In the Hon'ble High Court of Judicature at Allahabad,
Lucknow Bench, Lucknow

Neutral Citation No. - 2025:AHC-LKO:27009

A.F.R.

Court No. - 15

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3971 of 2025

Applicant :- Vipin Tiwari
Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko.
Counsel for Applicant :- Ajai Kumar Shukla,Nisha Devi
Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi J.

1. Heard Shri Ajai Kumar Shukla, the learned counsel for the applicant, Shri Anurag Verma, the learned A.G.A.-I for the State, Shri Bhuwan Raj, the learned counsel for the informant and perused the records.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No.317 of 2024 under Sections 109(1), 324(4), 351(3), 103(1), 61(2) of Bhartiya Nyaya Sanhita (which will hereinafter be referred to as 'the B.N.S.') registered at Police Station-Lalganj, District- Pratapgarh.

3. The learned Counsel for the applicant submitted that a co-accused person Sachin Mishra @ Adarsh Mishra has been granted bail by means of an order dated 09.04.2025 passed by this Court in Crl. Misc. Bail Application No.2963 of 2025 and, therefore, the applicant is also entitled to be released on bail on the ground of parity.

4. Sri. Bhuwan Raj, the learned Counsel for the informant has raised a preliminary objection against maintainability of the bail application on the ground that copies of some extracts of the case diary have been annexed with the bail application although the investigation is yet not completed and the prosecution papers have not been filed in the Court. He has stated that parts of case diary having been accessed to by the applicant indicates that he is capable of influencing the investigation and the Investigation Officer is trying to protect the accused persons.

5. The statutory provision relevant in this regard is contained in Section 192 Bhartiya Nagrik Suraksha Sanhita (hereinafter referred to as 'BNSS'), which provides as follows: -

> *"**192. Diary of proceedings in investigation**.—(1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.*
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> *(2) **The statements of witnesses recorded during the course of investigation under Section 180 shall be inserted in the case diary**.*
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> *(3) The diary referred to in sub-section (1) shall be a volume and duly paginated.*
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> *(4) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.*
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> *(5) **Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of Section 148 or Section 164, as the case may be, of the Bharatiya Sakshya Adhiniyam, 2023, shall apply**."*
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> (Emphasis added)

6. However, Section 230 of the BNSS provides as follows: -

> *"**230. Supply to accused of copy of police report and other documents**.—In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay, and in no case beyond fourteen days from the date of production or appearance of the accused, furnish to the accused and the victim (if represented by an advocate) free of cost, a copy of each of the following:—*
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> *(i) the police report;*
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> *(ii) the first information report recorded under Section 173;*
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> *(iii) **the statements recorded under sub-section (3) of Section 180 of all persons whom the prosecution proposes to examine as its witnesses**, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (7) of Section 193;*

(iv) ***the confessions and statements, if any, recorded under Section 183****;*

(v) ***any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (6) of Section 193****:*

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused and the victim (if represented by an advocate) with a copy thereof, may furnish the copies through electronic means or direct that he will only be allowed to inspect it either personally or through an advocate in Court:

Provided also that supply of documents in electronic form shall be considered as duly furnished."

(Emphasis added)

7. A bare reading of the provisions contained in Sections 192 and 230 BNSS indicate that although Section 192 BNSS provides that the accused or his agent shall not be entitled to call for the case diary or to see the same even if it is referred to by the Court, which stage would come only after commencement of the trial, Section 230 BNSS provides that upon appearance of the accused, the Magistrate shall furnish to the accused copies of the police report, the statements recorded under sub-section (3) of Section 180 of all persons whom the prosecution proposes to examine as its witnesses, the confessions and statements, if any, recorded under Section 183 and any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (6) of Section 193.

8. The aforesaid provisions of BNSS contained in Sections 192 and 230 BNSS found place in Sections 172 and 207 Cr.P.C. respectively.Thus there was an apparent conflict in the provisions contained in Section 172(3) and Section 207 of Cr.P.C., which conflict continues to remain in the provisions contained in Section 192 and 230 of BNSS regarding copies of the prosecution papers being provided to the accused. When

there is a conflict between two provisions contained in a Statute, the one beneficial to the accused should be given precedence, more so when it is in consonance with the principles of natural justice. It is a basic principle of natural justice that no person should be condemned without giving him an adequate opportunity of hearing, which would including providing him copies of the material against him. Therefore, the provisions contained in Section 230 BNSS are in consonance with the principles of natural justice and in case of a conflict with Section 192 BNSS, the provisions contained in Section 230 would prevail.

