



HIGH COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW

CRIMINAL APPEAL No. - 1790 of 2024

Rahul Verma

.....Appellant(s)

Versus

Central Bureau of Investigation, Special Crime Branch Lucknow Thru.
S.P.

.....Respondent(s)

Counsel for Appellant(s)	: Pranjal Krishna, Aishwarya Mishra, Arnav Prakash Tikku, Pranshu Agrawal, Rishad Murtaza
Counsel for Respondent(s)	: Anurag Kumar Singh,

A.F.R.

Reserved on 29.10.2025

Delivered on 15.11.2025

Court No. - 9

**HON'BLE RAJESH SINGH CHAUHAN, J.
HON'BLE ABDHESH KUMAR CHAUDHARY, J.**

(Per; Hon'ble Abdhesh Kumar Chaudhary, J.)

(Order on Criminal Misc. Bail Application No. 7 of 2024)

1. Heard Shri Nandit Srivastava, learned Senior Advocate assisted by Shri Rishad Murtaza, learned counsel for the appellant/applicant as well as Shri Anurag Kumar Singh, learned counsel representing the C.B.I. and perused the material available on record.

2. This is the second bail application moved on behalf of the appellant/applicant- **Rahul Verma**, in the instant pending appeal. He has been convicted under Sections 302 and 201 I.P.C. and sentenced for

maximum term of life imprisonment under Section 302 I.P.C. with fine stipulations and default clause, vide judgment and order dated 16.05.2024 and 22.05.2024 passed by the learned Special Judge, C.B.I., Court No.2, Lucknow in Sessions Trial No. 1900385 of 2012 (C.B.I. vs. Rahul Verma), arising out of Crime No. RC 14(S) of 2010, lodged at Police Station CBI/SCB/LKO, District Lucknow. However, the learned Trial Court has acquitted the appellant for the offence under Section 364 I.P.C.

3. At the very outset, this Court may note that the first bail application filed by the appellant was treated as short term bail, wherein the appellant was released for a period of two months vide order dated 04.10.2024 passed in the present appeal (In Re: C.M. Application No. 1 of 2024), apparently due to serious ailments of his father and the appellant being the only male member in his family. However, thereafter he having surrendered himself is presently lodged in Jail since 16.05.2024.

4. Shri Nandit Srivastava, Learned Senior Advocate appearing for the appellant/applicant has submitted that the appellant is a graduate from I.I.T. Kanpur and a postgraduate from I.I.M., Lucknow and was an employee of N.T.P.C. and has a bright career ahead. However, unfortunately, he has been wrongfully convicted and sentenced to undergo life imprisonment, whereas the fact remains that there is no direct eyewitness account or medical evidence against him and the entire case has been premised by the prosecution on the basis of untrustworthy circumstantial evidence and 'last seen theory'.

5. Learned counsel has drawn the attention of this Court to highlight that there is no motive in the present case, neither there is any evidence which could connect the missing person/deceased with the appellant nor is there any evidence which could establish the identity of the skeletal remains found by the police to the deceased person. According to him, although, this is a case of circumstantial evidence, however, the chain of circumstances as mandated to be completed in view of the Judgment of the Supreme Court in the case of *Sharad Birdhichand Sharda vs. State*

of Maharashtra reported in 1984 AIR 1622, is apparently missing and the chain of events is incomplete.

6. He further submits that the entire prosecution story revolves around the dubious theory of an unreliable witness, namely, Vivek Kumar Trivedi (P.W.-19), who is the witness of the 'last seen theory' propounded by the prosecution and according to him since the said theory put forth by the prosecution could not be supported or corroborated by any other witnesses, it was unwarranted for the learned Trial Court to convict the appellant solely on the testimony of the said witness. In this regard, he refers to the apparent infirmity in (i) Initial missing report against unknown (Exhibit-ka-1) proved by P.W.-1, (ii) F.I.R. for the offence of murder against unknown, (Exhibit-ka-54 proved by the P.W.-44), (iii) the affidavit of Shri Vivek Kumar Trivedi (Exhibit-ka-22) and (iv) Charge sheet filed against the appellant, (Exhibit-ka-66 proved by P.W.44).

7. Shri Rishad Murtaza, taking the case forward for the appellant has further argued that although the learned Special Judge framed two questions/issues for adjudication at paragraph no. 64 of the impugned judgment, however, on perusal of the reasoning of the learned Trial Court, it was apparent that the first issue led to a suspicion on P.W.19/Vivek Trivedi himself, who is the prime witness of the last seen theory by the prosecution. According to him as far as the first issue framed by the learned Trial Court is concerned, it has reached the conclusion that the victim was inside the premises of I.I.T., Kanpur on the basis of evidence of P.W.-1, namely, Surya Kumar Balroop Bajpai (father of the deceased/complainant) and P.W.-19, namely, Vivek Kumar Trivedi (witness of last seen theory), who were not the eye witness and their evidence are incoherent & unbelievable. Further as far as the second question framed by the Trial Court is concerned, the learned Trial Court has heavily relied upon the initial statement given by P.W.-19 under Section 161 Cr.P.C. in which he has only mentioned that when he dropped the victim around 10:30 pm. at the 'Moolganj Chauraha' there was a person who came to pick up the victim and P.W.-19 was told by

the victim that he was going to I.I.T. Kanpur and would come back the next day.

