

# Deepak vs State Of U.P. on 28 April, 2025

**Author: Samit Gopal**

**Bench: Samit Gopal**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:65171

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12920 of 2025

Applicant :- Deepak

Opposite Party :- State of U.P.

Counsel for Applicant :- S.S. Rajput, Satyendra Narayan Singh, Tarun Kumar Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri H.N. Singh, learned Senior Advocate, assisted by Sri Satyendra Narayan Singh, learned counsel for the applicant, Sri S.P.S. Chauhan, learned counsel for the first informant, Sri Ajay Singh, learned AGA-I for the State and perused the material on record.

3. Despite name of Sri S.P.S. Chauhan, being printed in the cause list, there is no vakalatnama on the record. Office to trace it out and place it on the record and make a note about it in the order sheet.

4. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Deepak, seeking enlargement on bail during trial in connection with Case Crime No. 293 of 2024, under Sections 302, 120B, 504, 506 and 34 I.P.C. and Sections 3/25/27 Arms Act, registered at P.S. Khair, District- Aligarh.

5. The F.I.R. of the matter was lodged on 12.6.2024 by Smt. Sheetal against the applicant, Sanjay (former Village Pradhan), Deepesh, Pradeep and Gaurav alleging therein that her husband had got her to contest election of village Pradhan of Village Naglia Jadana which was won by her and the family members of Sanjay the former village Pradhan had lost it. The former village Pradhan Sanjay and his family members had been at the said post since the last 35 years. This time after the informant won the elections and due to defeat of the family of Sanjay they were having enmity with her and the family members and used to openly abuse her husband and taunt him that no one could defeat them, but he managed it and thus they would not let him live. Sanjay was planning a conspiracy to murder her husband. On 11.6.2024 at about 06.30 p.m. her husband and Jeth/Manishanker and her brother/Roopkishor were going towards Gaushala wherein on one motorcycle her husband was going on and on the other motorcycle her jeth and her brother were going wherein on the way lying in wait Deepak, Deepesh, Pradeep and Gaurav indiscriminately fired upon her husband Virendra Singh and murdered him. The incident has been seen by her Jeth/Manishanker and her brother/Roopkishor who became terrified and returned back and told her about the incident which was then told by her to the family members and then the family members reached the place of occurrence and found her husband lying in a pool of blood who was dead. Even before this incident Rohit Kumar son of her Jeth was also threatened to be murdered. Her report be lodged and action be taken.

6. Learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. It is submitted that general and omnibus allegations have been levelled against the applicant and four other accused persons of indiscriminate firing upon the deceased. While placing inquest it is submitted that the same started on 11.06.2024 at 2300 hours on information of Head Constable in which Lala@Roopkishor the brother of the informant who is also an eye witness to the incident, was witness amongst 05 Panch witnesses but till that time First Information Report of the matter was not lodged and names of the accused persons was not disclosed. It is submitted that the present F.I.R. was then lodged on 12.06.2024 at 05:10 a.m. and then name of the applicant and 04 other accused persons have been disclosed. Learned counsel for the applicant further submitted that the F.I.R. has been lodged by the informant who is not an eye witness of the incident but on the basis of hearsay information. It is further submitted that the site plan of the place of incident does not show where the alleged eye witnesses were travelling with the deceased. It is submitted that co-accused Sanjay Kumar has been granted bail by a co-ordinate Bench of this Court vide order dated 17.09.2024 passed in Criminal Misc. Bail Application No. 28236 of 2024, copy of the said order has been placed before the Court which reads as under:-

"By means of the bail application the applicant has prayed to be enlarged on bail in Case Crime No. 293 of 2024 at Police Station- Khair, District- Aligarh under Sections 302, 120B, 504, 506, 34 IPC. The applicant is in jail since 14.06.2024.

The bail application of the applicant was rejected by the learned trial court on 06.07.2024.

The following arguments made by Sri S.S. Rajpur, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Sri S.P.S. Chauhan assisted by Sri Sukhendra Singh, learned counsel for the informant and Sri Chandan Agarwal, learned AGA-I from the record, entitle the applicant for grant of bail:

1. Briefly put the prosecution case set out in the FIR is that the applicant hatched a conspiracy to commit the murder of the deceased on account of a long standing political rivalry. Four persons have been identified as the principal offenders who discharged their fire arms and shot dead the deceased.
2. The applicant has not been attributed the role of inflicting the gun shots to the deceased.
3. The applicant has been assigned the role of hatching the conspiracy.
4. Prosecution evidence does not link the applicant with the offence of criminal conspiracy.
5. The applicant has been falsely nominated since he is the father and uncle of the principal offenders.
6. The applicant has explained his criminal history. It is also contended that the applicant has become a soft target and a convenient scapegoat for the police authorities who nominated him in a number of false cases to burnish their professional credentials. The said cases do not have any bearing on the instant bail application.
7. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to cooperate with the court proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant- Sanjay Kumar 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 below. The following conditions be imposed in the interest of justice:-

- (i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

(iii) The learned trial court is directed to fix the sureties after due application of mind in light of the judgement passed by this Court in Arvind Singh v. State of U.P. Thru. Prin. Secy. Home Deptt. (Application U/S 482 No.2613 of 2023).

