

2. आवेदकगण अभियोजन साक्षियों व पीड़िता / शिकायतकर्ता को डरायेंगे/धमकायेंगे नहीं।

3. आवेदकगण न्यायालय के आदेशों का पालन करेंगे, वह परीक्षण के दौरान बिना कोई अनावश्यक स्थगन लिए नियत तिथि पर न्यायालय में उपस्थित होंगे तथा परीक्षण में ईमानदारी से सहयोग करेंगे।

4. आवेदकगण जमानत पर रिहा होने के बाद जमानत की स्वतंत्रता का दुरुपयोग नहीं करेंगे और किसी भी अपराधिक गतिविधि में लिप्त नहीं होंगे न कोई अपराधिक कृत्य करेंगे।

5. आवेदकगण प्रत्यक्ष या अप्रत्यक्ष रूप से मामले के तथ्यों से परिचित किसी भी व्यक्ति या पुलिस अधिकारियों को कोई प्रलोभन या धमकी नहीं देंगे न ही उनसे कोई वायदा करेंगे, जिसके कारण उन्हें न्यायालय में तथ्यों को उजागर करने से विरत रहना पड़े।

उपरोक्त शर्तों में से किसी के उल्लंघन के मामले में परीक्षण न्यायालय आवेदकगण की जमानत नियमानुसार रद्द करने को स्वतंत्र है।

(2025) 5 ILRA 66
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 05.05.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Misc. Bail Application No. 13228 of
2024

Jai Ram ...Applicant
Versus
State of U.P. & Ors. ...Opposite Parties

Counsel for the Applicant:
 Brijesh Kumar, Karunakar Srivastava

Counsel for the Opposite Party:
 G.A.

Criminal Law - Indian Penal Code, 1860 - Section 376 D.A - Protection of Children from Sexual Offences Act, 2012 - Section 5G/6 - On basis of F.I.R. lodged against five persons, including applicant alleged that while informant's sister was going to give food to her grandmother in other house, accused persons dragged her in sugarcane field and they raped her - When informant's mother and sister reached sugarcane field looking after victim, accused persons ran away, she was lying in unconscious condition - Victim (PW-2) supported prosecution in her examination-in-chief - She admitted that she did not see miscreants' faces as her eyes were closed, lost consciousness, regaining it on next day - Reiterated during cross-examination, not declared hostile - Bail granted to co-accused on factually incorrect submission cannot justify parity for applicant's release - Another co-accused granted bail as no allegation was made against him by prosecutrix in her St.ment recorded by trial court - Prosecutrix St.d about involvement of applicant in commission of offence, her mother saw him at spot of incident and when she reached there applicant ran away - Hence, ground on which co-accused granted bail is not applicable to applicant. (Para 3, 15, 22 to 24)

Application rejected. (E-13)

List of Cases cited:

Tarun Kumar Vs Enforcement Directorate: 2023
SCC OnLine SC 1486, (Para 19)

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Karunakar Srivastava, the learned counsel for the applicant, Sri Mohd. Asif Khan, learned Additional Government Advocate-I for the State and perused the records.

2. This is the second application seeking release of the applicant on bail in Case Crime No. 660 of 2022, under Sections 376 D.A. I.P.C. and Section 5G/6 of Protection of Children from Sexual Offences Act, 2012, registered at Police Station Mohammadi, District Lakhimpur Kheri.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 11.09.2022 against five persons, including the applicant stating that while the informant's sister aged about 15 years was going to give food to her grand mother in the other house. The accused persons dragged her in a sugarcane field at about 9.30 p.m. on 10.09.2022 and they raped her. When the informant's mother and sister reached the sugarcane field looking after the victim the accused persons ran away and the victim was found lying in the field in an unconscious condition.

4. In the statement of the victim recorded under Section 161 Cr.P.C. she stated that she had been dragged in dark in sugarcane field and she was raped while she was unconscious. Her eyes were closed as such she could not recognize the accused persons, she recognized them from their voices.

5. The statement of the victim's mother was also recorded and she stated

that she had gone to look after her daughter with her other daughter Vandana and she had seen the accused persons inside the sugarcane field. Upon seeing her coming, the accused persons ran away and she found her daughter lying unconscious in the sugarcane field.

6. The medico legal examination report of the victim mentions that vaginal bleeding was present and the victim had pain in genitals. Hymen of the victim was freshly torn and there were signs of use of forceful penetration of vaginal.

7. In the statement of the victim recorded under Section 164 Cr.P.C. she stated that all the accused persons had raped her due to which she had fallen unconscious. The victim was taken to the Community Health Centre, Mohammadi, from where she was referred to the District Hospital Lakhimpur Kheri. When her condition could not improve, she was referred to Lucknow, where she remained admitted till 13.09.2022.

8. A copy of the statement of the informant recorded by the trial court has been annexed with the bail application and he has fully supported the F.I.R. version. The victim has been examined as PW-2 and she has also supported the F.I.R. version in her examination-in-chief. However, in her cross-examination she stated that she could not see the culprits.

