

Arendra Kumar Alias Harendra 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:28702

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44941 of 2024

Applicant :- Arendra Kumar Alias Harendra

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

Counsel for Applicant :- Vivek Kumar Singh

Counsel for Opposite Party :- G.A.,Rajesh Maurya

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Vivek Kumar Singh, learned counsel for the applicant and Sri Pradeep Kumar holding brief of Sri Rajesh Maurya, learned counsel for the informant as well as Sri V.K.S. Parmar, learned A.G.A. for the State and perused the record.
3. Applicant seeks bail in Case Crime No. 264 of 2024, under Sections 137(2), 123, 64 of BNS and Section 3/4 of POCSO Act, Police Station Sarpataha, District Jaunpur, during the pendency of trial.

PROSECUTION STORY:

4. The applicant is stated to have rendered the victim unconscious by putting a handkerchief over the face of the victim soaked with some liquid on 12.09.2024 and had taken her to some secluded place and committed rape with her and subsequently left her near the school. The victim is stated to have been recovered on 14.09.2024 and the FIR was instituted the same day.

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 allegations that the applicant had put chemical soaked handkerchief rendering the victim unconscious stands falsified from the judgment of this Court titled as "Ravindra Singh Rathaur Vs. State of U.P." reported in 2024 AHC 117849, paragraph no.13 of which is quoted hereinbelow :-

"13. As far as the fact of rendering a person unconscious by putting a handkerchief on her face is concerned, in the Modi's Medical Jurisprudence & Toxicology, Twenty-Second Edition (Student Edition) at page 511, it is observed as:

"..... 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."

7. As such, the complete story is false.

8. There is no medical corroboration of the said incident.

9. The victim has stated that she was disrobed completely but there was no sign of any struggle by her.

10. As per High School Certificate, the age of the victim is stated to be 16 years, 8 months and 11 days only.

11. 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.

12. There is no criminal history of the applicant. The applicant is languishing in jail since 15.09.2024. 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 :

13. The bail application has been opposed but the submissions raised by the learned counsel for the applicant could not be disputed.

CONCLUSION:

14. 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.

15. The Supreme Court in the case of Sushil Kumar vs. Rakesh Kumar, (2003) 8 SCC 673, has opined that it is more often in the Indian Society that person shows the age of their wards much below than their actual age. In the case of Brij Mohan Singh Vs. Priya Brat Narain Sinha, AIR 1965 SC 282, this Court, inter alia, observed that in actual life it often happens that persons give false age of the boy at the time of his admission to a school so that later in life he would have an advantage when seeking public service for which a minimum age for eligibility is often prescribed.

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 recapitulated 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 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".

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/State Law Officer.

21. 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.

22. Let the applicant- Arendra Kumar Alias Harendra 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.

23. 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.

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 Sumit S (Justice Krishan Pahal)