

# Vishnu Mishra vs State Of U.P. on 3 March, 2025

**Author: Raj Beer Singh**

**Bench: Raj Beer Singh**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Reserved

Neutral Citation No. - 2025:AHC:29379

Court No. - 73

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 19900 of 2024

Applicant :- Vishnu Mishra

Opposite Party :- State of U.P.

Counsel for Applicant :- Saurabh Raj Srivastava

Counsel for Opposite Party :- Abhishek Kumar Yadav,G.A.

Hon'ble Raj Beer Singh,J.

1. Heard Sri G.S. Chaturvedi, learned Senior Advocate, assisted by Sri Saurabh Raj Srivastava, learned counsel for the applicant, Sri Manish Goyal, learned Additional Advocate General, Sri Abhishek Kumar Yadav, learned counsel for the informant and perused the material brought on record.

2. The present second bail application has been filed by the applicant-accused in Case Crime No. 0194 of 2021 (State of U.P. Vs. Vishnu Mishra), under Sections - 147, 149, 452, 323, 504, 506, 307, 392, 120-B I.P.C., Police Station - Jaitpura, District- Varanasi, with the prayer to enlarge the applicant-accused on bail.

3. The first bail application of applicant was rejected by this Court vide order dated 30.10.2023, which is reproduced as under :-

"1. Heard Sri Gopal Swaroop Chaturvedi, learned Senior Advocate, assisted by Sri Saurabh Raj Srivastava, learned counsel for the applicant, learned counsel for the informant and Sri P. C. Srivastava, learned Additional Advocate General for the State of U. P. along with learned A. G. A.

2. The present bail application has been filed by the applicant in Case Crime No. 194 of 2021, under Sections-147, 149, 452, 323, 504, 506, 307, 511, 392, 120-B IPC, P. S.-Jaitpura, District-Varanasi, with the prayer to enlarge the applicant on bail.

3. Learned Senior Advocate submitted that the applicant is innocent and he has been falsely implicated in this case. The father of the applicant has been a member of Legislative Assembly for four times and his mother has also been an Ex. M. L. C. and that the prosecution case is wholly false and baseless and has been lodged with malafide intention. No specific date or time of incident or specific role has been mentioned in the first information report. The complainant has made his statement by submitting a typed statement after eleven days of the incident. The alleged first incident has been shown of 22.12.2020 and first information report has been lodged after nine months of the same. There is long and undue delay in recording the statement of the witnesses.

4. Learned counsel has referred the version of the first information report and submitted that the entire family of the applicant was named in the first information report and that it is not probable that the applicant along with his entire family members, including his sisters, would trespass into the house of the informant and would threaten her.

5. Learned Senior Counsel submitted that in fact, in the month of August, 2020 a business dispute arose between Krishna Mohan Tiwari and mother of the applicant, regarding partnership firm, M/s Krishna Mohan Tiwari. In order to grab the partnership business, the said Krishna Mohan Tiwari has lodged a case against the family members of applicant and that there are multiple civil and criminal cases pending between both the parties. It was submitted that the said Krishna Mohan Tiwari has planted the complainant and a false first information report was got lodged vide Case Crime No. 379 of 2020 under Sections-376 D, 342, 506 I. P. C. at Police Station-Gopiganj, district-Bhadohi, to settle political scores. The said first information report was registered on 18.10.2020, whereas, the incident was shown of the year, 2014. There is nexus between Krishna Mohan Tiwari and complainant of that case. The said Krishna Mohan Tiwari and his sons were shown witnesses in that matter. In said Case Crime No. 379 of 2020, the complainant / alleged victim has already been examined and thus, there is no possibility of tampering with evidence. In that matter earlier the applicant could not surrender as he was having serious

