

Pitamber @ Pitu @ Praveen vs State Of U.P. And 3 Others on 3 April, 2025

Author: Rajeev Misra

Bench: Rajeev Misra

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:47025

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10237 of 2025

Applicant :- Pitamber @ Pitu @ Praveen

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

Counsel for Applicant :- Pushpendra Kumar,Ramdhan

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Ramdhan, the learned counsel for applicant and the learned A.G.A. for State-opposite party-1.

2. Perused the record.

3. This repeat application for bail has been filed by applicant- Pitamber @ Pitu @ Praveen, seeking his enlargement on bail in Case Crime No. 120 of 2023, under Sections 342, 354, 354A, 354D, 376D, 504, 506 IPC and Sections 5/6, 7/8 PCOSO Act, Police Station Sikandramau, District Hathras during the pendency of trial i.e. Special Sessions Trial No.504 of 2023 (State Vs. Prem Singh and others) now pending in the Court of Special judge, (POCSO Act), Court No.1, Hathras.

4. The first bail application of applicant was rejected by this Court by a detailed order dated

19.12.2023 passed in Criminal Misc. Bail Application No.37641 of 2023 (Pitamber @ Pitu @ Praveen Vs. State of U.P.). For ready reference, the order dated 19.12.2023 is reproduced hereinunder:-

"1. Heard Mr. Ramdhan, the learned counsel for applicant and Mr. Prashant Kumar, the learned A.G.A. for State. Though the name of Miss Aarushi Khare is duly published in the cause list, however neither she nor any one on her behalf is present to oppose this application for bail.

2. Perused the record.

3. Present application for bail came up for order on 12.12.2023 and this Court passed the following order:-

"1. Heard Mr. Ramdhan, the learned counsel for applicant and the learned A.G.A. for State.

2. Present application for bail came up for orders on 31.10.2023 and this Court passed the following order:-

"Heard Mr. Ramdhan, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This application for bail has been filed by applicant Pitamber @ Pitu @ Praveen seeking his enlargement on bail in Case Crime No. 120 of 2023, under Sections 342, 354, 354A, 354D, 376D, 504, 506 IPC and Sections 5/6, 7/8 PCOSO. Act, P.S. Sikandrara, District Hathras, during the pendency of trial.

After some arguments, it transpires that the age of the prosecutrix has been determined with reference to the date of birth of the prosecutrix mentioned in the scholar register/transfer certificate. As per the said documents, the date of birth of the prosecutrix is said to be 08.09.2008.

Prima facie, the determination of age of the prosecutrix made with reference to above mentioned documents is manifestly illegal. By virtue of the provisions contained in Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015, the age of the prosecutrix could be determined only with reference to her date of birth mentioned in any of the documents recognized under Section 94 (2) (i) and 94 (2) (ii) of the Act, 2015. There is no document on record regarding the date of birth of the prosecutrix in consonance with the provisions of Section 94 of Act, 2015.

Learned A.G.A. submits that charge sheet has been submitted on 29.4.2023.

In view of above, Investigating Officer is directed to submit an application under Section 173 (8) Cr. P. C. before Court concerned seeking the permission of Court to conduct further investigation. After permission has been accorded by the Court concerned, the Investigating Officer shall proceed to discover the date of birth of the prosecutrix recorded in the institution first attended by her and also any such document which is in consonance with the provisions of Section 94 of the Act, 2015 regarding the date of birth of the prosecutrix. The necessary exercise shall be completed within a period of three weeks from today. The copy of the supplementary case diary shall be transmitted to this Court through the learned A.G.A. before the next date fixed.

Matter shall, accordingly, re-appear as fresh on 23.11.2023."

3. Since the order dated 31.10.2023 was not complied with, therefore, adjournment was prayed by the learned A.G.A. on the next date i.e. 23.11.2023. Accordingly, the matter was adjourned. Court passed the following order dated 23.11.2023;-

"1. On the matter being taken up, the learned A.G.A prays for and is granted a week's time to file an affidavit of compliance to bring on record the subsequent material collected by the Investigating Officer pursuant to order dated 31.10.2023.

2. In view of above, the hearing of present application is adjourned.

3. Matter shall accordingly re-appear for orders as fresh on 30.11.2023.

4. Supplementary affidavit filed by learned counsel for applicant in court today, is taken on record."

4. Subsequent to above order, the matter is listed today. Today again the learned A.G.A. submits that the order dated 31.10.2023 has not been complied with.

5. In view of above, it is apparent that Investigating Officer is proceeding with the matter in a cavalier fashion.

6. Accordingly, let the Superintendent of Police, Hathras appear in person along with the case diary of concerned case crime number as well as the additional material that has been collected pursuant to the order dated 31.10.2023.

7. Matter shall re-appear on 19.12.2023 as fresh at 02:00 P.M"

4. In compliance of above order dated 12.12.2023, the Investigating Officer and the Additional Superintendent of Police, Hathras are present in Court today.

