HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 10549 of 2026

Avnish Sharma

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	:	Achyutanand Pandey, Kamlesh Kumar Gangwar, Sadrul Islam Jafri, Sr. Advocate
Counsel for Respondent(s)	:	Anubhav Kumar Vats, G.A., Manish Kumar Singh

Court No. - 74

HON'BLE SAMIT GOPAL, J.

1. List revised.

2. Heard Sri N.I. Jafri, learned Senior Advocate assisted by Sri Kamlesh Kumar Gangwar, learned counsel for the appellant, Sri Birendra Pratap Singh, learned counsel for the State/O.P. No.1 and Sri Manish Kumar Singh, learned counsel for the opposite party no.2/first informant and perused the record.

3. A supplementary affidavit dated 16.10.2026 has been filed on behalf of the appellant and while placing para 4 and 5 of the same learned counsel for the appellant submits that previously a notice of appeal for bail being notice No. 9178 was served in the office of learned Government Advocate but owing to certain procedural defects and incomplete factual details in the earlier draft it was not filed and the present appeal with the prayer for bail was given fresh notice which has been filed. It is submitted that as per para 5 of the same that the deponent shall never file or pursue the said case before this Court or any other Court at any time in the future.

4. This criminal appeal under Section 14A(2) of SC/ST (Prevention of Atrocities) Act, 1989 has been filed by the appellant Avnish Sharma with the prayer to set-aside the judgment and order dated 22.07.2026 passed by the learned Special Judge (SC/ST) Act, Firozabad in Case Crime No. 434 of 2026, under Section 108 BNS and Section 3(2)(v) of SC/ST Act, Police Station Shikohabad, District Firozabad and with a further prayer to release the appellant on bail in the aforesaid case.

5. The FIR of the matter was lodged on 08.06.2026 by Smt. Suman Devi the opposite party no.2 against the appellant, Smt. Mamta Devi (mother) and Ashish Kumar (mama) alleging therein that her son Arun Kumar aged about 18 years was in love and relationship with Kumari Khushi due to which her mother Mamta, mama Ashish and Avnish Kumar were unhappy. On 05.06.2026 the accused in a planned manner threatened

them and called Arun Kumar through Kumari Khushi and then in a room in their house tortured them and sprinkled petrol on them and set them on fire due to which both the said persons got badly burnt. On their shouts and shrieks people of nearby reached there but the accused left them and ran away from the house. The people of nearby saved them and informed the police on 112 number on which the police came and took both the persons to the hospital where at about 06:00 pm Khushi died. Her son is badly burnt and in a bad condition. Report be lodged and action be taken.

6. The postmortem of Khushi was conducted on 06.06.2026 at 03:20 pm and the doctor found the following injuries on her body:

"i- Superficial to deep burn all over body except lower abdomen, perineum and bilateral lower limb. And Line of redness present.

ii- Skin peeled of at places on lower part of body due to burn."

The cause of death was opined due to hypovolemic shock as a result of ante-mortem burn injury.

7. Arun Kumar died on 08.06.2026 at 10:40 pm in Omega Hospital, Agra and his postmortem examination was conducted on 09.06.2026 at 02:30 pm. He was found to have received the following injuries:

"Injury No.1, FIRST TO SECOND DEGREE BURN OVER ALL OVER THE HEAD, FACE, NECK, BOTH SIDE OF CHEST, ABDOMEN BOTH SIDE OF ARM AND FOREARM WITH HAND.

Injury No.2, LINE OF DEMARCATION REDISH IN COLOUR PRESENT NECK, BOTH SIDE SIDE OF CHEST, ABDOMEN BOTH SIDE OF ARM AND FOREARM WITH HAND.

Injury No.3, APPROXIMATELY 50 TO 55% SURFACE AREA BURN."

The cause of death was opined due to septicemic shock as a result of ante-mortem burn injuries.

8. During investigation a dying declaration of the deceased Arun Kumar is alleged to have been recorded on 06.06.2026 at 11:05 am. The copy of the case diary noting regarding the same is at page 162 of the paper book. In the same he states that he was burnt yesterday in the night at 10:30 am, Avnish Sharma the mama of Khushi and Ashish Sharma sprinkled kerosene oil and set him on fire in the courtyard of the house. The mama of the girl had called him as he thought that the girl has disappeared. The door was locked from inside and thus he could not run away. People of the locality collected outside. He and the girl were inside.

