2025:AHC:229705

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**CRIMINAL MISC. BAIL APPLICATION No. - 35851 of 2025**

Sanju @ Sarvendra

.....Applicant(s)

Versus

State of U.P.

.....Opposite Party(s)

| | | |
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| Counsel for Applicant(s) | : | Abhilasha Singh, Ashutosh Yadav, Shyam Lal |
| Counsel for Opposite Party(s) | : | G.A. |

**Court No. - 47**

**HON'BLE RAJEEV MISRA, J.**

1. Heard Mrs. Abhilasha Singh , the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This repeat application for bail has been filed by applicant-Sanju @ Sarvendra, seeking his enlargement on bail in Case Crime No. 333 of 2022, under Sections 452, 302, 34 IPC, Police Station-Jaithra, District-Etah during the pendency of trial.

4. The first bail application of applicant was rejected by this Court by a detailed order dated 17.02.2025 passed in Criminal Misc. Bail Application No. 38433 of 2024 (Sanju @ Sarvendra Vs. State of U.P.). For ready reference, the order dated 17.02.2025 is reproduced hereinunder:-

***"1. Heard Mrs. Abhilasha Singh, the learned counsel for applicant, the learned A.G.A. for State-opposite paty-1 and Mr. Imtyaz Ahmad, the learned counsel representing first informant/opposite party-2***

***2. Perused the record.***

***3. This repeat application for bail has been filed by applicant-Sanju @ Sarvendra seeking his enlargement on bail in Case Crime No. 333 of 2022 under Sections 452, 302, 34 I.P.C., Police Station-Jaithra, District-Etah, during the pendency of trial i.e. Sessions Trial No. 197 of 2023 (State Vs. Sanju @ Sarvendra) under Sections 302, 452, 34 I.P.C., Police Station-Jaithra, District-Etah, now pending in the Court of Special Judge, POCSO and Rape, Ist, Etah.***

***4. The first bail application of applicant was rejected by this Court by a detailed order dated 05.07.2023 passed in Criminal Misc. Bail Application No. 27436 of 2023 (Sanju @ Sarvendra Vs. State of U.P.). For ready reference, the order dated 05.07.2023 is reproduced herein-under:***

***"1. Heard Mr. Onkar Nath, the learned counsel for applicant and the learned A.G.A. for State***

***2. Perused the record.***

***3. Instant bail application has been filed by applicant-Sanju Alias Sarvendra seeking his enlargement on bail in Case Crime No. 333 of 2022 under Sections 452, 302, 34 I.P.C., Police Station-Jaithra, District-Etah, during the pendency of trial.***

***4. Record shows that in respect of an incident, which is alleged to have occurred on 19.09.2022, a prompt F.I.R. dated 19.09.2022, was lodged by first informant-Rambriksha @ Taipoo (the elder brother of the deceased) and was registered as Crime No. 333 of 2022 under Sections 452, 302, 34 I.P.C., Police Station-Jaithra, District-Etah. In the aforesaid F. I.R., four persons namely Sanju, Niru @ Neeraj, Rinku and Chaub Singh have been nominated as named accused.***

***5. The gravamen of the allegations made in the F.I.R. is to the effect that named accused referred to above entered the house of first informant and thereafter, they caused murder of deceased Omveer i.e. younger brother of the first informant by firing gun shot upon him.***

***6. After aforementioned F.I.R. was registered, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. He took possession of the body of the deceased. Thereafter, inquest (panchayatnama) of the body of deceased was conducted on 19.09.2022. In the opinion of the witnesses of inquest (panch witnesses), the nature of death of deceased was characterised as suicidal. Subsequent to above, the post-mortem of the body of the deceased was conducted. The Doctor, who conducted the autopsy of the body of the deceased opined that the cause of death of deceased was shock and haemorrhage due to firearm injury. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-***

***7. The Autopsy Surgeon found following ante-mortem injuries on the body of the deceased.***

***i. Firearm wound of entry of size 1.5cm x 1.5 cm on right side chest autcro medial aspect 2cm. away from right nipple at 2 O clock position, margin inverted.***

