

A.F.R.

Neutral Citation No. - 2025:AHC:92246

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 750 of 2025

Applicant :- Vijay Kumar @ Krishna

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

Counsel for Applicant :- Akhilesh Singh, Atul Kumar Shahi, Pankaj Singh, Shivam Yadav

Counsel for Opposite Party :- G.A., Sanjay Mishra

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Counter affidavits filed by learned A.G.A. as well as learned counsel for the informant respectively are taken on record.
3. Heard Sri Atul Kumar Shahi, learned counsel for the applicant and Sri Sanjay Mishra, learned counsel for the informant as well as Sri Sunil Kumar, learned A.G.A. for the State and perused the record.
4. Applicant seeks bail in Case Crime No.69 of 2021, under Sections 376, 323 I.P.C. and Section 3/4 POCSO Act, Police Station Kurra, District Mainpuri, during the pendency of trial.

PROSECUTION STORY:

5. The FIR was instituted by the informant/victim that she was 15 years old and had gone to ease herself out at about 7:30 p.m. on 24.03.2021, whereby she was caught hold off by the applicant alongwith one another unknown person and was beaten up and raped by him and thereupon ran away from the place of occurrence.

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 eighteen hours and there is no explanation of the said delay caused.
8. There is no medical corroboration of the incident as no injuries were found on the body of the victim.
9. The medical examination of the victim was conducted on 25.03.2021 at about 4:00 p.m. The vaginal swab and slides of the victim were prepared and were sent for forensic analysis.
10. The victim has reiterated the allegations made in the FIR, but has changed the time of offence to 8:00 p.m. She has also stated the time to be 8:00 p.m. in her statement recorded by the doctor conducting her medical examination.
11. The statement of the victim recorded under Section 164 is filled up with embellishments as she has introduced another name and developed story stating that she was threatened by the applicant and co-accused person.
12. At this stage, she has reverted back to the time of offence mentioned in FIR i.e. 7:30 p.m.
13. The victim has introduced two witnesses to the incident and has also stated that her medical examination was conducted after she had changed her clothes.
14. The supplementary report was prepared by the doctor conducting medical examination of the victim and according to it, no spermatozoa was detected in the smear, as such, no sexual violence was subjected to her.
15. The clothes of the victim were recovered by the Investigating Officer on 25.03.2021 itself and he did not observe any stains on the underwear and lower of the victim at the time they were sealed.
16. In the pathology report, no spermatozoa was detected in the vaginal smear of the victim.

17. The said forensic science laboratory report dated 27.04.2024 indicated as follows:-

(i) On underwear of the victim, human blood was found, but no spermatozoa was found.

(ii) On the lower of the victim, spermatozoa was found, but an anomalous and vague inference has been mentioned in it stating that either blood or spermatozoa was of human origin.

18. The said report is tainted one as it does not indicate the details of the procedure undertaken in testing the same.

19. The victim and her father had submitted an affidavit before the S.S.P., Mainpuri that the applicant had not committed any offence with her and she was major and her age was deliberately suppressed. She has further stated in the said application that the FIR was instituted at the directions of the villagers. The said affidavit has been filed as Annexure No.7 to the affidavit filed with the bail application.

20. The police after thorough investigation was pleased to file a closure report in the said case on 23.04.2021 and even a report was sent for proceeding under Section 182 Cr.P.C. against the victim/informant.

21. Subsequent to it, the victim and her father moved an application on C.M. Portal and filed a protest petition, as such, further investigation was taken up.

22. On 31.10.2023, blood sample of the applicant and co-accused person were collected. On 25.11.2023, the sample was sent for DNA test and on 04.03.2024, the DNA report was submitted in court.

23. The said DNA report categorically indicated that semen was found on the lower and underwear of the victim, which matched with that of the applicant, as such, the second statement of the victim under Section 161 Cr.P.C. was recorded and the applicant was arrested.

24. The said DNA sample was collected after 2.5 years of the incident i.e. on 25.11.2023. No proper procedure has been followed in the DNA profiling of the applicant and the clothes of the victim, which were lying idle for more than two years.

25. The two forensic laboratory reports are self contradictory. There is every possibility of tampering with evidence as even the sample for testing at the lab was sent after a delay of about 25 days.

26. The instant FIR is a counterblast to an incident that occurred on 24.03.2021 at about 7:45 p.m., whereby the applicant sustained two lacerated wounds and fracture on his right elbow and his medical examination was conducted the same day at 9:15 p.m. In the said case also, the final report (charge-sheet) was submitted against the family members of the victim, including her father, on 02.07.2021. As such, it is a clear-cut case of malicious prosecution.

27. There is no criminal history of the applicant. The applicant is languishing in jail since 16.11.2024 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/INFORMANT:

28. The FIR is prompt and as per high-school mark-sheet, the date of birth of the victim was 03.04.2005, as such, at the time of incident, she was 15 years, 11 months and 21 days old and was minor.

29. The police had collected undergarments of the victim on 20.03.2021 itself.

30. The closure report of the case was submitted by the Investigating Officer in a hurry i.e. within 25 days of the incident.

31. The father of the victim had filed a Writ Petition No.4858 of 2021 before this Court for fair investigation and the Court passed the order as follows on 03.08.2021:-

"Sri Sanjay Mishra, counsel for the petitioner and learned A.G.A. for the State-respondents.

This writ petition has been filed by the petitioner seeking direction to the police authorities to conduct fair and impartial investigation in respect of Case Crime No. 69 of 2021, under Sections 376 DA, 323 IPC & 3/4 The Protection of Children from Sexual Offences Act, 2012 (POCSO), Police Station Kurra, District Mainpuri.

