HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 10534 of 2026

Kailash

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	:	Santosh Kumar Shukla
Counsel for Respondent(s)	:	G.A., Tej Om Prakash Gupta

Court No. - 74

HON'BLE SAMIT GOPAL, J.

1. List revised.

2. Heard Sri Santosh Kumar Shukla, learned counsel for the appellant, Sri Tej Om Prakash Gupta, learned counsel for the opposite party no.2 and Sri Ram Prakash Shukla, learned counsel for the State and perused the record.

3. This criminal appeal under Section 14-A (2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellant- **Kailash**, with the prayer to set aside the order dated 10.08.2026 passed by the Special Judge (SC/ST Act), Firozabad in Bail Application No. 3730 / 2026 (Kailash Vs. State of U.P.) arising out of Case Crime No. 383 of 2026, under Sections 64(1), 115(2), 352, 316(2) B.N.S. and Section 3(2)5 S.C./S.T. Act, Police Station Uttar, District Firozabad, with a further prayer to release the appellant on bail in the aforesaid case during the pendency of trial.

4. The first information report of the present matter was lodged on 05.07.2026 by the victim / opposite party no.2 against the appellant for offences under Sections 74, 352 B.N.S. alleging therein that she knows Kailash since the last one year. He had taken Rs. 50,000/- from her and for returning of the same called her on 05.07.2026 near P.D. Jain School. When she went there to take back her money he enraged her modesty. On her opposing it he abused her and went away. The incident is of 5 am in the morning. A report be lodged and action be taken.

5. Learned counsel for the appellant submits that the appellant has been falsely implicated in the present case. It is submitted that the first informant /

victim is a major woman aged about 40 years. It is further submitted that in the statement of the victim recorded under Section 180 BNSS she totally changes the prosecution version and states that when she went to P.D. Jain College the appellant offered her cold-drink which was consumed by her and then she became unconscious and he committed rape upon her. It is submitted that during interrogation she states that she knows the appellant since the last 15 years and she was living with him, they had also performed court marriage around 5-6 years back. It is submitted that thus the prosecution version as per the first information report is totally false and concocted and subsequently the same has been changed. It is submitted that the victim in her statement recorded under Section 183 BNSS also reiterates the version given by her in her statement under Section 180 BNSS. It is submitted that thus the fact as stated by the victim in the first information report that she knows the appellant since last one year is false and incorrect and just for the reason to give the case a different colour. It is submitted that the allegation regarding rape being committed on her was not stated in the first information report which has subsequently been changed during investigation. It is submitted that after the statement of the victim during investigation the case was converted under Sections 64(1), 115(2), 352, 316(2) B.N.S. and Section 3(2)5 S.C./S.T. Act. The appellant has no criminal history as stated in para 22 of the affidavit and is in jail since 08.07.2026.

6. *Per contra*, learned counsel for the opposite party no.2 and learned counsel for the State opposed the prayer for bail and submitted that the appellant is named in the first information report and in the statements of the victim and in the said statements there are allegations of rape against him.

7. After having heard learned counsel for the parties and perusing the record, it is evident that the version of the first information report is of the appellant enraging the modesty of the victim. Subsequently during investigation she states of the appellant committing rape upon her. The first information report states that she knows the appellant since last one year but during investigation she states that she has been living with the appellant since last 15-16 years and they have solemnized court marriage around 5-6 years. The prosecution version as per the first information report thus is not consistent.

8. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of

tampering with the evidence, this Court is of the view that the appellant may be enlarged on bail.

9. Let the appellant- **Kailash**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

(i) The appellant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

(ii) The appellant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The appellant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The appellant will not misuse the liberty of bail in any manner whatsoever. In case, the appellant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 84 B.N.S.S., 2023 may be issued and if appellant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 209 B.N.S., 2023.

(v) The appellant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 351 B.N.S.S., 2023. If in the opinion of the trial court absence of the appellant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and the trial court may proceed against him under Section 269 B.N.S., 2023.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the appellant.

10. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the

appellant to prison.

11. Accordingly, the appeal succeeds and the same stands **allowed**.

12. The impugned order dated 10.08.2026 passed by the Special Judge (SC/ST Act), Firozabad of the aforesaid case is hereby set aside.

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

October 28, 2026
AS Rathore

(Samit Gopal,J.)

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