

**Court No. - 9**

**Case :-** WRIT - C No. - 6782 of 2025

**Petitioner :-** Gohar And 2 Others

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Shiv Prakash

**Counsel for Respondent :-** C.S.C.

with

**Case :-** WRIT - C No. - 6739 of 2025

**Petitioner :-** Gohar And 2 Others

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Shiv Prakash

**Counsel for Respondent :-** C.S.C.

**Hon'ble Rohit Ranjan Agarwal,J.**

1. Both these writ petitions arise out of order passed by Additional District Magistrate on 10.05.2018 in Case No. 831 of 2017, under Section 51 of Food Safety and Standard Act as well as order dated 12.09.2024 passed by Food Safety Appellate Tribunal, Moradabad in Appeal No. 71 of 2018.

2. The allegations against the petitioners are serious as they have been charged for preparing adulterated milk to the tune of 4000 liters and they have been caught by Food Security Officer, Moradabad and his team while they were preparing the adulterated milk. Not only the adulterated milk of 4000 liters was recovered but also various materials were recovered from the site in question which were used in the preparation of adulterated milk. Against the order of Additional District Magistrate, an appeal was preferred which has also been rejected.

3. When the Writ Petition No. 6739 of 2025 was taken up, junior

colleague of Sri Shiv Prakash, Advocate, made a mention that his father had died and the matter be adjourned. The second Writ Petition No. 6782 of 2025 came up on 07.03.2025 and again a request was made on behalf of petitioners' counsel, Sri Shiv Prakash that matter may be adjourned as father of counsel for petitioner had died.

4. Looking to the gravity of the matter, an objection was raised by Sri Sanjai Singh, learned Additional Chief Standing Counsel that the matter may not be adjourned. On 07.03.2025, this Court had adjourned the matter and directed to list along with Writ Petition No. 6739 of 2024 for today.

5. It was brought to the notice of the Court by Additional Chief Standing Counsel that the U.P. Bar Council Registration No. of Sri Shiv Prakash is 8345 of 2013, and he is son of Late Shyam Lal Tiwari. The address registered with Bar Council is 5B/6, Dramund Road, Allahabad. The counsel had appeared in Criminal Misc. Bail Application No. 8056 of 2025 before the co-ordinate Bench, wherein his presence was recorded and bail order was passed, which is extracted hereasunder:-

*"1. List has been revised. As informed by learned A.G.A., notice has been served to the informant on 20.12.2024.*

*2. Heard learned counsel for the applicant as well as Sri Shiv Prakash, learned A.G.A. for the State and perused the material placed on record.*

*3. Applicant seeks bail in Case Crime No. 369 of 2024, U/S 137(2), 64(1) B.N.S. and 3/4 POCSO Act, Police Station Swar, District Rampur, during the pendency of trial.*

*4. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. It is stated that he has nothing to do with the said offence. The FIR is delayed by one day and there is no explanation of the said delay caused.*

*5. Learned counsel has further stated that the victim is the consenting party, as per her statement recorded u/s 183 B.N.S.S. and she has categorically stated that she has not been sexually assaulted by the applicant. Although, the victim is stated to be 14 years old as per the ossification test report, 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.*

*7. There is no criminal history of the applicant. The applicant is languishing in jail since 28.8.2024. In case, the applicant is released on bail, he will not misuse the liberty of bail.*

*8. Learned A.G.A. has vehemently opposed the bail application but has not disputed the fact that there is no criminal history of the applicant and the aforesaid submissions of learned counsel for the applicant.*

*9. 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.*

*10. The well-known principle of "Presumption of Innocence Unless Proven Guilty," gives rise to the concept of bail as a rule and imprisonment as an exception.*

*11. A person's right to life and liberty, guaranteed by Article 21 of the Indian Constitution, cannot be taken away simply because the person is accused of committing an offence until the guilt is established beyond a reasonable doubt. Article 21 of the Indian Constitution states that no one's life or personal liberty may be taken away unless the procedure established by law is followed, and the procedure must be just and reasonable. The said principle has been recapitulated by the Supreme Court in Satender Kumar Antil Vs. Central Bureau of Investigation and Ors., 2022 INSC 690.*

*12. Reiterating the aforesaid view the Supreme Court in the case of Manish Sisodia Vs. Directorate of Enforcement 2024 INSC 595 has again emphasized that the very well-settled principle of law that bail is not to be withheld as a punishment is not to be forgotten. It is high time that the Courts should recognize the principle that ?bail is a rule and jail is an exception?.*

*13. Learned AGA could not bring forth any exceptional circumstances which would warrant denial of bail to the applicant.*

*14. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA.*

*15. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, 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.*

*16. Let the applicant- Munav Alias Munaf 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.*

(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.*

*17. 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.*

*18. 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."*

6. Today, when the matter was taken up, Sri Laxmi Kant Bhatt, junior colleague of Sri Shiv Prakash, Advocate, again made statement that father of counsel for petitioners had died and the matter may be adjourned. The Court directed for presence of the counsel, who appeared after 10 minutes.

7. When Court confronted the counsel as to the health of his father, he said that before entering into the legal profession his father had passed away.

8. Sri Shiv Prakash, Advocate, had been deliberately avoiding the Court and getting the matter adjourned on the ground of death of his father. Had the fact not brought to the notice of the Court by learned Additional Chief Standing Counsel that his registration before U.P. Bar Council clearly reflects that he is son of Late Shyam Lal Tiwari, this Court was adjourning the matter on the false request made on his behalf. The counsel misconducted himself and had got false adjournment made, while he was appearing before co-ordinate Bench. The conduct of counsel is unbecoming of an advocate of this Court.

9. Let the matter be referred to U.P. Bar Council to take appropriate action after calling explanation from Sri Shiv Prakash

and proceed under the Advocates' Act, 1961, within a period of two months.

10. After hearing learned counsel for the parties and perusing the material on record, I find that looking to the gravity of the matter, no case for interference is made out in the orders impugned.

11. The writ petition fails and is hereby dismissed.

12. The order shall be communicated to U.P. Bar Council by Registrar (Compliance), within 48 hours.

**Order Date :- 12.3.2025**

V.S.Singh