A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 3764 of 2026

Sanjay Tripathi @ Sanjay Kumar Tripathi

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	:	Ashok Nath Tripathi, Tiwari Abhishek Rajesh
Counsel for Respondent(s)	:	G.A., Pankaj Kumar Rai, Sandeep Kumar Srivastava

Court No. - 54

HON'BLE ANIL KUMAR-X, J.

1. Heard Shri Ashok Nath Tripathi and Shri Tiwari Abhishek Rajesh, learned counsel for appellant and Shri Amrit Raj, learned AGA for the State-respondent as well as Shri Pankaj Kumar Rai, learned counsel for the private respondent.

2. This criminal appeal under Section 14-A(2) of The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been preferred by the appellant with a prayer to allow the appeal, set aside the bail rejection order dated 7.3.2026 passed by Special Judge (SC/ST Act), Kanpur Nagar in Second Bail Application No.815 of 2026 and to release the appellant on bail in Case Crime No. 168 of 2025, under Section-329(3), 329(4), 352, 351(3), 308(2), 61(2), 318(4), 338, 336(3), 340(2) of B.N.S. and Sections 3(2)(v), 3(2)(va), 3(1)(da) and 3(1)(dha) of Scheduled Caste and Scheduled Tribes, (Prevention of Atrocities) Act, Police Station-Hanumant Vihar, District-Kanpur Nagar.

3. It is to be noted that basically this is the second bail application preferred by the appellant seeking his bail in the aforesaid Case Crime No. 168 of 2025. The criminal appeal filed by the appellant for challenging the earlier bail rejection order of the learned trial court was dismissed by this Court vide judgment dated 12.11.2025 passed in **Sanjay Kumar Tripathi v. State of U.P. and Another, 2025:AHC:201457.**

4. Learned counsel for the appellant submitted that the appellant is in jail for about one year and the prosecution evidence is almost over. All the witnesses of fact have been examined and the case is likely to be fixed for recording the statements of the accused and thereafter for defence evidence. It was contended that the appellant requires a reasonable opportunity to collect and produce defence evidence before the learned trial court. Such an opportunity is an essential component of the right to a fair trial. If the appellant continues to remain in jail, he will face difficulty in collecting the best available evidence in support of his defence and effectively presenting the same before the learned trial court.

5. Learned counsel further submitted that the offences alleged against the appellant are not serious or heinous in nature. According to him, the allegations essentially arise out of a property dispute and are civil in nature. The proper remedy for the informant was to approach the civil court rather than initiate criminal proceedings against the appellant. It was also contended that the prosecution story does not disclose any monetary transaction or any fraudulent act on the part of the appellant which caused financial loss to the informant.

6. Learned counsel for the appellant thereafter placed reliance upon the judgment rendered by a coordinate Bench of this Court in **Asha v. State of U.P., 2025:AHC:184205**, particularly paragraphs 82 to 87 thereof. It was submitted that the aforesaid judgment recognises the importance of granting bail at the stage when the prosecution evidence has concluded or is nearing conclusion, so that the accused may collect defence evidence and effectively prepare and conduct the defence. It was further submitted that, after the examination of the witnesses of fact, the possibility of the appellant influencing such witnesses or tampering with their testimony has substantially receded. Learned counsel contended that the aforesaid judgment is being followed by other coordinate Benches of this Court and, therefore, the appellant is entitled to the same consideration.

7. Per contra, Shri Amrit Raj, learned A.G.A. appearing for the State, as well as Shri Pankaj Kumar Rai, learned counsel appearing for the private respondent, opposed the prayer for bail. They submitted that the trial has not reached the stage of recording the statements of the appellant under Section 351 of the Bharatiya Nagarik Suraksha Sanhita, 2023,

corresponding to Section 313 Cr.P.C. Rather, the cross-examination of the investigating officer is still continuing. Although the trial is nearing its conclusion, the delay cannot be attributed to the prosecution alone. It was contended that the appellant has taken five to six days for cross-examining individual prosecution witnesses and have not cooperated in the expeditious conclusion of the trial.

8. Learned counsel for the respondents further submitted that the first bail application of the appellant was rejected by this Court after considering the material collected during investigation, which *prima facie* indicated the alleged fabrication of documents and illegal possession of the informant's property. No material change in circumstances or any fresh ground warranting a different conclusion has been demonstrated by the appellant. It was, therefore, submitted that the second bail application is liable to be rejected.

9. I have considered the rival submissions advanced by learned counsel for the parties and perused the material available on record, including the judgment passed by this Court in the earlier bail proceedings and the judgment rendered by the coordinate Bench in **Asha** (supra).

A. Legal principles governing a second bail application:

(i). Before examining the submissions made on behalf of the appellant, it would be appropriate to refer to the legal principles governing successive bail applications. It is settled law that rejection of an earlier bail application does not create an absolute bar against filing a subsequent bail application. However, the Court considering the subsequent application is required to take into account the grounds on which the earlier application was rejected and to examine whether any material change in the factual or legal position warrants a different conclusion.

