2026:AHC:207618

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 35407 of 2026

Rohit Kharwar

.....Applicant(s)

Versus

State of U.P.

.....Opposite Party(s)

Counsel for Applicant(s)	:	Kapil Dev Dubey, Pratikdhar Dwivedi, Rahul Kumar
Counsel for Opposite Party(s)	:	G.A.

Court No. - 65

HON'BLE SAMEER JAIN, J.

1. Heard Sri Pratikdhar Dwivedi, learned counsel for the applicant and Dr. S. B. Maurya, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicants on bail in Case Crime No. 309 of 2019, under Sections 302, 506, 34 IPC, Police Station Tharwai, District Prayagraj, during pendency of the trial.

3. Learned counsel for the applicant submits, FIR of the present case was lodged on 19.08.2019 against one Raj Kumar and two unknown persons but after one and half year on 05.03.2021 quite dramatically the name of applicant was disclosed alongwith others through subsequent statement of informant. He next submits, he stated that applicant and other accused persons were resident of Bihar and thereafter on inquiry I.O. came to know that applicant and other accused involved in the present crime.

4. He next submits, except suspicion, confessional statement of applicant and statements of co-accused recorded by the I.O. there is no other evidence against the applicant on record.

5. He further submitted that however apart from the present case applicant is having criminal history of 11 other cases including three cases of section 302 IPC but his criminal history has been duly explained and except one case and some other cases in which proceedings of the case have already been dropped, in all the cases applicant is on bail. He further submitted that in cases of section 302 IPC also in similar fashion like present one applicant

has been made accused.

6. He further submitted that co-accused Debhi Kharwar was also made accused alongwith the applicant during investigation on the basis of same evidence and he was also having criminal history of 8 other cases including one case of each under sections 302 and 396 IPC and he has been released on bail by this Court vide order dated 23.9.2026 passed in Crl. Misc. Bail Application No. 32580 of 2026 and case of applicant is at par with him.

7. He further submitted that in the present matter applicant is in jail since 4.5.2022 i.e. for last more than four years.

8. He further submitted that therefore considering the facts and circumstances of the case including long incarceration of applicant of more than four years applicant may be released on bail.

9. Per contra, learned AGA opposed the prayer for bail and submitted that applicant appears to be hardened criminal and apart from the present case he is having criminal history of 11 other cases including three cases of section 302 IPC but could not dispute the other arguments on facts advanced by learned counsel for the applicant including the fact that co-accused Debhi Kharwar has already been released on bail by this Court and in the present matter applicant is in jail for last more than four years.

10. I have heard learned counsel for the parties and perused the record of the case.

11. However, it is a case of double murder but name of applicant has been surfaced first time after one and half year on the basis of suspicion. It further reflects, except suspicion, confessional statement of applicant and statements of co-accused recorded by the I.O. there is no other evidence against the applicant on record.

12. However, it reflects apart from the present case applicant is having criminal history of 11 other cases but his criminal history has been explained. Record further suggests that however out of 11 cases three cases were of section 302 IPC but it also reflects in these cases also like present case applicant has been made accused without any cogent evidence.

13. Further, in the present matter applicant is in jail since July 2022 i.e. for last more than four years.

14. Considering the facts and circumstances of the case including the long incarceration of applicant in view of this Court it is not proper to withhold the bail application of the applicant merely on the basis of his criminal history.

15. The Apex Court in the case of **Ayub Khan Vs. State of Rajasthan, 2024 SCC OnLine SC 3763** in paragraph-10 observed as follows:-

"10. The presence of the antecedents of the accused is only one of the several considerations for deciding the prayer for bail made by him. In a given case, if the accused makes out a strong prima facie case, depending upon the fact situation and period of incarceration, the presence of antecedents may not be a ground to deny bail. There may be a case where a Court can grant bail only on the grounds of long incarceration. The presence of antecedents may not be relevant in such a case. In a given case, the Court may grant default bail. Again, the antecedents of the accused are irrelevant in such a case. Thus, depending upon the peculiar facts, the Court can grant bail notwithstanding the existence of the antecedents....."

16. Further, even co-accused Debhi Kharwar who also made accused alongwith the applicant during investigation on the basis of same evidence and was also having criminal history of 8 other cases including one case each under sections 302 and 396 IPC has been released on bail by this Court on the basis of his long incarceration and case of applicant is at par with him.

17. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicant is entitled to be released on bail.

18. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

19. Let the applicant-**Rohit Kharwar,** be released on bail in the aforesaid case on 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 appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make 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 any police officer or tamper

with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

20. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

21. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

October 5, 2026
Ankita

(Sameer Jain,J.)

Digitally signed by :-
ANKITA SRIVASTAVA
High Court of Judicature at Allahabad