8. Learned counsel has submitted that although, in the statement of P.W.-19/Vivek Trivedi, he has stated that he can recognize the person if he comes before him, however, the 'Test Identification Parade' was not conducted by the police in that regard and subsequently, P.W.-19 filed affidavit dated 01.06.2009 and recorded his statement to state that the said person was the Appellant herein and it was on that basis only the appellant has been implicated in this case. It is also submitted that the said P.W.-19 delayed for about two days in informing the parents of the victim that the victim had been missing since 10.08.2008 and the missing report came to be filed only on 20.08.2008.

9. Shri Rishad Murtaza, learned counsel has vehemently argued that three grounds of delay is fatal for the prosecution story; Firstly, Vivek Kumar Trivedi reported that Adesh Bajpai is missing to the complainant on 14.08.2008 whereas the deceased was missing since the night of 10.08.2008. Secondly, the initial F.I.R. was lodged on 20.08.2008, that is almost after 10 days of Adesh being missing. Third the affidavit implicating accused-appellant is given on 17.12.2009, that is after almost 1 year and 4 months of the Adesh went missing.

10. According to Shri Rishad Murtaza, learned counsel for the appellant besides the incomplete chain of circumstances the identity of the deceased from the recovery of bones from the I.I.T. Kanpur Campus could not be proved nor the prosecution was able to prove any motive on the part of the accused-appellant which is a vital limb in a case based on circumstantial evidence. In any case, he submits that there is a plausible *alibi* of the appellant which has been duly recorded by the learned Trial Court, however, the same has not been appreciated in its right perspective.

11. He further submits that the outcome of the impugned judgment is a non-application of mind by the learned Trial Court as it has fully relied on the last seen evidence by P.W.-19/Vivek Trivedi, which is absolutely

unreliable and full of contradiction and most importantly the entire genesis of the case built by the prosecution has been destroyed due to the acquittal of the appellant under Section 364 I.P.C. relating to kidnapping or abducting in order to murder a person.

12. Thus, the hinge of the argument of learned counsel for the appellant is as to whether only on the basis of a solitary circumstances i.e. the 'last seen theory' whether the learned Trial Court could have convicted the appellant or not and in this regard, he refers to the proximity test enunciated by the Hon'ble Supreme Court in ***State of U.P. vs. Satish (2005 (CrLJ) 1428 and State of Goa vs. Sanjay Thakran (Criminal Appeal No 874 of 2004)***.

13. According to the learned Counsel, the present case is a case of an unreliable circumstantial evidence and most importantly the chain of circumstances is not complete and there are serious infirmities in the testimony of the witnesses which leads to the innocence of the appellant, who has been unfortunately incarcerated since last more than 12 years, for the offence which was never committed by him.

14. He next submits that although, the appeal has been filed in the year 2024 and he is ready to argue the appeal on merits, however, since the paper book is not ready, so at this stage he prays that the sentence order dated 22.05.2024 passed by the Learned Court of Special Judge, C.B.I., Court No.2, Lucknow may be suspended pending hearing of the present appeal and he undertakes to argue the matter as and when the paper book is ready, without any fail.

15. Shri Anurag Kumar Singh, learned counsel appearing for the C.B.I. has vehemently opposed the prayer for bail/suspension of sentence, on the ground that the appellant has committed heinous offence of Murder and keeping in view the gravity of the offence, the appellant should not be released on bail.

16. He further submits that the present case is relating to a crime, wherein the life of a young Fashion Designer Adesh Bajpai had been cut short by the appellant. According to him, the victim Adesh Bajpai went

missing on 10.08.2008 from Moolganj Chauraha, Kanpur Nagar and it was only on 23.08.2008 that the Security Officer of I.I.T., Kanpur lodged a written complaint about the recovery of bones in gunny bag in Old Type III area of I.I.T. Kanpur Campus. He has submitted that both the victim Adesh Bajpai and the appellant Rahul Verma belongs to 'gay' community and investigation revealed that both of them have made their profile on a website named "*GuysNmen*" and as such known to each other and were in continuous touch on the fateful night of 10.08.2008. According to him, the scientific evidence led by the prosecution proves beyond doubt that the human skull and the ante-mortem photographs are likely to be of the same person, which as per the expert report dated 08.04.2011 was of deceased Adesh Bajpai.

