

Siddharth Dwivedi vs State Of Up And 3 Others on 30 April, 2025

Author: Ajay Bhanot

Bench: Ajay Bhanot

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:67982

Court No. - 5

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6449 of 2024

Applicant :- Siddharth Dwivedi

Opposite Party :- State Of Up And 3 Others

Counsel for Applicant :- Avnish Chandra Tripathi, Qazi Wakil Ahmad, Rohit Shukla

Counsel for Opposite Party :- Babita Upadhyay, G.A.

Hon'ble Ajay Bhanot, J.

Matter is taken up in the revised call. This is the second bail application.

By means of this bail application the applicant has prayed to be enlarged on bail in Case Crime No.20 of 2023 (S.S.T. No.393 of 2023) at Police Station-Barra, District-Kanpur Nagar under Sections 376A, D IPC and Sections 5(Chha), 5(Tha) and 6 of the POCSO Act, 2012. The applicant is in jail since 07.12.2023.

The bail application of the applicant was rejected by the learned trial court on 21.12.2023.

The following arguments made by Shri Avnish Chandra Tripathi, learned counsel, Shri Rohit Shukla, learned counsel and Shri Mridul Shekhar Tripathi, learned counsel on behalf of the

applicant, which could not be satisfactorily refuted by Shri Shrawan Kumar Dubey, learned AGA as well as Ms. Babita Upadhyay, learned counsel on behalf of the victim as part of the free legal aid granted by the High Court Legal Services Committee upon recommendation of the Child Welfare Committee, from the record, entitle the applicant for grant of bail:

1. The victim was wrongly shown as a minor of 16 years in the F.I.R. only to falsely implicate the applicant under the stringent provisions of the POCSO Act and cause his imprisonment.
2. The age of the victim set out in the prosecution case is refuted in light of the judgement of this Court in *Monish Vs. State of U.P. and others* (Criminal Misc. Bail Application No. 55026 of 2021) and on the following grounds:
 - (i) There are material contradictions in the age of the victim as recorded in various prosecution documents.
 - (ii) The age of the victim was incorrectly got registered in the school records by the victim's parents to give her an advantage in life. There is no lawful basis for the age related entry of the victim in the school records. The school records disclosing her age as 15 years are unreliable.
 - (iii) The victim in her statements under Sections 161 Cr.P.C. and 164 Cr.P.C., has stated that she is 15 years of age respectively.
 - (iv) Medico-legal examination (not the age determination test) records that the victim is 15 years of age.
 - (v) No medical examination to determine the correct age of the victim as per the latest scientific criteria and medical protocol by eminent doctors from a reputed institution was got done by the prosecution as it would establish the majority of the victim and falsify the prosecution case. The victim is in fact a major.
3. The applicant is a law abiding citizen who cooperated with the police investigations and had joined the trial. The applicant never influenced witnesses or tampered with the evidence.
4. The applicant never adopted any dilatory tactics or impeded the process of the trial.
5. The trial has moved at an inordinately slow pace. The applicant is not responsible for the delay in the trial.
6. The status report sent by the trial court records that the prosecution proposes to examine 11 witnesses to bring home the charges. 6 witnesses have been examined till date.

7. Material witnesses including the victim and the first informant have been testified before the learned trial court. There is no possibility of the applicant influencing the said witnesses.

8. Continued imprisonment of the applicant will disable him from crafting an effective defence strategy, gathering evidence in his support thereof and tendering the same before the learned trial court to absolve himself of the charges. Denial of an opportunity to the applicant to collect and adduce the evidence before the learned trial court will be contrary to the norms of processual fairness in criminal jurisprudence.

9. This Court in Prabhat Gangwar v. State of U.P. (Criminal Misc. Bail Application No.2586 of 2023) while considering the grant of enlarging an accused on bail for preparing his defence and gathering evidence to tender the same before the learned trial court for establishing his innocence held:

"Nature and gravity of the offence is certainly liable to be considered by the court while considering grant of bail. The Court has also to factor the likelihood of whether the accused committed the offence while deciding a bail application. The court also has to determine in the facts of the case whether the accused needs to be set at liberty to frame his defence and gather evidence to refute the prosecution case and establish his innocence. The bail court has to examine whether continued incarceration would disable the accused from tendering an effective defence of his case. This is a demand of processual fairness in criminal jurisprudence.

Setting an accused at liberty at large on this ground cannot be applied mechanically in all cases. The issue has to be considered in the facts and circumstances of each case while doing so. All relevant facts including the evidences in the record, the conduct of the accused during the investigation as well as trial have to be adverted to before a decision is made in this regard."

10. Considering the aforesaid parameters in light of the above facts of this case, I am of the opinion that Prabhat Gangwar (supra) is applicable to the facts of this case.

11. The applicant has no criminal history apart from the instant case.

12. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to join the trial proceedings. There is no possibility of the applicant influencing witnesses, tampering with the evidence or reoffending.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant-Siddharth Dwivedi be released on bail in the aforesaid case crime number, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

The learned trial court is directed to fix the sureties after due application of mind in light of the judgement rendered by this Court in Arvind Singh v. State of U.P. Thru. Prin. Secy. Home Deptt. (Application U/S 482 No.2613 of 2023).

The learned trial court shall ensure that the right of bail of the applicant granted by this Court is not frustrated by arbitrary demands of sureties or onerous conditions which are unrelated to the socioeconomic status of the applicant.

In case the applicant does not cooperate in the process of trial or adopts dilatory tactics or threatens witnesses or violates any bail condition, the learned trial court shall record its finding to that effect and cancel the bail of the applicant without recourse to this Court.

Order Date :- 30.4.2025 Ashish Tripathi