

Manish Singh vs State Of U.P. Thru. Prin. Secy. Deptt. Of ... on 16 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LK0:21407

Court No. - 15

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2677 of 2025

Applicant :- Manish Singh

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

Counsel for Applicant :- Shrikant Mishra, Nishikant Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Shrikant Mishra, the learned counsel for the applicant, Sri Anurag Verma, the learned AGA-I for the State, Sri Rajendra Prasad Tiwari, the learned counsel for the informant and perused the records.
2. This is the second application seeking release of the applicant on bail in Case Crime No. 589 of 2022, under Sections 323, 325, 354 ga, 376 and 506 IPC and Sections 5/6 POCSO Act, Police Station Thakurganj, District Lucknow.
3. The first Bail Application No. 5073 of 2023 was rejected by means of an order dated 17.05.2024 and while rejecting the bail application this Court had observed that the trial court should conduct and conclude the trial with expedition within a period of nine months keeping in view the provision under Section 35(2) of the POCSO Act and Section 309 Cr.P.C. The trial could not be concluded and this second application has been filed after examination of six prosecution witnesses.

4. The F.I.R. was lodged on 01.11.2022 against the applicant, his father and other unnamed family members, stating that since August, 2021, whenever the informant and her family members used to go out of their home, the applicant, who is distantly related to them, raped her daughter in their house. On 30.10.2022, the applicant had come to the informant's house along with his father and said that he had come to take away the informant's daughter. When the informant's family members objected, the accused persons had beaten the informant and had caused a fracture in the hand of her husband. This incident is recorded in the CCTV camera installed in the informant's house. It was on 01.11.2022 that the informant's daughter disclosed for the first time that the applicant repetitively raped her in their house and she said that the applicant had raped her for the first time in August, 2021.

5. In the statement of the victim recorded under Section 161 Cr.P.C., she supported the F.I.R. allegations and she further stated that the applicant had raped her for the first time in the month of August, 2021. He consistently kept on visiting her home and making relations with her and he took photographs of the incidents. She further stated that she used to talk to the applicant on phone and the applicant used to threaten her that he would show her photos and videos to other persons. Lastly, the applicant made physical relations with her on 22.10.2022 at her residence.

6. The medico legal examination report of the victim mentions no mark of injury or sign of use of force. The findings of the pathological examination report also do not support the allegation of commission of rape.

7. The victim has been examined before the trial court as PW-1. In her examination-in-chief, she supported the F.I.R. version. After she has been cross examined, she was re-examined by the prosecution regarding some documents.

8. The informant has been examined as PW-2. In her cross-examination, she has stated that the applicant is son of her husband's uncle. The applicant's father also runs a nursery. The nursery of the informant and that of the applicant are situated about 300 to 400 meters apart. PW-2 had suffered some injuries in the altercation but she did not get herself examined medically. Her daughter had not suffered any injury in the incident. Her husband had suffered a fracture and a cast was put on his hand for 23 days. She stated that she did not know that the applicant loved her daughter and wanted to marry her. PW-2 also stated that the incident that had taken place on 30.10.2022 had been recorded in the CCTV camera. During cross-examination, a suggestion was given to her that there is a business rivalry between the families of the applicant and the informant as both of them are engaged in nursery business and she denied this suggestion.

9. PW-3 is a police constable, who had registered the FIR. His statement has been brought on record along with a supplementary affidavit.

10. PW-4 is the doctor who had conducted the medico legal examination of the victim and she stated that there was no visible injury mark on any part of the victim's body and the internal examination of the victim also did not reveal any injury. She had collected as many as 11 samples but she cannot give any definite opinion regarding sexual assault. She had not found any sign of commission of rape

on the victim's body and no spermatozoa- dead or alive, were found in pathological examination.

11. The investigating officer has been examined as PW-5.

12. The learned AGA-I has produced a copy of the relevant extracts of the case diary for perusal of the Court wherein it is recorded that the CCTV footage of the incident that took place on 30.10.2022 was examined by the Investigating Officer which shows that some altercation and beating took place between the applicant, his father and the informant and her husband. The victim is not seen in the CCTV footage.

13. The learned AGA-I as well as the learned counsel for the informant have vehemently opposed the bail application and they have submitted that in her statement recorded before the trial court the victim has supported the F.I.R. allegations. No major discrepancy has come to light even in her cross examination. Therefore, the applicant is not entitled to be released on bail.

14. Learned AGA-I has relied on a decision of the Hon'ble Supreme Court in the case of X v. State of Rajasthan: 2024 SCC OnLine SC 3539 wherein the Hon'ble Supreme Court held that: -

"14. Ordinarily in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused.

15. Over a period of time, we have noticed two things, i.e., (i) either bail is granted after the charge is framed and just before the victim is to be examined by the prosecution before the trial court, or (ii) bail is granted once the recording of the oral evidence of the victim is complete by looking into some discrepancies here or there in the deposition and thereby testing the credibility of the victim.

16. We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach to its final conclusion which may either result in the conviction of the accused or acquittal of the accused. The moment the High Court exercises its discretion in favour of the accused and orders release of the accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed."