***2. On cut section of throx B/L lungs lacerated and about 700 ml. fee and clotted blood present in throracic cavity and right side 3 to 5 Ribs fractured.***

***8. During course of investigation, Investigating Officer visited the place of occurrence and prepared the site plan, which is on record at page 30 of the paper book. Investigating Officer examined first informant and various other witnesses namely Tepoo, Yatendra Singh, Bablu and Poonam under Section 161 Cr.P.C. Witnesses so examined have supported the F.I.R. As per the statements of witnesses namely Tepoo, Yatendra Singh, Bablu and Poonam, who are eye witnesses of the occurrence have implicated the applicant as the author of the fatal gun shot injury sustained by the deceased. The statements of witnesses are on record at page 51 of the paper book.***

***9. On the basis of above and other material collected by Investigating Officer during the course of investigation, he came to the conclusion that offence complained of is fully established. He therefore opined to submit a charge-sheet. Accordingly, Investigating Officer submitted the charge sheet dated 17.12.2022.***

***10. Learned counsel for applicant contends that though the applicant is a named as well as charge-sheeted accused but he is innocent. He has invited the attention of Court to the F.I.R. and on basis thereof, he submits that author of fatal gun shot injury sustained by the deceased has not been specified in the F.I.R. In view of above, he contends that the improvement made in the statements of the witnesses examined under Section 161 Cr.P.C. is an after thought. It is thus urged that in view of the aforesaid situation, applicant is entitled to the benefit of doubt at this stage. It is then contended that even otherwise, applicant is a man of clean antecedents inasmuch as he has no criminal history to his credit except the present one. Applicant is in custody since 24.09.2022. As such he has undergone more than nine months of incarceration. The police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has been submitted. Therefore the entire evidence sought to relied upon by the prosecution against applicant stands crystallised. Upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. He therefore contends that applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.***

***11. Per contra, the learned A.G.A. for State has opposed the prayer for bail. He submits that since the applicant is a named as well as charge-sheet accused, therefore he does not deserve any indulgence by this Court. Learned A.G.A. further submits that it is true that in the F.I.R. giving rise to present application for bail, the author of fatal gun shot injury sustained by the deceased has not been specified but subsequently in the statements of witnesses examined under Section 161 Cr.P.C.. referred to above, the applicant has been identified as the author of the fatal gun shot injury sustained by the deceased. As such case of present applicant is clearly distinguishable from other three named accused. According to the learned A.G.A., the credibility and reliability of the witnesses examined under Section 161 Cr.P.C.***

***cannot be doubted at this stage. Upto this stage there is sufficient material to implicate the applicant for the death of the deceased. As such, the learned A.G.A. concludes by submitting that no sympathy be shown by this Court in favour of applicant. On the cumulative strength of above, he submits that present application for bail is liable to be rejected by this Court.***

***12. Having heard the learned counsel for applicant, the learned A.G.A. for State, upon consideration of material on record, evidence, gravity and nature of offence, accusations made as well as complicity of applicant coupled with the fact that the as per the statements of eye witnesses, applicant is the author of the fatal gun shot injury sustained by the deceased therefore case of present applicant is clearly distinguishable from other three named accused, therefore, in view of above, the varied submission urged by learned counsel for applicant in support of the bail application are not sufficient enough so as to enlarge the applicant on bail. However, without expressing any opinion on the merits of the case, this court does not find any good ground to enlarge the applicant on bail.***

***13. As a result, present application fails and is liable to be rejected.***

***14. It is accordingly rejected.***

***Order Date :- 5.7.2023 "***

***5. Learned counsel for applicant contends that though the applicant is a named and charge sheeted accused and facing trial before court below by way of aforementioned sessions trial however, in view of the peculiar facts and circumstances of the case as have now emerged on record, applicant is liable to be enlarged on bail. In furtherance of aforesaid submission, the learned counsel for applicant contends that the F.I.R. giving rise to present criminal proceedings was lodged on 19.09.2022. After completion of the statutory investigation of aforementioned case crime number in terms of Chapter XII Cr.P.C., Investigation Officer submitted the charge sheet/police report dated 20.10.2023 whereby applicant has been charge sheeted under Sections 452, 302, 34 I.P.C. Since offence complained of is triable exclusively by Court of Sessions, therefore, the jurisdictional Magistrate committed the case to the Court of Sessions. Resultantly aforementioned Sessions Trial came to be registered. The concerned Sessions Judge framed charges against applicant vide framing of charge order dated 20.10.2023. Applicant denied the charges so framed and demanded trial. Resultantly, the trial procedure commenced.***

