

# Satyaprakash 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:28133

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39880 of 2024

Applicant :- Satyaprakash

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

Counsel for Applicant :- Abhilasha Singh,Irshad Ahmad,Rahul Yadav

Counsel for Opposite Party :- G.A.,Harishchandra Yadav,Prateek Dwivedi

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Irshad Ahmad and Ms. Abhilasha Singh, learned counsel for the applicant and Sri Aryan Mishra holding brief of Sri Prateek Dwivedi learned counsel for the informant as well as Sri Deepak Kumar Singh, learned A.G.A. for the State and perused the material available on record.
3. Applicant seeks bail in Case Crime No. 128 of 2024, under Sections 137(2), 87, 64(1) of B.N.S. and Sections 3/4 of POCSO Act, Police Station - Kailadevi, District - Sambhal, during the pendency of trial.

**PROSECUTION STORY:**

4. The applicant is stated to have enticed away the daughter of the informant aged about 16 years 6 months on 26.08.2024 at about 05:00 pm. **ARGUMENTS ON BEHALF OF APPLICANT:**

5. The applicant has been falsely implicated in the present case due to ulterior motive. He has nothing to do with the said offence as alleged in the FIR.

6. The FIR is delayed by about two days and there is no explanation of the said delay caused.

7. The FIR does not whisper a single word about rape rather the allegations of rape have been added subsequently.

8. The statement of the victim was recorded under Section 183 B.N.S.S., whereby she has gone to agricultural field on being called by the applicant and she was ravished there. The said statement has been made as an after thought after legal consultation.

9. There is no medical corroboration as the medical report indicates that the LMP was started on 28.08.2024 and her medical examination was conducted on 02.09.2024. It was very much possible that the bleeding observed by the doctor was because of the LMP, as there is no injury observed by the doctor on the vital part of the victim.

10. There is no injury on the external parts of the victim either.

11. The victim by her physical appearance seems to be major, although, by her own statement she was 16 years and 6 months old. The consent of the victim can be drawn from the fact that she had gone to meet the applicant in the agricultural field at his calling.

12. 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.

13. The applicant is languishing in jail since 29.08.2024, having no criminal history to his credit, deserves to be released on bail. In case, the applicant is released on bail, he will not misuse the liberty of bail and shall cooperate with trial.

**ARGUMENTS ON BEHALF OF INFORMANT/ STATE:**

14. Learned counsel for the informant has opposed the bail application and placed reliance on the judgments passed by the Supreme Court :

1. In Madan Gopal Kakkad Vs. Naval Dubey (1992) 3 SCC 204, it has been held as under:

"Thus to constitute the offence of rape, it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pedenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of the law. It is, therefore, quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains."

2. In Radha Krishna Nagesh Vs. State of Andhra Pradesh (2013) 11 SCC 688, Hon'ble Supreme Court held as under:

"The mere fact that the hymen was intact and there was no actual wound of her private parts is not conclusive of the fact that she was not subjected to rape. According to PW-9, there was a definite indication of attempt to rape the girl. Also, later semen of human origin was traceable in the private parts of the girl, as indicated by the FSL report. This would sufficiently indicate that she had been subjected to rape. Penetration itself proves the offence of rape, but contrary is not true, i.e. even if there is no penetration, it does not necessarily mean that there is no rape.

3. Modi in his book Modi Textbook of Medical Jurisprudence and Toxicology, 23rd Edition, at page 897, opined thus:

"To constitute the offence of rape, it is not necessary that there should be complete penetration of the penis with the emission of semen and the rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda with or without the emission of semen, or even an attempt at penetration is quite sufficient for the purpose of law. It is, therefore, quite possible to commit legally, the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case the Medical Officer should mention the negative facts in his report, but should not given his opinion that no rape had been committed. "

At page 928: In small children, the hymen is not usually ruptured, but may become red and congested along with the inflammation and bruising of the labia. If considerable violence is used, there is often laceration of the fourchette and the perineum.

4. In Parikh's Textbook of Medical Jurisprudence and Toxicology, the following passage is found:

"Sexual intercourse: In Law, this term is held to mean the slightest degree of penetration of the vulva by the penis with or without emission of semen. It is, therefore, quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains."

5. State Of Himachal Pradesh vs Asha Ram, 2006 Cri.L.J. 139 was a case in which High Court of Himachal Pradesh has acquitted the accused Asha Ram on the ground that no spermatozoa were found on the Salwar and underwear of the prosecutrix though according to the prosecution,

complete act of sexual intercourse was committed. Further no evidence has come on record to show that hymen was ruptured. The medical evidence coming on record, as discussed above, is highly unreliable and even otherwise it does not establish that the victim was subjected to sexual intercourse. Hon'ble Supreme while setting aside the judgement of the High Court, has held as under:

"We record our displeasure and dismay, the way the High Court dealt casually with the offence so grave, as in the case at hand, overlooking the alarming and shocking increase of sexual assault on the minor girls. The High Court was swayed by sheer insensitivity totally oblivious of growing menace of sex violence against the minors much less by the father. The High Court also totally overlooked the prosecution evidence, which inspired confidence and merited acceptance. It is now well settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also well settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case."

6. In the case of *Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat*, AIR 1983 SC 753, Hon'ble Supreme Court held thus:

In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion ? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyze the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opiated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focussed on the Indian horizon. We must not be swept off the feet by the approach made in the Western World which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the Western World. It is wholly unnecessary to import the said concept on a turn-key basis and to transplate it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the

Indian Society and its profile."

7. Hon'ble Supreme Court in State of A.P. Vs. Bodem Sundara Rao, 1995 (6) SCC 230 has cautioned the Courts while dealing with the cases of sexual crime against women in the following words:

"Sexual violence apart from being a dehumanizing act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self esteem and dignity. It degrades and humiliates the victim and where the victim is a helpless innocent child, it leaves behind a traumatic experience. The Courts are, therefore, expected to deal with the cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely."

15. It has been further stated that it is true that victim was the consenting party with the applicant earlier on but on the date of incident, she had not consented, as such, the applicant is not entitled for bail. The girl cannot be taken for granted if she is not consenting.

#### CONCLUSION:

16. 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.

17. 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 reiterated by the Supreme Court in Satender Kumar Antil Vs. Central Bureau of Investigation and Ors., 2022 INSC 690.

18. Reiterating the aforesaid view, the Supreme Court in the case of Manish Sisodia Vs. Directorate of Enforcement, 2024 INSC 595, has again emphasized 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".

19. Learned AGA could not bring forth any exceptional circumstances which would warrant denial of bail to the applicant.

20. 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 AGA.

21. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, pending trial and considering the complicity of accused, severity

of punishment, taking into consideration the fact that there is no medical corroboration of the incident and the FIR does not mention the allegations of rape coupled by the fact that the FIR is itself delayed by about two days, at this stage, 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.

22. Let the applicant- Satyaprakash, 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 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.

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

24. 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 Priya (Justice Krishan Pahal)