

Atul vs State Of U.P. And 3 Others on 4 February, 2025

Author: Krishan Pahal

Bench: Krishan Pahal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:15223

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43382 of 2024

Applicant :- Atul

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

Counsel for Applicant :- Mukesh Joshi

Counsel for Opposite Party :- Fatma Anjum,G.A.,Zaheer Asghar

Hon'ble Krishan Pahal,J.

1. List has been revised.

2. Heard Sri Mukesh Joshi, learned counsel for the applicant and Sri Zaheer Asghar, learned counsel for the informant as well as Sri Sushil Kumar Shukla, learned State Law Officer for the State and perused the record.

3. Applicant seeks bail in Case Crime No. 761 of 2024, under Sections 65(1), 351(2), 352, 115(2), 127(7) B.N.S. and 3/4(2) POCSO Act, Police Station- Civil Lines, District- Moradabad, during the pendency of trial.

PROSECUTION STORY:

4. The applicant is stated to have established corporeal relationship with the victim after marrying her by converting her to his own religion and is stated to have even video recorded the said indecent act and had threatened her to make it viral on social media.

ARGUMENTS ON BEHALF OF APPLICANT:

5. The applicant is absolutely innocent and has been falsely implicated in the present case.

6. The applicant has nothing to do with the said offence. The applicant and victim had married each other in a temple and the said fact stands fortified from the statement of the victim recorded at the time of her medical examination.

7. The date of birth of the victim is stated to be 1.1.2009, which is false. The victim by her looks seems to be major, although as per her own statement her age comes out to be 15 years, 07 months and 24 days on the date of incident. The applicant himself is a youth of 24 years.

8. A petition U/s 9 of Hindu Marriage Act was filed by the applicant as the husband and wife duo had fallen apart. The said suit no.708 of 2024 is pending before the Principal Judge, Family Court, Moradabad, which has been filed as Annexure-12 to the affidavit filed with bail application.

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 7.9.2024 and 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/OPPOSITE PARTY:

11. The bail application has been opposed on the ground that victim was minor and she has been forcibly converted to the religion of the applicant, as such, the anticipatory bail applications of other co-accused persons have been rejected by the Co-ordinate Bench of this Court.

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. 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.

14. 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.

15. 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?.

16. Learned State Law Officer could not bring forth any exceptional circumstances which would warrant denial of bail to the applicant.

17. 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.

18. 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.

19. Let the applicant- Atul 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.

20. 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.

21. 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 Vikas (Justice Krishan Pahal)