***6. Prosecution in discharge of it's burden to bring home the charges so framed against accused/applicant has adduced only one witness i.e. Rambrij @ Tepu, the first informant. His statement in chief was recorded on 04.04.2024 but thereafter, he absconded from the proceedings of trial. Ultimately, aforementioned witness was***

***summoned by court below by issuing coercive process i.e. non-bailable warrant on 02.09.2024. Thereafter, P.W.-1 deposed before court below on 07.11.2024 when part of his examination-in-chief was recorded. Ultimately, the examination-in-chief of this witness concluded on 06.01.2025. Since then no other witness has appeared before court below.***

***7.On the above premise, the learned counsel for applicant submits that the prosecution is not diligently pursuing the trial. On account of lackadaisical approach of the prosecution in pursuing the trial, the right of applicant to speedy trial as declared by the Apex Court in A. R. Antulay Vs. R. S. Nayak (1992) 1 SCC 225 stands infringed. Since aforesaid fundamental right of accused/applicant stands infringed, therefore, applicant is liable to be enlarged on bail.***

***8. It is then submitted by the learned counsel for applicant that with reference to the material on record that the case in hand shall not travel beyond Section 304 (II) I.P.C. She therefore submits that maximum sentence that can be awarded to accused/ applicant is 10 years. Since applicant has already undergone two years and six months of incarceration, therefore, in view of above, applicant is liable to be enlarged on bail. To buttress her submission, she has referred to the judgement of Supreme Court in Sankath Prasad Vs. State of U.P., 2021 (1) ACR 798 (SC).***

***9. Learned counsel for applicant has then tried to impress upon the Court with reference to the material on record to show that present case is a case of no evidence.***

***10. It is lastly contended by the learned counsel for applicant that since the statement of first informant has already been recorded before court below, therefore, in case the applicant is enlarged on bail then in that eventuality it cannot be said that applicant shall either terrorize the witnesses or shall hamper the course of trial. As such, no good ground now exists to prolong the custodial arrest of applicant during pendency of trial.***

***11. Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. The police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallised. However, upto this stage, no such incriminating circumstance has emerged on the record necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged by the learned counsel for applicant that applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.***

***12. Per contra, the learned A.G.A. for State-opposite party-1 and Mr. Imtyaz Ahmad, the learned counsel representing first informant have vehemently opposed***

***this repeat application for bail. They submit that since applicant is a named and charge sheeted accused, therefore, he does deserve any indulgence by this Court. It is then contended by the learned A.G.A. that P.W.-1 has supported the F.I.R., therefore, he has not been declared hostile. According to the learned A.G.A. even though, this court is a superior court, dictates of prudence require that this court should not evaluate the evidence which has emerged on record as any such exercise undertaken by this court with regard to quality and nature of offence, which has emerged before the trial court, may affect the prosecution or the defence. The import of the testimony of the witnesses, who have deposed before court below, should be left to be evaluated by the trial court itself. It is further submitted by the learned A.G.A. that the issue as to whether the case in hand will fall under Sections 302 or 304 (II) I.P.C. can be decided only after the entire evidence has been recorded, therefore, the said issue cannot be answered either way at this premature stage. Apart from above, the learned A.G.A. submits that in view of the nature and gravity of offence complained of and the, period of punishment provided, the period of incarceration undergone by applicant by itself cannot said to be so sufficient a ground so as to enlarge the applicant on bail. On the above premise, the learned A.G.A. submits that no new, good or sufficient ground has emerged so as to enlarge the applicant on bail.***

