HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 7261 of 2025

Vivesh

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	:	Anshul Tiwari, Vikram Singh Shrivastava
Counsel for Respondent(s)	:	Akshay Raj Singh, G.A.

Court No. - 74

HON'BLE SAMIT GOPAL, J.

1. List revised.

2. Heard Sri Anshul Tiwari, learned counsel for the appellant, Sri Birendra Pratap Singh, learned AGA for the State and perused the material on record.

3. Sri Akshay Raj Singh, learned counsel for the opposite party no. 2 is not present even in the revised list.

4. Order sheet of the matter shows that on 14.10.2025 learned counsel for the first informant had prayed for time to file counter affidavit which was allowed. Time was also granted to learned A.G.A. by the said order to file counter affidavit. The said order reads as under:-

"1. Shri Ansul Tiwari, learned counsel for the appellant is present.

2. Shri Akshay Rai Singh, learned counsel appearing for the informant has prayed to allow him to file his counter affidavit.

3. Learned AGA and the learned counsel for the informant may file their counter affidavits (if any) before the next date fixed.

4. List this case on 24.11.2025."

5. Learned counsel for the appellant submits that he has not received any counter affidavit till date either from the State or the opposite party no. 2. IA details of web-portal also do not show filing of any such counter affidavit(s).

6. Today even in the revised call learned counsel for the opposite party no. 2 is not present and thus the Court proceeds to hear the matter.

7. This criminal appeal under Section 14A(2) of SC/ST (Prevention of Atrocities) Act, 1989 has been filed by the appellant Vivesh with the following prayers:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to allow the present criminal appeal and set-aside the bail rejection order dated 25.06.2025 passed by Additional District and Session/Special Judge (S.C./S.T. Act) Lalitpur in Criminal Misc. Bail Application No.988 of 2025 (Vivesh Vs. State of U.P. and another) arising out of case crime no.55 of 2025 Under Section 103 B.N.S.and Section 3(2)v of S.C./S.T. Act, Police Station-Narahat, District-Lalitpur.

It is further prayed that this Hon'ble Court may kindly be pleased to released the applicant on bail in case crime no. 55 of 2025 Under Section 103 B.N.S. and Section 3 (2)v of S.C./S.T. Act, Police Station-Narahat, District-Lalitpur during the course of trial, and/or pass such other or further order which this Hon'ble Court may deem fit and proper under the circumstances of the case."

8. The FIR of the matter was lodged on 06.04.2025 at 23:06 hours by Smt. Gomati Sahariya against the appellant and Kamloo@Kamlesh, alleging therein that she is resident of village-Gauna, Police Station-Narahat, District Lalitpur. Yesterday i.e. 05.4.2025 at about 5:00 p.m. her son Brijesh aged about 24 years was taken away on a motorcycle by the accused. Motorcycle was of Vivesh Kushwaha. Both persons have murdered her son and dead body was found on 6.4.2025 at a distance of about 1 kilometer away from her house near culvert on the highway near Prem Sahariya. Inquest of body of the deceased has been done which has been sent for post mortem examination. Report be lodged and action be taken. Pappu Sahariya is scribe of the said F.I.R.

9. The deceased Brajesh was found to have received the following injuries on his body:-

"Injury No.1, SWELLING WITH BLOOD CLOT PRESENT ON RIGHT SIDE FOREHEAD AND EYE.

Injury No.2, SWELLING WITH BLOOD CLOT PRESENT ON RIGHT SIDE OF EAR TO MANDIBLE SIZE 16 X 10CM

Injury No.3, SWELLING WITH BLOOD CLOT PRESENT OF LEFT SIDE OF EAR TO MANDIBLE SIZE 14 X 8CM

Injury No.4, FRACTURE PRESENT ON RIGHT SIDE OF MANDIBLE WITH LOWER JAW

Injury No.5, FRACTURE OF TRACHEA BONE WITH MULTIPLE ABRASION AND CONTUSION ABOVE HYOID BONE."

Cause of death has been opined as shock and aphyxia due to antemortem fracture of trachea. His post mortem examination was conducted on

07.04.2025 at 03:20 p.m. and duration between death and post mortem was opined to be about 01 to 02 days.

10. Learned counsel for the appellant submitted that the appellant has been falsely implicated in the present case. It is submitted that there is no eye witness to the murder of the deceased. It is submitted that the present case is a case of circumstancial evidence. It is submitted that the first informant Smt. Gomati Sahriya the mother of the deceased and Smt. Laxmi the wife of the deceased are the two persons who are the witness of taking away the deceased from his house on 05.4.2025 at about 05:00 p.m. It is further submitted that three persons are alleged to have taken dinner in a dhaba whose owner Raghvendra Singh was interrogated as an independent witness who stated that some dispute arose between the said three persons for paying money for food. He states that the said three persons were in a highly intoxicated condition. It is submitted that post mortem report of the deceased does not show presence of smell of alcohol. It is submitted that the appellant has no motive to commit the aforesaid offence. It is submitted that charge sheet in the matter has been submitted on 07.5.2025 against the appellant and Kamloo @ Kamlesh and thus investigation has concluded and there are no chances of the tempering with the evidence by the appellant. It is submitted that chain of circumstances are incomplete and thus implication of the appellant is only on the basis of suspicion. It is further submitted that in the present matter Rohit and Prem Narayan were interrogated during investigation amongst whom Prem Narayan stated that on 05.4.2025 at about 10.30 pm he was present in his hut in the field where he saw Vivesh Kushwaha the present appellant and Kamlu@Kamlesh Sahariya assaulted the deceased near Sagar Highway and there was shriek at that place which after sometimes stopped and he got terrified and did not go near it. In the morning he saw the dead body of Brajesh at the said place and then he gave information at the police station on 06.04.2025 at about 09:03 hours on the basis of which inquest on the body of the deceased was conducted. It is submitted that Prem Narayan is the witness of inquest but his statement was recorded on 07.4.2025 which is delayed. It is submitted that the present appeal be considered and the appellant be released on bail. The appellant has no criminal history as stated in para- 19 of the affidavit and is in jail since 08.4.2025.

11. Per contra, learned counsel for the opposite party no.2 and State opposed the appeal and prayer for bail and submitted that in so far as circumstances are concerned, link to the chain of circumstances clearly point out to the implication of the appellant as during investigation it has come out that the deceased was taken away by the appellant and the co-accused on 05.04.2025 at about 05.00 p.m. They were seen together in the night by Prem Narayan who saw that both the accused assaulted the deceased and after some time shrieks had stopped and on the next date the dead body of the deceased was seen by Prem Narayan who gave information about it to the police station and on the said information

inquest of the body was conducted. Thus it clearly shows involvement of the appellant in the present matter and links to the chain of circumstances are complete. It is submitted that the present appeal and the prayer for bail be rejected.

12. After having heard learned counsels for the parties and perusing the records, it is evident that the appellant and the co-accused Kamlu@Kamlesh Sahariya are alleged to have taken the deceased from his house on 05.04.2025 at about 5.00 p.m. Subsequently they were seen by Prem Narayan at about 10.30 p.m. fighting and there was shriek heard by him which subsequently stopped. In the morning Prem Narayan saw the dead body of Brijesh at the said place and then he informed the police after which the police came to the place and found the dead body of the deceased and then inquest was conducted. Time since death as per post mortem report also corroborates with the time of incident. Charge sheet in the matter has been submitted against the accused including the appellant. There is no ground to release the appellant on bail at this stage.

13. In view of the same, the prayer for bail is rejected.

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

(Samit Gopal,J.)

October 29, 2026
Naresh

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