

Omveer vs State Of U.P. And 3 Others on 3 March, 2025

Author: Krishan Pahal

Bench: Krishan Pahal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:29142

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40445 of 2024

Applicant :- Omveer

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

Counsel for Applicant :- Ravindra Sharma

Counsel for Opposite Party :- G.A.,Suresh Kumar Maurya

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Ravindra Sharma, learned counsel for the applicant and Sri Suresh Kumar Maurya, learned counsel for the informant as well as Sri Sunil Kumar, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No. 184 of 2024, U/S 354Kha, 504, 506, 376, 452 IPC and 3/4 POCSO Act, Police Station Dhanari, District Sambhal, during the pendency of trial.

PROSECUTION STORY:

4. The applicant is stated to have committed rape with the minor daughter of the informant aged about 15 years on 19.12.2023 at about 3.30 pm, when she had gone to graze her animals, by dragging her into a sugarcane field. The applicant is even stated to have taken certain indecent photographs and videos of her and had threatened her to make them viral on social media.

5. The applicant is stated to have again raped her on 11.5.2024 at about 5.00 am by forcibly entering her house. On hearing her shrieks, the neighbours and the family members had reached there, whereby in the scuffle, the applicant is stated to have run away from the place of occurrence, leaving his mobile.

ARGUMENTS ON BEHALF OF THE APPLICANT:

6. 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.

7. The FIR is delayed by about two months and there is no explanation of the said delay caused.

8. The informant had moved an application u/s 156(3) Cr.P.C. on 16.5.2024 and the same was dismissed as not pressed but subsequent to it, the instant FIR was instituted by the informant on 3.7.2024. Earlier on, an application was given by the informant at police station on 19.12.2023 and the matter was compromised once for all but subsequent to it, an altercation ensued between the parties, as such, the applicant had instituted the FIR against the informant on 11.5.2024 itself, which was registered as FIR No. 133 of 2024. The instant FIR is a counterblast to the said FIR No. 133 of 2024.

9. There is no medical corroboration of the allegations made in the FIR or in the statement of the victim recorded u/s 164 Cr.P.C.

10. The victim by her looks, seems to be major, although as per Class 6th Certificate, her date of birth is 1.1.2009, as such, her age comes out to be 15 years, 4 months and 10 days. The said document has no evidentiary value in light of Section 94 of The Juvenile Justice (Care and Protection of Children) Act, 2015.

11. 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.

12. There is no criminal history of the applicant. The applicant is languishing in jail since 10.7.2024. In case, the applicant is released on bail, he will not misuse the liberty of bail.

ARGUMENTS ON BEHALF OF INFORMANT/STATE:

13. The bail application has been opposed on the ground that the victim was minor on the date of incident and his mobile was left over there. The applicant had put certain photographs of the victim on WhatsApp status.

14. The victim was minor at the time of the said offence, as such, her consent, if any, cannot be taken into consideration in the eyes of law.

CONCLUSION:

15. In the case of P. Yuvaprakash vs. State Rep. by Inspector of Police, AIR 2023 SC 3525, the Supreme Court has observed that in the absence of records relating to the birth of the victim, no other documents except the Matriculation or equivalent certificate from the concerned examination board or certificate by a corporation, municipal authority or a Panchayat can be relied upon to ascertain the age of the victim.

16. 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.

17. 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.

18. 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.

19. 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?.

20. Learned AGA could not bring forth any exceptional circumstances which would warrant denial of bail to the applicant.

21. 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.

22. 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.

23. Let the applicant- Omveer 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.

24. 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.

25. 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 :- 3.3.2025 Shalini (Justice Krishan Pahal)