

# Vikas Yadav vs State Of U.P & Anr on 23 October, 2009

**Author: Anil Kumar**

**Bench: Anil Kumar, Vipin Sanghi**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CrI.A No.910/2008

% Date of Decision: 23.10.2009

Vikas Yadav . . . . Appellant

Through Mr. U. Lalit, Senior Advocate with  
Mr.Sumeet Verma and Ms.Charu  
Verma, Advocates for the appellant.

Versus

State of U.P & Anr . . . . Respondents

Through Mr.Sanjeev Bhandari, Additional  
Standing Counsel for the State along  
with Mr.Sunil Kumar, Inspector (Crime  
Branch).  
Mr. P.K. Dey, Ms.Kamini Jaiswal and  
Mr. Kaushik Dey, Advocates for the  
complainant.

CORAM:  
HON'BLE MR. JUSTICE ANIL KUMAR  
HON'BLE MR. JUSTICE VIPIN SANGHI

1.	Whether reporters of Local papers may be allowed to see the judgment?	YES
2.	To be referred to the reporter or not?	NO
3.	Whether the judgment should be reported in the Digest?	NO

ANIL KUMAR, J.

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1. This is an application by the appellant/Vikas Yadav for suspension of his sentence and his release on interim bail for a period of one month to attend the marriage ceremonies of his sister Ms.Bharti Singh. The appellant had been convicted for the offence of abducting and murdering Nitish Katara and causing disappearance of evidence by burning his dead body under sections 364/302/201/34 of IPC. He has been sentenced to undergo life imprisonment for the offence under Section 302/34 of

IPC with a fine of Rs. 1 lac and in default of payment of fine to undergo simple imprisonment of one year. He has been sentenced to undergo imprisonment for ten year for the offence under Section 364/34 of IPC with a fine of Rs. 50,000/- and in default of payment of fine to undergo simple imprisonment of six months and he has also been sentenced to undergo imprisonment for five years for the offence under Section 201/34 of IPC with a fine of Rs.10,000/- and in default of payment of fine to undergo simple imprisonment of three months.

2. The applicant has contended that he has undergone continuous incarceration of more than 7 years 7 months and his conduct has been satisfactory during this period. His application for regular suspension of sentence and his release on bail sought by Crl. M.B No.1381/2008 had been dismissed by order dated 7th August, 2009.

3. The plea of the applicant is that his real sister Bharti Singh has to marry Mr.Yatin s/o. Sh.Raj Kumar Yadav and the functions relating to marriage ceremonies are on 20th October, 2009, Bhajan Sandhya; Cocktail Party cum dinner on 24th October, 2009 at Hotel Monarch in Chandigarh; lagan ceremony at Vatika Grand, Gurgaon on 26th October, 2009; Ladies Sangeet party also at Hotel Monarch at Chandigarh on 28th October, 2009; marriage on 1st November, 2009 at Jhankar Garden, 555, M.G.Road, New Delhi-110030 and reception ceremony at Village and Post Office Dulana, District Mahendergarh, Haryana on 8th November, 2009.

4. The applicant has contended that he being the real brother of the bride is under a duty to not only actively participate in all family functions but he also has to make arrangements for the same. Invitation card of the marriage functions is also annexed with the application which application is signed by the counsel and is supported by the affidavit of Ms.Bharti Singh, daughter of Sh.D.P.Yadav, sister of the applicant.

5. The applicant has also asserted that his grandfather Sh.Teupal Yadav is very old and unwell and it is his earnest desire that he spends more valuable time with the applicant and the applicant also wishes to utilize the period of his interim bail to re-establish his ties with his family and his sister.

6. The reliance has been placed by the applicant on the decision of a Division Bench of this Court in Shakuntala Devi v. State, 1996 Crl.L.J.2954 and Inder Singh v. State, AIR 1978 SC 1091 and it is contended that in order to initiate and sustain the reformatory process a convict should be released atleast for a month every year for maintaining his family ties and a prisoner cannot be confined to his own cribbed, cabined and confined world in the four walls of prison. Reliance has also been placed on behalf of applicant on the decision of this Court in Crl.M(Bail) No.925/2009 in Crl.Appeal No.338/2008 decided on 8th October, 2009; Crl.M (Bail) No.588/2009 in Crl.Appeal No.357/2008 dated 3rd August, 2008 and Crl.M (Bail) No.877/2009 in Crl.Appeal No.548/2009 dated 8th October, 2009 and 2006(1) JCC 284, Rajesh v. State to contend that the appellant, in order to have ties with family and society, is entitled for grant of interim bail especially in view of the marriage of his only sister.

