

Khushbu Devi vs State Of U.P. Thru. Prin. Secy. (Home ... on 3 March, 2025

Author: Rajesh Singh Chauhan

Bench: Rajesh Singh Chauhan

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:12531

Court No. - 11

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1865 of 2025

Applicant :- Khushbu Devi

Opposite Party :- State Of U.P. Thru. Prin. Secy. (Home Deptt) U.P. Lko.

Counsel for Applicant :- Ravindra Kumar Singh,Ashish Kumar Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri Ravindra Kumar Singh, learned counsel for the applicant and Sri Arun Kumar Verma, learned A.G.A. for the State.

2. It has been contended by the learned counsel for the applicant that the applicant is in jail since 15.12.2024 in Case Crime No. 233 of 2024 u/s 103(2), 238(b), 3(5), 61(2) B.N,.S., P.S. Rahimabad, District Lucknow. It has been submitted that the applicant has been falsely implicated in this case as she has not committed any offence as alleged.

3. Attention has been drawn towards the impugned F.I.R. which was lodged on 13.12.2024 for the incident which took place on 25.11.2024 wherein no allegation of rape has been levelled against the present applicant. As a matter of fact she has not been made an accused in the F.I.R. However,

during the investigation on the basis of one C.D.R. report of the mobile phone of the present applicant the story emerged that the present applicant had called one Sushil Yadav couple of times and when such co-accused Sushil Yadav was arrested he confessed his guilt and apprised that he with the present applicant killed the husband of the present applicant and thrown the corpse into the well.

4. Learned counsel for the applicant has submitted that the aforesaid prosecution story is absolutely false and misconceived and on the confessional statement of Sushil Yadav she may not be implicated since Sushil Yadav was her distant relation, therefore, she called her but the story which has been created by the prosecution is false. There is no eye witness account or last seen evidence. Her relation with her deceased husband were cordial as there is no prior complaint either from the side of the complainant or her family members about any ill-behaviour of the present applicant. With the aforesaid wedlock she is having two minor children aged about six and four years as recital to this effect has been given in para 6 of the bail application. Since her husband has died and she is in jail there is none in the family to look after her minor children as those children are in abandoned condition, therefore, the present applicant press this bail application mainly on the sympathetic consideration saying that her minor children are in abandoned condition and she being a lady may be given the benefit of section 480 BNSS. The applicant has no previous criminal history of any kind whatsoever. The charge-sheet has been filed in this case.

5. The learned counsel for the applicant has given an undertaking on behalf of applicant that the applicant shall not misuse the liberty of bail and shall cooperate with the trial proceedings and shall abide by all terms and conditions of bail, if granted.

6. Learned A.G.A. opposed the prayer for bail but could not dispute the aforesaid facts as argued by the learned counsel for the applicant.

7. Without entering into the merits of the case and considering the arguments of learned counsel for the parties, contents and allegations of the F.I.R., the fact that F.I.R. was lodged on 13.12.2024 for the incident which took place on 25.11.2024 wherein no allegation of rape has been levelled against the present applicant, applicant has not been made an accused in the F.I.R., on the confession of co-accused Sushil Yadav her name come in the picture though Sushil Yadav is her distant relation, there is no eye witness account or last seen evidence, her relation with her deceased husband were cordial as there is no prior complaint either from the side of the complainant or his family members about any ill-behaviour of the present applicant, the applicant is having two minor children aged about six and four years , since her husband has died and she is in jail there is none in the family to look after her minor children as those children are in abandoned condition, the present applicant pressed this bail application mainly on the sympathetic consideration as her minor children are in abandoned condition, the applicant being a lady may be given the benefit of section 480 BNSS, applicant has no previous criminal history of any kind whatsoever, charge-sheet has been filed in this case and the undertaking given on behalf of the applicant that she shall not misuse the liberty of bail and shall cooperate in the trial proceedings, the applicant is entitled to be released on bail in this case.

8. Bail application is allowed.

9. Let the applicant Khushbu Devi, involved in aforesaid case crime be released on bail on her furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

(i) The applicant shall file an undertaking to the effect that he / she shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant 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 / her under Section 269 of the B.N.S., 2023.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 84 of B.N.S.S., 2023 may be issued and if the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him / her in accordance with law, under Section 208 of the B.N.S., 2023.

(iv) 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 351 of B.N.S.S., 2023. 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 / her in accordance with law.

10. Before parting with it is made clear that the present applicant has been granted bail only for the reason that her two minor children are in abandoned condition as the applicant is in jail and her husband has died and her presence is required to look after them, therefore, the other co-accused persons may not claim parity with the present applicant.

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(Rajesh Singh Chauhan, J.) Order Date :- 3.3.2025 Om