2026:AHC:210316

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 44936 of 2025

Digvijay Bharti @ Digvijay Nath

.....Applicant(s)

Versus

State of U.P.

.....Opposite Party(s)

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

Court No. - 67

HON'BLE JITENDRA KUMAR SINHA, J.

1. Heard Sri Kamlesh Singh, learned counsel for the applicant, Sri B.P. Singh, learned AGA for the State-respondents and perused the record.

2. The present bail application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, has been filed on behalf of applicant with a prayer to release him on bail in Case Crime No. 689 of 2012 under Sections 376-D, 363, 366, 323, 504, 506, 342 IPC registered at Police Station Khorabar, District Gorakhpur during pendency of the trial.

3. It has been argued by learned counsel for the applicant that the alleged incident is said to have tkaen place on 01.11.2012 when POCSO Act was not in force. It is next submitted that there is no allegation of rape in the FIR and later on the victim has been recovered and she has stated in her statements under sections 161 and 164 Cr.P.C. that applicant and five other accused persons committed gang rape on her. It is next submitted that it is highly improbable that father, son, uncle and nephew would commit gang rape. It is further submitted that applicant has been languishing in jail since 18.11.2025 and till date, not a single witness has been examined by the learned trial court and the trial is not likely to conclude in near future. It is further submitted that rest of the co-accused persons have already been enlarged on bail and the applicant is ready and willing to co-operate in the trial. It is also submitted that the applicant undertakes that he will not misuse the liberty, if granted. It has also been pointed out that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion

of trial.

5. On the other hand, learned A.G.A. opposed the prayer for grant of bail to the applicant and submits that applicant remained absconding for a long time and the trial has been delayed. He further submits the victim in her statements recorded under sections 161 and 164 Cr.P.C. has stated that applicant and five other accused persons committed gang rape on her.

6. As per the FIR, applicant and other accused persons are said to have enticed away the daughter of the first informant aged about 15 years, however, she has been recovered after one and a half years. The victim has stated in her statements recorded under sections 161 and 164 Cr.P.C. that applicant and five other accused persons committed gang rape on her, however, her medico-legal report does not support commission of gang rape on her. It is submitted that it is highly improbable that father, son, uncle and nephew would commit gang rape. Applicant has been languishing in jail since 18.11.2025 and till date, not a single witness has been examined by the learned trial court. Rest of the co-accused persons have already been enlarged on bail and the applicant is ready and willing to co-operate in the trial.

7. 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.

8. Let the applicant **Digvijay Bharti @ Digvijay Nath** 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 7, 2026
Madhurima

Digitally signed by :-
MADHURIMA GARG
High Court of Judicature at Allahabad