

**Court No. - 64**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 6430 of 2025

**Applicant :-** Jagan @ Jaagan

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Ghan Shyam Das

**Counsel for Opposite Party :-** G.A.

**Hon'ble Samit Gopal,J.**

1. List revised.

2. Heard Sri Kamal Krishna, learned Senior Advocate assisted by Sri Ghan Shyam Das, learned counsel for the applicant, Sri Kavish Suhail, learned counsel for the first informant and Sri Birendra Pratap Singh, learned counsel for the State and perused the material on records.

3. This bail application under Section 483 of B.N.S.S., 2023 has been filed by the applicant- **Jagan @ Jaagan**, seeking enlargement on bail during trial in connection with Case Crime No. 198 of 2024, under Sections 189(4), 117(2), 103(1), 115(2) B.N.S., Police Station Kasna, District Gautam Budh Nagar.

4. Learned counsel for the applicant submits that co-accused Shekhar and Akash @ Alizan have been granted bail by a common order dated 23.01.2025 passed by a co-ordinate Bench of this Court in their bail applications being Criminal Misc. Bail Application Nos. 45486 of 2024 (Shekhar Vs. State of U.P.) and 45546 of 2024 ( Akash Alias Alizan Vs. State of U.P.) respectively, the copy of the said order has been produced before the Court which is taken on record. The said order reads as under:-

*"1. As, both the bail applications are arising out of same case crime number, therefore, both the bail applications are being disposed off by a common order.*

*2. Heard Sri Kamal Krishna, learned Senior Advocate assisted by Sri Ghan Shyam Das, learned counsel for the applicants, Sri Arun Kumar Singh, learned counsel for the informant and Sri Mnoj Kumar Singh, learned Brief Holder for the State.*

*3. The instant bail applications have been filed seeking release of the applicants on bail in Case Crime No. 198 of 2024, under Sections 189(4), 103(1), 115(2), 117(2) B.N.S. and Section 25/27 Arms Act, Police Station Kasna, District Gautam Budh Nagar during pendency of the trial.*

*4. FIR of the present case was lodged on 17.08.2024 against applicants and three others and according to the FIR on 17.08.2024 co-accused Nitin has taken the brother of the informant from his house and thereafter he along with applicants and another accused Sundar after causing injury to his brother committed his murder.*

*5. It is further mentioned in the FIR that accused persons also caused injury to his uncle namely Vijay. It is further mentioned in the FIR that at the time of incident informant and one Sumit Bhati were also present at spot.*