apprehension / threat to his life, but he was arrested on 24.7.2022 and since then, he is in jail. Referring to the dispute between family of the applicant and said Krishna Mohan Tiwari, it was pointed out that Krishna Mohan Tiwari and his sons and complainant of this case, have lodged as many as sixteen frivolous first information reports against the family members of the applicant. Further, the said witnesses Krishna Mohan Tiwari is having criminal history of ten cases, including the case of murder and rape. The complainant is a lady of dubious character and she is running a racket of honey trap. Earlier on 22.6.2017 she has lodged one first information report vide Case Crime No. 430 of 2017, under Sections- 354 A, 504, 506 I.P.C. against one Manoj Sharma on similar lines and after investigation police have submitted final report. She had filed a complaint before the S. S. P., Varanasi against her brother-in-law and in that matter also, final report was submitted. She has lodged one first information report against one Triloki Singh, who is a leader of Aam Aadmi Party (AAP) and that in every case later on either she compromised the matter or police submitted final report. The complainant has also been involved in Hawala racket and she was intercepted by the custom officers for possessing illegal foreign currency and that she is having two passports. It was submitted that the complainant is continuously involved in criminal activities.

6. In the first information report of this case, no date or time of the alleged incident has been mentioned and there is long delay in recording the statement of the witnesses. The investigation has not been conducted properly. Referring to the first information report, it was submitted that no offence under Section-307 or 392 IPC is made out. There is no independent witness of alleged incident. Further, co-accused Vikas Mishra and Satish Mishra have been granted bail and co-accused Dr. Mukesh Tiwari, Smt. Garima Tiwari, Mrs. Reema Pandey, Mrs. Beema Dubey and Mr. Raj Dubey alias Pankaj Dubey have already been granted anticipatory bail. Criminal history of two cases was shown against the applicant, which has duly been explained. However, after this case, the applicant-accused has been shown to be involved in several other cases, which has duly been explained in the affidavit.

7. Referring to the facts of the matter, learned Senior Advocate submitted that the allegations made in the first information report are wholly false and this case has been lodged with ulterior motive and that investigation has not been conducted properly and in view of the aforesaid facts, the applicant is entitled for being released on bail.

8. Learned A. G. A. as well as learned counsel for the informant have vehemently opposed the bail application and submitted that the applicant is named in the first information report. It was submitted that there are serious allegations against the applicant. Earlier rape was committed upon the complainant by the applicant and co-accused Vijay Mishra and Vikas Mishra and that the applicant-accused was continuously absconding and that the accused persons were threatening the complainant to submit affidavit in their favour and to change her statement and due

to that reason, all the accused persons, including the applicant, have trespassed into house of the complainant and threatened that earlier co-accused Vijay Mishra has got murdered one Constable Surya Mani Mishra and if she did not make statement in their favour, she would also be met with the same fate and that they have also tried to snatch her mobile phone. The applicant has remained absconder for long time and there is criminal history of eight cases, including a case under the Gangster Act, against the applicant. The statement of complainant has not been recorded in this case so far and if the applicant was released on bail, he may threaten the complainant and witnesses and may tamper with the evidence.

9. Learned counsel for the informant further submitted that the applicant is an accused in Case Crime No. 379 of 2020, under Sections-376 D, 342, 506 I. P. C. and that the victim of the said case was threatened in order to force her to enter into compromise. In that matter after issuance of non-bailable warrants, process under Section-82/83 Cr. P. C. were also issued against the accused persons and the applicant-accused was declared as proclaimed offender and that a Case under Section 174-A I. P. C. was also registered against him. The version of the complainant is supported by several witnesses. It was submitted that after the applicant was arrested, an A. K.-47 rifle, pistol and cartridges were recovered at his pointing out and in that connection, a report has been lodged against him as Case Crime No. 230 of 2020, under Sections-3/7/25 of Arms Act. Earlier he was granted by this Court in Case Crime No. 194/2021, under Sections-147, 148, 149, 452, 323, 504, 506, 307, 511, 392, 120-B I. P. C. and that bail was cancelled by Hon'ble Apex Court vide order dated 28.4.2023. It was submitted that the statement of the complainant has not been recorded before the trial Court so far and that, if the applicant was granted bail, he may tamper with evidence.

