

Akash vs State Of U.P. on 2 January, 2025

Author: Krishan Pahal

Bench: Krishan Pahal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:275

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 29519 of 2023

Applicant :- Akash

Opposite Party :- State of U.P.

Counsel for Applicant :- Noor Muhammad,Rakesh Kumar Agrahari,Sandeep Kumar,Yogesh Kumar

Counsel for Opposite Party :- Ajeet Kumar,Chandra Prakash Srivastava,G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Yogesh Kumar Srivastava, learned counsel for the applicant and Sri Chandra Prakash Srivastava, learned counsel for the informant as well as Sri R.P. Patel, learned State Law Officer and perused the record.
3. Applicant seeks bail in Case Crime No. 16 of 2023, under Sections 302, 201 I.P.C. and Section 4/25 of the Arms Act, Police Station Gabhana, District Aligarh, during the pendency of trial.

PROSECUTION STORY:

4. The FIR was instituted by the informant stating that his son has been put to death by some unknown person and his dead body has been thrown in an abandoned well in the field of Tejvir on 09.01.2023 at about 10 a.m. ARGUMENTS ON BEHALF OF APPLICANT :

5. The applicant has been falsely implicated in the present case and he has nothing to do with the said offence.

6. The FIR is delayed by about 12 hours and there is no explanation of the said delay caused.

7. The applicant is not named in the FIR and his name has subsequently been come up in the statement of one Gyanendra which is simply a suspicion only.

8. There is no evidence of any person having seen the applicant stabbing the deceased person or throwing his body in the said abandoned well.

9. It is true that during trial, three witnesses of fact have been examined and they have deposed against the applicant but the said evidence is not sufficient to convict the applicant.

10. The trial stands delayed on the ground that an application under section 319 Cr.P.C. was moved by the informant and two other accused persons were added by them and the said application under section 319 Cr.P.C. has been dismissed by the trial Judge vide order dated 03.05.2024.

11. The revision against the said order is pending before this Court and there is no likelihood of the early conclusion of the trial in near future.

12. The Fundamental Rights of the applicant enshrined under Article 21 of the Constitution of India stands violated.

13. 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.

14. There is no criminal history of the applicant. The applicant is languishing in jail since 11.01.2023. The applicant is ready to cooperate with trial. In case, the applicant is released on bail, he will not misuse the liberty of bail.

ARGUMENTS ON BEHALF OF INFORMANT :

15. The bail application has been opposed on the ground that the prosecution story stands fortified from the fact that the dead body of the deceased was found in a loath of mud and stabbed wounds were observed on his body and there is recovery of a knife at the pointing out of the applicant, as such he is not entitled for bail. The witnesses of fact have also supported the prosecution story.

CONCLUSION:

16. In the judgement passed by the Supreme Court in the case of Union of India vs. K.A. Najeed, AIR 2021 SC 712, it has been held as follows:-

"We are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail."

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 emphasised 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 State Law Officer 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 State Law Officer.

22. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, and taking into consideration that the trial is moving at snail's pace and an application moved under section 319 Cr.P.C. has been rejected and the revision is pending before this Court coupled by the fact that the applicant is not named in the FIR 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-Akash 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. 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 :- 2.1.2025 Sumit S (Justice Krishan Pahal)