9. In **Sidharth v. State of Bihar**: (2005) 12 SCC 545, the Hon'ble Supreme Court referred to Section 172(3) Cr.P.C. and held that: -

> ***"27.*** *...It is specifically provided in sub-clause (3) of Section 172 that neither the accused nor his agents shall be entitled to call for such diaries nor shall he or they be entitled to see them merely because they are referred to by the court, but if they are used by the police officer who made them to refresh his memory, or if the court uses them for the purpose of contradicting such police officer, the provisions of Section 161 CrPC or the provisions of Section 145 of the Evidence Act shall be complied with. The court is empowered to call for such diaries not to use it as evidence but to use it as aid to find out anything that happened during the investigation of the crime. These provisions have been incorporated in the Code of Criminal Procedure to achieve certain specific objectives. The police officer who is conducting the investigation may come across a series of information which cannot be divulged to the accused. He is bound to record such facts in the case diary. But if the entire case diary is made available to the accused, it may cause serious prejudice to others and even affect the safety and security of those who may have given statements to the police. The confidentiality is always kept in the matter of criminal investigation and it is not desirable to make available the entire case diary to the accused. In the instant case, we have noticed that the entire case diary was given to the accused and the investigating officer was extensively cross-examined on many facts which were not very much relevant for the purpose of the case. The learned Sessions Judge should have been careful in seeing that the trial of the case was conducted in accordance with the provisions of CrPC."*

10. In **Balakram v. State of Uttarakhand**: (2017) 7 SCC 668, the Hon'ble Supreme Court held that neither the accused nor his agent is

entitled to call for such case diary and also are not entitled to see them during the course of inquiry or trial. The judgment in the case of **Balakram** (Supra) was followed in **P. Chidambaram v. Directorate of Enforcement**: (2019) 9 SCC 24. However, none of the aforesaid judgments in the cases of **Sidharth**, **Balakram** and **P. Chidambaram** (Supra) takes into consideration the statutory mandate contained in Section 207 Cr.P.C. or Section 230 BNSS.

11. We must also take note of the following directions issued by the Hon'ble Supreme Court in **State of Karnataka v. Shivanna:** (2014) 8 SCC 913: -

> *"6. Considering the consistent recurrence of the heinous crime of rape and gang rape all over the country including the metropolitan cities, we are of the view that it is high time such measures of reform in CrPC be introduced after deliberation and debate by the legal fraternity as also all concerned.*
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> * * *
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> *10. On considering the same, we have accepted the suggestion offered by the learned counsel who appeared before us and hence exercising powers under Article 142 of the Constitution, we are pleased to issue interim directions in the form of mandamus to all the Police Stations-in-Charge in the entire country to follow the directions of this Court which are as follows:*
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> *10.1. Upon receipt of information relating to the commission of offence of rape, the investigating officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 CrPC. A copy of the statement under Section 164 CrPC should be handed over to the investigating officer immediately with a specific direction that the contents of such statement under Section 164 CrPC should not be disclosed to any person till charge-sheet/report under Section 173 CrPC is filed.*
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> *10.2. The investigating officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.*
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> *10.3. The investigating officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid.*

10.4. If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the investigating officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.

10.5. Medical examination of the victim: Section 164-A CrPC inserted by Act 25 of 2005 in CrPC imposes an obligation on the part of investigating officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 CrPC."

12. Thus, although in **Shivanna** (Supra) the Hon'ble Supreme Court directed that a copy of the statement under Section 164 CrPC should be handed over to the investigating officer immediately with a specific direction that the contents of such statement under Section 164 CrPC should not be disclosed to any person till charge-sheet/report under Section 173 Cr.P.C. is filed, this direction was limited to the cases of rape and gang-rape. The present case does not involve the allegation of commission of rape and gang-rape.