10. I have considered the rival submissions and perused the record.

11. Perusal of Record shows that on 18.10. 2020 the informant has lodged an FIR vide case Crime No. 379 of 2020 under section 376 D, 342 and 506 IPC against the applicant and accused Vijay Mishra and Vikas Mishra making allegations of gang rape. First information of this case was lodged on 13.9.2021, wherein, it was alleged that the applicant and co -accused persons were threatening and pressurizing the informant to change her statement, in the said gang rape case, in their favour and it was also alleged that the applicant and co-accused have trespassed into the house of the informant and they assaulted and threatened her. It was shown that in the said earlier case registered as Case Crime No. 379 of 2020, the applicant accused did not surrender for long time and he has continuously absconded and due to these reasons, the process under Sections-82 and 83 Cr.P.C. was executed and after that a case under Section 174-A IPC was also registered against the applicant and co-accused persons and after that the applicant was arrested on 24.7.2022. In Case Crime No. 230 of 2020, one A. K.-47 rifle and pistol were shown recovered at the instance of the applicant accused. It was also shown that in one of the cases, Case Crime No. 194 of

2020, the applicant-accused was granted bail by this Court but the same was cancelled by the Hon'ble Apex Court. Though it was pointed out that in Case Crime No. 379 of 2020 the statement of informant/ victim has already been recorded but in the present case, statement of informant is yet to be recorded and an apprehension was expressed on behalf of the prosecution and the informant that in case the applicant was granted bail, he may threaten the informant and temper with evidence.

12. In view of the facts and circumstances of the case, at this stage, no case for bail is made out. Hence the bail application of applicant-accused is hereby rejected. However, after statement of informant of this case is recorded before the trial Court or in case no substantial progress is made in the trial within a period of six months from today, the applicant-accused would be at liberty to move a fresh bail application in accordance with law.

13. With the aforesaid observations, the bail application is rejected."

4. It is submitted by learned Senior Advocate that applicant is innocent and he has been falsely implicated on account of political enmity, as father of applicant is Ex. Member of Legislative Assembly. The entire family of applicant was named in the first information report and the allegations made by the complainant are wholly improbable. Referring to first information report, it was submitted that applicant was not present at the spot and that no case under Section ? 120-B I.P.C. is made out against applicant. No date or time of alleged incident has been mentioned and there is nothing to show that complainant has sustained any injury. There is long and undue delay in lodging of the first information report and alleged eye witnesses Babul Dubey and Amit Singh, who are residents of Mumbai, have been introduced later on.

5. It was submitted that there was business dispute between one Krishna Mohan Tiwari and mother of applicant in respect to partnership firm M/s Krishna Mohan Tiwari. There is nexus between said Krishna Mohan Tiwari and complainant of this case. It was stated that while rejecting first bail application of applicant vide order dated 30.10.2023, the applicant was given liberty to move fresh bail application after statement of informant is recorded before the trial court or if no substantial progress is made in the trial within a period of six months. Perusal of order-sheet of Trial court shows that informant did not appear before the trial court for long, whereas a period of seven months has been passed since then. In Case Crime No. 379 of 2020 applicant has already been acquitted by the trial court. Co-accused Reema Pandey, Beema Dubey, Dr. Mukesh Tiwari and Garima Tiwari have been granted anticipatory bail and co-accused Ratan Mishra is on interim anticipatory bail. Similarly co-accused Manish Mishra, Vikas Mishra and Satish Mishra have been granted bail. It is further submitted that prior to 04.08.2020, applicant has previous criminal history of only two cases and after this case, applicant has been implicated in eight more cases. The criminal history of applicant has been explained in affidavit filed in support of the bail application.

6. Per contra, learned Additional Advocate General as well as learned counsel for the informant, have vehemently opposed the prayer of bail and submitted that applicant along with Vijay Mishra was also accused in Crime No. 379 of 2020, under Sections ? 376-D, 342, 506 I.P.C., Police Station ?

