



2025:AHC:160279

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. BAIL APPLICATION No. - 30548 of 2025

Krishna Alias Kikka

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Rahul Singh Dahiya
Counsel for Opposite Party(s)	:	G.A.

Court No. - 80

HON'BLE RAJEEV MISRA, J.

Heard Mr. Rahul Singh Dahiya, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This repeat application for bail has been filed by applicant Krishna @ Kikka, seeking his enlargement on bail in Case Crime No. 325 of 2021, under Section 147, 148, 149, 307, 302, 120-B, 34 IPC Police Station- Kakod, District Bulandshahr, during the pendency of trial i.e. Sessions Trial No. 15871 of 2021, under Section 147, 148, 149, 307, 302, 120-B, 34 IPC Police Station- Kakod, District Bulandshahr.

The first bail application of applicant was rejected by this Court vide order dated 22.4.2022, passed in Criminal Misc. Bail Application No. 55751 of 2021 (Niranjan Vs. State of U.P.) along with other connected applications. For ready reference, the same is reproduced herein under:

"Case :- CRIMINAL MISC. BAIL APPLICATION No. - 55751 of 2021

Applicant :- Niranjan

Opposite Party :- State of U.P.

Counsel for Applicant :- Syed Imran Ibrahim, Anurag Vajpeyi

Counsel for Opposite Party :- G.A., Deepak Kumar Pandey, Sandeep Pandey

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51192 of 2021

Applicant :- Dharmendra Chaudhary

Opposite Party :- State of U.P.

Counsel for Applicant :- Dharendra Mohan Chaudhary, Anurag Pathak, Shyamal Kumar Prayagi, Uday Singh Patel

Counsel for Opposite Party :- G.A.,Deepak Kumar Pandey

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3455 of 2022

Applicant :- Krishna @ Kikka

Opposite Party :- State Of U.P.Through The Secretary Department Of Home Gov

Counsel for Applicant :- Anurag Vajpeyi,Syed Imran Ibrahim

Counsel for Opposite Party :- G.A.,Deepak Kumar Pandey,Sandeep Pandey

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6066 of 2022

Applicant :- Toni @ Dushyant

Opposite Party :- State Of U.P.Through The Secretary Department Of Home Gov

Counsel for Applicant :- Anurag Vajpeyi,Syed Imran Ibrahim

Counsel for Opposite Party :- G.A.,Deepak Kumar Pandey,Sandeep Pandey

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6088 of 2022

Applicant :- Deepak

Opposite Party :- State Of U.P.Through The Secretary Department Of Home Gov

Counsel for Applicant :- Anurag Vajpeyi,Syed Imran Ibrahim

Counsel for Opposite Party :- G.A.,Deepak Kumar Pandey,Sandeep Pandey

Order:- *Heard Mr. Anurag Vajpeyi, the learned counsel for applicants- Niranjan, Krishna @ Kikka, Toni @ Dushyant and Deepak, Mr. Anurag Pathak, the learned counsel for applicant- Dharmendra Chaudhary, the learned A.G.A. for State and Mr. Deepak Kumar Pandey, the learned counsel for first informant.*

This application for bail has been filed by applicants-Niranjan, Krishna @ Kikka, Toni @ Dushyant and Deepak and Dharmendra Chaudhary, seeking their enlargement on bail in Case Crime No. 325 of 2021, under sections 302 and 120-B IPC Police Station- Kakod, District Bulandshahar during the pendency of trial.

Perused the record.

Criminal Misc. Bail Application No. 55751 of 2021 (Niranjan Vs. State of U.P.) came up for orders on 9.3.2022 and this Court passed the following order:

"Heard Mr. Anurag Vajpeyi, learned counsel for the applicant, Niranjan, Mr. Virendra Mohan, learned counsel for the applicant, Dharmendra Chowdhary and the learned AGA for the State.

On 02.02.2022 this Court passed following order:-

"Heard Mr. Anurag Vajpeyi, learned counsel for applicant and learned A.G.A. for State, who are connected virtually.

Perused the record.