9. The matter was investigated and a charge sheet dated 07.08.2026 was filed against the appellant for offences under Sections 108 BNS and

3(2)(v) SC/ST Act. In so far as Section 103(1), 109(1) BNS is concerned, the same was deleted. The perusal of the charge sheet shows that the investigation with regards to Smt. Mamta Devi (mother) and Ashish Kumar (mama) was pending.

10. Submissions of learned counsel for the appellant is that the appellant has been falsely implicated in the present case. It is submitted that although the FIR was lodged under Sections 103(1), 109(1) BNS and Section 3(2)(v) of SC/ST Act but after investigation charge sheet has been submitted under Section 108 BNS and Section 3(2)(v) SC/ST Act and thus the present case has been converted into a case of suicide by the deceased. It is submitted that the appellant is the mama of one of the deceased Kumari Khushi. It is submitted that there were seven video clipping recovered from the CCTV footage in which only both the deceased were seen going to the house and then in video footage No. 3 it is seen that the main gate was closed from inside which was broken and then the neighbours entered where both the deceased were found sitting in a burnt condition in the kitchen. It is submitted that the CCTV footage No. 4 shows that the deceased were asked as to who tied their legs on which they stated that no one tied their legs, the clothes got burnt and stuck with legs. It is submitted that the said CCTV no where shows the presence of the appellant near the house and even going inside the house or coming out. It is submitted that the present case is a case of suicide since both the deceased were in love with each other and the relationship was not being accepted by their family members and thus they committed suicide after which Khushi died on 06.06.2026 whereas Arun died on 08.06.2026. It is submitted that there is no abetment and instigation of any kind by the appellant which has any nexus with the death of the deceased. The appellant has no mens-rea at all. There is no overt act whatsoever of the appellant which resulted in the death of the deceased, the appellant has no motive at all to commit the aforesaid offence. The appellant has no criminal history as stated in para 52 of the bail application in appeal and is in jail since 09.06.2026.

11. Per contra, learned counsel for the opposite party no.2 and State opposed the appeal and prayer for bail. Learned counsel for the opposite party no.2 submitted that the appellant is named in the FIR and also in the dying declaration of the deceased Arun and has been assigned the role therein. It is submitted that the present case is a case of honour killing. It is further submitted that co-accused filed a Criminal Misc. Writ Petition No. 21797 of 2026 (Smt. Mamta Devi and another Vs. State of U.P. and 3 others) before this Court for quashing of the FIR, stay of their arrest which was dismissed by a Division Bench of this Court vide order dated 10.09.2026. The said order has been produced before the Court which reads as under:

"1. The writ petition has been filed with the following main prayer:

"i. issue a writ, order or direction in the nature of certiorari quashing the First Information Report dated 08.06.2026 in Case Crime No. 434 of 2026, under sections 103 (1), 109 (1) of B.N.S. and Section 3(2)(v) of S.C./S.T. Act, Police Station-Shikohabad, District-Firozabad (Annexure No. 1);

ii. Issue a writ, order or direction in the nature of mandamus commanding the concerned respondents not to arrest the petitioners in pursuance of the First Information Report dated 08.06.2026 in Case Crime No. 434 of 2026, under sections 103 (1), 109 (1) of B.N.S. and Section 3(2)(v) of S.C./S.T. Act, Police Station-Shikohabad, District-Firozabad."

2. It has been submitted that the petitioners have been falsely implicated in the present case. It is the case of the petitioners that the matter arises out of a love affair between the daughter of petitioner no. 1 and the son of the informant. It is alleged that the petitioners were opposed to the said relationship on caste consideration. It is further submitted that the F.I.R. has been lodged illegally and with malafide intention, after an unexplained delay of three days. It is also submitted that, as per the post-mortem report of the deceased, only burn injuries were found on the body of the victim and there was no other external injury on the body of the deceased, which, prima facie, indicates that the victim was not subjected to any violence or physical assault as alleged in the F.I.R. It was argued that burn injuries were either suicidal or accidental. It is, therefore, submitted that the continuation of the proceedings against the petitioners would amount to an abuse of the process of law. It is, therefore, prayed that the impugned FIR be quashed qua the petitioners by allowing the present writ petition.

