



2026:AHC:56841

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 8308 of 2026

Nitin Bata @ Harsh Tomar

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Aushim Luthra, Irshad Husain
Counsel for Opposite Party(s)	:	G.A.

Court No. - 66

(Sr. No.28 out of 116)

HON'BLE KRISHAN PAHAL, J.

1. List has been revised. Supplementary affidavit filed by learned counsel for the applicant is taken on record.
2. Heard Sri Aushim Luthra, learned counsel for the applicant as well as Sri R.P. Patel, learned State Law Officer for the State and perused the record.
3. Applicant seeks bail in Case Crime No.191 of 2025, under Sections 191(2), 140(1), 103(1), 238, 3(5) and 61(2) BNS, Police Station Kapurpur, District Hapur, during the pendency of trial.

PROSECUTION STORY:

4. The applicant alongwith seven other named accused persons and some unknown persons is stated to have entered into an altercation with the deceased person on 18.4.2025 at about 05:30 p.m. and the applicant and other accused persons had threatened the deceased to put him to death.
5. On 5.9.2025 at about 07:00 p.m., the deceased was getting ready to leave his house for Noida, whereby his half burnt dead body was recovered from the village Devrala, Pahasu Road, P.S. Shikarpur on 7.9.2025. In the meantime, the informant kept on receiving messages from the phone of his son, as such, the informant got confused and could not institute any FIR at the police station.
6. It was suspected by the informant that the applicant and other accused

persons had hatched conspiracy and committed the said murder.

ARGUMENTS ON BEHALF OF APPLICANT:

7. The applicant is absolutely innocent and has been falsely implicated in the present case.

8. The FIR is delayed as the son of the informant had left the house on 5.9.2025, but it was instituted on 10.9.2025, i.e. after a delay of five days. There is no explanation of the said delay caused.

9. The dead body was already received and the postmortem examination was conducted on 8.9.2025 itself, i.e. three days after the son of the informant left the house, but the time of death in the postmortem report is stated to be two weeks before by the doctor conducting postmortem examination.

10. It was particularly observed by the doctor that postmortem staining was uncertain due to decomposed body. Decomposed body, foul smell present, maggots present about 2 cm, skin peeled off, scrotum and abdomen distended, which indicates that the death was caused much before the said statement of the informant regarding his son leaving the house on 5.9.2025.

11. The informant has subsequently changed his version and a last seen witness has been created. The said witness is Firoz, whose statement was recorded on 14.9.2025. He has stated that he had seen the applicant and other co-accused person alongwith the deceased person on 4.9.2025, i.e. one day before the deceased left his house. The said story does not carry any weight as it does not stand corroborated from the postmortem report and the FIR.

12. A false recovery of bag of the deceased has been foisted on the applicant when he was arrested. The said bag of the deceased contained Aadhar Card and other documents belonging to the deceased. There is no reason for applicant to carry those documents and bag with him.

13. The criminal history assigned to the applicant has been explained. He is languishing in jail since 24.9.2025. He undertakes to cooperate with the trial and not misuse the liberty of bail.

ARGUMENTS ON BEHALF OF STATE/INFORMANT:

14. The bail application has been opposed but the submissions raised by the learned counsel for the applicant could not be disputed.

CONCLUSION:

15. The Supreme Court in ***Prabhakar Tewari Vs. State of U.P. and another, 2020 (11) SCC 648*** has observed that pendency of several criminal cases against an accused itself cannot be a basis for refusal of bail, if otherwise his case of bail is made out.

16. 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.

17. 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 recapitulated by the Supreme Court in ***Satender Kumar Antil Vs. Central Bureau of Investigation and Ors., 2022 INSC 690***.

18. Reiterating the aforesaid view the Supreme Court in the case of ***Manish Sisodia Vs. Directorate of Enforcement 2024 INSC 595*** has again emphasised 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*".

19. Learned A.G.A./State Law Officer could not bring forth any exceptional circumstances which would warrant denial of bail to the applicant.

20. 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 A.G.A./State Law Officer.

21. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, the delay in institution of FIR, and 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***.

22. Let the applicant- **Nitin Bata @ Harsh Tomar**, be released on bail on furnishing a personal bond and two sureties to the satisfaction of the court concerned, subject to verification of sureties, with the conditions that he shall not tamper with evidence or intimidate witnesses and shall appear before the trial court as required.

23. Breach of any condition shall entail cancellation of bail. The observations herein shall not affect the trial on merits.

(Krishan Pahal,J.)

March 19, 2026

Vikas Verma