The learned trial court shall ensure that the right of bail of the applicant granted by this Court is not frustrated by arbitrary demands of sureties, or onerous conditions which are unrelated to the socioeconomic status of the applicant."

7. It is submitted that the applicant has no criminal history as stated in para-36 and is in jail since 14.06.2024.

8. Per contra, learned counsel for the first informant and learned A.G.A. opposed the prayer for bail vehemently and submitted that the applicant is named in the F.I.R. and has been assigned the role of indiscriminate firing along with three other persons upon the deceased. It is submitted that the post mortem examination report of the deceased goes to show that there are 11 firearm wounds of entry on the body of the deceased and 02 exit wounds and cause of death was opined by the doctor as coma and haemorrhagic shock due to ante mortem firearm injuries. It is submitted that thus from the firing of 04 accused persons 11 firearm injuries were received by the deceased. It is further submitted that the present case is a day light incident in which there are 02 eye witnesses present namely Manishanker and Roopkishor who are also mentioned as eye witnesses in the F.I.R. and even the site plan the place from where they have seen the incident is shown. It is further submitted that from the possession of the applicant a country made pistol has been recovered. It is submitted that the present incident is a day light incident and at the time of incident there was natural light available. It is submitted that the applicant has motive to commit the aforesaid offence. It is further submitted that bail of co-accused Gaurav Kumar has been rejected by the same co-ordinate Bench who granted bail to co-accused Sanjay Kumar vide order dated 17.2.2025 passed in Criminal Misc. Bail Application No. 2046 of 2025 (Gaurav Kumar vs. State of U.P.), the said order has been placed before the Court which reads as under:-

"Heard Sri Akhilesh Srivastava, learned counsel for the applicant, Sri S.P.S. Chauhan, learned counsel for the informant and learned A.G.A for the State. Sri Raghvendra Prakash, learned counsel holding brief of Sri Gaurav Kakkar has also filed his vakalatnama on behalf of the informant. Let the same be taken in the record.

By means of this bail application the applicant has prayed to be enlarged on bail in Case Crime No. 293 of 2024 at Police Station - Khair, District Aligarh under Sections 302, 120-B, 504, 506, 34 IPC and Sections 3/25/27 Arms Act. The applicant is in jail since 25.06.2024.

The bail application of the applicant was rejected by learned trial court on 06.07.2024.

The applicant has been identified as the principal offender who discharged the fire arm and shot dead the deceased. There are eye witnesses to the incident. The eye witness and the postmortem report corroborates the prosecution case. The applicant is a repeat offender. The offence is grave. There is likelihood that the applicant had committed the offence. At this stage, no case for bail is made out.

Without going into the merits of the case, the bail application is dismissed.

Sri Akhilesh Srivastava, learned counsel for the applicant contends that the trial is moving at a snail's pace and shows no sign of early conclusion. The prosecution is deliberately delaying the conduct of the trial to prolong the incarceration of the applicant. Various other aspects causing the delay of the trial have also been brought to the notice of the Court including the failure of the trial court to faithfully implement the mandate of Section 309 Cr.P.C. Other bottlenecks which cause delay in trials in the State of U.P. like failure of the police to promptly serve the summons and execute coercive measures issued by the trial court to compel the appearance of the witnesses have also been brought to the notice of the Court. Learned counsel's submissions are well founded and are liable to be addressed.

Considering the gravity of the offence, interest of justice will be served by directing the learned trial court to expedite the trial within a stipulated period of time.

Though no specific time frame to conclude the trial has been set out in the Cr.P.C., yet the legislative intent of Section 309 Cr.P.C. is explicit. The scheme of the provision clearly shows that the legislative intent is to conclude the trial in an expeditious time frame. In the facts of this case, the learned trial court shall make all endeavours to conclude the trial expeditiously. Preferably the trial shall set for itself a reasonable frame to conclude the trial say one year from the date of receipt of a certified copy of this order.