17. He also submits that there is no infirmity in the testimony of the various witnesses and the learned Trial Court has rightly convicted the accused-appellant after considering all the evidence found during the investigation and deposition made by the witnesses and there was nothing wrong in convicting the appellant for committing the offence of murder of Adesh Bajpai on the basis of 'last seen theory' as the witnesses and circumstances remained unshaken and unchallenged before the learned Trial Court. Thus, he submits that the bail application may be rejected on merits.

18. Having heard learned counsels for the parties and having perused the materials available on record, we find that although the nomenclature of the present bail application is second bail application, however, technically the bail application for suspension of sentence is being heard for the first time on merits, in as much as the first bail application was converted as an Application for short term bail. This Court is of the view that since short term bails are a kind of concession extended by this Court in a given compelling circumstances, may not be construed as disposal of the Bail on merits. Thus, effectively the present application is the first bail application being heard on merits, by this Court in the instant case.

19. The Hon'ble Supreme Court time and again has held that there is a difference between grant of bail under Section 439 Cr.P.C. in case of pre-trial arrest and suspension of sentence under Section 389 Cr.P.C. According to this Court, the rule for bail and/or suspension of sentence post-conviction are stringent because for grant of a bail post-conviction, there is no availability of 'presumption of innocence' as is available for grant of bail at pre-condition stage, as the said presumption fades in thin air once the person is convicted by the competent Trial Court. Therefore, this Court while considering an application for suspension of sentence and/or grant of bail is also to consider the *prima-facie* merits of the appeal coupled with other factors and only if there is a strong compelling reason for grant of bail the same can be granted after recording of reasons as mandated under Section 389(1) of Cr.P.C.

20. In this regard, this Court may refer to the Judgment of the Hon'ble Supreme Court in ***Omprakash Sahni vs. Jai Shankar Chaudhary reported in (2023) 6 SCC 123***, wherein the law for suspension of sentence has been fairly discussed from para nos. 31 to 33 which entails as herein under:-

"31. In Vijay Kumar v. Narendra and Ramji Prasad v. Rattan Kumar Jaiswal, it was held by this Court that in cases involving conviction under Section 302 IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. In Vijay Kumar, it was held that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder.

32. The aforesaid view is reiterated by this Court in Vasant Tukaram Pawar v. State of Maharashtra and Gomti v. Thakurdas.

33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if

ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The appellate court should not reappreciate the evidence at the stage of Section 389 of Cr.P.C. and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach."

21. Having discussed the law for grant of suspension of sentence in a case of post-conviction, this Court has to *prima-facie* make an assessment of the evidence on record and in order to satisfy itself has to test the testimony which has been brought on record. Apparently, the present case is based on circumstantial evidence as there is no eye witness. Further a hypothesis of 'last seen theory' also has been propounded by the prosecution in order to convict the appellant in the present case. However, this Court is reminded that merely an objective assessment of the evidence has to be made for disposal of the present bail application and not the entire evidence as the same would be dealt & appreciated at the time of hearing of the appeal on merits.

22. On perusal of the records, this Court finds that the prosecution has examined almost 44 witnesses to prove the fact of the case and has basically has framed two primary issues (i) as to whether the bones recovered on 23.08.2008 from the I.I.T Campus, Kanpur is that of the deceased- Adesh Bajpai. The learned Trial court, while deciding the said issue has relied on the evidence of P.W.-18 (Dr. R.N. Audhaliya) to conclude that the bones recovered were that of a human and apparently in the post-mortem report he says that the death might have been due to ante-mortem injuries sustained by the said human body. The learned court thereafter went on to discuss the evidence of P.W.- 29 (Neeraj Rai), who stated that he could not find adequate DNA from the bones, as it is 'degrate', so as to match with that of the DNA extracted from the blood of the deceased parent's and for that very reason, the MTDNA

analysis had been conducted by him. The said witness, while explaining the sequence analysis of Mito chondrial DNA for establishing biological relationship went on to state that the bones recovered from the campus of I.I.T. matched with that of the mother of the deceased. However, this Court finds that the said witness, first stated that DNA could not be conducted because of the body being 'degrate' and secondly, in his cross-examination had admitted that MT DNA could not be used as a conclusive proof of the recovered bones to be maternally related to that of the mother of the deceased. He stated the said sequencing can be used as a supporting purpose.

23. Further, when we see the evidence of P.W.32(Dr. Sanjeev), who is Assistant Director, CFSL has stated that since there is no mandible, the skull super imposing technique cannot be applied with accuracy. The learned Trial Court, when on to state that since there was no missing report from the vicinity of the I.I.T. Campus and there being a missing report of the deceased only, went on to conclude that the recovered bones were that of the deceased- Adesh Bajpai. Apparently, the said conclusion does not seems to be based on scientific evidence brought on record and a marked infirmity is observed in the said conclusion of the learned Trial Court, when all the evidence namely of P.W.-18, P.W.-29 and P.W.-32 is viewed together objectively. Thus, the bones recovered from the I.I.T. campus is that of the deceased or not, cannot be stated with certainty, however, that would depend on a close and in depth scrutiny of the evidence, which this Court refrains to enter into at this stage.

