



2025:AHC:170125

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. BAIL APPLICATION No. - 10397 of 2024

Varish Khan

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s) : Arun Kumar Tripathi, Swati Agrawal
Srivastava
Counsel for Opposite Party(s) : G.A.

Court No. - 65

HON'BLE SANJAY KUMAR SINGH, J.

1. Heard learned counsel for the applicant, Mr. Rajesh Kumar Rao, learned Additional Government Advocate assisted by Ms. Pratiksha Rai, learned Brief Holder representing the State and perused the record.
2. The instant second bail application has been filed on behalf of applicant-Varish Khan with a prayer to release him on bail in Case Crime No. 136 of 2020, under Sections 396, 412 I.P.C. and Section 4/25 Arms Act, Police Station Holagarh, District Prayagraj, during the pendency of trial.
3. First bail application of the applicant was dismissed for want of prosecution by this Court vide order dated 01.03.2023 in Criminal Misc. Bail Application No. 33455 of 2022.
4. Brief facts of the case, which are required to be stated are that complainant-Ashok Kumar Pandey got a first information report lodged on 03.07.2020 against unknown person stating inter-alia that his younger brother, Vimlesh Kumar Pandey alias Lallan, had been living in his house in village Shukla Ka Pura, Barriharakh, Police Station Holagarh, District Prayagraj for the last about 25 years. In the night intervening 02/03.03.2020, Vimlesh Kumar Pandey alias Lallan,

his daughters Km. Simu & Shibu and son Prince were hacked to death with sharp weapons by unknown persons, whereas his wife Smt. Rachna Panday received serious injuries and was admitted in Swaroop Rani Hospital.

5. During investigation, complicity of five persons namely Sarik, Shahrukh, Dabar, Varish and Farman came into light and they were arrested together. They, in their statements, confessed that they have murdered the aforesaid four persons and looted money and ornaments kept in the house. They also disclosed that Shahrukh was standing outside the house and keeping a vigil on the passerby. Sarik and Mobin were armed with Chapad, Dabar was armed with axe, whereas applicant-Varish and Farman were armed with knife. Weapons of crime and money were also recovered from their possession.

6. Learned counsel for the applicant submits that co-accused Farman has been granted bail by the coordinate Bench of this Court vide order dated 19.12.2023 in Criminal Misc. Bail Application No. 1059 of 2023, hence the applicant who is languishing in jail since 17.07.2020, is also liable to be released on bail on the ground of parity.

7. In response, learned Additional Government Advocate referring paragraph No. 5 of the order dated 19.12.2023 of the co-accused Farman submits that Farman has been granted bail considering one of the submissions that despite three years having been elapsed even charge has not been framed, whereas charge was framed before passing the order dated 19.12.2023 and examination-in-chief of complainant Ashok Kumar Pandey was also recorded on 25.08.2023 as such co-accused Farman has obtained bail by placing wrong fact before the coordinate Bench and thereafter other co-accused, namely, Sarik, Mobin and Shahrukh have been granted bail on the ground of parity of bail order dated 19.12.2023 of Farman. Hence no case of parity is made out.

8. Hon'ble Supreme Court in **Deepak Yadav Vs. State of U.P. and another**, (2022) 8 SCC 559, after considering catena of judgements on the guiding principle for adjudicating a regular bail, held as under:

27. "The importance of assigning reasoning for grant or denial of bail can never be undermined. There is prima facie need to indicate reasons particularly in cases of grant or denial of bail where the accused is charged with a serious offence. The sound reasoning in a particular case is a reassurance that discretion has been exercised by the decision maker after considering all the relevant grounds and by disregarding extraneous considerations."

"xxxxxxxxxxxxxxxxxxxxxx"

41. "Grant of bail to the respondent No. 2/accused only on the basis of parity shows that the impugned order passed by the High Court suffers from the vice of non-application of mind rendering it unsustainable. The High Court has not taken into consideration the criminal history of respondent No. 2/accused, nature of crime, material evidences available, involvement of respondent No. 2/accused in the said crime and recovery of weapon from his possession."

9. Having heard learned counsel for the parties, I find substance in the submission of learned Additional Government Advocate for the State as noted above. I also find that it is a very serious matter in which four persons have been done to death and Smt. Rachna Pandey was seriously injured. Further, since co-accused Farman has obtained bail order dated 19.12.2023 by concealment of correct facts as noted above, hence parity of such order cannot be extended to the applicant. Moreover, this Court is of the view that a Judge is not bound to grant bail to an accused on the ground of parity if the order granting bail contain wrong facts. If any illegality is brought to the notice of the Court, the same shall not be permitted to perpetuate.

10. Pursuant to the order of this Court dated 19.09.2024 a report was also called for from the concerned Presiding Officer with regard to present status of trial of the applicant. Accordingly, trial court submitted its report dated 07.10.2024, which is on record. On going through the report dated 07.10.2024 of the trial court, I also find that examination-in-chief of complainant-Ashok Kumar Pandey has been recorded on 25.08.2023. Thereafter, on 03.10.2024 statement of PW-

2 Pramod Kumar Yadav was recorded and on 04.10.2024 statement of PW-3 has also been recorded and the trial of the applicant is going on.

11. The Hon'ble Apex Court in the case of **Shabeen Ahmad Vs. the State of U.P. and another**, 2025 SCC OnLine SC 479 and **'X' vs. State of Rajasthan and another**, 2024 SCC OnLine SC 3539 has held that if offence is heinous in nature and trial of the accused is in progress, bail should not be granted.

12. In view of the above, considering the gravity of offence, which is most heinous in nature and stage of trial of the applicant as well as his criminal history, I do not find any good ground to release the applicant on bail.

13. Accordingly, the instant bail application is **rejected**.

14. However, considering the detention period of the applicant since 17.07.2020, the trial court is directed to make an endeavour to conclude the trial of the applicant, expeditiously, without granting any unnecessary adjournment to either of the parties.

15. Copy of this order be sent to the concerned trial court for necessary information and compliance.

(Sanjay Kumar Singh,J.)

September 22, 2025

Kashifa