

Fahim Ali vs State Of U.P. And 3 Others on 4 February, 2025

Author: Krishan Pahal

Bench: Krishan Pahal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:15574

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45820 of 2024

Applicant :- Fahim Ali

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

Counsel for Applicant :- Amit Rana

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised. As informed by learned State Law Officer, notice has been served to the informant on 10.12.2024.
2. Heard learned counsel for the applicant as well as Sri J.K. Chaurasia, learned State Law Officer and perused the material placed on record.
3. Applicant seeks bail in Case Crime No. 456 of 2024, U/S 69, 351(2) BNS and 5L/6 POCSO Act, Police Station Khoda, District Ghaziabad, during the pendency of trial.
4. As per prosecution story, the applicant is stated to have established corporeal relationship with the victim on the false promise of marriage and had subsequently refused to comply with the said betrothal.
5. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. It is stated that he has nothing to do with the said offence. It is a clear cut case of false

implication. There is no medical corroboration of the allegations made in the FIR

6. It is further stated that FIR is delayed by about 35 days from the date of incident of rape and there is no explanation of the said delay caused.

7. It is further stated that the victim, by her looks, seems to be major, although she has stated her age to be 16 years consistently in all her statements. In Class 6th transfer certificate, her date of birth is 17.7.2007, as such, her age comes out to be 16 years 8 months and 20 days. The said TC is not admissible u/s Section 94 of The Juvenile Justice (Care and Protection of Children) Act, 2015.

8. 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.

9. There is no criminal history of the applicant. The applicant is languishing in jail since 13.8.2024. In case, the applicant is released on bail, he will not misuse the liberty of bail.

10. The applicant has a criminal history of one case, which stands explained.

11. Learned State Law Officer has vehemently opposed the bail application but has not disputed the aforesaid submissions of learned counsel for the applicant.

12. In the case of Prabhakar Tewari Vs. State of U.P. and another, (2020) 11 SCC 648, the Supreme Court has observed that pendency of several criminal cases against an accused by itself cannot be a basis for refusal of bail.

13. 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.

14. 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.

15. 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.

16. 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?.

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

18. 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.

19. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, 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.

20. Let the applicant- Fahim Ali 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.

21. 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.

22. 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 :- 4.2.2025\Shalini (Justice Krishan Pahal)