3. Per contra, learned A.G.A. has opposed the writ petition and submitted that the F.I.R. clearly discloses the commission of cognizable offences, including offences punishable under the provisions of the S.C./S.T. Act. It is further submitted that the plea regarding the alleged commission of suicide is a matter of defence, which cannot be examined at this stage. Therefore, this Court ought not to exercise its extraordinary writ jurisdiction under Article 226 of the Constitution of India for quashing the impugned FIR. Learned AGA has also submitted that it is well settled that where the allegations contained in the FIR, on their face, disclose the commission of a cognizable offence, the petition seeking quashing of the FIR is not maintainable.

4. Heard learned counsel for the petitioners and learned AGA for the State.

5. We have perused the contents of the first information report, which are as follows:

"नकल तहरीर हिन्दी वादी सेवा में थाना प्रभारी महोदय थाना शिकोहावाद जनपद फिरोजाबाद महोदय सादर अवगत कराना है कि प्रार्थी अवनीश शर्मा पुत्र राम शरन लाल शर्मा निवासी नगला पजाबा थाना कोतवाली मैनपुरी का रहने वाला हूँ। आज दिनांक 05/06/2026 को मेरी भाँजी खुशी पुत्री स्व संजय शर्मा निवासी घड़िया थाना शिकोहावाद उम्र करीब 18 वर्ष 4 माह हमारे घर मैनपुरी से सुबह करीब 7.30 बजे घर से निकली इसका फोन मिलाया तो बन्द जा रहा था जिसके वाद हम घडिया शिकोहावाद स्थित मकान पर आये तो घर का ताला लगा मिला आप साप के लोगो से जानकारी हुई कि खुशी यहाँ आयी थी जिसके साथ अरुण पुत्र धर्मपाल निवासी मोहब्बत अहीर शिकोहावाद को देखा गया था जो मेरी भांजी खुशी शर्मा को अपने साथ वहला फुसलाकर ले गया है महोदय से अनुरोध है रिपोर्ड दर्ज करने की कृपा करें। दिनांक 05/06/2026 एसडी अग्रेजी पठित *Avnish* प्रार्थी अवनीश शर्मा पुत्र राम शरन लाल शर्मा निवासी नगला पंजावा मैनपुरी 63978*XXXXX* नोटः का0 428 अभय प्रताप सिंह प्रमाणित करता हूँ, कि प्रा०पत्र की नकल मेरे द्वारा कम्प्यूटर पर शब्द व शब्द टाईप की गयी। (अलावा तकनीकी त्रुटि के)"

6. The Supreme Court in the case of Somjeet Mallick vs. State of Jharkhand and Others :2024 INSC 772

has held as under:

"18. It is trite law that FIR is not an encyclopedia of all imputations. Therefore, to test whether an FIR discloses commission of a cognizable offence what is to be looked at is not any omission in the accusations but the gravamen of the accusations contained therein to find out whether, prima facie, some cognizable offence has been committed or not. At this stage, the Court is not required to ascertain as to which specific offence has been committed. It is only after investigation, at the time of framing charge, when materials collected during investigation are before the Court, the Court has to draw an opinion as to for commission of which offence the accused should be tried. Prior to that, if satisfied, the Court may even discharge the accused. Thus, when the FIR alleges a dishonest conduct on the part of the accused which, if supported by materials, would disclose commission of a cognizable offence, investigation should not be thwarted by quashing the FIR."

7. Again, the Supreme Court in the case of Muskan vs. Ishaan Khan (Sataniya) and others; 2025 INSC 1287, has held that the Courts are not expected to hold a mini trial in order to verify the allegations levelled in the FIR. For the sake of convenience, relevant observations of the Supreme Court in the case of Muskan (Supra) is reproduced below:-

"We are of the view that the High Court has erred in law by embarking upon an enquiry with regard to credibility or otherwise of the allegations in the complaints and the FIR. Normally, for quashing an FIR, it must be shown that there exists no prime facie case against the accused persons. In the present case, from the conjoint reading of complaints and the FIR, it can be seen that prime facie allegations of harassment and demand of dowry are made out, despite that the High Court quashed the FIR against the private respondents primarily on the ground that the earlier two complaints that were filed by the appellant did not mention the specific instances that happened on 22.07.2021 and 27.11.2022 and the same were later on mentioned in the FIR only as an afterthought and was a counterblast to the legal notice sent by respondent no.1/husband to the appellant as she was not coming back to her matrimonial home. This approach adopted by the High Court, in our considered opinion, amounts to conducting a mini trial."