At the very outset, learned A.G.A. submits that apart from Criminal Misc. Bail Application No.51192 of 2021 (Dharmendra Chaudhary Vs. State of U.P.) filed by co-accused, which is already connected along with this bail applications, following three bail applications filed by co-accused are also pending.

- 1. Criminal Misc. Bail Application No.3140 of 2022 (Naveen Kumar Vs. State of U.P.).*
- 2. Criminal Misc. Bail Application No.3455 of 2022 (Krishna @ Kikka Vs. State of U.P.).*
- 3. Criminal Misc. Bail Application No.2272 of 2022 (Krishna Vs. State of U.P.).*

In view of above, connect aforementioned criminal misc. bail applications along with this bail application.

Matter shall re-appear as fresh on 09.02.2022 along with connected matters."

Apart from the bail applications listed today two more bail applications i.e. Criminal Misc. Bail Application No.6066 of 2022 (Toni @ Dushyant Vs. state of U.P.) and Criminal Misc. Bail Application No.6088 of 2022 (Deepak Vs. state of U.P.) filed by the co-accused, are already pending before this Court.

In view of above, connect aforementioned bail applications alongwith the present bail application.

Matter shall reappear as fresh on 16.03.2022 alongwith the connected cases. "

Pursuant to aforesaid order, all the bail applications referred to above have been connected and listed together. Since all the bail applications arise out of the same case crime number, therefore, they have been heard together and are being disposed of finally by a common order.

Record shows that in respect of an incident which is alleged to have occurred on 1.7.2021 a belated F.I.R. dated 2.7.2021 was lodged by first informant Rahul Kumar and was registered as Case Crime No. 325 of 2021, under sections 302 and 120-B IPC Police Station- Kakod, District Bulandshahar. In the aforesaid F.I.R. nine persons namely, Kikka, Deepak, Tony, Dharmendra, Naven, Krishna, Ram Singh, Jawahar Lal, Niranjana have been nominated as named accused.

The gravamen of the allegations made in aforesaid F.I.R. is to the effect that on 1.7.2021 at 6:20 pm, first informant and his family members were sitting outside their home. At this moment, Barat (bride groom procession) came in front of their house. Members of Barat (bride groom procession) were armed with country made weapons. A request was made to slow down the volume of D.J. This was taken as a challenge and an incident took place, in which one person Rakesh sustained gun shot injuries. Immediately, injured was taken to hospital, where he was declared to be brought dead.

Subsequent to aforesaid F.I.R. Investigating Officer proceeded with statutory investigation of aforementioned Case Crime Number in terms of Chapter XII Cr.P.C. The inquest (panchayatnama) of the body of deceased was conducted on 1.7.2021. In the opinion of witnesses of inquest (panch witnesses), the nature of death of deceased was homicidal. Thereafter, the post mortem of the body of deceased was conducted. In the opinion of autopsy surgeon, the cause of death of deceased was shock and hemorrhage as a result of ante-mortem injury. The autopsy surgeon found following ante-mortem injuries on the body of deceased:

"(i) Exit wound 1 cm x 1 cm over left side of occipital bone, 10 cm above left ear, inter magic and

(ii) Exit wound 3 cm x 1.5 cm over centre of forehead, 4 cm above inner side of right eye brow marginally and

(iii) Entry wound 1 cm x 1 cm (circle) on left side of chest, just on left nipple bleeding and extending 4 cm x 5 cm around the "

In the incident referred to above, three other persons namely Dinesh Kumar, Manoj Kumar, Kallu Ram also sustained injuries. Their medico legal reports are on record as Annexure-7 to the affidavit, filed in support of the bail applications.

During course of investigation, Investigating Officer examined first informant and other eye witnesses namely, Rahul Kumar, Kuldeep Kumar, Santosh, Poonam and Rinku @ Rohit under section 161 Cr.P.C. They have supported the prosecution story. On the basis of above and as well as other material collected by Investigating Officer during course of investigation, he came to the conclusion that

complicity of named accused is established in crime in question. Accordingly, Investigating Officer submitted charge sheet dated 27.9.2021, whereby named accused Niranjan has been charge sheeted under sections 147, 148, 149, 307, 120B, 34, 302 IPC and Ram Singh and Jawahar Lal have been charge sheeted under sections 302, 120B IPC.

