

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8589 of 2025

Applicant :- Akash Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Pandey, Rajneesh Kumar, Sangam Singh

Counsel for Opposite Party :- G.A., Santosh Kumar Yadav

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Ajay Pandey, learned counsel for the applicant, Sri Santosh Kumar Yadav, learned counsel for the first informant and Sri V.D. Ojha, learned counsel for the State and perused the material on record.

3. This bail application under Section 483 of B.N.S.S. has been filed by the applicant Akash Yadav, seeking enlargement on bail during trial in connection with Case Crime No. 356 of 2024, under Sections 115(2), 352, 103(1), 3(5) of BNS, registered at Police Station Sarai Akhil, District Kaushambi.

4. Learned counsel for the applicant submits that co-accused Babli Devi has been granted bail by a co-ordinate Bench of this Court vide order dated 18.12.2024 passed in CrI. Misc. Bail Application No. 44450 of 2024 (Babli Devi Vs. State of U.P.), copy of the order is annexed as annexure 8 to the affidavit, the same reads as under:

"1. List has been revised.

2. Heard Sri Ajay Pandey, learned counsel for the applicant as well as Sri Sunil Kumar, learned A.G.A. for the State and perused the material available on record.

3. Applicant seeks bail in Case Crime No. 356 of 2024, under Sections 115(2), 352, 103(1), 3(5) of B.N.S., Police Station - Sarai Akil, District - Kaushambi, during the pendency of trial.

PROSECUTION STORY:

4. The applicant along with three other co-accused persons is stated to have assaulted the two sons of the informant armed with lathi, danda and iron pipe on 03.10.2024 at about 06:00 am.

ARGUMENTS ON BEHALF OF APPLICANT:

5. *The applicant has been falsely implicated in the present case due to ulterior motive. She has nothing to do with the said offence as alleged in the FIR.*
6. *The allegations in the FIR are per se false.*
7. *The post mortem report does not indicate any external injury on the body of the deceased person, as such, her viscera was preserved.*
8. *There is no injury sustained by the other son of the informant.*
9. *The allegations have simply been inflated by the informant.*
10. *Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against her. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length.*
11. *The applicant is languishing in jail since 02.11.2024, having no criminal history to his credit, deserves to be released on bail. In case, the applicant is released on bail, she will not misuse the liberty of bail and shall cooperate with trial.*

ARGUMENTS ON BEHALF OF STATE:

12. *The bail application has been opposed but the submissions raised by the learned counsel for the applicant could not be disputed and also the fact that the applicant has no criminal history.*

CONCLUSION:

13. *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.*
14. *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 reiterated by the Supreme Court in Satender Kumar Antil Vs. Central Bureau of Investigation and Ors., 2022 INSC 690.*
15. *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".*
16. *Learned AGA could not bring forth any exceptional circumstances which would warrant denial of bail to the applicant.*
17. *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.*
18. *Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, the said anomaly in the FIR to the post mortem report, pending trial and considering the complicity of accused, severity of punishment, at this stage, 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.*

19. Let the applicant- Babli Devi, who is involved in aforementioned case crime be released on bail on her furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(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 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 her in accordance with law.

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

21. 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 her independent opinion based on the testimony of the witnesses."

5. Further, another co-accused who is a juvenile has also been granted by a co-ordinate Bench of this Court vide order dated 22.04.2025 passed in Criminal Revision No. 1878 of 2025 (Juvenile Vs. State of U.P. and another), copy of the order is annexed as annexure S.A.-5 to the supplementary affidavit dated 30.04.2025. The said order reads as under:

"The present criminal revision under Section 102 of Juvenile Justice (Care and Protection of Children) Act, 2015 has been preferred against the judgment and order dated 05.03.2025 passed by Juvenile Court/ Court of Special Judge (POCSO Act), Kaushambi in Criminal Appeal No. 11 of 2025 and against order dated 14.02.2025 passed by Juvenile Justice Board, Kaushambi in Case Crime No. 356 of 2024, under Sections 115(2), 352, 103(1), 3(5) BNS, police station Sarai Akil, District Kaushambi whereby the learned Juvenile Justice Board as well as learned appellate court refused the prayer of bail of accused-revisionist.

Heard learned counsel for the revisionist, learned Additional Government Advocate representing the State of U.P., learned counsel for the informant/ opposite party no. 2 and perused the record.

As per the prosecution case, in brief, complainant Kuldeep Yadav lodged a first information report on 03.10.2024 for the offence under Sections 115(2), 352, 103(1), 3(5) BNS against Maharaje Yadav, Anshu Yadav, Aakash Yadav and Babli Devi making general allegation of assault to his son Sandeep. F.I.R. also alleges that on account of the said assault, his son fainted at the spot. Thereafter, he was taken to district hospital, Manjhanpur where he was declared as brought dead.

Learned counsel for the revisionist assailing the impugned orders submits that the revisionist was a juvenile on the date of the alleged incident dated 03.10.2024 and he has been declared juvenile vide order dated 17.01.2025 of Juvenile Justice Board treating the age of revisionist as 15 years, 09 months and 02 days on the date of alleged incident. It is next submitted that aforesaid order declaring the revisionist as juvenile has attained finality because the same has not been challenged by opposite party No.2. The revisionist has remained confined in juvenile home since 04.10.2024.