13. The directions issued in **A v. State of U.P.**: (2020) 10 SCC 505, is also relevant to be taken into consideration, but before referring to the direction, it is to be noted that the same were issued in the factual background mentioned in the following paragraphs of the judgment: -

"2. *On 25-8-2019, the father of the appellant lodged a complaint with Police Station Kotwali, District Shahjahanpur that he had seen a video of the appellant on her Facebook account alleging that Respondent 2 and some others had sexually exploited the appellant and many other girls; that the appellant was not contactable; that he was apprehending danger to the appellant; and that prompt action be taken in the matter.*

3. *Thereafter, pursuant to a complaint filed by one Mr Om Singh, Advocate, to the effect that he looked after the legal work of the Ashram run by Respondent 2; and that an unknown person had threatened that unless Rupees five crores were paid, the reputation of Respondent 2 in the society would be harmed. The said complaint was immediately registered as FIR No. 442 of 2019.*

4. *The complaint filed by the father of the appellant was registered two days later as FIR No. 445 of 2019 in respect of offences of abduction and sexual harassment under Sections 506 and 364 of the Penal Code, 1860 (for short "IPC").*

> ***5.*** *The Facebook video of the appellant having gone viral, letters were written to this Court by some advocates whereafter Suo Motu Writ Petition (Crl.) No. 2 of 2019 was registered in this Court. On 30-8-2019 it was reported to this Court that the appellant was found in District Dausa of the State of Rajasthan. On 30-8-2019, this Court recorded the statement of the appellant that she did not intend to go back to Uttar Pradesh but would meet her parents in Delhi. Certain directions were therefore passed."*

In the aforesaid peculiar factual background, the Hon'ble Supreme Court referred to the aforesaid directions issued in **Shivanna** (Supra) and held that: -

> ***"21.*** *The right to receive a copy of such statement will arise only after cognizance is taken and at the stage contemplated by Sections 207 and 208 CrPC and not before."*

14. The aforesaid directions should be read in light of the peculiar factual background in which those were issued, whereas the present case does not involve facts in any manner similar to the cases in which the aforesaid directions were issued.

15. We should not lose sight of the fact that the State's endeavor is to ensure justice and not to ensure conviction of all the accused persons. The State acts through its officers and officials and, therefore, the endeavor of the officers and officials of the State should also be the same, i.e. to ensure justice and not to ensure conviction of all the accused persons.

16. It is a basic principle of natural justice that no person should be condemned without giving him an adequate opportunity of hearing, which would include providing copies of the material against him. Condemnation does not only mean conviction and sentence. An innocent person being arrested and made to languish in jail during trial is also condemned as his fundamental right of personal liberty is adversely affected, besides the loss of his reputation and fame.

17. Section 230 BNSS provides that upon appearance of the accused, the Magistrate shall furnish to the accused copies of the police report, copies of the statements recorded under Section 180(3), the

confessions and statements recorded under Section 183 and any other document forwarded to the Magistrate with the police report under Section 193(6). An accused person intending to avail his remedy of anticipatory bail has to appear before the Court and he would be required to present the complete facts before the Court, which might include the material collected during investigation, to which the accused would be entitled under Section 230 BNSS.

18. If an innocent person is made an accused, he is taken into custody and he is not provided the prosecution papers till the investigation concludes, a charge-sheet is filed in the Court and the Court takes cognizance of the offence, he would remain in jail till that period and he will not even be able to present a properly prepared bail application containing all the relevant facts and material which needs to be considered by the Court for deciding his bail plea.

