S 363, 366, 376(2)(N) IPC and 5L/6 POCSO Act, Police Station Kunwargaon, District Budaun, during the pendency of trial.
4. As per prosecution story, the applicant is stated to have enticed away the minor daughter of the informant on 20.5.2024.

5. Learned counsel for the applicant has argued that 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. It is stated that he has nothing to do with the said offence. It is stated that FIR is delayed by about four days and there is no explanation of the said delay caused.

6. Learned counsel has further stated that the victim is the consenting party, as is evident from her statement recorded u/s 164 Cr.P.C., whereby she had gone with the applicant to Panipat, Haryana and remained with him for several days and she had expressed her willingness to marry him. There is no medical corroboration of the incident.

7. 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. There is no criminal history of the applicant. The applicant is languishing in jail since 7.6.2024. In case, the applicant is released on bail, he will not misuse the liberty of bail.

8. Learned State Law Officer and learned counsel for the informant have vehemently opposed the bail application on the ground that the victim is minor, aged about 16 years only as per School certificate, as such, the consent of the victim has no value in the eyes of law. However, they have not disputed the fact that there is no criminal history of the applicant.

9. In light of the judgement of the Supreme Court passed in Niranjan 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.

10. 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.

11. 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.

12. 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?.

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

14. 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.

15. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, the victim being the consenting party, as per her statement recorded u/s 164 Cr.P.C., coupled by the fact that the FIR is delayed by about four days, 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.

16. Let the applicant- Dharmendra 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.

17. 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.

18. 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 :- 1.4.2025 Shalini (Justice Krishan Pahal)