Subsequently, Investigating Officer submitted supplementary charge sheet dated 1.10.2021, whereby, named accused Toni @ Dushyant, Dharmendra Chaudhary, Krishna Kumar @ Kikka, Deepak and Krishna have been charge sheeted under sections 147, 148, 149, 302, 120B/34 IPC. Subsequently, second supplementary charge charge sheet dated 18.11.2021 was submitted whereby, named accused Naveen has been charge sheeted under sections under sections 147, 148, 149, 307, 302, 120B/34 IPC.

From the perusal of charge sheets, as noted above, it is explicit that named accused have been charge sheeted under three categories. The first category is of conspirators, in which three of the named accused namely, Ram Singh, Jawahar Lal, and Niranjan find place. Two of the named accused namely, Ram Singh and Jawahar Lal have been enlarged on bail vide separate orders, which are reproduced herein under:

"Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52270 of 2021

Applicant :- Ram Singh Opposite Party :- State of U.P.

Heard Sri Rama Shankar Mishra, learned counsel for the applicant, learned AGA-I, for the State and perused the material brought on record.

It is contended by learned counsel for the applicant that applicant has been falsely implicated in the present case due to enmity. It is next submitted that the role attributed to the applicant is of hatching the conspiracy except this there is no other role attributed to the applicant. It is next contended that nothing incriminating article has been recovered from the possession of the applicant or on his pointing out. No weapon has been assigned to the applicant, the prosecution story reveals the name of co-accused having weapon. It is next submitted that there is no credential evidence against the applicant which may show involvement of the applicant in the present case. There is no independent reliable eye witness of the alleged incident. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused has also been touched upon at length. It is further submitted that there is no possibility of applicant either fleeing away from the judicial process or tampering with the witnesses. Applicant is in jail since 02.07.2021, and undertakes that he will not misuse the liberty, if granted.

Learned A.G.A. has vehemently opposed the bail prayer of the applicant without disputing the aforesaid submissions of the learned counsel for the applicant and submitted that in case applicant is released on bail he will misuse the liberty of bail.

Courts have taken notice of overcrowding of jails during the current pandemic situation (Ref: Sue, Motu Writ Petition (c) No. 1/2020 , Contagion of Covid 19 Virus in prisons before the Supreme Court of India). These circumstances shall also be factored in while considering bail applications on behalf of accused persons.

Having heard the submissions of learned counsel of both sides, nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, prima facie satisfaction of the Court in support of the charge, reformatory theory of punishment, and larger mandate of the Article 21 of the Constitution of India, the dictum of Apex Court in the case of Dataram Singh v. State of U.P. and another, reported in (2018) 2 SCC 22 and without expressing any opinion on the merit of the case,

I find it to be a case of bail.

Let applicant- Ram Singh, be released on bail arising out of Case Crime No. 325 of 2021, under Sections - 302, 120B IPC, Police Station- Kakod, District- Bulandshahr, 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 file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the 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 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. 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.

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.

It is clarified that the observations, if any, made in this order are strictly confined to the disposal of this bail application and must not be construed to have any reflection on the ultimate merits of the case."

"Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50034 of 2021

Applicant :- Jawaharlal

Opposite Party :- State Of U.P. Through Secretary Home At Lucknow

Heard Sri Ishwar Chandra Tyagi, learned counsel for the applicant as well as learned A.G.A for the State and perused the record.

By means of this application, the applicant who is involved in case crime no.325 of 2021, under Sections 302 and 120B IPC, Police Station-Kakod, District-Bulandshahar is seeking enlargement on bail during the trial. The applicant is languishing in jail since 02.07.2021.