As to the offence alleged, it is submitted that the revisionist has falsely been implicated in the case with ulterior motive. In this regard, it is further stated that proper investigation was not conducted by the police and thus the revisionist had wrongly been charged with the offence. It is further argued that the revisionist has been falsely implicated in this case. As per the post mortem report, no external injury has been found on the body of the deceased. It is also

submitted that co-accused Babli Devi has been granted bail by this Court vide order dated 18.12.2024 in Criminal Misc. Bail Application No. 44450 of 2024.

It is further being emphasized that the revisionist does not have any criminal antecedent to his credit. Lastly, it is submitted that there is no material on record for believing that the release of revisionist is likely to bring him into association with any known criminal or expose him to moral, psychological danger, therefore, aforesaid impugned orders are not sustainable and liable to be set aside and revisionist is entitled to be released on bail in view of Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2015.

Learned A.G.A. representing the State and learned counsel for opposite party no. 2 opposed the present revision by contending that Rahul, brother of the deceased, has also sustained two injuries, hence it cannot be said that no incident has taken place. It is also submitted that merely because the revisionist is a juvenile, it would not entitle him to bail without going into the gravity of the offence, the nature of the crime. It is also contended that the bail sought for has been rightly refused in view of Section 12(1) of Juvenile Justice (Care and Protection of Children) Act, 2015.

Having considered the arguments so advanced by learned counsel for the parties, it is true that a juvenile offender is not entitled as of right to be enlarged on bail, irrespective of any other fact or circumstance, however, it also cannot be denied that in view of specific and special legislative intent and intervention, refusal of bail in the case of a juvenile may be made only for specific reasons and circumstance. Otherwise, a general legislative presumption does appear to exist under the scheme of the Act that the welfare of alleged juvenile offender would be better served without he being confined for long duration. Here, the revisionist has remained in juvenile home since 04.10.2024 against the maximum sentence of three years in case of conviction.

The Court has to see whether the opinion of the learned appellate Court as well as Juvenile Justice Board recorded in the impugned judgment and orders are in consonance with the provision of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Section 12 of the aforesaid Act lays down three contingencies in which bail could be refused to juvenile. They are:-

- (1) if the release is likely to bring him into association with any known criminal, or
- (2) expose him to moral, physical or psychological danger, or
- (3) that his release would defeat the ends of justice.

Gravity of the offence has not been mentioned as a ground for rejection of bail in Section 12 of the aforesaid Act. Though the prayer for bail of the revisionist has been opposed by learned counsel for the opposite parties/State, but could not demonstrate from the record that there existed any of the grounds on which bail application of a juvenile could be rejected keeping in view the provisions of Section 12 of the Juvenile Justice Act.

Considering the above, it appears that the findings recorded by the learned Court below are erroneous and cannot be sustained. The aforesaid impugned orders dated 05.03.2025 and 14.02.2025 are hereby set aside.

Accordingly, the present criminal revision is allowed.

Let the revisionist "Juvenile" involved in the aforesaid case crime be released on bail on furnishing a personal bond of his maternal grandfather, namely, Om Dev son of Mithai Lal, who is his natural guardian with two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

- (i) The revisionist shall not tamper with the evidence or threaten the witnesses;
- (ii) The revisionist through guardian 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;

(iii) The revisionist through guardian shall remain present before the trial Court on each date fixed, either personally or through his counsel."

6. It is submitted that in the FIR although the applicant and three other co-accused persons are named and have been assigned general and omnibus allegations have been levelled of assault on Sandeep Yadav and Rahul Yadav with lathi, danda and iron but there is no specification of roles therein. It is submitted that although Sandeep Yadav has died but doctor did not find any external or internal injury on his person and the cause of death could not be ascertained and viscera was preserved of which the viscera report is still awaited. It is submitted that Rahul Yadav the alleged injured was medically examined on 03.10.2024 at about 11:000 am by the Medical Officer, CHC, Sarai Akhil, Kaushambi and two injuries were found on which the injury on the chest was referred for x-ray examination which was conducted but no bony injury was seen in it. It is submitted that the injury received by Rahul Yadav were thus simple in nature. It is submitted that common and general role has been assigned to the applicant and three other co-accused persons in the FIR and even in the statement of Rahul Yadav the alleged injured recorded during investigation. It is submitted that the applicant has no criminal history as stated in para 26 of the affidavit and is in jail since 04.10.2024.

7. Per contra, learned counsel for the first informant vehemently opposed the prayer for bail and submitted that the applicant is named in the FIR. It is further submitted that co-accused Mahrajey Yadav who is the main architect of the incident is still absconding and no concrete steps have been taken by the Investigating Agency to arrest him. It is submitted that the said accused is in connivance with the police. It is submitted further that although charge sheet in the matter has been submitted against the applicant and three other persons but in so far as co-accused Mahrajey Yadav is concerned, the investigation is pending and the police is not investigating properly and not making efforts to arrest him.

8. Learned counsel for the State has also been heard who has opposed the prayer for bail but could not dispute the fact that the said co-accused have been granted bail.

9. After having heard learned counsels for the parties and perusing the records, it is evident that common and general role has been

assigned to the applicant and three other co-accused persons as per the FIR and also the statement of the alleged injured Rahul Yadav. The deceased was not found to have received any external or internal injury. The injuries sustained by Rahul Yadav are simple in nature. The co-accused Babli Devi and one juvenile a co-accused have been granted bail.

10. 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.

11. Let the applicant **Akash Yadav**, 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 BNSS, 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 BNS, 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 BNSS, 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 BNS, 2023.

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

12. 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.

13. The bail application is **allowed**.

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

Order Date :- 8.5.2025

M. ARIF

(Samit Gopal, J.)