



2025:AHC:168835

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. BAIL APPLICATION No. - 30026 of 2025

Umar Ansari

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Upendra Upadhyay
Counsel for Opposite Party(s)	:	G.A.

Court No. - 70

HON'BLE DR. GAUTAM CHOWDHARY, J.

1. Heard Shri Upendra Upadhyay, learned counsel for the applicant, Shri Pankaj Saxena, learned A.G.A.-I for the State and perused the material brought on record.

2. The F.I.R. dated 03.08.2025 was lodged by the concerned Station House Officer stating therein that on 09.07.2025 a report was called from him, by the Assistant District Prosecution Officer (Crl.) with respect to the cases pending before Ist Additional Sessions Judge/M.P.M.L.A. court and on receiving relevant documents, it prima facie came into light that the signature put by mother of the applicant on the petition filed through her Advocate as well as on the documents appears to be suspicious. On the basis of suspicion, the signature put by mother of the applicant over the partnership deed of M/s Vikas Constructions as well as on the documents produced before it, were got matched and the same was not tallied. It appears that the applicant in connivance with his counsel has made forged signature of his mother over those documents.

3. Learned counsel for the applicant submits that the applicant is absolutely innocent and has been falsely implicated in the present case. Learned counsel for the applicant further submits that the allegations made in the F.I.R. are totally false and fictitious and have been made with ulterior motive. The concerned Station House Officer is not empowered to lodge a case suo motu in the matter when there is no complaint made either by his mother or by the court concerned who was

hearing that very proceeding. There is no evidence against the applicant to connect him with the present case except the confessional statement of the co-accused, which is not admissible in the eye of law. The papers which were sent for forensic test were not sent in its original form and photostat copies thereof were sent for forensic test, thus, relying upon the same the applicant has been made the accused of criminal conspiracy and forgery. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that there are six criminal cases into the credit of applicant, out of which in two cases he has been granted anticipatory bail, in two cases he is on bail and in one case has been granted interim protection by a coordinate Bench of this Court and in one case charge sheet filed against him has been quashed by this Court. The applicant is in jail since 04.08.2025.

4. Per contra, learned A.G.A.-I has vehemently opposed the prayer for bail by contending that as per F.S.L. report the signatures made on those papers were found different, thus, there is active participation of applicant in the commission of offence, therefore, he does not deserve any indulgence.

5. I have heard rival submissions advanced by both the parties.

6. So far as the main contention of learned counsel for the applicant that the papers which were sent for forensic test were not sent in its original form and photostat copies thereof were sent for forensic test, this Court finds that Hon'ble Supreme Court in the case of **Ashok Dulichand Vs. Madahvlal Dube and Another : (1975) 4 SCC 664** in para-7 of its judgment has observed as under:-

7. After hearing the learned counsel for the parties, we are of the opinion that the order of the High Court in this respect calls for no interference. **According to clause (a) of section 65 of the Indian Evidence Act, secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in the possession or power of the person**

against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it. Clauses (b) to (g) of section 65 specify some other contingencies wherein secondary evidence relating to a document may be given, but we are not concerned with those clauses as it is the common case of the parties that the present case is not covered by those clauses. In order to bring his case within the purview of clause (a) of section 65, the appellant filed applications on July 4, 1973, before respondent No. 1 was examined as a witness, praying that the said respondent be ordered to produce the original manuscript of which, according to the appellant, he had filed photostat copy. Prayer was also made by the appellant that in case respondent No. 1 denied that the said manuscript had been written by him, the photostat copy might be got examined from a handwriting expert. The appellant also filed affidavit in support of his applications. It was, however, nowhere stated in the affidavit that the original document of which the photostat copy had been filed by the appellant was in the possession of respondent No. 1. There was also no other material on the record to indicate that the original document was in the possession of respondent No. 1. The appellant further failed to explain as to what were the circumstances under which the photostat copy was prepared and who was in possession of the original document at the time its photograph was taken. Respondent No. 1 in his affidavit denied being in possession of or having anything to do with such a document. **The photostat copy appeared to the High Court to be not above suspicion. In view of all the circumstances, the High Court came to the conclusion that no foundation had been laid by the appellant for leading secondary evidence in the shape of the photostat copy. We find no infirmity in the above order of the High Court as might justify interference by this Court.**

7. The Hon'ble Supreme Court in **J. Yashoda Vs. K. Shobha Rani : (2007) 5 SCC 730** in paras-7 & 9 of its judgment has observed as under:-

7. Secondary evidence, as a general rule is admissible only in the absence of primary evidence. **If the original itself is found to be inadmissible through failure of the party, who files it to prove it to be valid, the same party is not entitled to introduce secondary evidence of its contents.**