Contention raised by the counsel that for the incident of 01.07.2021 the FIR was registered on 02.07.2021 under Sections 147, 148, 149, 307, 120B, 34 and 302 IPC. But after investigation the police has dropped all other sections except Sections 302 and 120B IPC. From the FIR it is clear that only role attributed to the applicant is of hatching the conspiracy and providing his place for meeting purpose except this there is no other role attributed to the applicant.

Learned A.G.A opposed the prayer for bail but could not dispute the aforesaid facts and the legal submissions as argued by the learned counsel for the applicant.

Keeping in view the nature of the offence, evidence, complicity of the accused and submissions of learned counsel for the parties, I am of the view that the applicant has made out a case for bail.

Let the applicant, Jawaharlal, 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/APPLICANTS SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/SHE/THEY SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE FIXED FOR EVIDENCE WHEN THE WITNESSES IS/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.

(ii) THE APPLICANT/APPLICANTS SHALL REMAIN PRESENT BEFORE THE TRIAL COURT ON EACH DATE FIXED, EITHER PERSONALLY OR THROUGH HIS/HER/THEIR COUNSEL. IN CASE OF HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIS/HER/THEIR UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT/APPLICANTS MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HER PRESENCE PROCLAMATION UNDER SECTION 82 CR.P.C., MAY BE ISSUED AND IF APPLICANT/APPLICANTS FAILS TO APPEAR BEFORE THE COURT ON THE DATE FIXED IN SUCH PROCLAMATION, THEN, THE TRIAL COURT SHALL INITIATE PROCEEDINGS AGAINST HIS/HER/THEIR, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(iv) THE APPLICANT/APPLICANTS 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. IF IN THE OPINION OF THE TRIAL COURT ABSENCE OF THE APPLICANT/APPLICANTS IS/ARE 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 HIS/HER/THEIR IN ACCORDANCE WITH LAW.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT/APPLICANTS.

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

Since the bail application has been decided under extra-ordinary circumstances, thus in the interest of justice following additional conditions are being imposed just to facilitate the applicant/applicants to be released on bail forthwith. Needless to mention that these additional conditions are imposed to cope with emergent condition:-

1. The applicant/applicants shall be enlarged on bail on execution of personal bond without sureties till normal functioning of the courts is/are restored. The accused will furnish sureties to the satisfaction of the court below within a month after normal functioning of the courts are restored.

2. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

3. The computer generated copy of such order shall be self attested by the counsel of the party concerned.

4. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification

in

writing."



On the aforesaid premise, Mr. Anurag Vajpeyi, the learned counsel for applicant Niranjan submits that case of the applicant- Niranjan is similar and identical to aforesaid co-accused. He, therefore, submits that for the facts and reasons mentioned in the bail orders of aforementioned co-accused, applicant- Niranjan is also liable to be enlarged on bail. There is no such distinguishing feature on the basis of which case of applicant-Niranjan can be distinguished from aforesaid co-accused so as to deny bail to applicant. As such, applicant is liable to be enlarged on bail on the ground of parity.

The second set of charge sheeted accused is in respect of those who are alleged to have extorted in the incident. In this category three of the named accused namely Dharmendra, Navin and Krishna find place. Out of above two of the named accused namely Naveen Kumar and Krishna, have been enlarged on bail by this Court, their bail orders are reproduced herein under;

"Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3140 of 2022

Applicant :- Naveen Kumar

Opposite Party :- State of U.P.

Heard Shri Shikhar Awasthi, learned counsel for the applicant and learned AGA for the State.

A first information report was lodged against the applicant as Case Crime No. 325 of 2021 at Police Station Kakod District Bulandshahr under Sections 147, 148, 149, 307, 120B, 34 and 302 I.P.C.

The bail application of the applicant was rejected by learned Sessions Judge, Bulandshahr on 04.01.2022.

The applicant is in jail since 24.08.2021 pursuant to the said F.I.R.

Shri Shikhar Awasthi, learned counsel for the applicant contends that the applicant has been falsely implicated in the instant case. The prosecution case set out in the F.I.R. as well as the successive statements of the informant assign the role of exhortation to the applicant. The applicant was not named as one of the principal offenders who shot and killed the deceased. Learned counsel for the applicant contends that the applicant does not have any criminal history apart from this case. Lastly it is contended by the learned counsel for applicant that the applicant shall not abscond and will fully cooperate in the criminal law proceedings. The applicant shall not tamper with the evidence nor influence the witnesses in any manner.

