

Tahseem Khan vs State Of U.P. And 3 Others on 3 March, 2025

Author: Krishan Pahal

Bench: Krishan Pahal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:29082

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7231 of 2025

Applicant :- Tahseem Khan

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

Counsel for Applicant :- Sanjay Kr. Srivastava

Counsel for Opposite Party :- G.A.,Mahesh Sharma

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard learned counsel for the applicant, Sri Anit Kumar Shukla, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No.275 of 2024, under Sections 64(1), 137(2) B.N.S. and Section 3/4 POCSO Act, 2012, Police Station Binauli, District Baghpat, during the pendency of trial.
4. As per prosecution story, the applicant is stated to have enticed away the daughter of the informant, aged about 18 years, on 19.11.2024.

5. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case. The FIR is delayed by about one day and there is no explanation of the said delay caused. The victim was recovered the next day and she has allayed the allegation of gang-rape against the applicant and co-accused person. The said allegations are false, which stand substantiated from the CCTV footage, whereby she is stated to have called the applicant at Old Delhi Railway Station and had waived hands towards him. Learned counsel has further stated that the victim by her looks seems to be major, although as per ossification test report, her age has come out to be between 18-19 years.

6. 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. There is no criminal history of the applicant. The applicant is languishing in jail since 06.01.2025 and he is ready to cooperate with trial. In case, the applicant is released on bail, he will not misuse the liberty of bail.

7. Learned counsel for the informant and learned A.G.A. have vehemently opposed the bail application on the ground that as per school certificate, the date of birth of the victim was 18.08.2007, as such, she was less than her age of majority and her consent, if any, cannot be taken into consideration. The victim has categorically stated that she was gang-raped by the applicant and co-accused person and she was rendered unconscious by putting handkerchief on her nose.

8. The allegations of applicant having rendered her unconscious by putting clothes on her face cannot be relied in the light of observations in Modi's Medical Jurisprudence & Toxicology, Twenty-Second Edition (Student Edition) at page 511, which is being reproduced as under:

?????? Concerning the administration of an anaesthetic drug, such as chloroform, it must be remembered that it is impossible to anaesthetise a woman against her will while she is awake. Even a skilled anaesthetist requires the help of one or two assistants to hold a patient forcibly down on the operating table during the first stage of anaesthesia, although the patient voluntarily inhales it for an operation. It is also impossible for an inexperienced man to anaesthetise a sleeping person without disturbance, so as to substitute artificial sleep for natural sleep. Hence the story often published in the lay press of a woman having been rendered suddenly unconscious by a handkerchief soaked in chloroform held over her face and then raped is not to be believed. It must be borne in mind that a woman, especially of an excitable and emotional temperament, during the stage of anaesthesia, might get a dream or hallucination that she has been raped, and may insist on the belief after the effects of anaesthesia have passed off, so that she brings an accusation of violation against her medical attendant. ?????

9. 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.

10. The Supreme Court in the case of Niranjana Singh and another vs. Prabhakar Rajaram Kharote and Others, AIR 1980 SC 785 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.

11. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, and taking into consideration the settled law of the Supreme Court passed in Satender Kumar Antil vs. Central Bureau of Investigation and Ors., 2022 INSC 690 and Manish Sisodia vs. Directorate of Enforcement, 2024 INSC 595 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.

12. Let the applicant- Tahseem Khan, 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./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.

13. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

14. 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 :- 3.3.2025 (Ravi Kant) (Justice Krishan Pahal)