

Atul Kumar @ Shivam 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:147

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 35375 of 2023

Applicant :- Atul Kumar @ Shivam

Opposite Party :- State of U.P.

Counsel for Applicant :- Anvir Singh

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Anvir Singh, learned counsel for the applicant as well as Sri Jay Kishan Chaurasiya, learned State Law Officer and also perused the material available on record.
3. Applicant seeks bail in Case Crime No. 05 of 2023, under Sections 396, 412 of I.P.C., Police Station - Kakwan, District - Kanpur Nagar, during the pendency of trial.

PROSECUTION STORY:

4. The FIR was instituted by the informant stating that some six-seven unknown persons had barged into his house and committed dacoity and had even put his mother and father to death on 13.01.2023 at about 02:00 a.m. and had tied down the other family members by rope.

ARGUMENTS ON BEHALF OF APPLICANT:

5. The applicant has been falsely implicated in the present case due to ulterior motive. He has nothing to do with the said offence as alleged in the FIR.

6. The applicant is not named in the FIR. The name of the applicant has come up later on at the time of arrest of the applicant and other co-accused persons, which has no evidentiary value.

7. A false recovery of one CMP along with two live cartridges and some ornaments has been foisted on the applicant.

8. The applicant has no previous criminal antecedents except the case of Section 25 Arms Act and the Gangster Act instituted subsequent to the instant FIR.

9. Even after the arrest of the applicant, the statement of the wife of the informant Sapna was recorded by the Investigating Officer on 21.01.2023 which itself is delayed by about 8 days and she has stated that her relative Himanshu has come to her house in the night of the incident along with applicant and other accused persons.

10. The said allegations are false and vague.

11. There is no test identification parade conducted as per the provisions of Section 9 of the Indian Evidence Act.

12. 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.

13. The applicant is languishing in jail since 20.01.2023, deserves to be released on bail. In case, the applicant is released on bail, he will not misuse the liberty of bail and shall cooperate with trial.

ARGUMENTS ON BEHALF OF STATE BY STATE LAW OFFICER:

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

CONCLUSION:

15. In the case of Prabhakar Tewari Vs. State of U.P. and another, (2020) 11 SCC 648, the Supreme Court has observed that pendency of several criminal cases against an accused by itself cannot be a

basis for refusal of bail.

16. In so far as criminal antecedents of the applicant is concerned, it is not the case of the State that applicant might tamper with or otherwise adversely influence the investigation, or that he might intimidate witnesses before or during the trial. The State has also not placed any material that applicant in past attempted to evade the process of law. If the accused is otherwise found to be entitled to bail, he cannot be denied bail only on the ground of criminal history, no exceptional circumstances on the basis of criminal antecedents have been shown to deny bail to accused, hence, the Court does not feel it proper to deny bail to the applicant just on the ground of criminal antecedent.

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 reiterated 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 emphasized 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, the evidence on record, pending trial and considering the complicity of accused, severity of punishment, at this stage, 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- Atul Kumar @ Shivam, who is involved in aforementioned case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(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.

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 Priya (Justice Krishan Pahal)