

# Sarvesh Kumar vs State Of U.P. And 3 Others on 18 March, 2025

**Author: Krishan Pahal**

**Bench: Krishan Pahal**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:38414

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45150 of 2024

Applicant :- Sarvesh Kumar

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

Counsel for Applicant :- Abhishek Pal

Counsel for Opposite Party :- Dhirendra Kumar Verma,G.A.,Renu Swarnkar

Hon'ble Krishan Pahal,J.

1. List has been revised. Learned counsel for the informant is not present.
2. Affidavit of compliance filed by learned A.G.A. is taken on record.
3. Heard Ms. Antima Rajbhar, Advocate holding brief of Sri Abhishek Pal, learned counsel for the applicant, Sri Ram Mohit Yadav, learned A.G.A. for the State and perused the material placed on record.
4. Applicant seeks bail in Case Crime No.349 of 2024, under Sections 70(2), 351(1) B.N.S. and 5G/6 POCSO Act, Police Station- Mahrajganj, District- Azamgarh, during the pendency of trial.
5. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case. The FIR is delayed by about four hours and there is no explanation of the said delay caused. The applicant has not been nominated to have raped the victim

in the FIR or in the statement of the victim recorded U/s 180 B.N.S.S. Subsequently, the name of the applicant has come up in the statement of the victim recorded U/s 183 B.N.S.S., which has been taken after they were identified by the eye-witness, who happens to be uncle of the victim. There is no test identification parade conducted as per Section 7 of Bharatiya Sakshya Adhiniyam. It is a clear cut case of false implication.

6. 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. There is no criminal antecedent of the applicant. The applicant is languishing in jail since 4.9.2024 and he is ready to cooperate with trial. In case, the applicant is released on bail, he will not misuse the liberty of bail.

7. Learned A.G.A. has vehemently opposed the bail application.

8. 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.

9. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, and taking into consideration the settled law of the Supreme Court passed in Satender Kumar Antil vs. Central Bureau of Investigation and Ors., 2022 INSC 690 and Manish Sisodia vs. Directorate of Enforcement, 2024 INSC 595 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.

10. Let the applicant- Sarvesh Kumar, who is involved in aforementioned case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(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.

11. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

12. 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 :- 18.3.2025/ Vikas (Justice Krishan Pahal)