19. It would be appropriate to have a look at the provision contained in Regulation 107 of the U. P Police Regulations, which provides as follows: -

> *"107. The Investigating Officer should not consider himself a mere clerk recording evidence. It is his duty to observe and infer. In every case he will use his special knowledge of the scene of the crime and the general circumstances in examining the evidence of witnesses and in every case where the culprit is unknown he will determine the direction in which he will search for him. He should study the modus operandi of local criminals, which are known to the local police, with a view to recognising the work of their hands and be on guard against believing the doubts of witnesses and complainant which are contrary to the obvious inferences which may flow from the facts.* ***He should remember that it is his duty to find out the truth and not merely to secure a conviction. In them, he should not form any view of the facts for or against any person and though he should not go out of the way to look for evidence for the defence in a case in which he has satisfactory reasons to believe that the accused is guilty, he should always give an opportunity to the accused to produce evidence before him and, if produced, should consider such evidence carefully.*** *In cases of burglary, the investigation should be conducted in accordance with the special orders given on the subject."*
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> (Emphasis added)

20. In case an Investigating Officer provides copies of the material collected during investigation, to which the accused is entitled under Section 230 BNSS, for being presented before the Court so as to enable the Court to decide the bail plea after taking into consideration all the relevant facts and circumstances of the case, it should not result in non-consideration of the bail application on its merits.

21. It is also to be noted that this Court seldom comes across a case where photocopiesfrom the extract of case diary are not annexed with the bail application. Annexing copies of extracts of case diary has become a norm and not annexing the same is an exception. When the photocopies are being freely provided to the persons doing *Pairvi* of criminal cases, copies of extracts of case diary having been annexed with the bail application would not make out a ground for rejection of the bail application *in limine* without its merits being examined by the Court. Moreover, a person who is in custody, cannot be blamed for extracts of case diary procured by some person for his benefit, as he is not directly involved in this process and, therefore, he cannot be made to suffer by rejection of his bail application on this preliminary objection.

22. In **Pushpa Devi M. Jatia v. M.L. Wadhawan**: (1987) 3 SCC 367, the Hon'ble Supreme Court held that: -

> ***"19.*** *...There is a long line of authority to support the opinion that the court is not concerned with how evidence is obtained. The rule is however subject to an exception. The judge has a discretion to exclude evidence procured, after the commencement of alleged offence, which although technically admissible appears to the judge to be unfair. The classical example of such a case is where the prejudicial effect of such evidence would be out of proportion to its evidential value. Coming nearer home, this Court in MagrajPatodia v. R.K. Birla [(1970) 2 SCC 888 : AIR 1971 SC 1295 : (1971) 2 SCR 118] held that the fact that a document which was procured by improper or even illegal means could not bar its admissibility provided its relevance and genuineness were proved…."*

23. For the foregoing reasons, I find no force in the preliminary objection raised by the learned Counsel for the informant and the same is rejected. Now I proceed to examine the merits of the application.

24. Sri. Bhuwan Raj, the learned counsel for the informant has vehemently opposed the bail application and he has submitted that the incident took place on 05.08.2024, the applicant is said to be the prime accused, the investigation is still pending and the vehicle involved in commission of the incident, has not been recovered till date as the investigation is being influenced by the accused persons. He has submitted that in case the applicant is released on bail, there is every possibility of the investigation being influenced by him.

25. The learned counsel for the informant has submitted that the accused persons had deliberately hit the bullet motorcycle which the deceased was riding to eliminate him and to give it a semblance of an accident because of an old property dispute between the parties. He has relied upon a decision of the Hon'ble Supreme Court in the case of **Rohit Bishnoi v. State of Rajasthan &Anr.**: (2023) 18 SCC 753, wherein the Hon'ble Supreme Court has reiterated the points to be taken into consideration while deciding a bail application in the following words:-

> *"This Court has, on several occasions discussed the factors to be considered by a court while deciding a bail application. The primary considerations which must be placed at balance while deciding the grant of bail are: (1) the seriousness of the offence; (ii) the likelihood of the accused fleeing from justice; (iii) the impact of release of the accused on the prosecution witnesses; (iv) likelihood of the accused tampering with evidence. While such a list is not exhaustive, it may be stated that if a court takes into account such factors in deciding a bail application, it could be concluded that the decision has resulted from a judicious exercise of its discretion, vide Gudikanti Narasimhulu v. High Court of A.P.; Prahlad Singh Bhati v. State (NCT of Delhi) and Anil Kumar Yadav v. State (NCT of Delhi)"*

26. He has also relied upon the following portion of the order dated 17.01.2025 passed by the Hon'ble Supreme Court in the case of **Sushil Singh v. State of U.P.** in SLP No.14837 of 2024, which reads as follows:-