Gopiganj, District ? Bhadohi. The accused persons have threatened the complainant of that case and thus, instant case was lodged. The applicant has absconded and process under Section ? 82 and 83 Cr.P.C. was executed against him and a case under Section ? 174-A I.P.C. was also registered. In Crime No. 273 of 2020, the anticipatory bail application of applicant was rejected by the Hon'ble Apex Court. When applicant was arrested, an A.K.-47, pistol and cartridges were recovered at his instance.

7. Learned Additional Advocate General has referred facts of the matter and submitted that statement of informant is being recorded before the trial court and in case applicant is granted bail, there is possibility that he may threaten the informant and other witnesses. It was submitted that bail application of co-accused Manish Mishra was allowed by this Court vide order dated 07.05.2024, which was challenged by the informant before the Hon'ble Apex Court vide S.L.P. Criminal Diary No. 22192 of 2024, wherein notice was issued to the respondent-accused and it was directed that respondent no.1 (co-accused Manish Mishra) shall not be released in connection with F.I.R. No. 194 of 2021, Police Station - Jaitpura, District ? Varanasi (present case). Learned Additional Advocate General has referred contents of counter affidavit and submitted that there are serious allegations against applicant and in view of his previous conduct of abscondence, applicant is not entitled for bail. It was further submitted that in case applicant is granted bail, there is every possibility that he may threaten the informant and witnesses and would tamper with evidence.

8. I have considered the rival submissions and perused the record.

9. Perusal of record shows that first bail application of applicant was rejected by this Court vide order dated 30.10.2023, however the applicant was given liberty to file fresh bail application after statement of informant is recorded or if no substantial progress is made within a period of six months. Though, a period of one year has been passed since then but it was stated that examination of informant is in progress before the Trial court and her statement is yet to be completed. However, examination of informant has been started after several months after rejection of first bail application of applicant. It appears from record that earlier informant has lodged Case Crime No. 379 of 2020, under Sections ? 376-D, 342, 506 I.P.C., making allegations of gang rape against applicant, Vijay Mishra and Vikas Mishra. The main allegation of informant in the instant case is that the applicant and co-accused persons have threatened the informant in order to pressurize her to compromise the said Case Crime No. 379 of 2020. Co-accused Manish Mishra was granted bail by this Court vide order dated 07.05.2024 and it was shown that informant has challenged said order before the Hon'ble Apex Court, wherein by order dated 17.05.2024, notice was issued to the respondent and it was directed that respondent shall not be released in the instant matter (F.I.R. No. 194 of 2021). Thus, the bail matter of co-accused Manish Mishra is yet to be decided by the Hon'ble Apex Court. Criminal history of 11 cases has been shown against applicant. However, it was shown in above referred Case Crime No. 379 of 2020, applicant has been acquitted by the Trial court. Two cases shown in criminal history were withdrawn by the prosecution and in one case he has been discharged. It was also shown that after the above referred Crime No. 379 of 2020 was registered, applicant has absconded and process under Section ? 82 and 83 Cr.P.C. was issued against him and that when he was arrested, one A.K.-47 rifle and pistol were recovered at his instance. It was further shown that in Special Leave to Appeal (Crl.) No. 7571 of 2024 filed before

the Hon'ble Apex Court against grant of bail to co-accused Manish Mishra on 23.09.2024, the matter was adjourned by the Hon'ble Apex Court by considering the fact that statement of informant was not recorded before the Trial Court. Taking cumulative effect of all the facts and circumstances of the matter, no case for bail is made out, at this stage.

10. Accordingly, the instant second bail application filed on behalf of the applicant - Vishnu Mishra is rejected.

11. However, the Trial Court is directed to expedite the proceedings of the trial and to complete the examination of informant, as early as possible.

12. A copy of this order be forwarded to the concerned trial court for necessary compliance.

Order Date :- 3.3.2025 S Rawat