

# Anshu Kesarwani vs State Of U.P. on 2 January, 2025

**Author: Krishan Pahal**

**Bench: Krishan Pahal**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:187

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46908 of 2024

Applicant :- Anshu Kesarwani

Opposite Party :- State of U.P.

Counsel for Applicant :- Raghuvansh Misra

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.

2. Heard Sri Raghuvansh Misra, learned counsel for the applicant and Sri V.P. Srivastava, learned Senior Counsel assisted by Sri Narendra Kumar, learned counsel for the informant as well as Sri Rajendra Prasad Singh, learned State Law Officer and perused the record.

3. Applicant seeks bail in Case Crime No. 20 of 2024, under Sections 498A, 304B I.P.C. and Section 3/4 of D.P. Act, Police Station Mutthiganj, District Prayagraj, during the pendency of trial.

**PROSECUTION STORY:**

4. The FIR was instituted alleging that the in-laws of the daughter of the informant used to subject her to cruelty after her marriage which was solemnized on 13.02.2023 for a demand of dowry of Rs.20 lacs for business and a house, as such had forced her to commit suicide within the precincts of the house of the applicant at the second floor on 18.03.2024. The applicant and other family members are stated to have set their own house on fire in an attempt to show it to be the cause of accidental death.

**ARGUMENTS ON BEHALF OF APPLICANT :**

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

6. The FIR is delayed as it was instituted in the morning on 19.03.2024 at 7:08 a.m. and the applicant is not named in the FIR.

7. The named accused persons are the family members of the applicant i.e. his father, mother, sisters, and brother-in-law, as such the applicant has nothing to do with the said offence.

8. The name of the applicant is absent even in the statement of the informant which was recorded under section 161 Cr.P.C. but subsequently in the supplementary statement of the victim recorded on 06.05.2024 by the Investigating Officer, name of the applicant has come up which is an afterthought and the same has been recorded after a delay of about one and half months.

9. Subsequent to the instant FIR, another FIR was instituted by the applicant whereby two persons of the family of the applicant were put to death by the informant herein and other members of the locality by setting the house on fire.

10. The instant FIR is a cover up to the said allegations made in the FIR No.21 of 2024.

11. The cause of death has been found to be Asphyxia as a result of ante mortem hanging.

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 15.05.2024. 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 INFORMANT :**

14. The bail application has been opposed on the ground that it is true that applicant is not named in the FIR but the collusion of the police is but evident from the fact that the FIR mentions the word "Poora Parivar" which covers the applicant also as he is the member of the very same family.

15. Learned Senior counsel has further stated that after thorough investigation, the Final Report (charge sheet) has been submitted against the applicant only and other family members have been exonerated.

#### CONCLUSION:

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, and taking into consideration that the applicant is not named in the FIR and his name has come up in the supplementary statement of the informant subsequently and there being an FIR instituted from the side of the applicant against the informant and other members 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-Anshu Kesarwani 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. 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 :- 2.1.2025 Sumit S (Justice Krishan Pahal)