> *"2. The High Court of Judicature at Allahabad while considering the application for bail of the accused respondent no.2 Indrabhawan Singh appears to have conducted a mini trial*

and made observations which have the potential of deflecting justice when the trial is in progress. Having regard to the nature of allegations levelled in relation to the crime of murder of the brother of Sushil Singh (appellant), the role attributed to the accused respondent no.2, the circumstance of recovery of a pistol from his residence in terms of section 27 of the Evidence Act, 1872, the stage of the proceedings and the antecedents of the respondent no.2, we are of the considered opinion that the High Court was not justified in enlarging the respondent no.2 on bail primarily because of the 8 hours and 30 minutes delay in registration of the FIR and also relying on the statement of the gram pradhan without giving due credence to the statements of the alleged eye-witnesses."

27. The aforesaid order has been passed setting aside a particular order passed by this Court granting bail to an accused person on the primary ground of delay of 8 hours and 30 minutes in registration of the F.I.R. and without giving due credence to the statements of the alleged eye-witnesses. This order does not lay down any general principles of law which may be of universal application. It is a settled principle of law of precedents that only the ratio of law laid down by a judgment is binding. The observations made in the light of the peculiar facts and circumstances of the case do not have universal application and those observations ought not to be cited as a precedent.

28. The F.I.R. in the present case was lodged on 06.08.2024 at 23:26 hours against the applicant and his brother Ambikesh Tiwari, stating that Harikesh Kumar Tiwari - elder brother of the informant's husband and his cousin Manoj Shukla, were going on a bullet motorcycle to Lalganj Tehsil in connection with a bail matter at 10:00 a.m. on 05.08.2024. As soon as they reached near Raipur petrol pump at about 10:30 a.m., the applicant came there driving a white Bolero, the registration number whereof is not known, and he hit the bullet motorcycle from the left side due to which Harikesh Tiwari got seriously injured and Manoj Kumar sitting on the pillion seat also suffered injuries. The Bolero ran away. The FIR states that for the past few days the accused persons were threatening to kill the victims because of some old animosity.

29. Harikesh Tiwari died during treatment and his postmortem examination was conducted on 19.08.2024. The postmortem examination report mentions a contusion of size 12 cm X 6 cm on right side of head above right ear, a contusion of size 6 cm X 4 cm on back of head, an abraded contusion of size 6 cm X 3 cm on top of right shoulder and an abraded contusion on medial aspect of right foot. The cause of death has been opined to be coma due to ante-mortem head injuries.

30. In the statement of the informant recorded under Section 180 B.N.S.S., she stated that her husband is in jail in connection with some matter. There is a property dispute between family of the informant and the accused persons. Father-in-law of the informant and father of the accused persons are real brothers. The accused persons had entered into an altercation with Harikesh Tiwari at the time of sowing paddy and police had challaned Vipin Tiwari and Harikesh Tiwari (the deceased) and the deceased was going for bail in that matter on the date of the incident alongwith Manoj Kumar Shukla and Sunil Kumar Shukla. As soon as they had reached near Raipur petrol pump, a white Bolero of unknown registration number hit the bullet motorcycle of Harikesh Tiwari due to which they fell down and both of them suffered injuries. Harikesh Tiwari was taken to C.H.C., Lalganj from where he was sent to the District Hospital, Pratapgarh. He was then referred to Allahabad, but he was being treated in a private hospital at Lucknow. Manoj Shukla and Sunil Kumar Shukla had told that the Bolero was following them from Basantganj but as curtains were installed in it, the persons sitting in the vehicle could not be seen.

31. The applicant’s involvement in another criminal case under Section 307, 323, 506 IPC has been disclosed in para-19 of the bail application in which he has already been granted bail.

32. It has also been stated in the affidavit filed in support of the bail application that on the date of the incident i.e. on 05.08.2024, the applicant was present in this Court for opposing the bail application of

Kamlesh Tiwari. His photograph was taken in the photo affidavit Centre of this Court at about 11:20 a.m. and a copy of the same has been annexed as Annexure No.8 to the bail application.

