

Neutral Citation No. - 2025:AHC:33891

Reserved on 17.02.2025

Delivered on 07.03.2025

**Court No. - 66**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 32559 of 2024

**Applicant :-** Rachit Nagar

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

**Counsel for Applicant :-** Swati Agrawal Srivastava

**Counsel for Opposite Party :-** Abhinav Gaur,Ankit  
Shukla,G.A.,Sandeep Kumar Rai

**With**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 39544 of 2024

**Applicant :-** Sumit

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

**Counsel for Applicant :-** Indra Deo Mishra,Premshankar Shukla

**Counsel for Opposite Party :-** G.A.,Sandeep Kumar Rai

**With**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 31760 of 2024

**Applicant :-** Shubham Chaudhary

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

**Counsel for Applicant :-** Parvish Kumar,Rajiv Lochan Shukla

**Counsel for Opposite Party :-** Abhinav Gaur,Ankit Shukla,G.A.

**With**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 30464 of 2024

**Applicant :-** Shivam

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

**Counsel for Applicant :-** Neeja Srivastava,Sr. Advocate,Veerendra Singh

**Counsel for Opposite Party :-** Abhinav Gaur,Ankit  
Shukla,G.A.,Sandeep Kumar Rai

**Hon'ble Sameer Jain,J.**

1. As, all the four bail applications are arising out of the same FIR, therefore, all the four bail applications are being decided by a common order.

2. Heard Ms. Swati Agrawal Srivastava, learned counsel for the applicant Rachit Nagar, Sri V.P. Srivastava, learned Senior Advocate assisted by Sri Veerendra Singh, learned counsel for the applicant Shivam, Sri Rajiv Lochan Shukla, learned counsel for the applicant Shubham Chaudhary and Sri Indra Deo Mishra, learned counsel for the applicant Sumit, Sri Anoop Trivedi, learned Senior Advocate assisted by Sri Ankit Shukla, learned counsel for the informant and Dr. S.B. Maurya, learned AGA-I for the State.

3. The instant bail applications have been filed seeking release of the applicants on bail in Case Crime No. 85 of 2024, under Sections 364A, 302, 201, 120B IPC, Police Station Dadri, District Gautam Buddh Nagar during pendency of the trial.

**Brief facts of the case:-**

4. FIR of the present case was lodged on 27.02.2024 against unknown persons under Section 364A IPC and according to the FIR son of the informant namely Yash Mittal was the student of Bennett University in BBA Ist Year and he resided in the Hostel of the University and on 26.02.2024 at about 6.30 PM in the evening he went outside the Hostel but did not return and when next day informant came to the University then he received a message on his mobile that his son is with the sender and through mobile message a demand of Rs. 6 Crores as ransom was made.

5. After registration of the FIR, investigation was started and during investigation statement of Urvashi, the friend of the son of the informant was recorded on 28.02.2024 and she stated that on 26.02.2024 at about 8.00 PM in the evening she had mobile conversation with Yash Mittal (son of the informant) and he informed her that he received a phone call from applicant Rachit Nagar to attend a party.

6. As per witness Urvashi, Yash Mittal also informed her that applicant Rachit Nagar is at the gate of University and on query, he informed her

that he received phone call of applicant Rachit Nagar from mobile number 9457701803. Witness Urvashi also stated in her statement that after 8.30 PM the mobile phone of Yash Mittal and mobile number 9457701803 both were switched off.

7. From the record, it further reflects that when during investigation inquiry was made with regard to mobile number 9457701803 then it was found that it was issued in the name of one Ashish Kumar S/o Mahabeer but he informed the police that in November, 2023 he lost his mobile and since then he is not using this number and thereafter through the CDR of the above number it was found that on 26.02.2024 the last location of the above mobile number was around Bennett University.

8. It further reflects from parcha no.2 of the case diary dated 28.02.2024 which was prepared from 10:40 AM to 17:00 hours that Investigating Officer of the case received an information from the Incharge police station on phone that abductee Yash Mittal has been murdered and his dead body has been recovered from the area of Police Station Gajraula, District Amroha on the pointing out of the applicant Rachit Nagar.

9. Record further suggests that on the basis of surveillance applicant Rachit Nagar was arrested on 28.02.2024 at 16:30 hours by the team of S.O. Dadri, Sujeet Kumar Upadhyay and thereafter as per prosecution on his pointing out the dead body of abductee Yash Mittal was recovered from the jurisdiction of P.S. Gajraula, District Amroha and on 28.02.2024 at 19:56 hours a G.D. entry in this regard has been prepared at G.D. No. 72, P.S. Gajraula, District Amroha and on 28.02.2024 at 21:15 hours inquest report was prepared and thereafter post mortem was conducted on 29.02.2024 at 6:15 AM in the morning and according to the autopsy surgeon deceased died about three days before due to strangulation.