7. The application is contested by the State by contending, inter- alia, that though the programmes of Bhajan Sandhya, Mehendi and Ladies Sangeet are to be held at Hotel Monarch, Chandigarh,

however, no advance payment in this regard has been made for these functions scheduled on 20th October, 2009 and 28th October, 2009. The marriage ceremony to be held at Jhankar Garden, 555, M.G.Road, New Delhi is not denied and the factum of marriage of the sister of the applicant Ms.Bharti Singh with Mr.Yatin has also not been denied. Enquiries have also been made from Sh.Yatin, r/o. House No.89, Sector 31, Gurgaon. The State has also verified about the lagan ceremony stated to be fixed on 26th October, 2009 at Vatika Grand, Gurgaon and the reception ceremony to be held on 8th November, 2009 at Village and Post Office Dulana, Mahendergarh, Haryana.

8. Regarding the affidavit of the sister of the applicant dated 9th October, 2009 filed with the application it is asserted that the oath commissioner was contacted on phone to produce the register, to ascertain about the signing of the register by her, however, he has failed to do so.

9. The suspension of sentence and release of applicant on bail is opposed on the ground that from the enquiries conducted, it has become apparent that there will be huge gathering of different sections of people and the invitees could be more than 2000-3000. As there would be free access to all sort of persons, in case the sentence is suspended and the applicant is released on bail or allowed to join the ceremonies under custodial parol, there is grave apprehension that attempts would be made to facilitate fleeing the applicant and applicant fleeing and also committing other serious and grave crimes. It is also contended that the marriage functions are spread out in three States and span about three weeks. The functions scheduled to be held in Chandigarh/Gurgaon /District Mahender Garh are also stated to be beyond the jurisdiction of this Court.

10. The application is also contested on the ground that the suspension of sentence for attending the marriage and other functions do not weigh enough in view of the previous conduct of the applicant who had misused the liberty granted to him earlier during the period when he was on bail in Jessica Lal's murder case. He had committed the present offence while on bail in the said case. The application is also opposed on the ground that the presence of the applicant is not necessary for the ceremonies pertaining to the marriage of his sister as the applicant has his father and another brother and other family members to perform the ceremonies. It is not even stated that as per religious and customary beliefs and practices, the presence of the applicant is necessary for performance of any of the ceremonies.

11. The learned counsel for the complainant, who has been permitted to make his submissions, has contended that the application of the applicant for leading additional evidence under Section 391 CrI.PC is pending consideration in respect of one of the crucial witness Sh.Ajay Katara, PW.33 and suspending the sentence of the applicant and releasing him on bail gives rise to grave apprehension that the applicant would threaten and/or influence the said witness. The learned counsel has also pointed out that the sister of the applicant Ms.Bharti Singh was also a prosecution witness. However, when she was examined on different dates, the applicant had opted not even to appear during the trial and face her sister who had deposed about her relation with the deceased Nitish Katara. It is argued that Ms.Bharti Singh was the witness whose deposition has established the motive for the commission of the offence by the applicant. Contact between the applicant and the said witness Ms.Bharti Singh may also lead to her being influenced at this stage.

12. It has also been contended that the applicant was involved in Jessica Lal murder case and had absconded after that offence was committed. Even after committing the murder of Nitish Katara, the deceased, who was abducted while attending some marriage functions, the applicant had again absconded and was apprehended much later from Dabra, Madhya Pradesh. Apprehension has also been expressed on behalf of the complainant, that if the applicant is released even for a short time he may not come back as the appeal of the State for enhancement of his sentence from life imprisonment to death sentence and the criminal revision petition of the complainant to enhance the sentence of the applicant is also pending adjudication and considering all these circumstances, it is very probable that the applicant shall flee.

13. The complainant has also expressed her apprehensions regarding her own safety, if the applicant is released on bail. The learned counsel for the complainant has also contended that the applicant, during the trial, had slapped a photographer in Patiala House Courts and had also manhandled him, which demonstrates his violent tendencies and that the appellant is such a person who should be released on bail in any eventuality.

14. In his rejoinder, Mr.Lalit, Sr. Advocate, appearing for the applicant, has submitted that the order in Cr.M.B. No.1381/2008 had been reserved on 25.03.2009, though it was pronounced on 07.08.2009. He further submits that the application under Section 391 Cr. P.C. relates only to Mr.Ajay Katara, PW-33, and not to Ms.Bharti Singh. He also submits that no notice has been issued by the Court on the State's appeal for enhancement of sentence as it is barred by limitation. Only on the application seeking condonation of delay notice has so far been issued. He submits that no notice has been issued on the Criminal Revision Petition preferred by the complainant for enhancement of sentence.

15. We have heard the learned counsel for the parties in detail. It cannot be disputed that the applicant had filed a petition for suspension of his sentence and for his release on bail being Crl.M.B No.1381/2008 which was dismissed by a detailed order dated 7th August, 2009. While dismissing the application of the applicant for suspension of sentence, the Court had noted categorically that the applicant was involved in a murder case in 1991 which was withdrawn by the Government of U.P in 1993; he also faced trial for offences under Section 302/201/34 of IPC in Jessica Lal murder case and while he was on bail in the said case, the present offences were committed by the applicant. The Court had also considered three circumstances-motive, last seen evidence and the recoveries made at the instance of the applicant and other relevant facts and circumstances for declining the suspension of his sentence and his release on bail. Though at the time his application for suspension of sentence and release him on bail was considered he had undergone incarceration of more than seven years and his behavior during this period was reported to be satisfactory, however, regular suspension of sentence and release of applicant on bail was denied.