6. Learned Senior Advocate appearing on behalf of the applicants submits, on the basis of totally false allegation, applicants have been made accused in the present matter along with three others and they never participated in the alleged incident.
7. He further submits, however, as per informant, he along with Sumit Bhati were also present at spot but statement of alleged eye witness Sumit Bhati was recorded by the Investigating Officer on 17.09.2024 i.e. after a month and this fact suggests that actually he was not an eye witness.
8. He further submits, however, informant claimed himself to be an eye witness but from the perusal of the FIR and his statement recorded during investigation, it could not be reflected that when co-accused Nitin was taking the deceased from his house then he also accompanied him, therefore, it appears, he was also not eye witness.
9. He further submits, as per prosecution, uncle of the informant namely Vijay is the injured witness and he was present at spot but surprisingly his statement was also recorded on 16.09.2024 i.e. after a month.
10. He further submits, however, injured witness Vijay sustained injuries on around his Zygotic region but it is nowhere on record that he was not in a position to give the statement, therefore, no presumption can be drawn that earlier he was not in a position to give his statement and considering the fact that his statement was recorded after one month, it appears, he sustained injuries in some other manner and subsequently after the incident he was introduced as injured witness of the present case.
11. He further submits, however as per prosecution apart from the informant, injured Vijay and the above noted Sumit Bhati, two other persons were also eye witnesses but surprisingly their statements were also recorded on 16.09.2024, therefore, statements of all the eye witnesses except the informant were recorded by the Investigating Officer on 16.09.2024 i.e. after a month and all these facts clearly suggests that actually nobody could see the real incident and only due to the previous enmity on the basis of suspicion, informant implicated them in the FIR.
12. He further submits, applicants are not having any criminal history and in the present matter they are in jail since 28.08.2024.
13. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted, it is a case in which one person sustained injury and one person lost his life and injured categorically stated that applicants along with others opened fire upon the deceased and deceased also sustained number of firearm injuries. They further submitted, apart from the injured, informant and three others were also the eye witnesses but both the counsels could not dispute the fact that except the statement of the informant statements of all the witnesses including injured were recorded by the Investigating Officer on 16.09.2024 i.e. after a month and there is no explanation on record in this regard.
14. They further could not dispute the fact that however informant claimed himself to be the eye witness but even according to him co-accused Nitin has taken the deceased from his house and he never stated that he also accompanied them. They further could not dispute the fact that applicants are not having any previous criminal history.
15. I have heard learned counsel for the parties and perused the record of the case.
16. However, it is a case in which one person lost his life and one person sustained injuries and as per prosecution informant, injured and three others are eye witnesses but surprisingly the statements of the alleged injured and three others were recorded by the Investigating Officer on 16.09.2024 i.e. after a month and there is no explanation in this regard, why their statements were recorded after one month.
17. Further, however, apart from the injured and other three witnesses informant himself claimed to be an eye witness but from the FIR and from his statement recorded during investigation it reflects that co-accused Nitin has taken the deceased from his house and thereafter applicants and other accused persons including co-accused Nitin committed his murder by making indiscriminate fire but it is nowhere on record which can suggests that how informant reached at spot as it is not the case of the prosecution that he also accompanied co-accused Nitin along with deceased, therefore, considering this fact at this stage, the argument advanced by learned counsel for the applicant that actually nobody could see the real incident and due to the enmity applicants have been made accused in the present matter, cannot be ruled out.
18. Further, applicants are not having any criminal history and in the present matter they are in jail since

28.08.2024.

19. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicants are entitled to be released on bail.

20. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

21. Let the applicants - Shekhar and Akash @ Alizan be released on bail in the aforesaid case on 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 applicants shall appear before the trial court on the dates fixed, unless their personal presence is exempted.

(ii) The applicants shall not directly or indirectly, make 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 any police officer or tamper with the evidence.

(iii) The applicants shall not indulge in any criminal and anti-social activity.

22. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicants.

23. 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."

5. It is further submitted that co-accused Sundar has also been granted bail by the same co-ordinate Bench of this Court vide order dated 18.04.2025 passed in Criminal Misc. Bail Application No. 11890 of 2025 (Sundar Vs. State of U.P.), the copy of the said order has also been produced before the Court which is taken on record. The said order reads as under:-

"1. Heard Sri Kamal Krishna, learned Senior Advocate assisted by Ghanshyam Das, learned counsel for the applicant and Sri Jhamman Ram, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 198 of 2024, under Sections 189(4), 117(2), 103(1), 115(2), 3(5) BNS, Police Station- Kasna, District- Gautam Budh Nagar, during pendency of the trial in the court below.

3. Learned counsel for the applicant submitted that on the basis of false allegation, applicant has been made accused in the present matter including co-accused Shekhar and Akash @ Alizan and after considering entire facts of the case in detail both the above co-accused have been released on bail by this Court vide order dated 23.01.2025 passed in Criminal Misc. Bail Application No. 45486 of 2024 and 45545 of 2024 respectively and on facts, case of applicant is at par with them except the fact that as per prosecution, from the possession of applicant one country made pistol was recovered but till date, the alleged recovered country made pistol could not be connected with the instant crime.

4. He further submitted that however, apart from the present case, applicant is having criminal history of 12 other cases but his criminal history has been explained in the instant bail application and majority of the cases appears to be of Excise Act and in all the cases, applicant has been made accused by the police and in all the cases, applicant is on bail.