10. It appears, the recovery memo of the dead body has not been prepared and from the record it also could not be reflected that at what time recovery of the dead body was made on 28.02.2024, however, record

suggests, the recovery of the dead body was made in presence of the informant. Record further suggests that in the G.D. entry no. 72 dated 28.02.2024 at 19:56 hours of Police Station Gajraula, District Amroha the name of the accused on whose pointing out the dead body was recovered has not been mentioned and from perusal of the G.D. entry no. 72 it reflects, on the pointing out of one accused recovery was made.

11. It further reflects, before recovery of the dead body the statement/disclosure statement of applicant Rachit Nagar has not been recorded and it appears, after the recovery his statement was recorded.

12. From the statement of applicant Rachit Nagar recorded during investigation, it reflects, he confessed his guilt and stated to the police that in November, 2023 he found mobile number 9457701803 which was lying somewhere and he used to call the deceased from this number along with co-accused Shubham Chaudhary and Sushant.

13. According to the applicant Rachit Nagar on 14.09.2023 some dispute arose between him and deceased in a party and thereafter he along with other accused persons made a planning to eliminate him and on 26.02.2024 after calling the deceased through mobile number 9457701803 he along with other accused persons committed his murder by strangulating him and thereafter buried his dead body. It appears, through the statement of applicant Rachit Nagar names of applicants Sumit, Shivam and Shubham Chaudhary were surfaced in the present matter.

14. From the case diary, it reflects from the call details of all the four applicants, it appears, they were very well connected to each other and they made several calls and their location were also found near the place of incident.

15. As per prosecution, on the pointing out of the applicant Shubham Chaudhary, a Swift car number UP 23 AL 2411 and Vivo mobile with Sim card were recovered on 30.03.2024 and on his pointing out on 31.03.2024

a spade was also recovered, which was allegedly used in the alleged crime. Record further suggests through CCTV footage it was found that deceased Yash Mittal was sitting in the above car on 26.02.2024 along with one person but identity of that person could not be disclosed.

16. Record also shows, during investigation it was found that the above mentioned Swift car was of Sashi Kant Pal and when his statement was recorded on 11.04.2024 in Parcha no. 18 of the case diary then he informed that on 26.02.2024 co-accused Shubham Chaudhary had taken his car but it appears, during investigation Sashi Kant Pal has also been made accused in the present matter along with others. It also reflects, on the basis of above evidence, charge-sheet has been filed against the applicants after investigation.

**Submissions advanced on behalf of the applicant Rachit Nagar:-**

17. Learned counsel for the applicant submits, on the basis of false allegation during investigation applicant has been made accused in the present matter.

18. She further submits, it is a case of circumstantial evidence and as per prosecution applicant used to call the deceased along with co-accused Shubham Chaudhary and Sushant through mobile number 9457701803 but except the statement of the applicant before the police there is no cogent evidence in this regard on record.

19. She further submits, as per prosecution when applicant was arrested then on his pointing out dead body of the deceased was recovered but surprisingly before alleged recovery neither his statement was recorded nor recovery memo of the dead body was prepared, therefore, alleged recovery is not admissible under Section 27 of Indian Evidence Act.

20. She further submits, from perusal of the G.D. entry of the recovery of the dead body dated 28.02.2024 at 19:56 hours P.S. Gajraula, District Amroha it reflects, in the G.D. entry, it has not been mentioned that recovery of dead body was made on the pointing out of the applicant and

in the G.D. entry it has only mentioned that on the pointing out of one accused who was arrested through surveillance on 28.02.2024 recovery of the dead body was made. It is next argued, all these facts clearly suggests that actually the dead body of the deceased was not recovered on the pointing out of the applicant.

21. She further submits, however another evidence as per prosecution against the applicant is that location of the mobile phone of the applicant and other accused persons were near the place of incident and all the accused persons were well connected with each other but merely on the basis of this fact it cannot be said that applicant committed the murder of the deceased Yash Mittal.

22. She further submits, there is no evidence that applicant was last seen along with the deceased before his death. She next submits, from the statement of witness Urvashi, the friend of the deceased it reflects deceased was alive till 20:00 hours on 26.02.2024 as he had conversation with her on 26.02.2024 at 20:00 hours and as per prosecution deceased was murdered in the night of 26.02.2024 but according to the post mortem which was conducted on 29.02.2024 at 6:15 AM in the morning deceased had died three days before, therefore, according to the autopsy report of the deceased he had already died on 26.02.2024 at or around 6:00 AM in the morning.