33. A copy of FIR No.201 of 2021 has been annexed with the bail application which was lodged by the applicant against three persons- (i) Kamlesh Tiwari (husband of the present informant Meera Tiwari) (ii) Adarsh Tiwari S/o Kamlesh Tiwari and (iii) Devendra Tiwari father of Kamlesh Tiwari, stating that due to a dispute regarding plucking mangoes by the informant's niece aged 16 years, the accused persons had fired at her causing serious injuries to her. The informant's husband is in jail in connection with that case. However, the informant claims that the accused persons had entered into an altercation with Harikesh Tiwari at the time of sowing paddy and police had challaned the applicant and Harikesh Tiwari and the deceased was going for bail in that matter on the date of the incident.

34. During investigation it came to light that the third person sitting in Bolero was Sachin Mishra @ Adarsh Mishra and he has been granted bail by means of an order dated 09.04.2025 passed by this Court in Crl. Misc. Bail Application No.2963 of 2025.

35. The learned AGA-I has stated that the case diary does not make a mention of any injury suffered by Manoj Kumar Shukla. The failure to record the findings of medico-legal examination report of Manoj Kumar Shukla prima facie indicates he had not suffered any injury.

36. The Investigating Officer has recorded that from a perusal of call detail records of Vipin Tiwari (the applicant), his aunt Saroj Tiwari and the applicant's friend Sachin Mishra, it appears that the mobile phone locations of Vipin Tiwari and Saroj Tiwari have been found at the same place since morning of 05.08.2024 till after the incident. A call commenced between mobile phone of Vipin Tiwari and Saroj Tiwari at 06:00 a.m. and it continued till 07:00 a.m., during which the location of the applicant's mobile phone was from Raniganj, Kaithola to Salon via Raibareli and Lucknow on the same tower. The movement of mobile phone between Raniganj, Kaithola to Salon via

Raibareli and Lucknow, indicates that the observation recorded by the Investigating Officer that its location has been found since morning of 05.08.2024 till after the incident at the same tower, is incorrect.

37. The observations recorded in the case diary after perusal of the call detail records of the applicant indicate that the applicant had made a phone call at 08:59:48 hours while his location was S.G.P.G.I., Lucknow. He has made a phone call at 09:30:46 while his location was at Vineet Khand, Gomti Nagar Lucknow and another call was made at 10:06:32 hours while his location was at New High Court Compound, Gomti Nagar, Lucknow. Yet another call was made at 10:40:23 hours while his location was still at the High Court Compound at Gomti Nagar, Lucknow. Thereafter, at 11:31:49 hours, the applicant's mobile phone location was at Surendra Nagar, Faizabad Road, Lucknow, which is a place near this Court's campus.

38. The applicant's location in the campus of this High Court is established from his call detail records since 10:06:32 hours on 05.08.2024 till 10:40:23 hours while the accident took place at about 10:30 hours on 05.08.2024 in District Pratapgarh, which about 175 Kms. Away from the premises of this High Court at Lucknow.

39. The applicant's presence in this Court at 11:20 a.m. on 05.08.2024 is established by his photograph taken in the photo affidavit Centre of this Court, a copy whereof has been annexed with the bail application.

40. The learned AGA-I has also submitted that it is recorded in the case diary that the Bolero Car and the Bullet Motorcycle were seen in the footage of CCTV several cameras. However, in none of the CCTV footages the registration number of the Bolero car or the persons sitting in it could be seen.

41. The learned A.G.A-I has pointed out that the investigation has been transferred to the Inspector (Crime) on 05.02.2025.

42. The learned Counsel for the informant has blamed the Investigating Officer for having failed to recover the offending white Bolero and he has contended that it has been done under influence of the applicant

who is languishing in jail. The Court finds no force in this submission because the failure to recover a Bolero car by the mere description that it was of white colour and it had curtains installed in it and without disclosure of its registration number or any other particular sufficient to identify it, does not prima facie appear to be deliberate.

