2026:AHC:209185

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 3447 of 2026

Ayub

.....Applicant(s)

Versus

State of U.P.

.....Opposite Party(s)

Counsel for Applicant(s)	:	Shiv Shankar Kaithal
Counsel for Opposite Party(s)	:	G.A.

Court No. - 74

HON'BLE SAMIT GOPAL, J.

1. List revised.

2. Heard Sri Shiv Shankar Kaithal, learned counsel for the applicant, Sri Birendra Pratap Singh, learned AGA for the State and perused the material on record.

3. This third bail application under Section **483 of B.N.S.S.** has been filed by the applicant Ayub seeking enlargement on bail during trial in connection with Case Crime No. 174 of 2023, under Section(s) 302, 201, 34 I.P.C. registered at P.S. Govind Nagar, District Kanpur Nagar.

4. The first bail application of the applicant being Criminal Misc. Bail Application No. 52867 of 2023 was rejected by this Court vide order dated 08.12.2023.

5. The second bail application of the applicant being Criminal Misc. Bail Application No.14885 of 2024 was rejected by this Court vide order dated 18.02.2025.

6. Learned counsel for the applicant while placing para-28 of the affidavit, has submitted that in the trial 11 prosecution witnesses have been examined. Further while placing para-30 of the affidavit it is submitted that as per charge sheet there are 29 witnesses shown and till date only 11 witnesses have been examined in the trial and thus trial will take time. Further while placing para 33 of the affidavit it is submitted that co-accused Smt.

Afsana@Apsana and Salam have been granted bail by other Benches of this Court vide order dated 18.10.2023 passed in Criminal Misc. Bail Application No.44278 of 2023, Smt. Afsana@Apsana vs. State of U.P. and vide order dated 05.02.2024 passed in Criminal Misc. Bail Application No.1520 of 2024, Salam vs. State of U.P. respectively, copies of the said bail granting order have been placed before the Court for the same which are annexure no. 7 to the affidavit. It is further submitted that the applicant has criminal history of four other cases apart from the present case which have been disclosed and explained in para-32 of the affidavit. It is submitted that the applicant is in jail since 29.5.2023. It is submitted that looking to delay in trial prayer for bail be considered and the applicant be released on bail.

7. Per contra, learned A.G.A. opposed the prayer for bail vehemently and submitted that this is the third bail application. The first bail application of the applicant was rejected by this Court on merit vide order dated 08.12.2023 after which his second bail application was also rejected on merits vide order dated 18.02.2025. It is submitted that submissions of learned counsel for the applicant have already been considered in the second bail application of the applicant and at that time 8 prosecution witnesses had been examined and as such there is no fresh and new ground in the present matter. Further it is submitted that the applicant has also criminal history of 4 other cases which was also considered in both the previous bail applications. It is submitted that the prayer for bail be rejected.

8. After having heard learned counsels for the applicant and perusing the records, it is evident that this is the third bail application. The second bail application of the applicant was rejected by this Court vide order dated 18.2.2025. The same reads as under:-

"1. List revised.

2. Heard Sri Shiv Shankar Kaithal, learned counsel for the applicant and Sri Bade Lal Bind, learned counsel for the State.

3. The present application under Section 439 Cr.P.C. has been filed by the applicant Ayub with a prayer to release him on bail in Case Crime No. 174 of 2023, under Sections 302, 201, 34 I.P.C., registered at Police Station Govind Nagar, District Kanpur Nagar, during the pendency of trial.

4. This is the second bail application. The first bail application of the applicant was rejected by this Court

vide order dated 08.12.2023 passed in Criminal Misc. Bail Application No.52867 of 2023 (Ayub vs. State of U.P.).

5. Learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. It is submitted that till date only eight prosecution witnesses have been examined and the trial is still pending for disposal which would take a lot of time. Learned counsel for the applicant has placed statements of P.W.-1 and P.W. 3 which are annexure ? 3 and 4 to the bail application and the statement of P.W.-6, P.W.-7 and P.W.-8 which are annexure-S.A.-2 to the supplementary affidavit dated 10.12.2024. It is submitted that the co-accused Smt. Afsana @ Apsana has been granted bail vide order dated 18.10.2023 passed in Criminal Misc. Bail Application No. 44278 of 2023 and co-accused Salam has been granted bail vide order dated 05.02.2024 passed in Criminal Misc. Bail Application No. 1520 of 2024, copies of the orders have been placed before this Court which are Annexure-7 to the affidavit. It is submitted that as such the applicant be granted bail.

6. Per contra, learned counsel for the State vehemently opposed the prayer for bail and submitted that the first bail application of the applicant has been rejected on merits by this Court vide order dated 08.12.2023. It is submitted that insofar as the co-accused Smt. Afsana @ Apsana is concerned, this court has considered the fact that she was a lady and having no criminal history. It is submitted that insofar as the co-accused Salam is concerned, the paragraph 13 of the order granting bail specifically states that the said accused has no criminal history. It is submitted that the applicant has criminal history of three cases in which one case is under Section 302 I.P.C. and as such there is repetition of an offence of the same nature. It is submitted that the prayer for bail be thus rejected.

7. After having heard learned counsels for the parties and perusing the records, it is evident that the first bail application of the applicant was rejected by this Court vide order dated 08.12.2023. The said order reads as under :-

"1. List revised.

