

# Vijay Kumar Arya vs State Of U.P. And 3 Others on 4 February, 2025

**Author: Krishan Pahal**

**Bench: Krishan Pahal**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:15290

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43347 of 2024

Applicant :- Vijay Kumar Arya

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

Counsel for Applicant :- Hare Krishna Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Learned State Law Officer has stated that notice to the informant has been served on 25.11.2024.
3. The original ossification test report of the victim has been placed on record, which indicates her age to be between 12 to 18 years.
4. Heard Sri Hare Krishna Tripathi, learned counsel for the applicant as well as Ms. Ifrah Islam, learned State Law Officer for the State and perused the record.

5. Applicant seeks bail in Case Crime No.100 of 2024, under Sections 376(GhaKa), 506 I.P.C. and 5/6 POCSO Act, Police Station- Todifatehpur, District- Jhansi, during the pendency of trial.

#### PROSECUTION STORY:

6. The applicant and co-accused persons Gaurav and Ajay are stated to have committed gang-rape with the victim after taking her to a secluded place behind a hill on 8.5.2024 at about 05:30 p.m.

#### ARGUMENTS ON BEHALF OF APPLICANT:

7. The applicant is absolutely innocent and has been falsely implicated in the present case.

8. The FIR is delayed by about one and half months and there is no explanation of the said delay caused.

9. The instant incident is a clear cut case of false implication as the victim was recovered the next day. On the day of alleged incident, she was scolded by her parents, as such, she had left her house. There was no whispering of single word of rape in the statement of the victim recorded U/s 161 Cr.P.C., but subsequently, the allegations have been escalated in her statement recorded U/s 164 Cr.P.C.

10. As per the ossification test report, her age comes out to be between 12 to 18 years, as such, a leverage of two years may be granted to the applicant. Although, it is a clear cut case of false implication.

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 7.7.2024 and 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 STATE/OPPOSITE PARTY:

13. The bail application has been opposed but the submissions raised by the learned counsel for the applicant could not be disputed.

#### CONCLUSION:

14. The Supreme Court in Jaya Mala vs. State of J & K, (1982) 2 SCC 538 and Mohd. Imran Khan vs. State (Govt. of NCT of Delhi), (2011) 10 SCC 192 has opined that the radiologist cannot predict the correct date of birth rather there is a long margin of 1 to 2 years on either side.

15. 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.

16. 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.

17. 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.

18. 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?.

19. Learned State Law Officer could not bring forth any exceptional circumstances which would warrant denial of bail to the applicant.

20. 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.

21. 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.

22. Let the applicant- Vijay Kumar Arya 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.

23. 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.

24. 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.

25. The original ossification test report shall be returned to the office of CMO concerned, after retaining photostat copy of the same on record.

Order Date :- 4.2.2025 Vikas (Justice Krishan Pahal)