Shri Anupam Anand, learned brief holder for the State could not satisfactorily dispute the aforesaid submissions from the record. Learned AGA does not dispute the fact that the applicant does not have any criminal history apart from this case.

Courts have taken notice of the overcrowding of jails during the current pandemic situation (Ref.: Suo Motu Writ Petition (c) No. 1/2020, Contagion of COVID 19 Virus in prisons before the Supreme Court of India). These circumstances shall also be factored in while considering bail applications on behalf of accused persons.

I see merit in the submissions of learned counsel for the applicant and accordingly hold that the applicant is entitled to be enlarged on bail.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant- Naveen Kumar be released on bail in Case Crime No. 325 of 2021 at Police Station Kakod District Bulandshahr under Sections 147, 148, 149, 307, 120B, 34 and 302 I.P.C., on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence during the trial.

(ii) The applicant will not influence any witness.

(iii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) 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 to any police officer or tamper with the evidence.

In case of breach of any of the above condition, the prosecution shall be at liberty to move bail cancellation application before this Court.

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2272 of 2022

Applicant :- Krishna

Opposite Party :- State of U.P.

Heard learned counsel for the applicant, learned counsel for the complainant and learned AGA for the State and perused the record.

It has been argued by learned counsel for the applicant that applicant is innocent and he has not committed any offence. It has been submitted that as per prosecution version, applicant and co-accused Dharmendra and Naveen have made exhortation to other co-accused persons to kill the deceased and thereafter other co-accused persons have fired bullet and deceased sustained fire arm injury and died. Learned counsel for the applicant stated that the alleged incident took place suddenly during the procession of a Barat and dispute has taken place over the volume of D.J.. Applicant has no previous enmity with the deceased and that applicant has no motive to indulge in the alleged incident. It has been further submitted that similarly placed co-accused Naveen Kumar has already been granted bail by Co-ordinate Bench of this Court in Criminal Misc. Bail Application No.3140 of 2022 vide order dated 09.02.2022. Lastly, it has been submitted that applicant is languishing in jail since 09.07.2021 having no criminal history and that in case he is released on bail, he will not misuse the liberty of bail and will cooperate in trial.

Learned A.G.A. and learned counsel for the complainant have opposed the prayer for bail. It has been argued by learned counsel for the complainant that deceased was suffering from heart disease and when he has asked to reduce the volume of D.J, the alleged incident took place and deceased was murdered, however, it could not be disputed that similarly placed co-accused person namely Naveen Kumar has already been granted bail

Considering the submissions of learned counsel for the parties, facts of the case, nature of allegations, period of custody and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, the Court is of the view that a case for bail is made out. Hence, the bail application is hereby allowed.

Let the applicant- Krishna, involved in Case Crime No.325 of 2021, under Sections 147, 148, 149, 307, 302, 120-B and 34 of IPC, Police Station- Kadod, District- Bulandshahar, 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:

1. The applicant shall not tamper with the evidence during the trial.

2.The applicant shall not pressurize/ intimidate the prosecution witness.

3.The applicant shall appear before the trial court on the date fixed, unless personal presence is exempted.

4. *The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.*

5. *The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer or tamper with the evidence.*

In case of breach of any of the above condition, the Court below shall be at liberty to cancel bail of applicant in accordance with law. "

On the aforesaid premise, Mr. Anurag Pathak, the learned counsel for applicant - Dharmendra Chaudhary submits that case of the applicant-Dharmendra Chaudhary is similar and identical to aforesaid co-accused. He, therefore, submits that for the facts and reasons mentioned in the bail orders of aforementioned co-accused, applicant-Dharmendra is also liable to be enlarged on bail. There is no such distinguishing feature on the basis of which case of present applicant can be distinguished from aforesaid co-accused so as to deny bail to applicant-Dharmendra. As such, applicant is liable to be enlarged on bail on the ground of parity.