5. Mr. Prashant Kumar, the learned A.G.A. has filed the personal affidavits of Investigating Officer, Superintendent of Police and Additional Superintendent of Police, which are taken on record.

6. Mr. Prashant Kumar, the learned A.G.A. fairly submits that on account of Hathras Mahotsav in progress, it is impossible for the Superintendent of Police, Hathras to leave the station. He has therefore, filed his personal affidavit seeking indulgence of this Court. However, the Additional Superintendent of Police has been deputed to appear before this Court. Considering the explanation offered by the Superintendent of Police, his personal appearance is exempted.

7. Perused the affidavit filed by the Additional Superintendent of Police and the Investigating Officer. The Court finds that in view of the averments made in the affidavits filed by the aforesaid officers, their personal appearance is also not required on future dates. Accordingly, their personal appearance on future is also exempted.

8. This application for bail has been filed by applicant-Pitamber @ Pitu @ Praveen seeking his enlargement on bail in Case Crime No. 120 of 2023, under Sections 342, 354, 354-A, 354-D, 376-D, 504, 506 IPC and Sections 5/6, 7/8 POCSO Act, Police Station-Sikandrara, District-Hathras during the pendency of trial.

9. At the very outset, the learned A.G.A. submits that notice of present application for bail has already been served upon first informant-opposite party 2 on 17.08.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant-opposite party 2 to oppose this application for bail.

10. Record shows that in respect of an incident, which is alleged to have occurred on 20.03.2023, a delayed FIR dated 21.03.2023 was lodged by first informant-Rakesh Kumar (father of the prosecutrix) and was registered as Case Crime No. 120 of 2023, under Sections 342, 354, 354-A, 354-B, 376, 511, 504, 506 IPC and Sections 7/8/18 POCSO Act, Police Station-Sikandrara, District-Hathras. In the aforesaid FIR, 3 persons namely (1) Prem Singh, (2) Pawan and (3) Pitu have been nominated as named accused.

11. The gravamen of the allegations made in the FIR is to the effect that named accused Prem Singh and Pawan deliberately and forcibly dislodged the modesty of the prosecutrix.

12. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. The statement of the prosecutrix was recorded under Section 161 Cr.P.C. Same is on record at page 49 of the paper book. The prosecutrix in her aforesaid statement has fully supported the FIR. Thereafter, the prosecutrix was requested for

her internal medical examination. The Doctor, who medically examined the prosecutrix, did not find any injury on her body so as to denote commission of deliberate or forceful sexual assault. No adverse opinion was formed by the Doctor with regard to the private part of the prosecutrix either. The Urine Pregnancy Test of the prosecutrix was conducted. The result of the same is in negative.

13. During course of investigation, Investigating Officer recovered the School Leaving Certificate of the prosecutrix wherein the date of birth of the prosecutrix is mentioned as 08.09.2008. The occurrence giving rise to present criminal proceedings occurred on 20.03.2023. As such, the prosecutrix was aged about 14 years, 6 months and 12 days. Investigating Officer further examined the first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have substantially supported the FIR. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of all the named accused is established in the crime in question. He, accordingly, submitted the charge sheet dated 29.04.2023 whereby 2 of the named accused i.e. Pitamber @ Pitu @ Praveen and Prem Singh have been charge sheeted under Sections 342, 354, 354-A, 354-B, 376-D, 504, 506 IPC and Sections 5/6, 7/8 POCSO Act whereas once of the named accused Pawan @ Deepu @ Bachcha has been declared juvenile for which the charge sheet has been sent to Junvenile Justice Board on 29.04.2023..

14. Subsequent to the order dated 31.10.2023 passed by this Court, Investigating Officer conducted further investigation and the date of birth of the prosecutrix recorded in the institution first attended by her has also been recovered which is 08.09.2008.

15. Learned counsel for applicant contends that though the applicant is named as well as charge sheeted accused yet he is liable to be enlarged on bail. The medical evidence does not support the ocular version of the occurrence as disclosed in the statements of the prosecutrix recorded under Section 161 Cr.P.C, before the Doctor, who medically examined the her and under Section 164 Cr.P.C. He, therefore, contends that applicant is liable to be enlarged on bail.

16. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 17.04.2023. As such, he has undergone more than 8 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, no such circumstance has emerged on record necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, he submits that applicant is liable to be enlarged on bail. In case, the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

17. Per contra, the learned A.G.A. has opposed the present application for bail. He submits that since applicant is a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The prosecutrix in her statements recorded under Section 161 Cr.P.C., before the Doctor, who medically examined her and under Section 164 Cr.P.C. has clearly supported the FIR. She has also described the act of applicant including the manner in which, criminality was committed upon her. Since the prosecutrix is a young girl of tender age and below 16 years of age, therefore, it cannot be said that the present criminal proceedings are false or malicious accentuated by mala-fide. There is nothing on record to infer the innocence of applicant either. As such, on sympathy be shown by this Court in favour of applicant.

