

Mohamadun Nisha vs State Of U.P. Thru. Secy. Home U.P. Lko. on 28 March, 2025

Author: Manish Mathur

Bench: Manish Mathur

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:17767

Court No. - 13

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 891 of 2025

Applicant :- Mohamadun Nisha

Opposite Party :- State Of U.P. Thru. Secy. Home U.P. Lko.

Counsel for Applicant :- Ravindra Prakash Ojha

Counsel for Opposite Party :- G.A.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for applicant, learned Additional Government Advocate appearing on behalf of State and perused the record.

2. Second bail application has been filed with regard to Case Crime No.0344 of 2024 under Section 115(2) & Section 109 BNS, 2023, P.S. Kunda, District Pratapgarh. It has been submitted that earlier the first Bail Application preferred by applicant bearing no.508(B) of 2025 was dismissed vide order dated 20.01.2025 with liberty to file a fresh bail application. It is in terms thereof, the second bail application has been filed.

3. As per contents of first information report, the incident is said to have taken place on 25.11.2024 at about 08.00 P.M. when applicant called her husband Evne Hasan (brother of informant) to her house and along with co-accused attacked him resulting in serious injuries.

4. It has been submitted that applicant has been falsely implicated in the charges levelled against her only on account of previous matrimonial dispute. It is submitted that since applicant was living separately from her husband and a divorce has also ensued between the parties prior to the incident, there was no occasion for her to call her husband. The applicant does not have any previous criminal history.

5. Learned Additional Government Advocate appearing on behalf of State has opposed the bail application with submission that contents of F.I.R. are clearly made out from injury report pertaining to Evne Hasan indicating nine injuries. It is however, admitted that there is no previous criminal history of applicant.

6. Hon'ble the Supreme Court in Sanjay Chandra v. Central Bureau of Investigation, reported in (2012) 1 SCC 40 has specifically held that bail is to be a norm and an under-trial is not required to be in jail for ever pending trial. Relevant paragraphs of the judgment are as under :-

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty."

"27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution."

7. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, prima facie, and subject to further evidence being led in trial, it appears that there is previous matrimonial dispute between the parties. Although injury report indicates nine injuries upon body of injured but as per contents of F.I.R., there does not appear to be any singular role applicable upon applicant for having inflicted injuries on vital parts of injured. The applicant is under incarceration since 10.12.2024 and does not have any previous criminal history, as such, without expressing any opinion on merits of the case, this Court finds, the applicant is entitled to be released on bail in this case.

8. Accordingly bail application is allowed.

9. Let applicant Mohamadun Nisha, involved in aforesaid case crime be released on bail on his/her 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 dates 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 counsel. In case of his absence, without sufficient cause, the trial court may proceed against him/her under Section 269 of BNS.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his/her presence proclamation under Section 84 BNSS is issued and the 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 209 of BNS.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 351 BNSS. 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/her in accordance with law.

Order Date :- 28.3.2025 kvg/-