



2026:AHC-LKO:41145-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL MISC. WRIT PETITION No. - 5727 of 2026

Murtaza Alias Murtaza Raja

.....Petitioner(s)

Versus

State Of U.P. Thru. Secy. Home Deptt. Lko. And
3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Hom Narayan Awasthi
Counsel for Respondent(s)	:	G.A.

Court No. - 2

**HON'BLE SAURABH LAVANIA, J.
HON'BLE PRAMOD KUMAR SRIVASTAVA, J.**

1. Heard learned counsel for the petitioner and learned AGA for the State as well as perused the record.
2. The present petition has been filed for quashing of the FIR dated 30.05.2026 bearing Case Crime No. 0194 of 2026, under Sections 137(2), 87 of BNS, Police Station Khairi Ghat, District Bahraich, alongwith the prayer to not arrest the petitioner in pursuance of the aforesaid FIR.
3. The relief(s) have been sought on the ground of plea of 'alibi', as appears from the pleadings and submission advanced before this Court by learned counsel for the petitioner.
4. In so far as the plea of 'alibi' is concerned, it is a settled law that it is a plea of defence. In **Binay Kumar Singh v.State of Bihar [(1997) 1 SCC 283]**, the Hon'ble Apex Court observed as under:

"23. The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person;

(i) the burden is on the prosecution to prove that the accused was

present at the scene and has participated in the crime.

(ii) The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi.

(iii) The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily.

(iv) But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence.

(v) When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened.

*(vi) But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. This Court has observed so on earlier occasions (vide *Dudh Nath Pandey v. State of U.P.* [(1981) 2 SCC 166 : 1981 SCC (Cri) 379]; *State of Maharashtra v. Narsingrao Gangaram Pimple* [(1984) 1 SCC 446 : 1984 SCC (Cri) 109 : AIR 1984 SC 63]).*

5. In *Rajendra Singh v. State of U.P.*, (2007) 7 SCC 378 the Hon'ble Apex Court has held as under: -

"8. That apart, the plea taken by the respondent Kapil Dev Singh in his petition under Section 482 CrPC was that of alibi. Section 103 of the Evidence Act says that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is proved by any law that the proof of that fact lie on any particular person. The second illustration to Section 103 reads as under:

*"B wishes the Court to believe that at the time in question, he was elsewhere. He must prove it." This provision makes it obvious that the burden of establishing the plea of alibi set up by Respondent 2 in the petition filed by him under Section 482 CrPC before the High Court lay squarely upon him. There is hardly any doubt regarding this legal proposition. (See **Gurcharan Singh v. State of Punjab [AIR 1956 SC 460 : 1956 Cri LJ 827]**, **Chandrika Prasad Singh v. State of Bihar [(1972) 4 SCC 140 : AIR 1972 SC 109]** and **State of Haryana v. Sher Singh [(1981) 2 SCC 300 : 1981 SCC (Cri) 421 : AIR 1981 SC 1021]**.) This could be done by leading evidence in the trial and not by filing some affidavits before the High Court. In such a case the prosecution would have got an opportunity to cross-examine those witnesses and demonstrate that their testimony was not correct. Learned counsel for the appellant has submitted that in fact no affidavits were filed in the High Court but what was filed were copies of two or three affidavits which were given by some persons before the Superintendent of Police, Allahabad. Thus, there was absolutely no legal evidence in support of the plea of alibi of Kapil Dev Singh, which the High Court chose to rely upon and accept for the purpose of quashing the order passed by the learned Sessions Judge."*

13. Having considered the submissions made by learned counsel for the parties, we are of the opinion that the statements of the witnesses under Section 161 CrPC being wholly inadmissible in evidence could not at all be taken into consideration. The High Court relied upon wholly inadmissible evidence to set aside the order passed by the learned Sessions Judge. That apart, no finding on a plea of alibi can be recorded by the High Court for the first time in a petition under Section 482 CrPC. As mentioned above, the burden to prove the plea of alibi lay upon the accused which he could do by leading evidence in the trial and not by filing some affidavits or statements purported to have been recorded under Section 161 CrPC. The whole procedure adopted by the High Court is clearly illegal and cannot be sustained."

6. In **Shaikh Sattar v. State of Maharashtra [(2010) 8 SCC 430]**, the Hon'ble Apex court has observed as under:-

"35. Undoubtedly, the burden of establishing the plea of alibi lay upon the appellant. The appellant herein has miserably failed to bring on record any facts or circumstances which would make the plea of his absence even probable, let alone, being proved beyond

reasonable doubt. The plea of alibi had to be proved with absolute certainty so as to completely exclude the possibility of the presence of the appellant in the rented premises at the relevant time. When a plea of alibi is raised by an accused it is for the accused to establish the said plea by positive evidence which has not been led in the present case. We may also notice here at this stage the proposition of law laid down in Gurpreet Singh v. State of Haryana [(2002) 8 SCC 18 : 2003 SCC (Cri) 186] as follows : (SCC p. 27, para 20)

"20.....This plea of alibi stands disbelieved by both the courts and since the plea of alibi is a question of fact and since both the courts concurrently found that fact against the appellant, the accused, this Court in our view, cannot on an appeal by special leave go behind the abovenoted concurrent finding of fact."

13. It is the prosecution to prove its case by adducing evidence. The petitioner is at liberty to take the plea of alibi as his defence and to establish the same with positive evidence. Before prosecution adduce evidence to establish the incident, and to prove participation of the accused, there is no scope for entertaining a defence plea of alibi."

7. From the observations made by the Hon'ble Apex Court in the judgments referred above, what appears is as under:-

"(a) The prosecution has to prove its case including the role of the accused in that incident.

(b) Only when prosecution succeeds in discharging the burden by establishing its case including participation of the accused in the crime/incident, the plea of 'Alibi' put up by the accused needs to be considered.

(c) The burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime.

(d) The burden would not be lessened by the mere fact that the accused has adopted the defence of 'Alibi'.

(e) The plea of 'Alibi' of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily.

(f) It is incumbent on the accused, who adopts the plea of alibi, to

prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence.

(g) When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened.

(h) If the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy.

*(i) Strict proof is required for establishing the plea of 'Alibi'. [vide: **Dudh Nath Pandey v. State of U.P. (1981) 2 SCC 166 : 1981 SCC (Cri) 379; State of Maharashtra v. Narsingrao Gangaram Pimple (1984) 1 SCC 446 : 1984 SCC (Cri) 109 : AIR 1984 SC 637**].*

8. In view of principle settled on the plea of 'alibi', the ground, i.e. plea of 'alibi' taken by the petitioner for entertaining the instant petition has no force.

9. Accordingly, the present petition is hereby **dismissed**.

**June 15,
2026**

kkv/

(Pramod Kumar Srivastava,J.) (Saurabh Lavania,J.)