2. Heard Sri Suresh Dhar Dwivedi, Advocate holding brief of Sri Shiv Shankar Kaithal, learned counsel for the applicant and Sri Ajay Singh, learned AGA-I for the State and perused the records.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Ayub, seeking enlargement on bail during trial in connection with Case Crime No. 174 of 2023, under Sections 302, 201, 34 IPC, registered at P.S. Govind Nagar, District Kanpur Nagar.

4. The FIR of the matter was lodged on 27.05.2023 under Sections 302, 201 IPC by Afsana @ Apsana against Salam alleging therein that on 25.04.2023 at about 06:00 pm her husband Mohd. Shakeel and she had some quarrel with regards to electricity bill. On 26.04.2023 she called her brother Salam and went to her maternal house. There were talks between her and her husband even then. On 27.04.2023 at about 04:00 pm she talked from the mobile phone of the neighbour to her husband who told her that he has left work and would do his work on his own. Her husband is not traceable since then. He has been searched but could not be traced. A report regarding his missing be lodged.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that on 29.04.2023 one Deepak Kumar gave an information to the police that one unknown dead body has been seen by him. The said information was registered in a GD after which the inquest to the same was conducted. On the same day, the postmortem examination of the same was also conducted as an unknown male person. The cause of death was opined as shock and hemorrhage due to antemortem injuries which was although a single abrasion but there were extensive internal damages. It is argued that subsequently on suspicion, the police made the first informant Smt. Afsana @ Apsana also an accused in the matter. Later on, the statement of the father and mother of the deceased Mohd Shakeel, Smt. Afsana @ Apsana and her brothers Salam and Ayub who is the present applicant have been made as an accused in the present case. It is argued that the implication of the applicant in the present is without credible and cogent evidence. There is no direct or indirect evidence against the applicant in the present case. While placing para 24 and annexure 13 of the affidavit in support of the bail application it is argued that Smt. Afsana @ Apsana has been granted bail by a co-ordinate Bench of this Court vide order dated 18.10.2023 passed in Crl. Misc. Bail Application No. 44278 of 2023 (Smt Afsana @ Apsana Vs. State of U.P.). Further while placing para 28 of the affidavit it is argued that the applicant is involved in four other cases in which he is on bail by the concerned courts. The applicant is in jail since 29.05.2023.

6. Per contra, learned counsel for the State opposed the prayer for bail and argued that the applicant is the brother of Smt. Afsana @ Apsana the wife of the deceased. It is argued that the applicant was seen with the deceased after which the deceased went missing and then a body was recovered which was opined to be around 3-5 days old. The postmortem of the same was conducted on 02.05.2023. It is argued that the evidence of last seen is against the applicant, is clinching since soon thereafter the deceased went missing and the time since death corroborates with the same. It is further argued that the applicant has a criminal history of four cases in which one case under Section 302 IPC also and as such the involvement of the applicant in the present case is a repetition of a case of under Section 302 IPC. It is argued that there is no reason for false implication of the applicant and as such the prayer for bail of the applicant be rejected.

7. After having heard learned counsels for the parties and perusing the records, it is evident that the present case is one in which the evidence is of last seen of the applicant with the deceased. The said time corroborates with the time since death conducting the postmortem by the doctor in the postmortem examination. The applicant when a juvenile was previously involved in another case under Section 302 IPC. There are three other cases in which he is involved. Looking to the entire facts and circumstances of the case, I do not find it a fit case for bail.

8. Considering the totality of the case in particular, nature of evidence available on record, I am not inclined to release the applicant on bail.

9. The bail application is, accordingly, rejected."

8. The fact of co-accused Smt. Afsana @ Apsana being granted bail is concerned has already been considered by this Court while rejecting the first bail application of the applicant. Insofar as the co-

accused Salam is concerned he although has been granted bail by co-ordinate Bench of this Court but the said order specifically mentions that he has no criminal history. Insofar as the present applicant is concerned he has previous involvement in three criminal cases in which one of the case is under Section 302 I.P.C.. There is thus a repetition of the same offence. The release of the applicant at this stage may not be in the fitness of things. No ground for bail is made out.

9. Accordingly, the present bail application is rejected."

9. Submissions of learned counsel for the applicant have already been considered while considering the second bail application as at that time 8 witnesses were examined and as of now 11 prosecution witnesses have been examined. Thus it cannot be said that trial is not proceeding. Further criminal history of the applicant shows that the cases are serious in nature and there is a repetition of case of the same nature which is also under Section 302 I.P.C.

10. Considering the criminal history of the accused and even involvement in serious cases of same nature the Apex Court also rejected the prayer for bail in the cases of ***SLP (Crl.) No. 2740 of 2026: Rahul vs. State of U.P.,*** decided on 18.3.2026 and ***SLP (Crl.) No. 10438 of 2026: Lisham Ibungotomba Singh vs. State of West Bengal:*** decided on 01.09.2026.

11. In view of the matter and the orders of the Apex Court in the said cases, no case for bail is made out in favour of the applicant.

12. The bail application is, accordingly, rejected.

13. Pending application(s), if any, shall stand disposed of.

(Samit Gopal,J.)

October 5, 2026
Naresh

Digitally signed by :-
NARESH KUMAR
High Court of Judicature at Allahabad