18. When confronted with above, the learned counsel for applicant could not overcome the same.

19. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, complicity of accused, accusations made coupled with the fact that the prosecutrix is a young girl aged about 14 years, 6 months and 18 days, the learned counsel for applicant could not contradict the age of the prosecutrix from any other material, the prosecutrix in her statements under Section 161 Cr.P.C., before the Doctor, who medically examined her and under Section 164 Cr.P.C. has clearly implicated the applicant for the criminality committed upon her, she has also detailed the manner of occurrence, in view of the law laid down by the Apex Court in Phool Singh Vs. State of M.P. (2022) 2 SCC 74 the prosecution of an accused for an offence of rape and sexual assault can be maintained even in the absence of medical evidence and on the solitary statement of the prosecutrix, however, the statement of prosecutrix showed clear and specific, when the statements of the prosecutrix referred to above are taken as a whole and examined in the light of above, it cannot be said that the same suffer from the vice of exaggeration, embellishment and contradiction but to the contrary, they are clear, categorical and consistent i.e. unambiguous, as such, the statements of the prosecutrix are of impeccable character, there is nothing on record to infer that the prosecution of applicant is false or malicious being accentuated by mala-fide, there is nothing to infer the innocence of applicant either, therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of the present application for bail, but without making any comments on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

20. As a result, present application for bail fails and is liable to be rejected.

21. It is accordingly rejected. "

5. Learned counsel for applicant submit that though applicant is a named and charge sheeted accused, however, in view of subsequent developments as have emerged on record of concerned

Special Sessions Trial the applicant is liable to be enlarged on bail.

6. In furtherance of aforesaid submission, the learned counsel for applicant submits that subsequent to the order dated 13.10.2023 trial of applicant commenced before Court below. Upto this stage, three prosecution witnesses of fact have deposed before Court below i.e. PW-1 Rakesh Kumar (father of the prosecutrix), PW-2 Rakesh Kumar (brother of the prosecutrix), PW-3 prosecutrix. However, aforementioned witnesses in their depositions before Court below have not supported the FIR.

7. On the above premise, the learned counsel for applicant submits that once the statements of the first informant and prosecutrix have been recorded before Court below then in that eventuality it cannot be said that if, the applicant is enlarged on bail, then he shall either terrorize the witnesses or shall hamper the course of trial.

8. It is then contended by the learned counsel for applicant that since the first informant and the prosecutrix in their depositions before Court below have not supported the prosecution story as unfolded in the FIR, therefore, no good ground now exists to prolong the custodial arrest of applicant during the pendency of trial. As such, the applicant is liable to be enlarged on bail.

9. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 17.04.2023. As such, he has undergone more than one year of incarceration. The charge sheet/police report in terms of Section 173(2) Cr.P.C. has already been submitted by the Investigating Officer. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, no such incriminating circumstance has emerged on record necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, it is thus urged by the learned counsel for applicant that applicant is liable to be enlarged on bail. In case, the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

10. Per contra, the learned A.G.A. for State-opposite party-1 has vehemently opposed the prayer for bail. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicant, with reference to the record at this stage.

11. Having heard, the learned counsel for applicant, the learned A.G.A. for State and upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that three prosecution witnesses of fact have deposed before Court below as PW-1 Rakesh Kumar (father of the prosecutrix), PW-2 Rakesh Kumar (brother of the prosecutrix), PW-3 prosecutrix upto this stage, however, aforementioned witnesses in their depositions before Court below have not supported the prosecution story as unfolded in the FIR and therefore, they have been declared hostile, once the statements of the first informant and prosecutrix have been recorded before Court below then in that eventuality it cannot be said that if, applicant is enlarged on bail, he shall either terrorize the witnesses or shall hamper the course of trial, the police report in terms of Section 173(2) Cr.P.C. has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet in spite of above, the

learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, the judgment of Supreme Court in Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373 (Paragraph 5), the clean antecedents of applicant, the period of incarceration undergone, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to this repeat application for bail, but without making any comments on the merits of the case, applicant has made out a case for bail.

12. Accordingly, the bail application is allowed.

13. Let the applicant-Pitamber @ Pitu @ Praveen, be released on bail in the aforesaid case crime number 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 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 DATE 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/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/HER PRESENCE PROCLAMATION UNDER SECTION 82 CR.P.C., MAY BE ISSUED AND IF 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 174-A IPC.

(iv) 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. 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 THE HIM/HER IN ACCORDANCE WITH LAW.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE

RELEASE OF THE APPLICANT.

14. However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his bail so granted by this Court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

Order Date :- 3.4.2025/Imtiyaz