



HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.687 of 2025

Shahjad Alias Kankada Alias Thokar Appellant

Versus

State of Uttarakhand Respondent

Presence:-

Mr. C.K. Sharma, Advocate for the appellant.

Mr. J.S. Virk, Dy.A.G. (Criminal) with Mr. Dipak Bhardwaj, learned
Brief Holder for the State.

Coram :Hon'ble Manoj Kumar Tiwari, J.

Hon'ble Pankaj Purohit, J.

Hon'ble Pankaj Purohit, J. (Oral)

For the reasons stated, Delay Condonation Application (IA/4/2026) is allowed. Delay of 16 days in filing the appeal is condoned.

2. This criminal appeal is directed against the judgment and order dated 06.10.2025, passed by learned Special Judge (U.A.P. Act)/Ist Additional Sessions Judge, Haldwani, District Nainital in Bail Application No.255 of 2025 filed in Special S.T. No.01 of 2024 (FIR No.21 of 2024), registered at Police Station Banbhoolpura, Haldwani District Nainital under Sections 147, 148, 149, 307, 323, 332, 341, 342, 353, 395, 427, 436, 333, 412, 120-B IPC, r/w Section 7 of the Criminal Law Amendment Act, 1932, r/w Sections 3/4 of the Prevention of Damage to Public Property Act, 1984, r/w Sections 15/16 of the U.A.P.A., r/w Section 3/25 of The Arms Act, whereby, the learned trial court has rejected the Bail Application filed by appellant.



3. Facts of the case giving rise to the present proceedings are that FIR No.21 of 2024 dated 08.02.2024 was lodged in Police Station Banbhoolpura, District Nainital. As per the aforesaid FIR, on 08.02.2024, officials from Nagar Nigam, Tehsil and Police went to a place in Banbhoolpura locality to demolish two structures *viz.* alleged encroachments on public land – one Madarsa and one Mosque, which was already sealed and fenced. When officials reached the spot, they faced resistance from the local public, which formed a mob and started pelting stones at the officials and petrol bombs were also thrown in the process. During this process police officials also rushed to the Police Station Banbhoolpura after receiving reports that some persons attempted to set the police station on fire; petrol bombs were thrown on the police vehicle and the service pistols and cartridges of Police officials S.O. Mukhani were also snatched.

4. It is admitted that the provisions of Section 15/16 of the Unlawful Activities (Prevention) Act, 1967 were invoked subsequently during investigation against the appellant/applicant and other persons who have been arrested during investigation. The name of the appellant/applicant was not mentioned in the FIR. He was arrested on 11.02.2024. From his possession, 01 country made pistol, 02 used cartridges and 10 live cartridges were recovered.

5. Against the rejection of his Bail Application No.255 of 2025, as mentioned above, appellant/applicant has preferred the present appeal.

6. Objection to the bail application was called from the State. The State in its objection opposed the bail



application by stating that the appellant/applicant was involved in the serious offence of rioting, arsoning and violence that too with the officers of the administration and police. It has also been stated that from his possession, 01 country made pistol of 315 bore, 02 used cartridges and 10 live cartridges were recovered. Sub-Inspector Asif Khan is the witness of recovery made from the accused. The State has also annexed the report of FSL according to which the empty cartridges so recovered were found to have been used in the country-made pistol recovered from the accused. The State further contended that the criminal activities done by the appellant /applicant falls within the definition of “terroristic attack” with the purpose of creating terror among the people and the attack caused by the crowd of which the appellant/applicant was part of, caused irreparable damaged to the property of nation and it created fear in the mind of general public. Therefore, offence is made out against the appellant/applicant.

7. It is further submitted by the State that after completion of the investigation, the investigating officer has filed a charge-sheet against the appellant/applicant before the court concerned.

8. Heard learned counsel for the parties and perused the record.

9. Learned counsel for the appellant/applicant submitted that appellant was not named in the FIR; he has falsely been implicated with the incident; he has no concern with the alleged violence rioting and arsoning. He further submitted that there is no concrete evidence with the prosecution to connect the appellant/applicant with the incident happened on 08.02.2024 at Malik-Ka-



Bagicha in Haldwani. He further submitted that the appellant/applicant is under incarceration since 11.02.2024 and has no criminal history. But the role assigned to appellant/applicant is of firing bullets, pelting stones and arsoning with others named in the statement of injured witness Samir, and, therefore, he is entitled to be released on bail by this Court after setting aside the judgment and order impugned. He further submitted that without collecting any credible evidence like CCTV footages, mobile call details and location against the appellant/applicant and merely on the basis of statement of injured witness Samir by indicating that he too was involved in stone pelting and arsoning, appellant cannot be nailed as he was resident of the area. It was also argued that the recovery of country-made pistol, 2 used cartridges and 10 live cartridges is also false and concocted.

10. *Per contra*, learned Deputy Advocate General for the State strongly opposed the appeal and grant of bail to the appellant. He also relied upon the statements of injured witnesses-Samir and Raees recorded u/s 164 Cr.P.C. as well as that of Constables Bhupendra Singh, Parvez Ali and Sub Inspector Ashif Khan to connect the appellant/applicant with the alleged crime and offence. He further submitted that though appellant has not been named in the FIR because the FIR was against unknown persons, but his name was figured during investigation and from possession of appellant/applicant, firearm with cartridges were recovered; a case being Crime No.15 of 2022 under Sections 2/3 of Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 is also against the appellant.



11. We have perused the record of the case and the statements recorded under Section 164 Cr.P.C. of Samir injured (independent witness), Raees and that of other police personnel. As stated above, appellant was implicated with the crime by these witnesses and one pistol, 2 used cartridges and 10 live cartridges were said to have been recovered from his house on his pointing out.

12. Having considered the submissions of both the learned counsel for the parties and having gone through the record of the case, this Court is of the view that prima facie there is no direct evidence against the appellant/applicant. The prosecution could not explain as to what active role was attributed to the appellant /applicant. There is no direct evidence so far against the appellant. So far as the offence of U.P. Gangsters Act is concerned, except this FIR, a case of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 is reported against him. The Court has also considered the period already undergone by the appellant in jail.

13. Accordingly, the present criminal appeal is allowed. Judgment and order dated 06.10.2025 impugned in the instant appeal is hereby set-aside. Appellant/applicant-Shehzad @ Kankada @ Thokar is directed to be released immediately on bail on his executing personal bond and furnishing two reliable sureties, each of the like amount, to the satisfaction of the Court concerned in connection with SST No.01 of 2024 (FIR No.21 of 2024), if he is not wanted in any other criminal case. The observations made are strictly for deciding this Criminal Appeal and shall not have any bearing on the merit of the trial.



14. Pending application(s), if any, stands disposed of accordingly.

(Pankaj Purohit, J.)

(Manoj Kumar Tiwari, J.)

18.06.2026

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