16. The instances relied on by the applicant do not lay down that where a convict has undergone incarceration for more than seven years, the sentence of such a convict is to be suspended and he should be or has to be released on bail. In the precedent relied on by the applicants, the sentence of the convicts were suspended in peculiar facts and circumstances of those cases and on the basis of same, the applicant cannot contend that his sentence is also liable to be suspended and he is also

liable to be enlarged on interim bail. No doubt, the Court has to be sensitive to the need of the convict to re-connect with his family and friends to re-establish his family ties. However, that does not mean that in each and every case, without exception, or without regard to the peculiar facts of the case, the Court would mechanically suspend the sentence and release such convicts on interim bail.

17. This is no more *res integra* that the ratio of any decision must be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It must be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances obtaining in two cases. Consequently on the basis of ratio of the cases relied on by the learned counsel for the appellant/applicant, no inference in favor of the appellant to suspend his sentence and release him on interim bail can be drawn.

18. A perusal of Section 389, Cr.P.C would show that suspension of sentence during pendency of appeal is not the absolute right of the convict. The discretion to suspend the sentence vests in the Court and it is required to be exercised judicially keeping in view all facts and circumstances and the nature of offence. The Court has to exercise this discretion with utmost care and caution, balancing one's right and liberty on one hand and the interest of the society on the other. It is for this reason that despite the presumption of innocence being there during appeal, the convicts in offences like murder, ransom kidnapping, culpable homicide, rape, etc. are not granted bail in routine, though some of them may get acquitted after final appeal. In the criminal justice system which we have, delays have entered for various reasons and is a fact of life. Merely because there is delay in hearing of appeals, every person convicted by the trial Court is not let loose on the society either during the pendency of the appeal or even for short period.

19. In order to decide whether the applicant sentence has to be suspended or not and whether he is entitled to be released on interim bail, a number of circumstances have to be considered which inter-alia are the past conduct of the convict, whether the convict has exploited the liberty granted to him; nature of offence; whether his similar prayer for suspension of sentence and his release on bail has been declined or not; whether the release of the convict is absolutely essential for performing certain ceremonies and various other facts and circumstances which are peculiar to each case. The fact that the appellant committed the offence of murder of Nitish Katara and other offences when he was on bail in the murder case of Jessica Lal, cannot be brushed aside lightly. The learned counsel for the appellant has very vehemently contended that the appellant has undergone his sentence in Jessica Lal murder case and he was not convicted for murder but a lesser offence, this however, will not mitigate the severity of the act of the applicant of committing the murder of Nitish Katara when he had been released on bail in that case. The confidence reposed by the Court in releasing him on bail in another case was not sustained and honored by the applicant and this fact cannot be construed lightly.

20. The learned counsel for the State had emphasized the doubt about the affidavit of the sister of the applicant given in support of the application of the applicant. The learned counsel for the applicant, Shri Verma has, however, stated at the bar, that the sister of the applicant had appeared before the Oath Commissioner in his presence and had even signed the register of the Oath Commissioner in his presence. This aspect in any case will not have much weightage as the State has enquired about the marriage of the sister of the applicant and this fact has not been disputed.

21. Considering the rival contentions and the entirety of facts and circumstances, this Court is not inclined to suspend the sentence of the applicant and release him on interim bail.

22. The applicant/ Vikas Yadav is, however, allowed to attend the marriage ceremony of his sister on 1st November, 2009 at Jhankar Garden, 555, M.G.Road, New Delhi under judicial custody subject to following terms and conditions. According to the marriage card the reception of barat is at 8 PM. Consequently, applicant be taken to the venue of marriage three hours before the time of reception of barat and he is allowed to attend the marriage ceremonies till Doli which could be till late hours on 1st November, 2009 or till early hours of 2nd November, 2009. The custodial officials under whose custody the applicant shall attend the marriage ceremonies of his sister are directed to be in plain clothes. Such custodial officers and personnel shall however, be at liberty to take such measures and use such devices and equipments at the venue of marriage and at such other places which shall be deemed necessary by them to ensure that the applicant does not abscond or flee and/or assisted by any one in fleeing from judicial custody or committing any offence in any manner while attending the marriage of his sister under custodial parole. After the marriage ceremonies the applicant be sent back or lodged at the appropriate Jail.

Dasti under the signatures of Court Master.

ANIL KUMAR, J.

OCTOBER 23, 2009  
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VIPIN SANGHI, J.