

Upendra Saharia 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:15866

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2525 of 2025

Applicant :- Upendra Saharia

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

Counsel for Applicant :- Ranjeet Singh

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Learned State Law Officer has stated that notice to the informant has been served on 21.1.2025.
3. Heard Sri Ranjeet Singh, learned counsel for the applicant as well as Sri R.P. Patel, learned State Law Officer for the State and perused the record.
4. Applicant seeks bail in Case Crime No.106 of 2024, under Sections 363, 366, 376 I.P.C. and 3/4 POCSO Act, Police Station- Raksa, District- Jhansi, during the pendency of trial.

PROSECUTION STORY:

5. The applicant is stated to have enticed away the minor daughter of the informant aged about 15 years on 6.5.2024 at about 08:00 p.m. ARGUMENTS ON BEHALF OF APPLICANT:

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

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

8. The victim by her looks seems to be major and as per the ossification test report her age comes out to be between 16-18 years.

9. The victim is a consenting party as is but evident from her statement recorded U/s 164 Cr.P.C., whereby she has stated that she had gone with the applicant all the way to Orchha and therefrom Mathura and stayed in a thatched house behind a temple.

10. There is no medical corroboration of the prosecution story.

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 1.6.2024 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:

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 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.

16. 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.

17. 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?.

18. Learned AGA could not bring forth any exceptional circumstances which would warrant denial of bail to the applicant.

19. 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.

20. 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.

21. Let the applicant- Upendra Saharia 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.

22. 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.

23. 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)