

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48033 of 2023

Applicant :- Pooran @ Pooraniya

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

Counsel for Applicant :- Devendra Kumar Patel, Sandeep Pandey

Counsel for Opposite Party :- G.A., Vikash Kumar

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Devendra Kumar Patel, learned counsel for applicant, Sri Vikash Kumar, learned counsel for the informant and Sri Durvijay Singh, learned Additional Advocate General assisted by Sri Sunil Kumar, learned A.G.A. for the State.
3. The present bail application has been filed by the applicant in Case Crime No.258 of 2023, under Sections 376AB IPC and 5m/6 POCSO Act, Police Station Kirawali, District Agra with the prayer to enlarge him on bail.
4. Learned counsel for the applicant has stated that he has been falsely implicated in the present case. The FIR is delayed by about two days and there is no explanation of the said delay caused. The prosecution story stands falsified from the fact that it is alleged the victim had gone to ease herself out while it is admitted by the victim herself that there was toilet in her house, as such, there was no occasion for her to go ease herself out that too in the agricultural field which is far away from the village.
5. Learned counsel for the applicant has further stated that the victim has not sustained any injury, whereas the place of occurrence is an agricultural field of Bajra crop. There are certain photographs of the place of occurrence annexed as Annexure-2 to the affidavit which indicates that the said crop was very much standing in the agricultural field.
6. It is further argued by learned counsel for the applicant that the age of the victim is disputed as there is a school certificate of Class-6th relied on by the prosecution which is undated and is hit by Section 94 of Juvenile Justice (Care and Protection of Children) Act. Learned counsel has placed much reliance on the judgment of the Supreme Court passed in the case of ***P. Yuvaprakash vs State Rep. by Inspector of Police, AIR 2023 SC 3525***, whereby the

Supreme Court has observed that in the absence of records relating to the birth of the victim, no other documents except the Matriculation or equivalent certificate from the concerned examination board or certificate by a corporation, municipal authority or a Panchayat can be relied upon to ascertain the age of the victim.

7. It is further submitted by learned counsel for the applicant that the fundamental rights of the applicant enshrined under Article 21 of the Constitution of India stand violated as he is languishing in jail since 20.9.2023, as such, he is incarcerated for about twenty months. There is no criminal antecedent of the applicant. He is ready to cooperate with trial. In case, the applicant is released on bail, he will not misuse the liberty of bail.

8. Per contra, learned counsel for the informant and learned A.G.A. have vehemently opposed the bail application on the ground that the trial is at its conclusive end and the victim has deposed against the applicant, as such, he is not entitled for bail.

9. This Court had called for the status of trial from the concerned trial court. As per the said status report dated 6.8.2025, prosecution evidence is complete after recording the statement of six prosecution witnesses and the statement of accused U/s 313 Cr.P.C. was recorded on 2.8.2025. On 5.8.2025, an application was moved by the counsel of the applicant for conducting ossification test of the victim and the same is pending disposal before the court concerned.

10. The Supreme Court in case of ***X vs. State of Rajasthan & Anr.*** reported in **2024 INSC 909**, has held that once the trial has commenced, it should be allowed to reach to its final conclusion, which may either result in conviction or acquittal of the accused. The bail should not be normally granted to the accused after the charge has been framed. It should also not be granted by looking into the discrepancies here or there in the deposition.

11. The Supreme Court in ***Ram Govind Upadhyay Vs Sudarshan Singh (2002) 3 SCC 598*** and ***Neeru Yadav Vs State of U.P. (2016) 15 SCC 422*** has categorically opined that the power to grant bail under Section 439 of CrPC, is of wide amplitude. The court is bestowed with considerable but not unfettered discretion, which calls for exercise in a judicious manner and not as a matter of course and not in whimsical manner.

12. In ***Gurcharan Singh v. State (Delhi Administration), (1978) 1***

SCC 118 it was held by the Supreme Court that the considerations in granting bail are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.

13. In ***State of U.P. v. Amarmani Tripathi (2005) 8 SCC 21*** it was opined by the Supreme Court that there is no strait jacket formula which can ever be prescribed as to what the relevant factors could be. However, certain important factors that are always considered, inter-alia, relate to prima facie involvement of the accused, nature and gravity of the charge, severity of the punishment, and the character, position and standing of the accused.

14. In ***Prahlad Singh Bhati vs. NCT of Delhi and Ors (2001) 4 SCC 280*** the Supreme Court was of the opinion that it has to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge.

15. In ***Mahipal v. Rajesh Kumar, (2020) 2 SCC 118 and Ms. Y versus State of Rajasthan and Anr 2022 SCC OnLine SC 458*** it was laid down by the Supreme Court that it is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the Judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the heart of this commitment.

16. In ***Manno Lal Jaiswal vs. The State of U.P. and others 2022 SCC OnLine SC 89*** the Supreme Court has observed "when the Accused were charged for the offences punishable under Section 149 of the Indian Penal Code also and when their presence has been established and it is stated that they were part of the unlawful assembly, the individual role and/or overt act by the individual Accused is not significant and/or relevant."

17. In ***Manoj Kumar Khokhar vs. State of Rajasthan, (2022) 3 SCC 501*** it was made clear that the Court deciding a bail application cannot completely divorce its decision from material aspects of the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the Court in support of the charge against the accused. The same view has been vent in ***Prasanta Kumar Sarkar vs. Ashis Chatterjee and Anr (2010)14 SCC 496***; ***Ishwarji Mali vs. State of Gujarat and another, 2022 SCC OnLine SC 55***; ***Mahipal vs. Rajesh Kumar, (2020) 2 SCC 118***; ***Manno Lal Jaiswal vs. The State of U.P. and others, 2022 SCC OnLine SC 89***; ***Ms. Y vs. State of Rajasthan and Anr 2022 SCC OnLine SC 458*** and ***Deepak Yadav vs. State of U.P. and Anr. (2022)8 SCC 559***.

18. After hearing learned counsel for the parties and taking into consideration the status of trial and the applicant being named in the FIR fact that FIR is prompt and the deceased had expired within the precincts of house of the applicant and the cause of death was asphyxia as a result of antemortem hanging, I do not find it a fit case for grant of bail to the applicant.

19. The bail application is found devoid of merits and is, accordingly, ***rejected***.

20. However, it is directed that the aforesaid case pending before the trial court be decided expeditiously in view of the principle as has been laid down in the recent judgments of the Supreme Court in the cases of ***Vinod Kumar vs. State of Punjab; 2015 (3) SCC 220*** and ***Hussain and Another vs. Union of India; (2017) 5 SCC 702***, if there is no legal impediment.

21. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 12.8.2025/ Vikas

(Justice Krishan Pahal)