8. This Court has perused the contents of the impugned FIR as well as the material brought on record. After plain reading of the First Information Report and considering the submissions advanced by the learned counsel for the parties, this Court is of the view that the allegations disclosed in the FIR prima-facie constitute cognizable offences which requires investigation. At this stage, this Court cannot embark upon an enquiry into the correctness or otherwise of the allegations contained in the F.I.R. or appreciate the defence sought to be raised by the petitioners. It is well settled by the Supreme Court in the case of State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335, that the extraordinary jurisdiction under Article 226 of the Constitution of India or the inherent jurisdiction for quashing criminal proceedings is to be exercised sparingly and with circumspection, and only in the rarest of rare cases where the allegations, even if taken at their face value, do not disclose the commission of any cognizable offence or where the case falls within any of the exceptional categories enumerated therein. Hence in the present case, since, the allegations made in the impugned F.I.R. on their face, disclose the commission of cognizable offences of serious nature affecting society at large, the question whether the antimortem injuries sustained by the deceased are homicidal or suicidal, in nature, can only be answered after conducting a proper investigation. Accordingly, this Court is of the considered view that the impugned FIR prima facie discloses the commission of cognizable offences, hence no ground is made out for the Court to exercise its

extraordinary writ jurisdiction under Article 226 of the Constitution of India for quashing the same.

9. Taking into consideration allegations contained in the impugned F.I.R., the submissions advanced by learned counsel for the parties, and the settled legal principles governing the exercise of writ jurisdiction in matters relating to quashing of criminal proceedings as well as considering the judgments of the Supreme Court in the cases of Somjeet Mallick (Supra), Muskan (Supra) and Bhajan Lal (Supra), we are of the considered opinion that no case for interference under Article 226 of the Constitution of India is made out. The First Information Report discloses prima-facie commission of cognizable offences. This Court does not find any exceptional circumstance warranting exercise of its extraordinary writ jurisdiction for quashing of the impugned F.I.R. or for issuing a direction in the nature of mandamus, as prayed.

10. Consequently, the writ petition, being devoid of merit, is hereby dismissed."

12. It is submitted that the Division Bench did not agree to the arguments as extended therein in the writ petition by the co-accused and thus their writ petition was dismissed. It is submitted that the appellant has been assigned the role of pouring kerosene oil on the deceased and setting them on fire. It is submitted that thus the prayer for bail be rejected.

13. Learned counsel for the State also adopted the arguments of learned counsel for the opposite party no.2 and further submitted that the role of the appellant is specific in the matter. He disagrees with the opinion of the Investigating Officer while filing charge sheet dated 07.08.2026 and submits that the records of the bail application and even received by him show that the witnesses assigned the specific role to the appellant but still the matter was converted into a case under Section 108 BNS.

14. After having heard learned counsels for the parties and perusing the records, it is evident that the FIR in the present matter was lodged under Sections 103(1), 109(1) BNS and Section 3(2)(v) of SC/ST Act. The investigation in the matter in so far as the appellant is concerned has concluded and a charge sheet has been filed under Section 108 BNS and Section 3(2)(v) of SC/ST Act. The case as of now which stands is of abetment to suicide. There is no abetment and instigation of any kind by the appellant which has any nexus with the death of the deceased. The appellant has no mens-rea at all. There is no overt act whatsoever of the appellant which resulted in the death of the deceased, the appellant has no motive at all to commit the aforesaid offence.

15. 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.

16. Let the appellant **Avnish Sharma** 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 BNSS/82 Cr.P.C., 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 BNS/174-A I.P.C.

(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 251 BNSS/313 Cr.P.C. 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 BNS/229-A IPC.

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

17. 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.

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

19. The judgment and order dated 22.07.2026 passed by the learned Special Judge (SC/ST) Act, Firozabad is hereby set aside.

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

October 28, 2026
M. ARIF

(Samit Gopal,J.)

Digitally signed by :-
MOHAMMAD ARIF
High Court of Judicature at Allahabad