



2026:AHC:207994

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 26316 of 2025

Javed Khan

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite
Party(s)

Counsel for Applicant(s) : Akhilendra Choubey, Shamasul Eslam
Counsel for Opposite Party(s) : G.A.

Court No. - 66

HON'BLE ARUN KUMAR SINGH DESHWAL, J.

1. No one appeared on behalf of the first informant despite service of notice by the police.
2. Heard Sri Shamasul Eslam, counsel for the applicant, Sri D.P.S. Chauhan, learned A.G.A. for the State and perused the record.
3. The instant bail application has been filed with a prayer to release the applicant on bail during trial in Case Crime No. 86 of 2023, under Sections, 363, 366A, 376(3), 506 I.P.C. and Section 5L/6 of POCSO Act, Police Station-Dubahara, District-Ballia.
4. This is second bail application. The first bail application i.e. Criminal Misc. Bail Application No.7776 of 2024 was rejected on 14.05.2024.
5. Contention of learned counsel for the applicant is that bare perusal of the statement of the victim recorded under Section 164 Cr.P.C., it is clear that the victim herself left the house and the applicant has not committed rape upon her. It is further submitted that despite issuance of the N.B.W., the victim and her mother did not turn up before the trial court to record their statement and till date only the first informant has been examined. It is further submitted that out of total 8 prosecution witnesses, only one witness has been examined so far, therefore, trial is not likely to be concluded in near future. It is also submitted that medical examination report of the victim does not show any mark of injury or any sign of sexual assault, therefore the case under the POCSO Act is not made out against the applicant. The

applicant is in jail since 03.06.2023. The applicant has no criminal history. In case the applicant is granted bail, he will not misuse the liberty of bail and would cooperate in the trial proceedings.

6. Per contra, learned A.G.A. has vehemently opposed the prayer for bail but could not dispute the aforesaid facts.

7. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties, and taking into account that the victim in her statement recorded under Section 164 Cr.P.C., wherein she denied that she was raped by the applicant; coupled with the fact that despite issuance of N.B.W., the victim and her mother did not appear before the trial court to record their statements; also taking into account that out of total 8 prosecution witnesses, only one witness has been examined so far and keeping in view the nature of offence, evidence, complicity of the accused and taking into account overcrowded jails and heavy pendency of criminal cases before the trial courts as well as considering the mandate of the judgement of the Apex Court in the case of **Kapil Wadhawan vs Central Bureau of Investigation reported in 2025 SCC OnLine SC 3038** and without expressing any opinion on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail. Accordingly, the bail application is **allowed**.

8. Let the applicant- **Javed Khan** involved in the aforementioned 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, with the following conditions:-

- i. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.
- ii. The applicant shall cooperate in the trial/investigation sincerely without seeking any adjournment.
- iii. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

iv. The applicant shall attend in accordance with the conditions of the bond executed by him.

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

10. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

11. It is made clear that the applicant shall be released on the basis of downloaded copy of this order from the official website of High Court Allahabad and verified by the concerned counsel with the undertaking that the certified copy will be filed within 15 days.

12. It is directed that the trial court shall send the release order to the concerned jail through Bail Order Management System (BOMS) to ensure early release of the applicant.

13. Office is directed to send a copy of this order to the applicant through concerned Jail Superintendent via e-mail or on e-prison portal and Trial Court via e-mode within 24 hours in compliance of the order of the Apex Court in the case of **Policy Strategy for Grant of Bail, In Re: Suo Motu Writ Petition (Crl.) No.4 of 2021** decided on 31.01.2023 reported in **(2024) 10 SCC 685** as well as **Pila Pahan @ Peela Pahan and others Vs. State of Jharkhand and another**, in **Writ Petition (Criminal) No. 169 of 2025**, decided on 29.05.2026.

(Arun Kumar Singh Deshwal,J.)

October 5, 2026

CS/-