According to the petitioner, on 25.03.2021, daughter of the petitioner has lodged a report against private respondent but till date nothing has been done by the police authorities. An apprehension has been shown by the petitioner that either the police is protecting the accused or is not interested to take any action against the private respondent.

In the writ petition, the petitioner has also prayed for transfer of investigation, however, during argument, he submits that purpose of filing this writ petition would be served, if direction be issued to the police authorities for fair and impartial investigation.

State counsel submits that the police authorities are under the obligation to do the investigation fairly, impartially and expeditiously and the same would be done in accordance with law.

The present petition is disposed of directing the police authorities to conclude the investigation of the said case fairly, impartially and expeditiously, preferably within 45 days from the date of production of a copy of this order before them.

It is made clear that this Court has not expressed any opinion on the merits of the case and the competent authority to act in accordance with law.

....."

32. In compliance of the said order of this Court, an application was moved by the police before the C.J.M., Mainpuri for DNA test of the applicant.

33. The Chief Medical Superintendent, Mainpuri constituted a panel for DNA profiling of the applicant.

34. The affidavit filed before the S.S.P., Mainpuri is fake. It was not filed by the victim. After getting knowledge of the fake affidavit given to the S.S.P., Mainpuri, the victim moved an application before the S.S.P., Mainpuri and denied the said compromise between the parties.

35. The father of the informant also filed Criminal Misc. Writ Petition No.14064 of 2023 before this Court, which was dismissed.

36. The victim again filed Criminal Misc. Writ Petition No.19095 of 2024, whereby this Court directed the Investigating Officer to undertake fair investigation expeditiously in the case vide its' order dated 19.11.2024.

37. The most pertinent point is that the co-accused person Chandra Shekhar was granted anticipatory bail by a Co-ordinate Bench of this Court vide order dated 07.05.2025 on the basis of a DNA report dated 20.02.2024 on the ground that the said DNA report was found positive with respect to the applicant, as such, the applicant is not entitled for bail.

CONCLUSION:

38. *Evidentiary Value of the DNA Report:*

(I) A serious anomaly exists between the two forensic reports on record. The DNA report, which appears to support the prosecution's version of events, is rendered unreliable due to an undue and unexplained delay in forwarding the samples for forensic examination i.e. 25 days.

(ii) This delay raises significant concerns regarding the integrity and sanctity of the forensic material. In criminal jurisprudence, the chain of custody is a fundamental requirement to ensure that evidence remains untampered, uncontaminated, and authentic from the time of collection until its presentation in court. Any interruption, delay, or unexplained gap in this chain—particularly when not adequately accounted for—casts a serious shadow of doubt on the reliability of the evidence.

(iii) Given the lapse in timely dispatch and the possibility of tampering or contamination during the intervening period, the potential for manipulation cannot be ruled out. This undermines the probative value of the DNA report.

(iv) The Supreme Court in recent judgment passed in ***Prakash Nishad @ Kewat Zinak Nishad vs. State of Maharashtra***¹ has stated that the samples when collected should be sent to the laboratory without any delay, so that the possibility of contamination and the concomitant prospect of diminishment in value can be ruled out. It further noted:

"In the present case, the delay in sending the samples is unexplained and therefore, the possibility of contamination and the concomitant prospect of diminishment in value cannot be reasonably ruled out. On the need for expedition in ensuring that samples when collected are sent to the concerned laboratory as soon as possible, we may refer to "Guidelines for collection, storage and transportation of Crime Scene DNA samples For Investigating Officers-Central Forensic Science Laboratory Directorate Of Forensic Sciences Services Ministry Of Home Affairs, Govt. of India" which in particular reference to blood and semen, irrespective of its form, i.e. liquid or dry (crust/stain or spatter) records the sample so taken "Must be submitted in the laboratory without any delay."

(v) The aforesaid view has been expressed by the Supreme Court in its' latest judgement passed on 16.01.2025 in ***Irfan @ Bhayu Mevati & Anr. v. State of Madhya Pradesh***².

(vi) The same view has been vent by the Supreme Court in ***Anokhilal v. State of Madhya Pradesh***³, ***Rahul v. State of Delhi, Ministry of Home Affairs***⁴, ***Krishan Kumar Malik v. State of Haryana***⁵ and ***Pattu Rajan v. State of Tamil Nadu***⁶.

(vii) Thus the DNA report has to be treated with extreme caution, at the time of adjudication of bail, in the interest of justice and to uphold the principles of a fairness.

39. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, taking into consideration the delay in institution of FIR and there being two

1 AIR 2023 SC 2938

2 2025 INSC 150

3 (2019) 20 SCC 196

4 (2023) 1 SCC 83

5 (2011) 7 SCC 130

6 (2019) 4 SCC 771

contradictory forensic reports on record, there being delay in sending the DNA report for forensic analysis for matching it with clothes taken in possession more than two years ago, and also the fact that the medical examination report does not corroborate the prosecution story coupled with the fact that earlier on, in the instant case, closure report was filed by the Investigating Officer, 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**.

40. Let the applicant- **Vijay Kumar @ Krishna** 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 during trial.

(ii) The applicant shall not pressurise/intimidate with the prosecution witnesses.

(iii) The applicant shall appear before the trial court on the date fixed.

41. 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.

42. 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 :- 26.5.2025

Ravi Kant

(Justice Krishan Pahal)