The third set of accused relates to named/charge sheeted accused who have used fire arm. The role of using fire arm in the incident giving rise to these bail applications has been assigned to named/charge sheeted accused Krishna @ Kikka, Deepak and Toni @ Dushyant.

The prosecution story as unfolded in F.I.R. has specified aforesaid three accused to be armed with country made weapons. The statements of eye witness of occurrence also corroborates the prosecution story as unfolded in F.I.R.

Learned counsel for applicants Krishna @ Kikka, Toni @ Dushyant and Deepak contends that though aforesaid applicants are named as well as charge sheeted accused but they are innocent. General role of firing has been assigned to above mentioned co-accused. He has then invited attention of Court to the post mortem report of deceased and on basis of thereof he contends that deceased has sustained two fire arm entry wounds. It is next submitted that the author of gun shot injuries have not been specified in the F.I.R. Since author of gun shot injuries sustained by the deceased have not been specified in the F.I.R. nor in the statement of eye witness who have been examined by Investigating Officer, during course of investigation, applicants are liable to be enlarged on bail.

It is also contended by learned counsel for parties that applicants- Niranjana, Dharmendra Chaudhary and Krishna @ Kikka are men of clean antecedents inasmuch as they have no criminal history to their credit except the present one. Applicants- Toni @ Dushyant and Deepak have criminal history of one case each, which has been duly explained. It is next contended that applicant-Niranjana is in jail since 2.7.2021 As such, he has undergone more than 9 months of incarceration. Applicant- Dharmendra Chaudhary is in jail since 9.7.2021 As such, he has undergone more than 9 months of incarceration. Applicant-Krishna @ Kikka is in jail since 3.7.2021 As such, he has undergone more than 9 months of incarceration. Applicant-Toni @ Dushyant is in jail since 7.7.2021 As such, he has undergone more than 9 months of incarceration. Applicant-Deepak is in jail since 23.7.2021. As such, he has undergone almost 8 months of incarceration. In case, applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

It is further contended by learned counsel for applicants Krishna @ Kikka, Toni @ Dushyant and Deepak that there are cross versions of occurrence giving rise to this application for bail. He, therefore, contends that occurrence is admitted to parties. Therefore, question which is required to be considered is as to who is aggressor. Such question can be decided effectively only during course of trial. In view of

aforesaid exceptional circumstance, learned counsel for applicant submits that applicants are liable to be enlarged on bail.

It is also contended that the occurrence giving rise to present criminal proceedings is not the outcome of premeditative mind but on account of sudden prosecution. Applicants are therefore, liable to be tried for an offence under section 304 IPC.

It is lastly contended that deceased himself has criminal history. Deceased has died on account of gun shot injuries which were fired from the side of first informant.

Per contra, the learned A.G.A. and Mr. Deepak Kumar Pandey, the learned counsel for first informant have opposed the prayer for bail. They submit that prosecution story as unfolded in F.I.R. is clear and categorical. The role of firing has been assigned to three of the co-accused namely, Krishna @ Kikka, Deepak and Toni @ Dushyant. The ocular version as well as medical version supports the prosecution story as unfolded in F.I.R. Up to this stage, there is nothing on record on the basis of which testimony of witnesses examined during the course of investigation can be disbelieved. It is thus contended that though occurrence giving rise to these applications for bail has cross version but the F.I.R. from the side of the accused has been lodged after three months of occurrence. There is no injury report in respect of any person from the side of accused. It is thus contended that said F.I.R. has been lodged as a counter blast to built defence. Learned A.G.A. has then invited attention of Court to the judgement of Supreme Court in Neeru Yadav Vs. State of U.P. and another, 2016 (15) SCC 422 and on basis thereof he contends that though the deceased has sustained two gun shot injuries and the role of firing has been assigned to three of the named accused but that by itself cannot be taken as a ground to enlarge the applicants-Krishna, Deepak and Toni on bail. Criminality committed by aforesaid accused is interlinked and intertwined. As such, it cannot be separated nor segregated. As such, aforesaid applicants are not entitled to any indulgence by this Court

Having heard learned counsel for applicants, learned A.G.A. for State, upon perusal of material brought on record as well as the complicity of applicants and accusation made but without making any comment on the merits of the case, this Court does not find any justifiable or good ground to enlarge the applicants Krishna @ Kikka, Toni @ Dushyant and Deepak on bail. Accordingly, bail applications of Krishna @ Kikka, Toni @ Dushyant and Deepak are rejected.

