2026:AHC:224119

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 35086 of 2026

Vivek @ Kannu

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite Party(s)

Counsel for Applicant(s)	:	Syed Shahnawaz Shah
Counsel for Opposite Party(s)	:	G.A.

Court No. - 66

HON'BLE ARUN KUMAR SINGH DESHWAL, J.

1. Heard Sri Syed Shahnawaz Shah, learned counsel for the applicant, Sri Bhupendra Pal Singh, learned A.G.A. for the State and perused the record. No one appeared on behalf of the opposite informant-party no. 2 despite service of notice by the police on 23.09.2026.

2. The instant bail application has been filed with a prayer to release the applicant on bail during trial in Case Crime No. 99 of 2026, under Sections 64(2)(m), 351(3) B.N.S. and Section 5(1)/6 POCSO Act, P.S. Transport Nagar, District Meerut.

3. In compliance with the order of this Court dated 09.10.2026, the learned trial court has submitted its report dated 27.10.2026, wherein it is mentioned that the statement of P.W.-1 (victim) was recorded on 14.08.2026. Thereafter, dates were fixed for 27.08.2026, 11.09.2026 and 25.09.2026, but P.W.-2 (first informant) did not appear before the trial court, for that reason the statement of P.W.-2 (first informant) could not be recorded. Finally, the statement of P.W.-2 (first informant) was recorded on 27.10.2026.

4. This Court is satisfied with the explanation submitted by the learned trial court.

5. From a perusal of the statement of P.W.-2 (first informant), annexed by the learned trial court with its report dated 27.10.2026, it is clear that she has stated that she lodged the F.I.R. under the pressure of her neighbour

and her daughter (victim) had never informed her that the applicant had committed rape upon her. In her statement, P.W.-2 (first informant) has also stated that the police incorrectly recorded her statement under Section 180 BNSS.

6. Counsel for the applicant submitted that though as per the prosecution story, the applicant is maternal uncle of the victim and he is alleged to have committed rape upon the victim; and the applicant being the relative of the victim after taking her into confidence sexually assaulted her. It is further submitted that though the victim in her statements recorded under Section 180 and 183 BNSS supported the prosecution story, however, during trial, the victim and first informant, who were examined as P.W.-1 and P.W.-2, did not support the prosecution story and they have been declared hostile by the trial court. P.W.-1 further stated that the applicant being her maternal uncle used to scold the victim for using mobile, therefore, she made the false allegation against him. It is further submitted that the victim in her statements, as aforesaid, also stated that her mother (P.W.-1, first informant) incorrectly made allegation of sexual assault against the present applicant. It is further submitted that the applicant has explained the criminal history of ten cases. It is further submitted that charge sheet has been filed in the present case, therefore, there is no requirement of custodial interrogation. The applicant is a law abiding citizen and he is languishing in jail since 28.11.2022. In case, he is granted bail, he will not misuse the liberty of bail and would cooperate in the trial proceedings.

7. Per contra, learned A.G.A. has vehemently opposed the prayer for bail but could not dispute the aforesaid facts.

8. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties and taking into account the fact that not only the victim (P.W.-1) but also the first informant (P.W.-2) did not support the prosecution story and both of them have been declared hostile by the trial court, and that it was also admitted by P.W.-1 (victim) and P.W.-2 (first informant) that a false case had been lodged against the applicant, and keeping in view the nature of offence, evidence and complicity of the accused, as well as taking into account overcrowded jails and the heavy pendency of criminal cases before the trial courts, and

further considering the mandate of the judgment of the Apex Court in the case of **Kapil Wadhawan vs. Central Bureau of Investigation, reported in 2025 SCC OnLine SC 3038**, as well as the guidelines of this Court in the case of **Maya Tiwari Vs. State of U.P., 2024 SCC OnLine All 6765**, regarding grant of bail, and without expressing any opinion on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail. Accordingly, the present application is **allowed**.

9. Let the applicant- **Vivek @ Kannu,** involved in the aforementioned 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:-

i. 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.

ii. The applicant shall cooperate in the trial/investigation sincerely without seeking any adjournment.

iii. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

iv. The applicant shall attend in accordance with the conditions of the bond executed by him.

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

11. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

12. Verification of mobile number and Aadhaar card of the applicant as well as sureties should be verified by the court concerned.

13. It is made clear that the applicant shall be released on the basis of computer generated copy of this order, downloaded from the official website of High Court Allahabad and verified by the concerned counsel

with the undertaking that the certified copy will be filed within 15 days.

14. It is further directed that the trial court shall send the release order to the concerned jail through Bail Order Management System (BOMS) to ensure early release of the applicant.

15. Office is directed to send a copy of this order to the applicant through **Jail Superintendent, Meerut** via e-mail or on e-prison portal and Trial Court via e-mode within 24 hours in compliance of the order of the Apex Court in the case of **Policy Strategy for Grant of Bail, In Re: Suo Motu Writ Petition (Crl.) No.4 of 2021 decided on 31.01.2023** reported in **(2024) 10 SCC 685** as well as **Pila Pahan@Peela Pahan and others Vs. State of Jharkhand and another, in Writ Petition (Criminal) No. 169 of 2025,** decided on **29.05.2026.**

16. Application, if any, stands **disposed of**.

17. From a perusal of the statements of P.W.-1 and P.W.-2, it is clear that P.W.-2 (first informant) has lodged a false case against the applicant, and this fact has been admitted by her in her statement before the trial court. Therefore, the Senior Superintendent of Police, Meerut, is directed to register an F.I.R. against P.W.-2 (first informant) for lodging a false case against the applicant, as per Section 22 of the POCSO Act.

18. Let a copy of this order be communicated to the **Senior Superintendent of Police, Meerut,** through **Registrar (Compliance)**.

(Arun Kumar Singh Deshwal,J.)

October 28, 2026
SA

Digitally signed by :-
SALMAN ALI
High Court of Judicature at Allahabad