HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.453 of 2025

Shanwaz @ Shanu

--Appellant

Versus

State Of Uttarakhand

--Respondent

Presence:-
Mr. C.K. Sharma, learned counsel for the appellant.
Mr. J.S. Virk, learned Deputy Advocate General for the State.

Coram :Hon'ble Manoj Kumar Tiwari, J.
Hon'ble Pankaj Purohit, J.

Hon'ble Pankaj Purohit, J. (Oral)

The present criminal appeal is barred by limitation of 293 days' wherefor delay condonation application (IA No.1/2025) has been filed. Objection to the delay condonation application has also been filed. However, in view of the fact that the appellant had approached the Hon'ble Supreme Court of India where vide judgment and order dated 12.12.2025 in Special Leave Petition (Criminal) Nos.18725/2025 and 18860 of 2025, a direction was given by the Apex Court to decide the appeal pending before this Court on merits, notwithstanding the delay that has occasioned in filing the appeals, we condone the delay in filing this appeal. We accordingly proceed to decide this appeal on its merits.

2. This criminal appeal is directed against the judgment and order dated 09.09.2024, passed by learned 1st Additional Sessions Judge, Haldwani, District Nainital in FIR No.23 of 2024, under Sections 147, 148, 149, 307, 332, 353, 427, 435, 436 & 120B IPC and Section 3/4 of the Prevention of Damage to Public Property Act, 1984 &

Section 15/16 of the Unlawful Activities (Prevention) Act, 1967. The court below has rejected the Bail Application No.284 of 2024 of the accused.

3. The brief facts of the case involved in the present criminal appeals are that FIR No.23 of 2024 for the offences under 147, 148, 149, 307, 332, 353, 427, 435, 436 & 120B IPC and Section 3/4 of the Prevention of Damage to Public Property Act, 1984 & Section 15/16 of the Unlawful Activities (Prevention) Act, 1967 were registered against Mehboob Alam , Shakeel Ansari and against unknown persons in Police Station Banbhoolpura, District Nainital. In the FIR, it has been alleged by the informant that while the team of administration and police went to demolish and remove the illegal construction at *Malik-ka-Bagicha* in Haldwani on 08.02.2024, several persons assembled there and committed violence, arsoning and rioting with the team of administration and police; hurled petrol bombs, fired from illegal weapons and snatched the weapons of the police. The appellant/applicant has been arrested on 20.02.2024 on the charge of the aforesaid offences.

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 came into light during investigation.

5. The bail application of the appellant/ applicant has been rejected by the learned 1st Additional Sessions Judge, Haldwani, District Nainital as stated above by the impugned judgment and order. It is feeling aggrieved by

the aforesaid judgment and order, the appellant/applicant is before this Court.

6. The objections were called from the State. Objections have been filed along with delay condonation applications (IA Nos.5/2026 & 6/2026. For the reasons stated, the same is allowed. Delay in filing the objections is condoned. Objections filed on behalf of the State are taken on record.

7. The State in its objections 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 in the statement of witnesses recorded under Section 161 Cr.P.C., the involvement of appellant/applicant is proved; the illegal arms and petrol bombs were stored under a well planned conspiracy and public officers were attacked with the intention of killing them by using petrol bombs etc. by demonstrating criminal force. The State further stated 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, as conspirator, 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.

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

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

10. Learned counsel for the appellant/applicant submitted that appellant/applicant 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 Halwani. He has no concern with the crime. The main accused and the alleged conspirator of the crime Mr. Abdul Malik has also been released on bail by Co-ordinate Bench of this Court on 16.04.2026. Since no specific role has been assigned to appellant/applicant in commission of crime, therefore, he is entitled to be released on bail by this Court after setting aside the judgment and order impugned.

11. Per contra, learned Deputy Advocate General strongly opposed the appeal and grant of bail to the appellant/applicant. He submits that the statements under Section 161 Cr.P.C. of complainant, police persons and one Mukesh Saxena (independent witness/reporter) and Pankaj Agrawal (reporter) have been recorded who unequivocally stated about the involvement of appellant/accused in the crime. He further submitted that though he has not been named in the FIR because the FIR was against unknown persons, but his name was figured during investigation.

12. We have perused the record of the case and the statements recorded under Section 161 Cr.P.C. He has been booked only on the basis of CCTV footage. Further,

he has no criminal history.

13. 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 there is no direct evidence even of conspiracy against the appellant/applicant. The prosecution could not tell us as to who has named or identified the appellant/applicant. It is also in the mind of this Court since the appellant/applicant has already more than two years in custody in connection with the aforesaid alleged FIR, he is entitled to be released on bail.

14. The net result of the aforesaid discussion is that appellant is entitled to be released on bail in the present matter. Accordingly, the criminal appeal is allowed. The judgments and orders, passed by learned 1st Additional Sessions Judge, Haldwani, District Nainital impugned in the instant appeal are hereby set-aside. The appellant/ applicant-Shanwaz @ Shanu is directed to be released immediately, if he is not wanted in any other criminal case, on bail on his executing personal bond in each case and furnishing two reliable sureties, each of the like amount to the satisfaction of the Court concerned.

15. Pending application, if any, stands disposed of accordingly.

(Pankaj Purohit, J.) (Manoj Kumar Tiwari, J.)
23.04.2026

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