9. The victim's mother has also been examined by trial court as PW-3 and she has supported the prosecution case. Even in her cross-examination she has categorically stated that she had seen the applicant running away from the place of incident.

10. The learned counsel for the applicant has submitted that two co-

accused persons namely Nikhil and Vimal have already been enlarged on bail by coordinate Benches of this court by means of orders dated 28.08.2024 and 21.02.2025, passed in Criminal Misc. Bail Application Nos.5494 of 2024 and 11145 of 2024.

11. The first bail application of co-accused Vimal was rejected and the second application has been allowed on the ground that the victim has turned hostile.

12. The learned counsel for the applicant has submitted that the victim has stated in her cross-examination that she could not see the culprits, the applicant is entitled to be released on bail.

13. The learned Additional Government Advocate-I appearing on behalf of the State has opposed the prayer for bail and he has submitted that the offence committed by the applicant is heinous in nature and he is not entitled to be enlarged on bail by this court.

14. A perusal of the statements recorded by trial court indicates that the informant has supported the F.I.R. version and stated that when he reached the spot, her sister was lying unconscious in sugarcane field, her clothes were untidy and open. There was soil on her face and hair. She was taken in an unconscious condition and an ambulance was called and she was taken to Mohammadi Hospital, from where she was taken to District Hospital and on the next day she was referred to Lucknow.

15. The victim has been examined as PW-2 and she has supported the prosecution case in her examination-in-chief. However, in her cross-examination she stated that she could not see the faces of miscreants as her eyes were closed and thereafter she had fallen

unconscious and she regained her consciousness on the next day. During her cross-examination also the victim stated that she could not see the faces of miscreants. The victim has not been declared to be hostile.

16. The mother of the victim has been examined as PW-3 and she has supported the prosecution case. She stated that the victim did not come back home, she had gone to look for her along with her other daughter. She has categorically stated that she had seen Nikhil, Jairam (the applicant) and Pawan in the field in the torch light and they started running away after seeing her. The victim was lying unconscious there. She was bleeding from her vagina. They raised hue and cry whereupon her husband, son and several villagers reached there and they took the victim to home and thereafter she was taken to the hospital in an ambulance. The victim had told her in the hospital that Nikhil, Jairam (the applicant), Pawan, Vimal and Pushpendra had raped her. Even during her cross-examination the victim's mother stated that she had seen Vimal coming on the way. She had seen Jairam (the applicant), Pawan and Nikhil standing there. Although, she had not seen the applicant committing the misdeed, as soon as she reached near the place of occurrence Jairam, Nikhil and Pawan had ran away.

17. In response to another question the victim's mother reiterated that she had seen the applicant standing on the place of incident and thereafter running away when Jairam had seen her. She had identified the face of the applicant.

18. The victim's father has been examined by the trial court as PW-4 and he has also supported the prosecution case.

19. Thus, the submission of learned counsel for the applicant that the victim has turned hostile is not correct.

20. So far as the question of grant of bail to the applicant on the ground of parity is concerned, the co-accused Nikhil has been granted bail by a coordinate Bench of this court by means of an order dated 28.08.2024, passed in Criminal Misc. Bail Application No.5494 of 2024 considering the submission of the learned counsel for the applicant that the prosecutrix has not supported the prosecution story during trial. This court had accepted the submission by having faith on the statement made by the learned counsel for the applicant in that case and the Court had not verified its correctness. However, a perusal of the statement of the prosecutrix shows that she has fully supported the prosecution case. Even in her statement recorded under Section 161 Cr.P.C. and in her statement recorded under Section 164, the prosecutrix had stated that she had not seen the accused persons as her eyes were closed and she had identified the culprits from their voices. Therefore, it is apparent that order dated 28.08.2024 granting bail to the co-accused Nikhil has been passed on the basis of an incorrect factual submission made by the learned Counsel for the applicant in that case.

21. In **Tarun Kumar v. Enforcement Directorate: 2023 SCC OnLine SC 1486**, the Hon'ble Supreme Court held that: -

“19. It is axiomatic that the principle of parity is based on the guarantee of positive equality before law enshrined in Article 14 of the Constitution. However, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same

irregularity or illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision.”

22. In view of the aforesaid law laid down by the Hon'ble Supreme Court, the bail order passed in favour of co-accused Nikhil by accepting a factually wrong submission of the learned Counsel for the applicant, cannot be made a ground to claim release of the applicant on bail on the ground of parity.

23. Another co-accused Vimal has been granted bail by a coordinate Bench of this Court by means of an order dated 21.02.2025, passed in Criminal Misc. Bail Application No.11145 of 2024 on the ground that the prosecutrix has not levelled any allegation against the co-accused Vimal in her statement recorded by the trial court.

24. The prosecutrix has categorically stated about the involvement of the applicant in commission of offence. The mother of the prosecutrix has clearly stated that she had seen the applicant standing at the spot of incident and as soon as she reached there she had seen the applicant running away. Therefore, the reason mentioned in the order dated 21.02.2025 granting bail to co-accused Vimal is not available to the applicant.

25. Without making any observation which may affect the outcome of trial, I am of the considered view that the facts and