15. In Parasa Raja Manikyala Rao v. State of A.P., (2003) 12 SCC 306, the Hon'ble Supreme Court has held that: -

"9. Each case, more particularly a criminal case, depends on its own facts and a close similarity between one case and another is not enough to warrant like treatment because a significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive. The vague and cryptic conclusion arrived at by the trial court to treat their case differently from the manner it dealt with that of A-1, despite its very observation that the evidence was as cogent against them too as it was against A-1 lacks a judicious approach and determination and, therefore, was rightly interfered with by the High Court after an objective appreciation of the evidence independently and in the light of the relevant and guiding principles of law governing such determination."

16. In *Bank of India v. K. Mohandas*, (2009) 5 SCC 313, the Hon'ble Supreme Court held that: -

"54. A word about precedents, before we deal with the aforesaid observations. The classic statement of Earl of Halsbury, L.C. in *Quinn v. Leathem* (1901) 1 AC 495 (HL), is worth recapitulating first: (AC p. 506) "... before discussing ... *Allen v. Flood* (1898 AC 1) and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

(emphasis in original) This Court has in long line of cases followed the aforesaid statement of law.

55. In *State of Orissa v. Sudhansu Sekhar Misra* [AIR 1968 SC 647] it was observed:

"13. ... A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it."

56. In the words of Hidayatullah, J.: (*Abdul Kayoom v. CIT* AIR 1962 SC 680):

"19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to

another case is not at all decisive."

57. It was highlighted by this Court in *Ambica Quarry Works v. State of Gujarat* [(1987) 1 SCC 213] :

"18. ... The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

58. In *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.* [(2003) 2 SCC 111] this Court held that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

59. This Court in *Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani* [(2004) 8 SCC 579] emphasised that the courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. It was further observed that the judgments of courts are not to be construed as statutes and the observations must be read in the context in which they appear to have been stated. The Court went on to say that circumstantial applicability, one additional or different fact may make a world of difference between conclusions in two cases."

(Emphasis added)

17. In *X v. State of Rajasthan (Supra)*, the High Court had granted bail to the accused after taking into consideration certain discrepancies between the averments made in the F.I.R. and the statements of the victim recorded under Section 161 Cr.P.C. The victim challenged the order of the High Court by filing SLP before the Hon'ble Supreme Court. Notice of the SLP was issued to the accused but he did not appear before the Hon'ble Supreme Court in spite of service of notice. The Hon'ble Supreme Court also took into consideration the fact that the victim was yet to be examined by the trial court. Her mother, who is said to be an eye witness of the incident, had also not been examined. In these circumstances, the Hon'ble Supreme Court held that a few discrepancies in the version of the F.I.R. and the statement of the victim recorded under Section 164 Cr.P.C. could not have been a good ground to exercise the discretion in favour of the accused in a serious offence like rape. This order does not make any mention of the findings of the medico legal examination report of the victim.

18. In the present case, as many as five prosecution witnesses have already been examined, including the victim and the informant and, therefore, now there remains no possibility of the witnesses being influenced by the applicant after his release on bail.

19. PW-4 - the doctor who had conducted the medico legal examination of the victim, has stated that there was no visible injury mark on any part of the victim's body and the internal examination of the victim also did not reveal any injury. She had collected as many as 11 samples but she could not give any definite opinion regarding sexual assault. She had not found any sign of commission of rape on the victim's body and no spermatozoa- dead or alive, were found in pathological examination.

20. Therefore, the facts of the present case are no similar to the facts of the case of X versus State of Rajasthan (Supra).

21. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that the applicant is related to the victim as her uncle; the statements reveal that both the families are engaged in nursery business and a suggestion has been given regarding false implication due to business rivalry between the two families, though the same has been denied; the victim has stated that the applicant repetitively raped her since August, 2021 till 22.10.2022 and that too, always inside her own home and yet she did not complain about the incident to any person and no other family member came to know about it; that an aggravated altercation took place between the parties on 30.10.2022 and even then the victim did not disclose that the applicant used to rape her repetitively inside her house since August 2021 and she disclosed it only subsequently on 01.11.2022; that the allegation of commission of rape is not supported by the findings of the medico legal examination report of the victim or by the statement of the Doctor (PW-4) and that all the witnesses of fact already having been examined, in case of his release on bail the applicant will not be in a position to influence the witnesses, I am of the view that the aforesaid facts are sufficient for making out a case for enlargement of the applicant on bail in the aforesaid crime.

22. Accordingly, this bail application stands allowed.

23. Let the applicant-Manish Singh be released on bail in the aforementioned case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of magistrate/court concerned, subject to following conditions:-

- (i) the applicant shall not tamper with the prosecution evidence;
- (ii) the applicant shall not pressurize the prosecution witnesses;
- (iii) the applicant shall appear on each and every date fixed by the trial court.

24. It is made clear that the observations made in this application are for the purpose of bail application only and same will not affect the trial.

(Subhash Vidyarthi, J.) Order Date: 16.04.2025 Pradeep/-