23. She further submits, however, on the basis of post mortem report precise time of death of deceased cannot be ascertained but from the post mortem report, prima facie, prosecution story appears to be doubtful as post mortem report indicates, deceased had died on 26.02.2024 well before 8.00 PM.

24. She next submits, considering all these facts it cannot be said that applicant involved in the present crime. She further submits, applicant is not having any criminal history and in the present matter he is in jail since 28.02.2024 i.e. for last almost a year.

**Submissions advanced on behalf of the applicant Shubham Chaudhary:-**

25. Learned counsel for the applicant submits, applicant has been made accused in the present matter during investigation through the statement of co-accused Rachit Nagar, and however, as per prosecution on his pointing out, Swift car, Vivo mobile with Sim card and a Spade were recovered which were used in the instant crime but merely on the basis of such recovery it cannot be said that applicant involved in the present crime.

26. He further submits, however, as per owner of the Swift car applicant had taken his vehicle on 26.02.2024 but there is no evidence on record that he was ever seen along with deceased either in the car or at any place on 26.02.2024.

27. He next submits, however, as per prosecution, the CDR of the mobile phone of the applicant suggests, his location was found along with other accused persons near the place of incident and all the accused were well connected with each other but merely on the basis of this fact also, at this stage, it cannot be said that applicant involved in the present crime.

28. He further submits, it is a case of circumstantial evidence and there is no cogent evidence against the applicant on record which can connect him with the instant crime.

29. He further submits, applicant is not having any criminal history and in the present matter he is in jail since 21.03.2024.

**Submissions advanced on behalf of the applicants Sumit and Shivam:-**

30. Learned counsel for the applicants submitted, names of the applicants were disclosed in the present matter through the statement of co-accused Rachit Nagar and except the statement of co-accused, their confessional statement and the fact that they had frequent conversation with other

accused persons and location of their mobile phones were found near the place of incident, there is no other cogent evidence against the applicants on record.

31. They further submitted, merely on the basis of above evidences, at this stage, it cannot be said that applicants also involved in the present crime.

32. They further submitted, applicants are not having any previous criminal history and in the present matter they are in jail since 29.02.2024.

**Submissions advanced on behalf of the State and informant:-**

33. Per contra, learned AGA as well as learned counsel for the informant vehemently opposed the prayer for bail and submitted that it is a case in which a young boy has been brutally murdered and from perusal of the entire material available on record, it reflects, after making planning he was murdered by the applicants and other accused persons.

34. They further submitted that involvement of applicant Rachit Nagar was surfaced in the present matter through the statement of witness Urvashi, the friend of the deceased and when she disclosed that deceased received a call from mobile number 9457701803 which was made by the applicant then through surveillance applicant was arrested and on his pointing out dead body of the deceased was recovered.

35. They further submitted that if recovery memo of the dead body could not be prepared then merely on this basis entire recovery cannot be discarded. They further submitted, however, it reflects, before recovery of the dead body the statement of the applicant Rachit Nagar was not recorded but merely on this basis also recovery of dead body cannot be disbelieved as law is settled that no benefit should be extended to the accused due to the lapses of the Investigating Officer.

36. They further submitted, apart from the recovery of the dead body there is also evidence against the applicant Rachit Nagar that he used the mobile number 9457701803 to make conversation with the deceased. It is

further submitted, location of the mobile phone of the applicant Rachit Nagar and other accused persons were found between Bennett University and the place from where dead body was recovered and record also suggests they were very well connected with each other through their mobile phones and, therefore, it cannot be said that applicants are innocent.

37. They further submitted, even on the pointing out of the applicant Shubham Chaudhary, a Swift car which was used in the abduction of the deceased and Vivo mobile with Sim card and Spade were recovered and considering the fact that it is a case of circumstantial evidence these facts are having importance.

38. They further submitted that all the above circumstances clearly indicate towards the guilt of the applicants, therefore, considering the totality of facts and circumstances of the case, all the bail applications should be dismissed.

### **Analysis**

39. I have heard both the parties at length and perused the record of the case.

40. It is a case of circumstantial evidence and as per prosecution following are the circumstances against the applicants:-

### **Circumstances/evidences against the applicant Rachit Nagar:-**

(A) As per witness Urvashi (the friend of the deceased) deceased received a call from applicant from mobile number 9457701803 on 26.02.2024 around 20:00 hours to attend a party and according to witness Urvashi deceased informed her that applicant was on the gate of the University and thereafter mobile phone of applicant and mobile number 9457701803 were switched off.

