HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 33634 of 2026

Shiva Kushwaha

.....Applicant(s)

Versus

State of U.P.

.....Opposite Party(s)

Counsel for Applicant(s)	:	Anand Kumar Singh
Counsel for Opposite Party(s)	:	G.A.

Court No. - 67

HON'BLE JITENDRA KUMAR SINHA, J.

1. Heard Sri Anand Kumar Singh, learned counsel for the applicant and Sri B.P. Maurya, learned A.G.A. for the State.

2. The instant bail application has been filed with a prayer to release the applicant on bail in Case Crime No. 227 of 2026, under Sections 69, 352, 351(3) BNS, Police Station Shivli, District Kanpur Dehat, during the pendency of the trial.

3. It is contended by the learned counsel for the applicant that the applicant has been falsely implicated in the present case and on perusal of the statement of the victim recorded under Sections 180 and 183 BNSS and other attending facts and circumstances, it appears that she is a consenting party. It is further submitted that the victim is a major lady and the medico-legal report of the victim does not support the commission of rape on her. It is also submitted that the applicant has been languishing in jail since 28.7.2026 and he is having no criminal history. It is lastly submitted that in case the applicant is granted bail, he will not misuse the liberty of bail and would cooperate in the trial proceedings.

4. Per contra, learned A.G.A. has vehemently opposed the prayer for bail but could not dispute the aforesaid facts.

5. As per the allegation in the FIR, the applicant is said to have established physical relationship with the victim on the false promise of

marriage, however, it is submitted that on perusal of the statement of the victim recorded under Sections 180 and 183 BNSS and other attending facts and circumstances, it appears that she is a consenting party. The victim is a major lady and the medico-legal report of the victim does not support the commission of rape on her. The applicant has been languishing in jail since 28.7.2026 and he is having no criminal history.

6. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view the nature of offence, evidence, complicity of the accused and taking into account overcrowded jails and heavy pendency of criminal cases before the trial courts as well as considering the mandate of the judgement of the Apex Court in the case of ***Kapil Wadhawan vs Central Bureau of Investigation*** reported in 2025 SCC OnLine SC 3038 as well as guideline of this Court in the case of ***Maya Tiwari Vs. State of U.P.*** reported in 2024 SCC Online All 6765 regarding grant of bail and without expressing any opinion on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Accordingly, the present application is **ALLOWED**.

8. Let the applicant- **Shiva Kushwaha** involved in the aforementioned crime be released on bail, on his furnishing a personal bond and two sureties each in the like amount, to the satisfaction of the court concerned, with the following conditions:-

(i) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

(ii) The applicant shall cooperate in the trial/investigation sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

(iv) The applicant shall attend in accordance with the conditions of the

bond executed by him.

9. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

10. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted. Verification of mobile number and Aadhaar card of the applicant as well as sureties should be verified by the court concerned.

11. It is further directed that the trial court shall send the release order to the concerned jail through Bail Order Management System (BOMS) to ensure early release of the applicant.

12. Office is directed to send a copy of this order to the applicant through **concerned Jail Superintendent** via e-mail or e-prison portal within 24 hours in compliance of the order of the Apex Court in the case of **Policy Strategy for Grant of Bail, In Re: Suo Motu Writ Petition (Crl.) No.4 of 2021 decided on 31.01.2023** reported in (2024) 10 SCC 685.

(Jitendra Kumar Sinha,J.)

October 24, 2026
Abhishek

Digitally signed by :-
ABHISHEK AGRAHARI
High Court of Judicature at Allahabad