

Durgesh Yadav vs State Of U.P. on 1 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:44886

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2743 of 2025

Applicant :- Durgesh Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Atharva Dixit, Rakesh Kumar Mishra

Counsel for Opposite Party :- G.A., Vishveshwar Mani Tripathi

Hon'ble Sameer Jain, J.

1. Heard Sri Manish Tiwari, learned Senior Advocate assisted by Sri Atharva Dixit, learned counsel for the applicant, Sri Vishveshwar Mani Tripathi, learned counsel for the informant and Sri Manoj Kumar Singh, learned brief holder for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 414 of 2023, under Sections 147, 148, 149, 34, 323, 427, 352, 452, 504, 307, 302 IPC and Section 7 Criminal Law Amendment Act, Police Station- Rudrapur, District- Deoria, during pendency of the trial in the court below.

3. Learned Senior Advocate appearing on behalf of applicant submitted that however, it is a case in which as per allegation, due to assault made by applicant and others, five persons died but from the FIR, it reflects that along with applicant as many as 27 named and 50 unknown persons were made accused on the basis of general and omnibus allegation and this fact clearly suggests that applicant has been falsely made accused in the present matter along with others.

4. He further submitted that actually informant side was the real aggressor and due to assault made by them from the side of applicant also one person died and from his side also a FIR was lodged against the deceased persons.
5. He further submitted that actually, it is a case of free fight and in the incident, from the side of informant however, five persons died but neither any specific role nor any specific weapon has been assigned to any of the accused including applicant and considering the nature of allegation levelled against the accused persons, even it appears to be a case of over implication.
6. He further submitted that however, as per prosecution, when applicant was arrested then on his pointing out one spade was recovered, which allegedly used in the instant crime by him and as per prosecution, on the alleged recovered spade some marks, looks like blood, were found but till date, the alleged recovered spade could not be connected with the instant crime. He further submitted that even there is no evidence on record, which can suggest that the alleged marks found on spade were of the human blood.
7. He further submitted that along with applicant, co-accused Paramhans Yadav, Kush Yadav, Pawan Tiwari, Sudama Pal, Fulgena, Raghuveer Pal, Diwakar Tiwari, Parshuram Rajbhar, Pradeep Rajbhar, Sugreev Pal, Bechu Rajbhar and Ramayan Pal were also made accused and they have been released on bail by this Court vide orders dated 18.03.2025, 22.01.2025, 09.12.2024, 28.11.2024, 26.11.2024, 26.11.2024, 26.09.2024, 25.09.2024, 25.09.2024, 13.08.2024 and 25.09.2024 passed in Criminal Misc. Bail Application Nos. 9041 of 2025, 40285 of 2024, 15658 of 2024, 40493 of 2024, 39735 of 2024, 39881 of 2024, 31633 of 2024, 29994 of 2024, 32308 of 2004, 27900 of 2024 and 32331 of 2024 respectively and as far as allegation of assault is concerned, case of applicant is at par with them. He further submitted that however there was no allegation against these co-accused that on their pointing out any weapon was recovered, which allegedly used by them in the instant crime.
8. He further submitted that however, bail application of co-accused Aniruddha Yadav has been dismissed by co-ordinate Bench of this Court vide order dated 25.09.2024 passed in Criminal Misc. Bail Application No. 27917 of 2024 and on his pointing out also one iron rod was recovered but law is settled, there can be no parity of bail rejection order and at the time of rejection of bail application of co-accused Aniruddha Yadav, it could not be placed before co-ordinate Bench of this Court that the alleged recovered iron rod could not be connected with the instant crime.
9. He further submitted that applicant is not having any criminal history and he is in jail in the present matter since 03.10.2024 i.e. for almost one and half years.
10. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that it is a case, in which, five persons died due to assault made by applicant and others and however, number of persons have been enlarged on bail by this Court but case of applicant is distinguishable from them as on the pointing out of applicant, one weapon (spade) used in the crime was recovered.

11. They further submitted that on the pointing out of co-accused Aniruddha Yadav one iron rod was recovered, which also allegedly used it in the crime and his bail application has been dismissed by co-ordinate Bench of this Court but both the counsels could not dispute the fact that from the side of applicant also one person died and from his side also a FIR was lodged against the deceased persons.

12. They further could not dispute the fact that as far as allegation of assault is concerned, case of applicant is at par with those accused, who have been released on bail.

13. They further could not dispute the fact that the alleged recovered spade on the pointing out of the applicant could not be connected with the instant crime and there is no evidence on record, which can suggests that the blood marks allegedly found on the alleged recovered spade on the pointing out of the applicant were the marks of human blood.

14. They further could not dispute the fact that applicant is not having any criminal history and he is in jail in the present matter for almost one and half years.

15. I have heard learned counsel for the parties and perused the record of the case.

16. However, it is a case in which five persons died but it reflects, on the basis of general and omnibus allegations applicant has been made accused in the present matter along with as many as 27 name accused and 50 unknown persons.

17. Record also suggests that from the side of applicant also one person died and from his side also a FIR was lodged against the deceased persons and considering this fact, the argument advanced by learned counsel for the applicant that it is a case of free fight, cannot be completely ruled out at this stage.

18. Further, neither any specific role nor any specific weapon has been assigned to the applicant and other accused. However, as per prosecution, when applicant was arrested then on his pointing out one spade was recovered, which allegedly used by him in the crime and on the alleged recovered spade some marks were found, which looked like blood marks but till date, the alleged recovered spade could not be connected with the instant crime and till date there is also no evidence that the marks, which looked like blood marks were the marks of human blood.

19. Further, after investigation charge sheet has been filed in the matter.

20. Further, however, record also suggests that along with applicant, co-accused Aniruddha Yadav was also made accused with similar allegation and when he was arrested then on his pointing out one iron rod was recovered, which alleged to have been used in the instant crime and his bail application has been dismissed by co-ordinate Bench of this Court but this Court finds merit in the argument advanced by learned counsel for the applicant that law is settled there can be no parity of bail rejection order.

21. Further, from the bail rejection order dated 25.09.2024, it reflects that at the time of rejection of bail application of co-accused Aniruddha Yadav, it could not be brought to the notice of co-ordinate Bench of this Court that the alleged recovered iron rod could not be connected with the instant crime.

22. Further, along with applicant number of other accused persons were also made accused with similar allegation of assault and they have already been released on bail by this Court, however, on their pointing out recovery of any weapon could not be made.

23. Further, applicant is not having any criminal history and he is in jail in the present matter for last almost one and half years.

24. Further, law is settled, bail application of an accused should not be dismissed for punitive purpose.

25. Therefore, considering the facts and circumstances of the case discussed above, in my view applicant is entitled to be released on bail.

26. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

27. Let the applicant- Durgesh Yadav be released on bail in the aforesaid case on 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 appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make 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 any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

28. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

29. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 1.4.2025 KK Patel