

Ajay Kumar vs State Of U.P. Through Principal ... on 4 February, 2025

Author: Krishan Pahal

Bench: Krishan Pahal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:15771

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43807 of 2024

Applicant :- Ajay Kumar

Opposite Party :- State Of U.P. Through Principal Secratary Home Government Of U.P. At L

Counsel for Applicant :- Dwijendra Prasad

Counsel for Opposite Party :- Ajay Kumar Dwivedi,G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Dwijendra Prasad, learned counsel for the applicant and Sri Ajay Kumar Dwivedi, learned counsel for the informant as well as Sri Shyam Dhar Maurya, learned A.G.A. for the State and perused the record.
3. Applicant seeks bail in Case Crime No. 212 of 2024, under Sections 363, 366, 376 I.P.C. and Section 3/4 of the POCSO Act, Police Station Narkhi, District Firozabad, during the pendency of trial.

PROSECUTION STORY:

4. The applicant is stated to have enticed away the minor daughter of the informant in the night of 18.06.2024 at about 11 p.m. ARGUMENTS ON BEHALF OF APPLICANT :

5. The applicant has been falsely implicated in the present case and he has nothing to do with the said offence.

6. The victim is a consenting party as is but evident from her statement recorded under section 164 Cr.P.C. whereby she has stated that she had established corporeal relationship with the applicant out of her own sweet will and the said relationship continued for a period of two months.

7. The victim by her looks seems to be major, although as per school certificate of class-VIIIth, her date of birth is stated to be 13.06.2008, as such she was marginally more than 16 years old.

8. The said certificate is not admissible in the light of Section 94 of the Juvenile Justice (Care and Protection of Children) Act.

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 04.09.2024. The applicant 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 INFORMANT :

11. The bail application has been opposed on the ground that the victim was minor aged about 16 years at the time of offence.

CONCLUSION:

12. In light of the judgement of the Supreme Court passed in Niranjana 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.

13. In the case of P. Yuvaprakash vs State Rep. by Inspector of Police, AIR 2023 SC 3525, the Supreme Court has observed that in the absence of records relating to the birth of the victim, no other documents except the Matriculation or equivalent certificate from the concerned examination board or certificate by a corporation, municipal authority or a Panchayat can be relied upon to ascertain the age of the victim.

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 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".

17. Learned AGA 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 AGA.

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-Ajay Kumar 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 Sumit S (Justice Krishan Pahal)