(B) When applicant was arrested on 28.02.2024 at 16:30 hours then on his pointing out dead body of the deceased was recovered.

(C) The location of the mobile phone of the applicant was found between Bennett University and the place from where recovery of dead body was made and it was also found during investigation that applicant and other co-accused persons were having frequent conversation with each other.

(D) Applicant is the person who was using mobile number 9457701803 to talk the deceased along with applicant Shubham Chaudhary and co-accused Sushant.

**Circumstances/evidences against the applicant Shubham Chaudhary:-**

(A) After taking on police remand on the pointing out of the applicant Swift four wheeler, Vivo mobile phone and Spade were recovered which were used in the commission of instant crime.

(B) Location of the mobile phone of the applicant was found near the place of incident.

(C) On 26.02.2024 applicant had taken the Swift four wheeler from its owner Sashi Kant Pal and there is evidence that deceased was sitting in the Swift car.

(D) Applicant also used to talk the deceased through mobile number 9457701803 along with applicant Rachit Nagar and co-accused Sushant.

**Circumstances/evidences against the applicants Shivam and Sumit:-**

Only evidence against these applicants are that location of their mobile phones were found between Bennett University and place from where dead body of the deceased was recovered and they were well connected through phones with each other and other accused as they had frequent conversations with them.

41. Therefore, from the material available on record, it reflects that as per prosecution applicant Rachit Nagar was the principal accused, who called the deceased and had taken the deceased and thereafter on his pointing out

dead body of the deceased was recovered but there is no evidence on record which can suggests that he was last seen along with deceased.

42. Further, however, as per prosecution applicant Rachit Nagar, Shubham Chaudhary and co-accused Sushant used to make call to the deceased from mobile number 9457701803 and on 26.02.2024 applicant Rachit Nagar called him through mobile number 9457701803 but admittedly mobile number 9457701803 was not of the applicants Rachit Nagar, Shubham Chaudhary and co-accused Sushant and it was of one Ashish Kumar and however as per the prosecution applicant Rachit Nagar found the above mobile number while it was lying somewhere and thereafter he used the same in the instant crime along with applicant Shubham Chaudhary and co-accused Sushant but it appears, except the statements of applicants and co-accused persons there is no other cogent evidence in this regard on record.

43. Further, from the record, it reflects that recovery memo of the recovery of the dead body has not been prepared. Further, record also suggests that after the recovery of the dead body G.D. entry has been made on 28.02.2024 at 19:56 hours as G.D. No. 72 at Police Station Gajraula, District Amroha and from its perusal it reflects, in the G.D. entry it has been mentioned that on 28.02.2024 an accused was arrested and on his pointing out the dead body of the deceased was recovered and in this G.D. entry the name of applicant Rachit Nagar has not been disclosed. Further, from the entire case diary it could not be reflected what was the time of recovery of the dead body. After considering all these facts prima facie recovery of the dead body allegedly on the pointing out of applicant Rachit Nagar appears to be doubtful.

44. Record also suggests that no statement/disclosure statement of the applicant Rachit Nagar with regard to the recovery of the dead body was recorded before the alleged recovery of the dead body. Considering this facts, the argument advanced by learned counsel for the applicant Rachit

Nagar that even recovery of the dead body is not admissible under Section 27 of Evidence Act cannot be completely brushed aside at this stage.

45. Further, except the recovery of dead body as per prosecution location of mobile phones of the applicant Rachit Nagar and other accused persons were found between Bennett University and place from where dead body was recovered and all the accused persons were well connected with each other but this Court finds merit in the argument advanced by learned counsel for the applicants that merely on the basis of such evidence however doubt can be created against them but at this stage it cannot be said that they involved in the present crime.

46. Further, however, as per prosecution on the pointing out of the applicant Shubham Chaudhary, Swift four wheeler along with mobile phone and Spade was recovered after taking him on police remand but this Court is of the view that at this stage merely on the basis of such recovery also it cannot be said that he involved in the present crime considering the fact that there is no evidence on record which can suggests that he was last seen along with deceased either in the Swift car or at any place.

47. Further, applicants are not having any criminal history and they are in jail for last one year.

48. Further, law is settled that unless proven guilty an accused is deemed to be innocent and bail application should not be dismissed for punitive purpose.

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

50. Accordingly, without expressing any opinion on the merits of the case, the instant bail applications are **allowed**.

51. Let the applicants – **Rachit Nagar, Sumit, Shubham Chaudhary and Shivam** 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.

52. 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.

53. 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.

**Order Date :- 07.03.2025**

AK Pandey