The trial court has also to be conscious of the rights of the accused persons and is under obligation of law to ensure that all expeditious, necessary and coercive measures as per law are adopted to ensure the presence of witnesses. Counsels or parties who delay or impede the proceedings should not only be discouraged from doing so but in appropriate cases exemplary costs should also be imposed on such parties/ counsel.

All witnesses and counsels are directed to cooperate with the trial proceedings.

The learned trial court shall issue summons by regular process as per Section 62 Cr.P.C. and also by registered post as provided under Section 69 Cr.P.C. to expedite the trial.

The learned trial court shall promptly take out all strict coercive measures against all the witnesses in accordance with law who fail to appear in the trial proceeding. Counsels or parties who delay or impede the proceedings should not only be discouraged from doing so but in appropriate cases exemplary costs should also be imposed on such parties/ counsel.

The police authorities shall ensure that warrants or any coercive measures as per law taken out by the learned trial court to ensure that the attendance of the witnesses are promptly executed.

The Senior Superintendent of Police, Aligarh shall file an affidavit before the trial court on the date fixed regarding status of execution of the warrants/service of summons taken out by the learned trial court.

The delay in the trials caused by the failure of the police authorities to serve summons or execute coercive measures to compel the appearance of witnesses at the trial despite a statutory mandate, is an issue of grave concern. The said issue had arisen for consideration before this Court in *Bhanwar Singh @ Karamvir Vs. State of U.P.* (Criminal Misc. Bail Application No. 16871 of 2023) & *Jitendra v. State of U.P.* (Criminal Misc. Bail Application No.9126 of 2023) and was decided by the judgements dated 24.08.2023 & 20.12.2023 respectively. This Court in *Bhanwar Singh @ Karamvir (supra)* & *Jitendra (supra)* had issued certain directions to the police authorities regarding their statutory duty to promptly serve summons and execute coercive processes to compel the appearance of witnesses.

The Director General of Police, Government of U.P. as well as Principal Secretary (Home), Government of U.P. had taken out relevant orders in compliance of judgements in *Bhanwar Singh @ Karamvir (supra)* & *Jitendra (supra)* and nominated the Senior Superintendent of Police of the concerned districts as the nodal officials for implementing the said judgments.

The counsels as well as the learned trial court are directed to comply with the directions issued by this Court in *Noor Alam Vs. State of U.P.* rendered in Criminal Misc. Bail Application No. 53159 of 2021. In case any strike happens during the course of the trial, the learned trial court is directed to ensure full compliance of the directions issued in *Noor Alam (supra)* to prevent delay in the trial.

In case the police authorities are failing to comply with the directions issued by this Court in *Bhanwar Singh @ Karamvir (supra)* & *Jitendra (supra)* and do not implement the said directions of the Director General of Police, Government of U.P. & the Home Secretary, Government of U.P. in regard to service of summons and execution of coercive measures to compel the appearance of witnesses, the learned trial court shall direct the concerned Senior Superintendent of Police to file an affidavit in this regard.

The learned trial court shall be under an obligation to examine whether the judgements of this Court in Bhanwar Singh @ Karamvir (supra) & Jitendra (supra) as well as directions of Director General of Police, Government of U.P. & the Home Secretary, Government of U.P. issued in compliance thereof have been implemented or not and to take appropriate action as per law.

The learned trial court shall also take appropriate measures in law after receipt of such affidavit which may include summoning the concerned officials in person.

It is further directed that in case any accused person who has been enlarged on bail does not cooperate in the trial or adopts dilatory tactics, the learned trial court shall record a finding to this effect and cancel the bail without recourse to this Court.

The trial judge shall submit a fortnightly report on the progress of trial and the steps taken to comply with this order to the learned District Judge.

A copy of this order be communicated to the learned trial judge through the learned District Judge, Aligarh as well as Senior Superintendent of Police, Aligarh by the Registrar (Compliance) by E-mail."

9. It is submitted that thus prayer for bail be rejected.

10. After having heard learned counsels for the parties and perusing the record, it is evident that the present incident is a day light incident. The applicant is named in the F.I.R. and has been assigned the role of indiscriminate firing upon the deceased. The post mortem examination report corroborates with the prosecution version. There is a recovery of country made pistol from the possession of the applicant. There are 02(two) eye witnesses of the incident. There is enmity also as stated in the F.I.R.

11. Looking into the facts and circumstances of the case as well as nature and gravity of the offence, I am not inclined to release the applicant on bail.

12. The bail application is, accordingly, rejected.

(Samit Gopal,J.) Order Date :- 28.4.2025 Naresh