9. The rule which is the most universal, namely that the best evidence the nature of the case will admit shall be produced, decides this objection that rule only means that, so long as the higher or superior evidence is within your possession or may be reached by you, you shall give no inferior proof in relation to it. Section 65 deals with the proof of the contents of the documents tendered in evidence. In order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document. Under Section 64, documents are to be proved by primary evidence. Section 65, however permits secondary evidence to be given of the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in the said Section must be fulfilled before secondary evidence can be admitted. **Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in the Section.** In *Ashok Dulichand v. Madahavlal Dube and Another* [1975(4) SCC 664], it was inter alia held as follows:

"7. After hearing the learned counsel for the parties, we are of the opinion that the order of the High Court in this respect calls for no interference. According to clause (a) of Section 65 of Indian Evidence Act, Secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in possession or power of the person against whom the document is sought to be proved or of any person out of reach of, or not subject to, the process of the Court of any person legally bound to produce it, and when, after the notice mentioned in Section 66 such person does not produce it. Clauses (b) to (g) of Section 65 specify some other contingencies wherein

*secondary evidence relating to a document may be given, but we are not concerned with those clauses as it is the common case of the parties that the present case is not covered by those clauses. In order to bring his case within the purview of clause (a) of Section 65, the appellant filed applications on July 4, 1973, before respondent No. 1 was examined as a witness, praying that the said respondent be ordered to produce the original manuscript of which, according to the appellant, he had filed Photostat copy. Prayer was also made by the appellant that in case respondent no. 1 denied that the said manuscript had been written by him, the photostat copy might be got examined from a handwriting expert. The appellant also filed affidavit in support of his applications. It was however, nowhere stated in the affidavit that the original document of which the Photostat copy had been filed by the appellant was in the possession of Respondent No. 1. There was also no other material on the record to indicate the original document was in the possession of respondent no.1. **The appellant further failed to explain as to what were the circumstances under which the photostat copy was prepared and who was in possession of the original document at the time its photograph was taken.** Respondent No. 1 in his affidavit denied being in possession appeared to the High Court to be not above suspicion. **In view of all the circumstances, the High Court to be not above suspicion. In view of all the circumstances, the High Court came to the conclusion that no foundation had been laid by the appellant for leading secondary evidence in the shape of the photostat copy. We find no infirmity in the above order of the High Court as might justify interference by this Court."***

8. Further, Hon'ble Supreme Court in the case of **H. Siddiqui (Dead) By LRS. Vs. A. Ramalingam : (2011) 4 SCC 240** in paras-12, 14 & 17 has observed as under:-

12. The provisions of Section 65 of the Act 1872 provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. **In a case where original documents are not produced at any time, nor, any factual foundation has been**

led for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. **Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law.** The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon. (Vide: *The Roman Catholic Mission & Anr. v. The State of Madras & Anr.*, AIR 1966 SC 1457; *State of Rajasthan & Ors. v. Khemraj & Ors.*, AIR 2000 SC 1759; *Life Insurance Corporation of India & Anr. v. Ram Pal Singh Bisen*, (2010) 4 SCC 491; and *M. Chandra v. M. Thangamuthu & Anr.*, (2010) 9 SCC 712).

14. In our humble opinion, the Trial Court could not proceed in such an unwarranted manner for the reason that the respondent had merely admitted his signature on the photocopy of the power of attorney and did not admit the contents thereof. **More so, the court should have borne in mind that admissibility of a document or contents thereof may not necessary lead to drawing any inference unless the contents thereof have some probative value.**

17. Therefore, it is the duty of the court to examine whether documents produced in the Court or contents thereof have any probative value.

9. Thus, in view of above proposition of law of Hon'ble Supreme Court in the judgments referred as above, it is apparent that where original documents are not produced at any time, nor any factual foundation laid for giving second evidence, it is impermissible to allow a party to adduce secondary evidence; and secondary evidence relating to contents of a document is inadmissible, until non production of original is accounted for.

10. Considering the overall facts and circumstances, the nature of allegations, the gravity of offence, and considering the law as discussed in the above mentioned judgments of Hon'ble Supreme Court, without expressing any opinion on merits, this Court finds it to be a fit case for bail. Accordingly, the bail application stands **allowed**.

11. Let the applicant-**Umar Ansari**, be enlarged on bail in Case Crime No. 245 of 2025, under Sections 318(4), 319(2), 336(3), 338, 340(2) of B.N.S., Police Station- Muhammadabad, District- Ghazipur, on executing a personal bond and furnishing two local sureties each in the like amount to the satisfaction of the court concerned with the following conditions:

- i) The applicant shall not tamper with the prosecution evidence.
- ii) The applicant shall not threaten or harass the prosecution witnesses.
- iii) The applicant shall appear on the date fixed by the trial court.
- iv) The applicant shall not commit any offence similar to the offence of which the applicant is accused, or suspected of the commission.
- v) 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 such person from disclosing facts to the Court or to any police officer or tamper with the evidence.

12. In case of default of any of the conditions enumerated above, the court concerned shall be at liberty to cancel the bail of applicant in accordance with law.

(Dr. Gautam Chowdhary,J.)

September 19, 2025

Mustaqeem.