

Vaibhav Tiwari vs State Of U.P. Thru. Prin. Secy. Home Lko. on 31 January, 2025

Author: Rajesh Singh Chauhan

Bench: Rajesh Singh Chauhan

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:6973

Court No. - 11

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12598 of 2024

Applicant :- Vaibhav Tiwari

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Digvijay Nath Dubey, Jaya Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Digvijay Nath Dubey, learned counsel for the applicant and Sri Raj Vijay Singh, learned A.G.A. for the State. Sri Dubey has filed supplementary affidavit, which is taken on record.
2. As per learned counsel for the applicant, the present applicant is in jail since 11.08.2024, in FIR/ Case Crime No. 219 of 2024, under Sections 103(1), 190 B.N.S., Police Station- Atariya, District- Sitapur.
3. Learned counsel for the applicant has submitted that the applicant has been falsely implicated in the present case as he has not committed any offence as alleged. Attention has been drawn towards

the impugned FIR which was lodged on 05.08.2024 for the alleged incident dated 01.08.2024, without explaining the delay. The allegation has been levelled against Mukteshwar @ Munaan (father of the present applicant), Vaibhav Tiwari (present applicant) and some unknown persons. It is further stated that the name of Gaurav Tiwari and Ayush Tiwari (brothers of the present applicant) surfaced during investigation, therefore, charge sheet has been filed against all accused persons.

4. Learned counsel for the applicant has further stated that co-accused Gaurav Tiwari has been granted bail by this Court vide order dated 21.10.2024 passed in CRIMINAL MISC. BAIL APPLICATION No. - 10594 of 2024 (Gaurav Tiwari Vs. State of U. P.). Co-accused Shivendra Pratap Singh @ Sani has been granted bail by this Court vide order dated 21.11.2024 passed in CRIMINAL MISC. BAIL APPLICATION No. - 11278 of 2024 (Shivendra Pratap Singh @ Sani Vs. State of U. P.). Co-accused Ayush Tiwari has been granted bail by this Court vide order dated 26.11.2024 passed in CRIMINAL MISC. BAIL APPLICATION No. - 12301 of 2024 (Ayush Tiwari Vs. State of U. P.). All the bail orders have been annexed as Annexure No. 8, 9 & 10 to this bail application. Presently, the applicant and his father is in jail. The extra judicial confession of the applicant has been recorded, which has no evidentiary value, wherein the applicant has admitted his guilt that he and his father had assaulted his cousin brother/ victim (since deceased) by beating with bricks, resultant thereof the victim died. Sri Dubey has fairly stated that other co-accused persons, who have been granted bail by this Court, have not been attributed any role of assault as per prosecution story, therefore, they have been granted bail. He has also stated that as per the post-mortem report, the deceased sustained two ante-mortem injuries on head area and those injuries might have been caused by a hard and blunt object. Both the aforesaid injuries are lacerated wounds.

5. Learned counsel for the applicant has further stated that the applicant is a student of 12th class (Intermediate) and he is to appear in the forthcoming Board Examination. The copy of the registration paper of the Board Examination has been shown to the Court, which has been annexed as Annexure No. SA-1 to the supplementary affidavit filed today, wherein the name of the applicant has been indicated. The present applicant being a Science Stream student is to appear in the Practical Examination which would commence from 1st February, 2025 while the written examination would commence from 24th February, 2025. The relevant papers to that effect have been annexed as Annexure No. SA-1 and SA-2 to the supplementary affidavit. Learned counsel for the applicant has prayed that the applicant may be enlarged on bail considering his age and the fact that he is a student of 12th Class (Intermediate) and he is to appear in the forthcoming Board Examination. He has also stated that the applicant has no prior criminal history of any kind whatsoever.

6. Learned counsel has further stated that the applicant undertakes that if he is enlarged on bail, he shall co-operate in the trial proceedings and shall not misuse the liberty of bail. Further, the applicant shall abide by all terms and conditions of the bail order, the applicant may be enlarged on bail.

7. Learned A.G.A. has, however, opposed the prayer for bail by submitting that the main role has been attributed to the present applicant and his father, however, he has nothing to say on the fact that the applicant is to appear in the Board Examination.

8. Therefore, without entering into merits of the issue, considering the arguments of learned counsel for the parties; contents and allegations of the FIR and the fact that the applicant is a young student of 12th class (the copy of the registration paper of the Board Examination has been shown to the Court); the Practical Examination of the applicant is going to commence from 1st February, 2025 and the written examination would commence from 24th February, 2025; the applicant is to appear in the Board Examination; the applicant has no prior criminal history of any kind and the undertaking of the applicant that he shall cooperate in the trial proceedings and shall not misuse the liberty of bail, I find it appropriate to release the applicant on bail.

9. Accordingly, the bail application is allowed.

10. Let the applicant- Vaibhav Tiwari be released on bail in the aforesaid case crime number 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 file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A IPC/269 of the B.N.S., 2023.

(iii) 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./84 of B.N.S.S., 2023 is issued and the 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 IPC/208 of the B.N.S., 2023.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C./351 of B.N.S.S., 2023. 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.

(v) The present applicant shall not leave the country without prior permission of the Court.

11. Before parting with, it is made clear that the present applicant has been granted bail only on the ground that he is a young student of 12th class. His Practical Examination is going to commence from 1st February, 2025 and the written examination would commence from 24th February, 2025. He is to appear in the Board Examination, therefore, other co-accused person i.e. his father namely Mukteshwar @ Munaan cannot claim parity of this order.

(Rajesh Singh Chauhan,J.) Order Date :- 31.1.2025 (Manoj K.)