



2026:AHC:165447

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. BAIL APPLICATION No. - 27605 of 2026

Nivesh @ Nainu

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Anand Pati Tiwari
Counsel for Opposite Party(s)	:	G.A.

Court No. - 65

HON'BLE SAMEER JAIN, J.

1. Heard Sri Anand Pati Tiwari, learned counsel for the applicant and Dr. S. B. Maurya, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 214 of 2026, under Sections 61(2), 103(1), 3(5) BNS, Police Station Sikandrabad, District Bulandhshahr, during pendency of the trial in the court below.
3. Learned counsel for the applicant submitted that FIR of the present case was lodged against four unknown bike riders with regard to the murder of the brother of the informant but during investigation very casually applicant has been made accused on the basis of statement of Sonu who was one of the inquest witness.
4. He further submitted that according to the witness Sonu when he was passing then he heard the conversation of the applicant and other accused and they were stating that if they did not have courage then co-accused Amit, Deepak and Tejendra @ Teji could not commit the murder of the deceased and merely on the basis of such shaky evidence applicant has been made accused in the present matter.
5. He further submitted that however nobody was named in the FIR but during investigation when statement of the wife of the deceased Menu was recorded then she started making herself to be eye-witness and even from her statement it reflects, co-accused Amit, Deepak, Kishan Pal and Tejendra @ Teji by causing firearm injury committed the murder of the deceased.

6. He further submitted that it reflects applicant has been made accused in the present matter with the aid of section 61(2) BNS but there is no cogent evidence against the applicant on record.

7. He further submitted that apart from the present case, applicant is having criminal history of nine cases and therefore, police is highly inimical with the applicant and only due to this reason during investigation police falsely implicated him in the present matter. He further submitted that entire criminal history of the applicant has been explained in the instant bail application and majority of the cases were of minor nature and in all the cases, applicant is on bail.

8. He further submitted that applicant in the present matter is in jail since 21.3.2026.

9. Per contra, learned AGA opposed the prayer for bail but could not dispute the arguments on facts advanced by learned counsel for the applicant.

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

11. However nobody was named in the FIR but during investigation on the basis of statement of witness Sonu applicant has been made accused in the present matter with the aid of section 61(2) BNS but statement of the witness Sonu does not appear to be convincing.

12. Further however from the record it reflects wife of the deceased was the eye witness but she did not even disclose the name of the applicant and according to her, co-accused Amit, Deepak, Kishan Pal and Tejendra @ Teji by causing firearm injuries committed the murder of the deceased.

13. Further, however, apart from the present case applicant is having criminal history of nine other cases but his criminal history has been explained in the instant bail application and after considering entire criminal history of the applicant, argument advanced by learned counsel for the applicant that only due to previous criminal history police who is highly inimical with him during investigation falsely implicated him in the present matter cannot be ruled out, at this stage.

14. Further, even it reflects, majority of the cases relate to minor offences and in all the cases, applicant is on bail.

15. Further, considering the manner in which applicant has been made accused in the present matter in view of this Court merely on basis of criminal antecedents of the applicant it is not proper to withhold his instant bail application.

16. The law is settled that if otherwise case of bail is made out then ordinarily, merely on the basis of criminal antecedents bail application of an accused should not be withheld.

17. The Apex Court in the case of **Ayub Khan Vs. State of Rajasthan, 2024 SCC OnLine SC 3763** in paragraph-10 also observed as follows:-

"10. The presence of the antecedents of the accused is only one of the several considerations for deciding the prayer for bail made by him. In a given case, if the accused makes out a strong prima facie case, depending upon the fact situation and period of incarceration, the presence of antecedents may not be a ground to deny bail. There may be a case where a Court can grant bail only on the grounds of long incarceration. The presence of antecedents may not be relevant in such a case. In a given case, the Court may grant default bail. Again, the antecedents of the accused are irrelevant in such a case. Thus, depending upon the peculiar facts, the Court can grant bail notwithstanding the existence of the antecedents....."

18. Further, in the present matter applicant is in jail since 21.3.2026.

19. Therefore, considering the facts and circumstances of the case, discussed above as well as observation made by the Apex Court in the case of **Ayub Khan (supra)**, in my considered view, applicant is entitled to be released on bail.

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

21. Let the applicant-**Nivesh @ Nainu**, 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.

22. 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.

23. 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.

August 7, 2026
Ankita

(Sameer Jain,J.)