

# **Bhure Pathan vs State Of U.P. on 3 March, 2025**

**Author: Samit Gopal**

**Bench: Samit Gopal**

HIGH COURT OF JUDICATURE AT ALLAHABAD

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Neutral Citation No. - 2025:AHC:29262

Court No. - 78

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44838 of 2022

Applicant :- Bhure Pathan

Opposite Party :- State of U.P.

Counsel for Applicant :- Santosh Kumar Mishra, Satendra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Santosh Kumar Mishra, learned counsel for the applicant and Sri Ajay Singh, learned A.G.A.-I for the State and perused the material on record.

3. This is second bail application of the applicant. The first bail application of the applicant was rejected by this Court vide order dated 03.02.2021 passed in Criminal Misc. Bail Application No. 2775 of 2021 (Bhure Pathan vs. State of U.P.).

4. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Bhure Pathan, seeking enlargement on bail during trial in connection with Case Crime No. 341 of 2018, under Section 396, 397 I.P.C., Police Station Bhamora, District Bareilly.

5. The first information report of the present matter was lodged on 14.11.2018 by Mohd. Hasnain against Achchhan, Naved @ Navedi and 04 other unknown persons alleging therein that in the night of 13/14-11-2018 at about 1 am when he and members of his family were sleeping 5-6 miscreants entered in his house and were committing theft and when his brother Chaman and Nasimuddin protested and attempted to catch them they committed maar-peet wherein Nasimuddin was hit by butt of the pistol and Chaman was dragged out of the house in gali and was shot upon which a hue & cry was raised whereby the villagers arrived and caught two miscreants Achchhan and Naved @ Navedi with their firearms. The injured persons were taken to the hospital where subsequently Chaman died.

6. Learned counsel for the applicant argued that the applicant is not named in the first information report. It is submitted that the implication of the applicant in the present matter is on the basis of confessional statement of co-accused Achchhan and Naved @ Navedi given to the police which is an inadmissible evidence. It is submitted that co-accused Achchhan has been granted bail by a co-ordinate Bench of this Court vide order dated 13.07.2020 passed in Criminal Misc. Bail Application No. 52698 of 2019, the copy of the said order has been produced before the Court which is taken on record. Further co-accused Chhote @ Dilshad who was also not named in the first information report has been granted bail by another Bench of this Court vide order dated 04.04.2019 passed in Criminal Misc. Bail Application No. 13906 of 2019, the copy of the said order is annexed as Annexure-7 to the affidavit. It is further submitted while placing paragraph 13 to the affidavit that no test identification parade of the applicant has been conducted by the police. While placing paragraph 16 of the affidavit it is submitted that the applicant is involved in 06 other criminal cases, the explanation of which have been given from paragraph 17 to 19 of the affidavit. The applicant is in jail since 08.06.2020. It is submitted that the applicant be released on bail.

7. Per contra, learned counsel for the State vehemently opposed the prayer for bail and submitted that personal affidavit dated 23.08.2024 of Sri Anurag Arya, S.S.P., Bareilly has been filed in compliance of order dated 24.07.2024 of this Court. It is submitted that there was a discrepancy in reporting of the criminal history of the applicant by the police on which the said personal affidavit was called for and the S.S.P. concerned has in paragraph 9 & 10 of the said affidavit submitted that there were some criminal antecedents not brought to light by the Inspector in-charge Bhamaura, District Bareilly, he has ordered an enquiry which has been assigned to the Circle Officer, City-II. It is further submitted that the applicant is involved in the matter as his participation has surfaced during investigation. It is submitted that the prayer for bail be rejected.

8. After having heard learned counsel for the parties and perusing the record, it is evident that this is second bail application of the applicant. The first bail application of the applicant was rejected by this Court vide order dated 03.02.2021 which reads as under:-

"Heard Sri Santosh Kumar Mishra learned counsel for the applicant, Sri Pankaj Mishra, learned A.G.A. for the State and perused the material on record.

This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Bhure Pathan, seeking enlargement on bail during trial in connection with Case Crime No. 341 of 2018, under Sections 396, 397 I.P.C., registered at P.S. Bhamora, District Bareilly.

At the very outset, learned Brief Holder states that the recital made in para-15 of the affidavit in support of bail application that the applicant has no criminal history is incorrect as the applicant has been reported to have six cases apart from the present case. It is argued that there is a material concealment of said fact in the affidavit.

Looking to fact and circumstances of the case I do not find it a fit case to release the applicant on bail.

Accordingly, the bail application is rejected.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

The computer generated copy of such order shall be self attested by the counsel of the party concerned.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing."

9. The applicant is not named in the first information report. His implication in the present matter is on the basis of confessional statement of two co-accused given to the police. The criminal history of the applicant is duly explained. Co-accused Chhote @ Dilshad and Achchhan have been granted bail. No test identification has been conducted.

10. 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 applicant may be enlarged on bail.

11. Let the applicant- Bhure Pathan, 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 applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant 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 applicant 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 applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant 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 174-A I.P.C.

(v) The applicant 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 313 Cr.P.C. If in the opinion of the trial court absence of the applicant 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 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 applicant.

12. 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 applicant to prison.

13. The bail application is allowed.

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

Order Date :- 3.3.2025 AS Rathore (Samit Gopal,J.)