

# Vimal vs State Of U.P. And 3 Others on 2 January, 2025

**Author: Krishan Pahal**

**Bench: Krishan Pahal**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:172

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41874 of 2023

Applicant :- Vimal

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

Counsel for Applicant :- Bhawesh Pratap Singh,Gaurav Srivastav,Rajesh Kumar Srivastava,U

Counsel for Opposite Party :- Arun Kumar Vishvakarma,G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.

2. Heard Sri Rajesh Kumar Srivastava, learned counsel for the applicant and Sri Arun Kumar Vishvakarma, 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. 620 of 2022, under Sections 363, 366, 376, 506 of I.P.C. and Sections 3/4 of POCSO Act, Police Station - Shahganj, District - Agra, during the pendency of trial.

**PROSECUTION STORY:**

4. The applicant is stated to have enticed away the minor daughter of the informant aged about 17 years on 07.12.2022 at about 03:00 p.m. 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 five days and there is no explanation of the said delay caused.

7. The victim by her looks seems to be major and as per her COVID-19 vaccination certificate, victim was aged about 20 years on 01.01.2022, as such, the allegations are per se false.

8. There is no medical corroboration of the allegations made in the FIR as she has refused for her internal medical examination.

9. Victim seems to be a consenting party as is but evident from the fact that she had gone with the applicant in an auto to Fatehabad from Agra and has not raised any alarm whatsoever during the said sojourn.

10. 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.

11. The applicant is languishing in jail since 15.12.2022, 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:

12. The bail application has been opposed on the ground that as per her Junior High School Age certificate her date of birth was 06.08.2008, as such, her age comes out to be 14 years 4 months and 8 days.

#### CONCLUSION:

13. The said document i.e. Junior High School Age certificate of the victim cannot be taken into consideration in view of the judgement of Supreme Court passed in P. Yuvaprakash vs State Rep. by Inspector of Police, AIR 2023 SC 3525, whereby it 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 reiterated 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 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, pending trial and considering the complicity of accused, severity of punishment, 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.

20. Let the applicant- Vimal, 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. 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.

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 :- 2.1.2025 Priya (Justice Krishan Pahal)