***13. Mr. Imtyaz Ahmad, the learned counsel representing first informant has adopted the argument raised by the learned A.G.A.***

***14. When confronted with above, the learned counsel for applicant could not overcome the same. She has, however, attempted to point out the fallacy in the prosecution case with reference to the material on record.***

***15. Having heard the learned counsel for applicant, the learned A.G.A. for State, Mr. Imtyaz Ahmad, the learned counsel representing first informant, upon consideration of material on record, evidence, gravity and nature of offence, accusations made as well as complicity of applicant and coupled with the fact that objections raised by the learned A.G.A. and the learned counsel representing first informant in opposition to this repeat application for bail as noted herein above are not only borne out from the record but furthermore, the same could not be dislodged by the learned counsel for applicant with reference to the record at this stage, therefore irrespective of the varied submissions urged by the learned counsel for applicant in support of present repeat application for bail but without making any comment on the merits of the case, this court does not find any new, good or sufficient ground so as to enlarge the applicant on bail.***

***16. As a result, present repeat application for bail fails and is liable to be rejected.***

***17. It is accordingly rejected."***

5. Present repeat application for bail came up for orders on 14.11.2025 and this Court passed the following order;-

***"Heard Mrs. Abhilasha Singh, the learned counsel for applicant and the learned A.G.A. for State/opposite party-1.***

***This third application for bail has been filed by applicant Sanju @ Sarvendra, seeking his enlargement on bail in Case Crime No. 333 of 2022, under sections 452, 302, 34 IPC, Police Station- Jaithra, District- Etah.***

***Learned counsel for applicant submits that framing of charge order was passed by Court below on 20.10.2023. However, in spite of the fact that a period of more than two years has rolled by, the statements of only three prosecution witnesses have been recorded before Court below i.e. P.W.1, P.W.2 and P.W.4. The deposition of P.W.3 is in progress before Court below. The statement-in-chief of P.W.3 has been recorded but the same has not yet been concluded. On the above, premise, it is urged that in view of indifferent approach of the prosecution in pursuing the trial, there is no likelihood of the trial getting concluded in near future. Placing reliance upon the judgement of Supreme court in A. R. Antulay Vs. R. S. Nayak (1992) 1 SCC 225, it was thus urged by the learned counsel for applicant that right to speedy trial is now recognized as a fundamental right of an accused. Since the aforesaid fundamental right of accused stands infringed on account of lackadaisical approach of the prosecution in pursuing the trial, as such applicant is liable to be enlarged on bail, during the pendency of trial.***

***In view of above, it is desirable to have a report from the Court concerned regarding delay in the proceedings of trial.***

***Accordingly, court below shall submit its report before this Court on or before 5.12.2025, explaining the grounds on the basis of which the deposition of prosecution witnesses have not been recorded speedily.***

***Put up again as fresh on 5.12.2025."***

6. In compliance of above order dated 14.11.2025, Court below has submitted it's report dated 27.11.2025, which is on record.

7. Prima-facie upon perusal of aforesaid report, this Court is of the view that there is no unexplained delay in the progress of trial. Since the only argument raised by the learned counsel for applicant in support of this repeat application for bail was primarily to the effect that as there is delay in progress of trial, therefore, applicant is liable to be enlarged on bail, is not found to have emerged on record. In view of above, this Court does not find any good ground to enlarge the applicant on bail.

8. Accordingly, this repeat application for bail of applicant is **rejected**.

9. However, considering the fact that the trial of the applicant is of the year, 2023 and in spite of the fact that a period of more than 2 years has rolled by from the date of framing of charge order, it is provided that Court below shall proceed with the trial expeditiously without granting any unnecessary adjournment to either of the parties. Court below shall be guided by the provisions contained in Section 309 Cr.P.C. In case, an adjournment is inevitable, Court below shall record reasons for granting adjournment.

**December 19, 2025**
Vinay

**(Rajeev Misra,J.)**

Digitally signed by :-
VINAY KUMAR
High Court of Judicature at Allahabad