

Isaa Mohammad Hussain Diwan vs State Of U.P. Thru. Prin. Secy. Home ... on 31 January, 2025

Author: Rajesh Singh Chauhan

Bench: Rajesh Singh Chauhan

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:6942

Court No. - 11

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 994 of 2025

Applicant :- Isaa Mohammad Hussain Diwan

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

Counsel for Applicant :- Vikas Vikram Singh, Abdul Malik, Akram Azad

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Vikas Vikram Singh, learned counsel for the applicant, Sri Arun Verma, learned AGA for the State and Sri Manish Vaish, Advocate who has filed vakalatnama on behalf of the informant/complainant and the same is taken on record.

2. The present applicant is in jail since 18.12.2024, in case crime no. 0394 of 2024, under Section 323, 504, 506, 328, 342, 419, 379 D, 377 of IPC and Section 3 of U.P. Prohibition of Unlawful Conversion of Religion Ordinance, 2021.

3. Attention has been drawn towards the impugned FIR, wherein, the period of incident has been indicated from 01.01.2020 to 31.12.2023, but the FIR has been lodged on 07.11.2024 without explaining the aforesaid inordinate delay. Learned counsel for the applicant has stated that though in the FIR, serious allegations have been levelled against the present applicant relating to physical exploitation, rape, unnatural rape, relating to monetary transaction as well as exerting force for conversion. There is one more allegation which has been levelled against the applicant that the present applicant has concealed his religion and introduced himself as Hindu, but as soon as the prosecutrix came to know about his religion, he forced her to convert. So as to explain the delay in lodging the FIR, the prosecution story says that the prosecutrix was under the captivity of the present applicant and he did not permit her to go anywhere without the company of another co-accused, Nadiya.

4. Learned counsel has stated that in one case crime no. 477 of 2024, under Sections 406, 419, 420 of IPC, the prosecutrix was in judicial custody and was released on bail, vide order dated 05.09.2024 (Annexure No. 3).

5. One joint anticipatory bail application bearing number bearing CNR No. MHCCo5-000175-2021 was filed by the applicant and the prosecutrix in the court of Sessions Judge Borivali Division, Dindoshi, Mumbai, wherein, the name of the applicant has been correctly indicated and the anticipatory bail application was rejected vide order dated 18.01.2021 (Annexure No. 4), therefore, Shri Vikas Vikram Singh has stated that the prosecutrix was fully aware about the caste/religion of the applicant, when such joint anticipatory bail application was filed in the month of January 2021.

6. The present applicant and the prosecutrix both are married persons. The relation of the prosecutrix with her husband, namely, Rakesh Bhardwaj was not cordial therefore, she lodged an FIR against her husband and her husband filed anticipatory bail application before the court of Sessions, At Dindoshi (Borivali Division), Goregaon, Mumbai and he has been granted anticipatory bail vide order dated 21.07.2022 (Annexure No. 9). Thereafter, the prosecutrix filed a First Information Report at Lucknow bearing case crime no. 0213 of 2022, under Sections 506, 504, 323 and 498-A at P.S. Gomti Nagar, District Lucknow against her husband (Annexure No. 10). The husband of the prosecutrix filed criminal misc. writ petition no. 8547 of 2022, where he has been granted interim protection vide order dated 18.11.2022 (Annexure No. 11)

7. Sri Vikas Vikram Singh has stated that if the prosecutrix could come to Lucknow to lodge First Information Report against her husband on 26.08.2022, she could have lodged the FIR against the present applicant for the alleged offence occurred from 01.01.2020 at Lucknow itself, but no FIR has been lodged till 07.11.2024 inasmuch as the impugned FIR has been lodged on 07.11.2024. The applicant has explained the criminal history of one case bearing FIR no. 6 of 2021, under Section 425, 506, 506(II), 504 r/w 34 of IPC, wherein, he has been granted bail as the bail order has been annexed as annexure no 13.

8. Charge-sheet has been filed only against the present applicant and Nadia, however, the investigation in respect of other co-accused persons is pending and the present applicant undertakes that he shall cooperate in the trial proceedings and shall not misuse the liberty of bail, if granted.

Further, he shall abide by all terms and condition of the bail order.

9. Sri Arun Verma learned AGA has opposed the aforesaid bail application by submitting that serious charges have been levelled against the present applicant and the prosecution is having material/evidence to establish that the present applicant has committed the aforesaid offence, though he tried to explain the delay but could not explain properly. Further, only on the basis of delay in lodging FIR, the present applicant may not be absolved from the charges. Sri Verma has also submitted that the present applicant is a resident of Mumbai, so if he is released on bail, there is likelihood of him not cooperating in the trial proceedings properly, therefore, this aspect may also be considered.

10. Sri Manish Vaish learned counsel for the informant has also opposed the aforesaid bail application by submitting that since the present applicant was threatening the prosecutrix for dire consequences, if she lodges FIR against him, therefore, she could not lodge FIR promptly. He has also submitted that all the allegations which has been levelled in the FIR are absolutely true and the present applicant has committed all the offence for which the FIR has been lodged and chargesheet has been filed.

11. On being confronted as to why the FIR has been lodged at Lucknow when the prosecutrix lodged FIR against her husband on 26.08.2022, Sri Manish Vaish has submitted that at that point of time, the prosecutrix was forced by the applicant to lodge FIR only against her husband and not against the applicant and under threat of life, she could not lodge FIR against the present applicant at that point of time, though the circumstances are now beyond the control, therefore, she lodged the FIR on 07.11.2024.

12. Having heard the learned counsel for the parties and having perused the material available on record, without entering into the merits of the issue, considering the fact that there is inordinate delay in lodging the FIR, one joint anticipatory bail application was filed by the present applicant and the prosecutrix at Mumbai, she lodged one FIR against her husband at Lucknow in the year 2022, but no FIR has been lodged against the present applicant, though the alleged incident in question had already taken place from 01.01.2020, the charge-sheet has been filed and undertaking of the applicant that he shall cooperate in the trial proceedings and shall not misuse the liberty of bail, I find it appropriate to release the applicant on bail.

13. The bail application is allowed.

14. Let the applicant-Isaa Mohammad Hussain Diwan, be released on bail in the aforesaid case crime number on his furnishing a personal bond and two sureties of 1,00,000/- each with the following conditions:-

(i) One surety out of two surety should be of U.P. and those sureties should be properly verified.

(ii) The present applicant shall mark his attendance once in a month at P.S. Vibhuti Khand, Lucknow, preferably, in the first seven days of a month. However, if in case, the date of the trial court is fixed in the aforesaid period, he may mark his attendance on such date before the Police Station and in that case he need not mark his attendance again in that month in the Police Station.

(iii) The applicant shall file an undertaking to the effect that he 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.

(iv) 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 under Section 229-A of the Indian Penal Code.

(v) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(vi) 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 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.

(vii) Before parting with, it is expected that the trial shall be concluded with expedition, strictly in accordance with law, without adjourning the case for any unnecessary reason. Further, the learned trial court may take all coercive measures, as per law, if either of the parties do not co-operate in the trial properly.

Order Date :- 31.1.2025 Anurag