(ii). In **Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav, (2005) 2 SCC 42**, the Supreme Court held that the Court considering a subsequent bail application must give due weight to the grounds which prevailed while rejecting the earlier application. Ordinarily, the same grounds cannot be re-agitated in a subsequent application without any material change in circumstances. Where a different view is taken, the

Court must record the fresh grounds which justify such a decision.

(iii). The aforesaid principle is founded upon judicial discipline and the need for consistency in the administration of justice. Although the principle of *res judicata* does not strictly apply to successive bail applications, an accused cannot seek reconsideration of the same grounds merely by presenting them in a different form. At the same time, a subsequent application must be considered on the basis of the circumstances prevailing on the date of its consideration. The progress of the trial, the period of incarceration and other relevant developments may be taken into account, but their significance must be assessed in the context of the earlier order and the facts of the particular case.

(iv). Thus, the mere fact that a second bail application has been filed after the passage of time or that the trial has progressed does not, by itself, entitle an accused to bail. The Court must examine whether the subsequent circumstances, considered cumulatively with the other relevant factors, justify release on bail.

B. Consideration of the judgment in Asha v. State of U.P. :

(i). Learned counsel for the appellant has placed considerable reliance upon paragraphs 82 to 87 of the judgment rendered in **Asha** (supra). It would, therefore, be appropriate to examine the principles laid down therein in their proper context.

(ii). In the aforesaid judgment, the coordinate Bench considered whether the need to collect defence evidence, prepare a defence strategy and effectively conduct the defence during trial could constitute a ground for granting bail. The Court observed that, after the conclusion of prosecution evidence or when the same is nearing conclusion, the stage may be appropriate for considering bail to enable the accused to prepare and conduct the defence. It further observed that the preparation and production of defence evidence is an essential component of a fair trial and not a mere formality.

(iii). The coordinate Bench also indicated the relevant considerations for examining such a request, including the gravity and nature of the offence, its impact on society, the criminal antecedents of the accused, his conduct

during investigation and trial, the possibility of tampering with evidence or influencing witnesses, the nature of the material relied upon by the prosecution, the nature of the defence evidence proposed to be collected, and the accused's ability to obtain legal advice and effectively conduct the defence while in custody.

(iv). The aforesaid observations cannot, however, be read in isolation or construed to mean that an accused becomes entitled to bail as soon as the prosecution evidence concludes or the trial reaches the stage of recording the statement of the accused. The judgment itself, in paragraphs 89 to 91, makes it clear that preparation of the defence does not automatically guarantee release on bail and that such a prayer cannot be considered mechanically. The Court is required to exercise its judicial discretion on the basis of a cumulative consideration of the relevant facts and circumstances of each case.

(v). Therefore, the judgment in **Asha** (supra) does not lay down an inflexible rule that every accused must be released on bail at the stage of recording his statement under Section 313 Cr.P.C. or Section 351 of the BNSS. It recognises the importance of an effective defence as a relevant consideration in the exercise of bail jurisdiction. Whether that consideration warrants release on bail depends upon the facts of the individual case, including the conduct of the accused and the specific need for liberty to collect or produce defence evidence.

(vi). The aforesaid interpretation is also consistent with the law laid down by the Supreme Court in **Irfan v. State of Uttar Pradesh and Another, 2025 INSC 1012**. In that case, the Supreme Court considered the grant of bail on the ground that continued incarceration would impair the accused's ability to prepare an effective defence. The Supreme Court held that such a ground cannot be applied mechanically and that the facts and circumstances of the case, particularly the conduct of the accused during investigation and trial, must be examined. The Supreme Court further observed that the accused should indicate what defence strategy or evidence requires liberty and what special circumstances justify such indulgence.

(vii). The aforesaid judgment of the Supreme Court makes it clear that the

right to an effective defence and the right to seek bail are distinct legal considerations. The need to prepare a defence is relevant, but it does not dispense with the requirement of examining the other circumstances governing the grant of bail. A Court cannot grant bail merely on a general assertion that an accused would be better placed to conduct his defence if released from custody. The necessity of such release must emerge from the material and circumstances of the particular case.

(viii). Consequently, this Court does not find any conflict between the principles laid down in **Asha** (supra) and those reiterated by the Supreme Court in **Irfan** (supra). The judgment in **Asha** (supra) itself requires a case-specific assessment and expressly cautions against granting bail mechanically. The observations contained in paragraphs 82 to 87 must, therefore, be read along with paragraphs 89 to 91 of the same judgment and the binding principles laid down by the Supreme Court.

Application of the aforesaid principles to the present case

10. In the present case, the first bail application of the appellant was rejected by this Court vide judgment dated 12.11.2025. While rejecting the earlier application, this Court considered the allegations regarding fabrication of documents, the disputed Will and the alleged illegal possession of the informant’s property. The material collected during investigation was found to *prima facie* indicate the involvement of the appellant in the alleged acts. The earlier order was thus passed after consideration of the nature of the accusations and the material relied upon by the prosecution.