However, for the facts noticed above, applicants- Niranjan and Dharmendra Chaudhary have made out a case for bail. Accordingly, bail applications of applicants- Niranjan and Dharmendra Chaudhary are allowed.

Let the applicants Niranjan and Dharmendra Chaudhary, be released on bail in the aforesaid case crime number on their 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 SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/SHE 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.

(ii) THE APPLICANT SHALL REMAIN PRESENT BEFORE THE TRIAL COURT ON EACH DATE FIXED, EITHER PERSONALLY OR THROUGH HIS/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED

AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/HER PRESENCE PROCLAMATION UNDER SECTION 82 CR.P.C., 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/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(iv) 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. 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 THE HIM/HER IN ACCORDANCE WITH LAW.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/her bail so granted by this court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above. "

Learned counsel for applicant contends that applicant is a named as well as charge sheeted accused and facing trial before Court below. However, in view of the fact as have now crystalized during the pendency of trial, applicant/appellant is liable to be enlarged on bail. Elaborating his submission, the learned counsel for applicant submits that up to this stage, all the prosecution witnesses of fact have been examined by Court below. Trial is at the stage of defence evidence. On the above premise, it is thus urged that in case applicant is enlarged on bail, then in that eventuality, it cannot be said that applicant shall either hamper the course of trial or shall terrorize the witnesses. On the above conspecuts, it is thus urged that applicant is liable to be enlarged on bail.

Even otherwise, applicant is a man of clean antecedents inasmuch as he has no criminal history to his credit except the present one. Applicant is in jail since 3.7.2021. As such, he has undergone four years and one month of incarceration. Charge-Sheet/Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. However, upto this stage, no such, incriminating circumstance

has emerged necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged by the learned counsel for applicant/appellant that applicant is liable to be enlarged on bail during the pendency of trial. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with trial.

Per contra, the learned A.G.A. for State has opposed the present repeat application for bail. He submits that since applicant is a named as well as charge sheeted accused and facing trial before Court below, therefore, he does not deserve any indulgence by this Court. According to the learned A.G.A. present case is a case of direct evidence and all the prosecution witnesses have clearly implicated the applicant in the crime in question. Considering the nature and gravity of evidence, the period of incarceration undergone by applicant is by itself not so sufficient a ground so as to enlarge the applicant on bail. Since trial is at the stage of defence evidence, interest of justice shall better be served in case a direction is issued by this Court to the court below to conclude the trial expeditiously. On the aforesaid conspectus, the learned A.G.A. submit that no new, good or sufficient ground has emerged so as to enlarge the applicant on bail. As such, this repeat application for bail is liable to be rejected.

When confronted with above, the learned counsel for applicant could not overcome the same.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that in view of the nature and gravity of offence complained of, the period of sentence provided for the offence complained of this Court finds that the period of incarceration is itself not so sufficient a ground so as to enlarge the applicant on bail. As such, this Court does not find any new good or sufficient ground to enlarge the applicant on bail.

However, considering the fact that trial is at the stage of defence evidence, this Court finds that interest of justice shall be served in case a direction is issued to court below to conclude the trial. Accordingly, Court below is directed to proceed with the trial with all expedition and conclude the same preferably within three months from the date of receipt of certified copy of this order. Court below shall proceed on day to day basis. No

exemption/adjournment shall be granted to either of the parties. In case the same is inevitable, the same shall be on cost of Rs. 1000/- per date against the party seeking exemption/adjournment.

The application is finally **disposed of**

September 10, 2025
Arshad

(Rajeev Misra,J.)