5. He further submitted that applicant is in jail in the present matter since 19.08.2024 i.e. for last more than six months.

6. Per contra, learned AGA however, opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

7. I have heard learned counsel for the parties and perused the record of the case.

8. However, as per allegation, due to assault made by applicant and others one person died and one person sustained injury but after considering entire facts of the case, co-accused Shekhar and Akash @ Alizan have already been released on bail and on facts, case of applicant is at par with them except the fact that as per prosecution, from possession of applicant one country made pistol was also recovered but till date, the alleged recovered country made pistol could not be connected with the instant crime.

9. Further, however, apart from the present case, applicant is having criminal history of 12 other cases but his entire criminal history has been explained in the instant bail application and out of 12 cases, 10 cases are old one and in all the cases, he is on bail.

10. Further, law is settled, if otherwise case of bail is made out then ordinarily merely on the basis of criminal history of an accused, his bail application should not be dismissed.

11. Further, applicant is in jail in the present matter since 19.08.2024 i.e. for last more than six months.

12. Therefore, considering the facts and circumstances of the case discussed above, in my view applicant is entitled to be released on bail.

13. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

14. Let the applicant- Sundar be released on bail in the aforesaid case on 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 appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make 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 any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

15. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

16. 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."

6. It is submitted that the case of the applicant is identical with that of co-accused persons and even as per the first information report the case of the applicant is identical with that of co-accused Sundar who has been granted bail. While placing paragraph 13, 14 and 15 of the affidavit in support of bail application it is submitted that the applicant was previously involved in three cases but in all the three cases he has been granted bail, the copies of the bail orders have been placed before the Court which are annexed as Annexures- 11, 12 & 13 to the affidavit. It is further submitted while placing paragraph 16 of the affidavit that nothing incriminating material has been recovered either from the possession or from his pointing out.

7. Learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. It is submitted that there is no eye-witness to the incident. The applicant is in jail since 06.09.2024.

8. *Per contra*, learned counsel for the first informant vehemently opposed the prayer for bail and submitted that after the present case, the applicant has been involved in one case under the Gangsters Act also which has not been disclosed and

thus the bail application be dismissed in view of the order of the Apex Court in the case of ***Munnesh Vs. State of U.P.: SLP (Crl.) No.1400 of 2025*** decided on 03.04.2025, paragraph 12 of the same has been relied. However, the fact that three co-accused persons have been granted bail by a co-ordinate Bench of this Court is not disputed and further that the case of the applicant is of parity is not disputed. It is further submitted that the applicant is a man of criminal antecedents in as much as there are three previous cases in which he is involved which has been disclosed in paragraph 13 to 15 of the affidavit and there is one case under the Gangsters Act after the present case. Learned counsel further submits that even the stage of trial has not been disclosed in the bail application.

9. Learned counsel for the State also opposed the prayer for bail vehemently but could not dispute the arguments that co-accused Shekhar & Akash @ Alizan and Sundar have been granted bail and adopted the arguments of learned counsel for the first informant. Further the fact that the case of the applicant was of parity is also not disputed.

10. After having heard learned counsel for the parties and perusing the record, it is evident that co-accused Shekhar & Akash @ Alizan and Sundar have been granted bail by a co-ordinate Bench of this Court. The case of the applicant is of parity. Three criminal cases have been disclosed and explained in the affidavit. One case which is said to be not disclosed is under the Gangsters Act which has been lodged after the present case. The same would not count as a previous criminal history.

11. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

12. Let the applicant- **Jagan @ Jaagan**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In

case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 84 B.N.S.S., 2023 may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 209 B.N.S., 2023.

(v) 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 351 B.N.S.S., 2023. 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 and the trial court may proceed against him under Section 269 B.N.S., 2023.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

**13.** The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

**14.** The bail application is **allowed**.

**15.** Pending application (s), if any, shall stand disposed of.

**Order Date :- 24.4.2025**

AS Rathore

(Samit Gopal,J.)