11. It is true that the trial has progressed since rejection of the earlier bail application and that the appellant has remained in custody for about one year. The stage of the trial is a relevant circumstance which deserves consideration. However, the progress of the trial cannot be examined in isolation, particularly when the prayer for bail is founded primarily upon the need to prepare and conduct the defence.

12. The submission that all the witnesses of fact have been examined does not, by itself, resolve the issue. The learned A.G.A. and learned counsel for the private respondent have specifically submitted that the cross-

examination of the investigating officer is still continuing. Thus, the prosecution evidence has not yet concluded. Even otherwise, the conclusion of prosecution evidence would only remove or reduce certain concerns relating to the possibility of influencing prosecution witnesses; it would not, by itself, establish an entitlement to bail.

13. Another relevant circumstance is the conduct of the appellant during the trial. The respondents have submitted that the appellant has taken five to six days for cross-examining individual prosecution witnesses and that the progress of the trial has been affected by his conduct. At this stage, this Court is not required to make any final finding on whether the cross-examination was necessary or whether the time taken by the defence was justified. Nevertheless, the conduct of the accused during trial is a relevant consideration while examining a request for bail on the ground that continued incarceration is preventing effective preparation of the defence.

14. The appellant has also submitted that he require liberty to collect and produce defence evidence. The importance of such evidence cannot be disputed. However, the material placed before this Court, as reflected in the submissions advanced, does not sufficiently disclose the nature of the particular defence evidence which the appellant proposes to collect, the steps required for obtaining it, or the specific difficulty which prevents them from collecting or arranging such evidence while in custody through his counsel or persons acting on his behalf. A general assertion that remaining in jail would make the preparation of the defence difficult cannot, by itself, be treated as sufficient ground for release on bail.

15. The right to a fair trial requires that the accused be afforded a proper opportunity to produce defence evidence in accordance with law. The denial of bail, however, does not dispense with or curtail that right. The learned trial court remains under an obligation to ensure that the appellant receives a fair and reasonable opportunity to present this defence. If any specific difficulty arises in collecting or producing defence evidence, the same may be brought to the notice of the learned trial court for appropriate orders in accordance with law. The right to lead defence evidence cannot be equated with an unconditional right to secure release on bail for that purpose.

16. The contention that the dispute is civil in nature and that no financial loss has been caused to the informant also requires consideration in the context of the allegations forming the basis of the prosecution. The earlier order records allegations of fabrication of documents and illegal possession of the informant's property. Whether the dispute is ultimately proved to be civil in nature, whether the documents relied upon are genuine, and whether the ingredients of the offences alleged against the appellant are established are matters to be examined in accordance with law. At this stage, the mere existence of a property dispute or the absence of an alleged monetary transaction does not, by itself, remove the seriousness of the accusations recorded in the earlier order.

17. The period of incarceration is undoubtedly a relevant factor. However, no independent ground of undue delay attributable to the prosecution has been established merely by referring to the period spent in custody. The respondents have, in fact, disputed the appellant's assertion regarding the progress of the trial and have attributed part of the delay to the manner in which the prosecution witnesses were cross-examined. In these circumstances, the period of custody, considered along with the other relevant factors, does not by itself justify release on bail.

18. This Court is conscious that the trial has reached an advanced stage and that the appellant must be afforded an effective opportunity to defend himself. At the same time, the grant of bail at this stage cannot be treated as an automatic consequence of the trial nearing conclusion. The Court is required to balance the right of the accused to prepare and present a defence with the other considerations governing the exercise of bail jurisdiction.

19. Upon a cumulative consideration of the grounds on which the first bail application was rejected, the nature of the accusations, the present stage of the trial, the conduct attributed to the appellant during the proceedings, the absence of any sufficiently particularised need for liberty to collect specific defence evidence, and the principles laid down by the Supreme Court in **Kalyan Chandra Sarkar** (supra) and **Irfan** (supra), this Court is not persuaded to take a different view from the one taken while rejecting the earlier bail application.

20. The appellant has failed to establish circumstances which, in the facts of the present case, warrant his release on bail at this stage. The principles laid down in **Asha** (supra), properly understood, do not compel a contrary conclusion. The right to prepare an effective defence is an important consideration, but it cannot be applied as a mechanical or independent ground for granting bail without examining the other relevant circumstances.

21. Accordingly, the second bail application preferred by the appellant is rejected. Consequently, the criminal appeal is, therefore, **dismissed**.

22. However, considering that the trial is stated to be at an advanced stage, the learned trial court is expected to proceed with the matter expeditiously and endeavour to conclude the trial in accordance with law, without granting unnecessary adjournments to either party.

23. It is clarified that the observations made in this order are confined to the consideration of the present bail application and shall not affect the independent assessment of the evidence by the learned trial court.

(Anil Kumar-X,J.)

October 27, 2026
SK

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