



2026:AHC:127540

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 20657 of 2026

Vivek Kumar

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Rajesh Kumar
Counsel for Opposite Party(s)	:	G.A.

Court No. - 45

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard learned counsel for the applicant as well as learned A.G.A. for the State of U.P. and perused the record.
2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No.04/2026, under Sections 2(b)(i)/3 of The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, Police Station- Kotwali Nagar, District- Banda.
3. The submissions of learned counsel for the applicant is that the applicant is an innocent person and he has falsely been implicated in the case. It is further submitted on behalf of the applicant that five cases have been shown in the gang chart against the applicant and in all the cases, the applicant is on bail. Apart from the said five cases shown in the gang chart, the applicant has criminal history of four more cases, which have been duly explained in paragraph no.8 of the affidavit filed in support of the bail application. It is also submitted that co-accused, namely, Arvind Kushwaha and Santlal @ Nirala have already been enlarged on bail by the Co-ordinate Benches of this Court vide orders dated 12.03.2026 and 22.04.2026 passed in Criminal Misc. Bail Application Nos.6135 of 2026 and 13179 of 2026.
4. He further stated that in F.I.R., in issue, the allegations with regard to disturbing the public order as also regarding gaining undue temporal, pecuniary, material or other advantage of like nature against the applicant are vague. Further, stated that in absence of allegation concerning an act or omission on the part of an accused, covered by the definition of term "gang"

and "gangster" as provided under Section 2 of the Act, no FIR is maintainable. In the instant case, the FIR is based upon the pending criminal case(s) and not upon any new allegation(s) or discovery of fact(s) having serious reflection on the society, for which purpose the Act was enacted.

5. He also stated that the provisions of the Act could not be used as a weapon to wreak vengeance or harass or intimidate citizens or to settle scores on political or other fronts.

6. He stated that in this case, it appears that the District Administration in order to show good work or to win laurels or seek appreciation from the higher authorities of Government or ruling party has invoked the provisions of the Act, which is unjustified.

7. He also stated that considering the facts of the case, as stated above, there are reasonable grounds for believing that the applicant is not guilty of the offence under the Gangsters Act and that he would not commit the offence while on bail. He also submitted that the applicant while on bail would not commit any crime/offence nor would try to tamper the evidence or influence the witnesses in any manner whatsoever it may be.

8. Learned Counsel for the applicant has submitted that applicant is languishing in jail in this matter since 25.08.2025 and there is no apprehension that, if the facility of bail is granted to the applicant, he may flee from the course of law or he will not appear before the Trial Court, as also the evidence/material available on record is not strong enough to raise a presumption that the applicant is guilty of the offences mentioned in the gang chart.

9. In these circumstances, the applicant is entitled for bail. In case of being enlarged on bail, he will not misuse the liberty of bail and will cooperate in trial.

10. Learned A.G.A. has opposed the prayer for grant of bail, but has fairly conceded that in the cases mentioned in the gang chart, the applicant is on bail. He also could not dispute that aforesaid co-accused persons have already been enlarged on bail by the Co-ordinate Benches of this Court. However, he further submitted that the applicant is member of a gang and

habitual of committing crime. In case the applicant is released on bail he will again indulge in similar anti-social activities and will misuse the bail by extending threat and intimidation to the prosecution witnesses.

11. Section 19(4) of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986 reads as follows:-

"(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless--

(a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

12. In light of Section 19(4) of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, I have considered the material evidence available on record, the nature of offence which has been mentioned in the gang-chart and the criminal background of the accused-applicant.

13. In **Union of India v. K.A. Najeeb, (2021) 3 SCC 713**, it was held that in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, courts would ordinarily be obligated to enlarge them on bail.

14. Having considered the submissions of the parties noted above, larger mandate of the Article 21 of the Constitution of India and the dictum of Apex Court in the cases of **Dataram Singh Vs. State of U.P. and another**, reported in **(2018) 3 SCC 22 & Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021** and without expressing any opinion on the merits of the case, the bail application is allowed.

15. Let the applicant- **Vivek Kumar** involved in the aforesaid crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions that :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in Court. In case of default of this condition, it shall be open for the Trial Court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the Trial Court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A IPC/ 269 B.N.S.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C./ 84 B.N.S.S., may be issued and if applicant fails to appear before the Court on the date fixed in such proclamation, then, the Trial Court shall initiate proceedings against him, in accordance with law, under Section 174-A IPC/ 209 B.N.S.

(iv) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C./ 351 of B.N.S.S. If in the opinion of the Trial Court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

16. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

17. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Vivek Kumar Singh,J.)

June 16, 2026

Radhika