24. Further, as far as the second issue framed by the learned Trial Court relating to as to whether the accused was the person, who was last seen with the deceased and is adequate enough to show that the accused- Rahul Verma has murdered the deceased- Adesh Bajpai. Although, we see that the said issue also contains an extended question of causing disappearance of evidence by the appellant/Rahul Verma, by throwing the body in the forest, but this Court finds that the said appellant has

neither been charged nor convicted under section 201 of the I.P.C., therefore, a discussion in that regard is not required. As far as the second issue is concerned, this Court finds that essentially the learned Court while discussing the said issue has merely analyzed the evidence on record, which does not prove towards the culpability of P.W.-19, rather than proving the case against the appellant beyond reasonable doubt.

25. A prima facie assessment of the reasoning of the learned Trial Court, brings us to fore that the 'last seen theory' has not been corroborated by any witnesses and the accused came to be roped in the present case on the basis of the Affidavit dated 01.06.2009 followed by the statement of P.W.-19, who himself was under suspicion although out the investigation. The said belief can be well understood from the fact that the learned Trial Court has devoted almost the entire reasoning of the second issue in trying to exonerate the P.W.-19, rather than discuss the evidence brought on record against the accused. Apparently, the learned Trial Court has convicted the appellant, solely on the testimony of P.W.-19/Vivek Trivedi, the witness last seen with the victim. The Supreme Court in **Kanhaiya Lal vs. State of Rajasthan, (2014) 4 SCC 715** has held that evidence on 'last seen together' is a weak piece of evidence and conviction only on the basis of 'last seen together' without there being any other corroborative evidence against the accused, is not sufficient to convict the accused for an offence under Section 302 I.P.C. The following passage from the judgment in paragraphs nos. 12 and 15 can be profitably referred:

“12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.

15. The theory of last seen—the appellant having gone with the deceased in the manner noticed herein-before, is the singular piece of circumstantial evidence available against him. The conviction of

the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in Macho Singh v. State of Rajasthan, (2010) 15 SCC 588”

26. In the case at hand also, at best, the only evidence against the appellant is of ‘last seen together’ as propounded by the prosecution story. Further, the evidence of motive does not satisfy us to be an adverse circumstance against the appellant. Prima facie, this Court finds that the appellant has been under suspicion solely because of him being a member of a community having a particular sexual orientation and the prosecution has sought to develop the said suspicion into a reality by weaving a chain incompatible with the evidence on record, which apparently have loose ends.

27. We find merits in the submission of learned counsel of the appellant and at this stage, without diving deeper into the facts and evidence of the present case and reserving all the rights of the parties, which has to be adjudicated at the time of final hearing of the appeal, we are hereby inclined to grant bail/suspend the sentence of order dated 22.05.2024 passed by the Learned Court of Special Judge, C.B.I., Court No.2, Lucknow.

28. Accordingly, the instant bail application filed on behalf of appellant/applicant is **allowed**.

29. Let the appellant/applicant- **Rahul Verma**, who has been convicted in Sessions Trial No. 1900385 of 2012 (C.B.I. vs. Rahul Verma), arising out of Crime No. RC 14(S) of 2010, under Sections 302 and 201 I.P.C., Police Station CBI/SCB/LKO, District Lucknow and sentenced maximum imprisonment for life under Section 302 I.P.C. with fine stipulations, vide judgment and order dated 16.05.2024 and 22.05.2024

passed by the Learned Court of Special Judge, C.B.I., Court No.2, Lucknow, be released on bail on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:-

- (i) The whole amount of fine imposed by the Trial Court shall be deposited by the appellant/applicant within 30 days after being released from prison on bail.
- (ii) The appellant/applicant shall cooperate in the early disposal of appeal without seeking unnecessary adjournment.
- (iii) The appellant/applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.
- (iv) The appellant/applicant shall deposit his passport with the learned Trial Court and would not leave the country, without the prior permission of this Court.

30. It is made clear that during bail, if the appellant commits any offence, the prosecution will be at liberty to file an application for cancellation of bail.

31. As soon as personal bonds and sureties are furnished, photocopies of the same are directed to be transmitted to this Court forthwith by the Trial Court concerned to be kept on record of this appeal.

(Order on Appeal)

List this appeal in the **3rd Week of December, 2025 for final hearing.**

(Abdhesh Kumar Chaudhary,J.) (Rajesh Singh Chauhan,J.)

November 15, 2025
Praveen