



2026:AHC-LKO:20572

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL MISC. BAIL APPLICATION No. - 668 of 2026

Abhay Tiwari

.....Applicant(s)

Versus

State Of U.P. Thru. Prin. Secy. Home U.P. Lko.

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Sant Lal Dixit, Rakesh Kumar
Counsel for Opposite Party(s)	:	G.A.

Court No. - 13

HON'BLE SAURABH LAVANIA, J.

1. Learned counsel for applicant has filed supplementary affidavit and learned A.G.A.. has filed counter affidavit today in Court and both the affidavits are taken on record.
2. Heard learned counsel for the applicant as well as learned A.G.A for the State and perused the record.
3. The present bail application has been filed on behalf of the applicant seeking bail in F.I.R No. 946 of 2025, under Sections 103(1), 109(1), 3(5), 61(2) B.N.S, Police Station Kotwali Nagar, District Gonda.
4. It is stated that according to F.I.R., in connection to which the applicant is in jail since 29.11.2025, 7-8 unknown persons, who were on vehicle known as Safari, crushed the son of informant on account of some hot talk/altercation.
5. It is further submitted that the deceased Nitin Mishra is the son of informant Shankar Dayal Mishra.
6. It is also stated that according to the F.I.R. in issue dated 27.11.2025 lodged at 23:14 hours, registered as F.I.R No. 946 of 2025, under Sections 103(1), 109(1), 3(5), 61(2) B.N.S, Police Station Kotwali Nagar, District Gonda, the incident occurred on 26.11.2025 at 11:30 p.m.

7. The F.I.R. also indicates that the deceased Nitin Mishra and one Arun Mishra were present at the place of crime.

8. It is further submitted during investigation on 29.11.2025 i.e. after about two days of the incident, the statement of Arun Mishra, alleged injured witness, was recorded by the Investigating Officer (in short 'IO'). The typed copy of the statement of Arun Mishra is on record as annexure-4 at page-30 of the paper-book and a perusal of the same would indicate that hot talk/altercation took place between deceased Nitin Mishra, on one side, and Atul Pandey, Vaibhav Dubey and Abhay Pandit, on other side. This statement also indicates that prior to the incident, all the persons including the applicant had party at Suraj Hotel, District Gonda. The statement also indicates that applicant was on the driving seat and accordingly, it is the applicant who crushed the deceased, which in fact is not correct.

9. In continuation to above, it is stated that in fact the crime, if any, was committed by Atul Pandey or Vaibhav Dubey or Abhay Pandit.

10. It is also stated that the facts of the case would indicate that in fact Arun Mishra is not the injured witnesses of the story of prosecution nor he is the eye witness.

11. It is further stated that a perusal of the charge-sheet no. 1 dated 10.02.2026, which is filed as S.A.-1 to the supplementary affidavit dated 20.03.2026, would indicate that Arun Mishra is not an eye witness or the injured witness.

12. The charge sheet indicates that eye witness of the incident is Mohd. Umar son of Abdul Khalid.

13. It is stated that it appears that it is the case of blind accident and a concocted story has been framed against the applicant and co-accused and this aspect of the case can be inferred from the fact that after lodging of

the F.I.R., a Claim Petition dated 22.01.2026, under Section 164 of Motor Vehical Act, 1988 (in short 'Act of 1988') has been instituted by mother and father of the deceased before the competent court of jurisdiction.

14. It is further stated that a perusal of the charge-sheet would also indicate that along with charge-sheet, the injury report of Arun Mishra has not been filed to establish that he is injured witness or eye witness of the prosecution.

15. It is further stated that considering the aforesaid facts, the case of the prosecution, if proved against the applicant beyond doubt before the trial court by the prosecution, would fall under Section 106 B.N.S., akin to Section 304(A) (now repealed).

16. In these circumstances, the applicant, who is languishing in jail since 29.11.2025, is entitled to be released on bail. In case of being enlarged on bail, he will not misuse the liberty of bail and will cooperate in trial and would also not influence the prosecution witnesses.

17. Considering the arguments advanced by the learned counsel for the applicant, learned A.G.A. and going through the contents of the application, F.I.R., as well as other relevant documents including the charge sheet in which Arun Mishra has not been shown as eye witness or injured witness and also the period of incarceration as well as the nature of dispute and also the chances of conclusion of trial in near future and also the fact relates to filing of claim petition and without going into the merits of the case, this Court is of the view that the application has substance and it is accordingly, **allowed.**

18. Let the applicant- **Abhay Tiwari** be released on bail in the aforesaid case crime number on his furnishing personal bond of Rs. 25,000/- and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following conditions :-

- (i) The applicant will cooperate with the prosecution during trial.
- (ii) The applicant will not tamper with the evidence during trial.
- (iii) The applicant will not pressurize/intimidate the prosecution witness(es).
- (iv) The applicant shall not commit an offence.
- (v) The applicant shall not directly or indirectly make any 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 to any police officer or tamper with the evidence.
- (vi) The applicant shall remain present before the trial court on each date fixed, either personally or through counsel.
- (vii) The applicant will not seek any adjournment on the dates fixed for evidence when the witnesses are present in court.
- (viii) The applicant shall remain present, in person, before the trial court on the dates fixed for recording of statement under Section 313 Cr.P.C.

19. In case of default of above conditions it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

20. As this order relates to enlargement of the applicant on bail, it is clarified that observations made in this order shall have no bearing on the merits of the case and the trial court shall not be influenced by any observation made in this order.

(Saurabh Lavania,J.)

March 20, 2026

Arti/-