

Ritesh Kannujiya vs State Of U.P. And 3 Others on 28 February, 2025

Author: Krishan Pahal

Bench: Krishan Pahal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:28510

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44628 of 2024

Applicant :- Ritesh Kannujiya

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

Counsel for Applicant :- Gaurav Kumar Singh

Counsel for Opposite Party :- G.A.,Utkarsh Tripathi

Hon'ble Krishan Pahal,J.

1. List has been revised.

2. Heard Sri Gaurav Kumar Singh, learned counsel for the applicant and Sri Utkarsh Tripathi, learned counsel for the informant as well as Ms. Ifrah Islam, learned State Law Officer for the State and perused the record.

3. Applicant seeks bail in Case Crime No.331 of 2024, under Sections 137(2), 87, 65(1) B.N.S. and

5/6 POCSO Act, Police Station- Mahuli, District- Sant Kabir Nagar, during the pendency of trial.

PROSECUTION STORY:

4. The applicant is stated to have enticed away the minor daughter of the informant aged about 14 years on 9.9.2024 at about 01:00 a.m. with the help of other co-accused person.

ARGUMENTS ON BEHALF OF APPLICANT:

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

6. The FIR is delayed by about three days and there is no explanation of the said delay caused. The FIR was instituted regarding enticing away only. There are no allegations of rape in it.

7. The victim is a consenting party as is but evident from her statement recorded U/s 183 B.N.S.S., whereby she has stated that she had gone to Gujarat via Lucknow and Delhi and had married the applicant in a temple there and she had remained with him as husband and wife. She has even stated that there is no fault of the applicant and she had left her house on her own as she was beaten up by her family members.

8. The victim by her looks seems to be major. She herself has stated her age to be 17 years, but as per the ossification test report, her age has come out to be 16 years, as such, a leverage of two years may be granted to the applicant on the upper side.

9. 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.

10. There is no criminal history of the applicant. The applicant is languishing in jail since 8.10.2024 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:

11. The bail application has been opposed on the ground that the victim in the instant case is minor aged about 14 years only and as per the school certificate her age is less than 14 years as her date of birth is 18.8.2010. As such, the consent of the victim, if any, pales into insignificance.

12. There are several complaints filed by the informant against the applicant at Jansunwai Portal as well as at police station itself, as such, the applicant is not entitled for bail.

CONCLUSION:

13. 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.

14. In light of the judgement of the Supreme Court passed in *Niranjan 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.

15. 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.

16. 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.

17. 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?.

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

19. 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.

20. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, taking into consideration the statement of the victim recorded U/s 183 B.N.S.S. and the fact that the victim is aged about 16 years as per the ossification test report, 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.

21. Let the applicant- Ritesh Kannujiya 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.

22. 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.

23. 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 :- 28.2.2025 Vikas (Justice Krishan Pahal)