

# Love Kaushik vs State Of U.P. on 4 February, 2025

**Author: Krishan Pahal**

**Bench: Krishan Pahal**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:16039

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 21902 of 2024

Applicant :- Love Kaushik

Opposite Party :- State of U.P.

Counsel for Applicant :- G.A.,Jitendra Kumar Shishodia,Shekhar Gangal

Hon'ble Krishan Pahal,J.

1. List has been revised.

2. Heard Sri Jitendra Kumar Shishodia, learned counsel for the applicant and Sri R.P. Patel, learned State Law Officer and perused the record.

3. Applicant seeks bail in Case Crime No. 111 of 2024, under Sections 376, 506 I.P.C. and Section 67 of I.T. Act, Police Station Gandhi Park, District Aligarh, during the pendency of trial.

PROSECUTION STORY:

4. The applicant is stated to have established corporeal relationship with the victim and had taken certain photographs and had video recorded the said act. The applicant is even stated to have hacked her facebook I.D. and had posted indecent photographs on it thereby making it viral.

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 more than one month and there is no explanation of the said delay caused.
7. There is no medical corroboration of the said incident.
8. There is no evidence on record to suggest that the said photograph or video were uploaded by the applicant. The said fact stands fortified from the statement of the Investigating Officer who has been examined as PW-2 and his statement has been filed in the supplementary affidavit dated 07.01.2025.
9. The Investigating Officer has categorically stated that he did not take any certificate as per the provision of Section 65-B of the Indian Evidence Act and he did not find any mobile from which the said photographs or video have been uploaded on facebook.
10. Reliance has been placed on the statement of the victim who herself has stated that she has visited the applicant at the jail premises about 2-3 times, which shows her consent.
11. The trial is moving at snail's pace and there is no likelihood of early conclusion of the trial.
12. Obviously, the victim is major as she is a married lady.
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 21.03.2024. 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 STATE :

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

#### CONCLUSION:

16. 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.

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, 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.

23. Let the applicant-Love Kaushik 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.

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 :- 4.2.2025/Sumit S (Justice Krishan Pahal)