

Azam vs State Of U.P. And 3 Others on 1 April, 2025

Author: Krishan Pahal

Bench: Krishan Pahal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:44559

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5549 of 2025

Applicant :- Azam

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

Counsel for Applicant :- Mukesh Joshi

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Mukesh Joshi, learned counsel for the applicant and Sri R.P. Patel, learned State Law Officer and perused the record.
3. As informed by learned State Law Officer, notice to the informant has been served on 04.02.2025 but none is present on behalf of the informant even in the revised call.
4. Applicant seeks bail in Case Crime No. 264 of 2024, under Sections 332(3), 64(1) of BNS and Section 3/4 of POCSO Act, Police Station Chhajlait, District Moradabad, during the pendency of trial.

PROSECUTION STORY:

5. The applicant is stated to have barged into the house of the informant in the night of 11.12.2024 at about 11 p.m. and had committed rape with her daughter aged about 17 years.

ARGUMENTS ON BEHALF OF APPLICANT :

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

7. The FIR is delayed by about one day and there is no explanation of the said delay caused.

8. The victim seems to be a consenting party as she has stated that she was disrobed completely by the applicant and raped by him.

9. The victim has stated that on her raising of alarm, family members had reached there.

10. She has next stated that she wants to marry the applicant as it was him who had defiled her.

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

12. 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.

13. There is no criminal history of the applicant. The applicant is languishing in jail since 15.12.2024. 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 STATE :

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

CONCLUSION:

15. 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.

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 State Law Officer 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 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-Azam 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 :- 1.4.2025/Sumit S (Justice Krishan Pahal)