43. When we examine the facts of the case in light of the law laid down by the Supreme Court in **Rohit Bishnoi** (Supra), the allegation in the present case is that a Bullet Motorcycle was hit by a Bolero car and as per the statement of the informant and the observations made by examination of numerous CCTV footages, neither the registration number of the Bolero nor its occupants could be seen. The informant claims that the accused persons killed the deceased and they tried to give it a semblance of an accident. Even as per the informant, the incident has a semblance of an accident. The applicant and the accused persons are descendants of the same ancestor and they are fighting for the same piece of land left by the applicant's grandfather. There appears to be no serious likelihood of the applicant fleeing from the process of law. It has been stated in the bail application that the informant's husband is accused of committing an offence under section 307 I.P.C. in which applicant's niece had suffered a gun-shot injury on her shoulder from and he is in jail in connection with that case. Therefore, prima facie it appears that the informant's family members also do not have clean antecedents.

44. Without making any observations which may affect the outcome of trial, I am of the view that the facts that the F.I.R. was lodged 37 hours after the incident; there is an old animosity between the parties; the registration number of the Bolero which had hit the motorcycle has not been identified even after examination of footages of numerous CCTV cameras; the applicant has not been connected with that Bolero vehicle and the applicant's call detail records and his photo taken in the photo affidavit centre of this Court indicate that at the time of the incident he was present in the premises of this High Court which is at a distance of about 175 Kilometers from the place of the incident and

that another accused person has already been granted bail, I am of the view that the applicant is also entitled to be released on bail.

45. Accordingly, this bail application stands ***allowed.***

46. Let the applicant- **Vipin Tiwari** be released on bail in the aforementioned case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of Magistrate/Court concerned, subject to following conditions:-

(i) the applicant shall not tamper with the prosecution evidence;

(ii) the applicant shall not pressurize the prosecution witnesses;

(iii) the applicant shall appear on each and every date fixed by the trial Court.

47. Before parting with the case, the Court is constrained to put on record that although this bail application could have been decided by a short order in a short period of time, the learned Counsel for the informant has made very elaborate submissions on several aspects of the matter. This Court had to point out that submissions advanced while opposing a bail application should not deal with the merits of the case and that there are 44 fresh matters and 200 listed matters to be dealt with by the Court and, therefore, he should be considerate towards the other litigants also but he persisted, although in an extremely respectful manner, that he is duty bound to advance submissions in the interest of his client. He is correct in a way, but at the same time, it cannot be lost sight of that while deciding a bail application, the Court is not expected to hold a mini trial and this Court also tried to decide the bail application on brief consideration of the relevant points, without going into unnecessary details. However, when a Counsel persists and advances detailed submissions, the Court has to record the same and deal with the same, as not mentioning the submissions of a learned Counsel and not dealing with the same, would give rise to a genuine reason for grievance to the learned Counsel. This has resulted in various observations being made in the order, which could have been avoided but for the persistence of the learned Counsel for the

informant. Therefore, as an abundant precaution, it is clarified that any observation made in this order will not affect the merits of the matter.

48. This long order has also resulted in spending more than reasonable time of the Court in deciding one bail application at the cost of several other matters, which loss cannot be made good. In **Banwari Lal Kanchhal v. State of U.P.**: 2023 SCC OnLine All 2510 this Court had observed that: -

> ***"85.*** *It is often said that the Judges and the advocates are wheels of a chariot. For enhancing the speed of this chariot, the other wheels of the chariot i.e. the learned advocates, should also change gears and assist the courts more efficiently in order to enhance the speed of dispensation of justice in the courts.*
>
> ***86.*** *I take this opportunity to request to all the learned counsel to cooperate in speedy dispensation of justice by decreasing the non-productive expenditure of the court's time. The learned counsel should decrease the number of adjournments sought and they should not object to the submissions being heard in their absence, more so when there is a learned counsel present to take notes of the submissions. The precious time of the court can also be better utilised if the learned counsel refrain from citing multiple case laws on a single point. The same old practices will continue to produce the same old results but as the society needs faster disposal of matters, all of us should change our practices to produce better results."*

49. I once again request the learned members of the bar and remind them that besides being a representative of their client, they are also responsible officers of the Court. They should be considerate towards the other litigants also and should cooperate in expeditious dispensation of justice by being precise and concise while preparing pleadings as well as while making submissions before the Court.

(Subhash Vidyarthi, J.)

Order Date: 08.05.2025
-Amit K-