



AFR

Reserved on 22.07.2026

Delivered on 28.07.2026

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 346 of 2025

Pawan Kumar Pandey

.....Appellant(s)

Versus

State of U.P. Thru. Prin. Secy. Home Lko.

.....Respondent(s)

Counsel for Appellant(s)	: Brij Mohan Sahai, Alok Verma, Atul Krishna, Ayodhya Prasad Mishra A.p. Mishra, Prajjwal Harsh, Praveen Kumar Yadav, Vivek Kumar Tripathi
Counsel for Respondent(s)	: G.A., Akanksha Gupta, Anurag Singh, Devansh Vikram Singh, Gaurav Mehrotra, Nadeem Murtaza

Court No. - 9

**HON'BLE RAJESH SINGH CHAUHAN, J.
HON'BLE RAM MANOHAR NARAYAN MISHRA, J.**

(Order on CMA/I.A. No.1 of 2025)

1. Heard Sri Ayodhya Prasad Mishra, assisted by Sri Vivek Kumar Tripathi, learned counsel for the appellant /applicant, Sri Vinod Kumar Shahi, learned Additional Advocate General of U.P. assisted by Sri Anurag Verma, learned AGA-I for the State and Sri Nadeem Murtaza, learned counsel for the victim.
2. This is the first bail application of the present appellant/ applicant- Pawan Kumar Pandey under Section 389 Cr.P.C. moved in the present Criminal Appeal assailing the judgment and order dated 04.01.2025 &

06.01.2025 passed by the Special Judge (M.P./M.L.A. related matters)/ Additional Sessions Judge (FTC-II), District- Ambedkar Nagar in Criminal Case No.297 of 2020 (Sessions Case No.297 of 2020), State Vs. Pawan Kumar Pandey and Another, arising out of Case Crime No.157 of 1990, Police Station- Baskhari, District- Ambedkar Nagar, wherein the appellant has been convicted under Sections 147, 148, 307/149 & 427 IPC and sentenced for maximum period of seven years' rigorous imprisonment with fine stipulations.

3. Son of the injured has also filed a revision bearing Criminal Revision No.370 of 2025, Nirbhay Singh Vs. State of U.P. and Another against the aforesaid judgment and order seeking enhancement of sentence awarded to the present appellant from seven years' rigorous imprisonment to life imprisonment, therefore, present criminal appeal and the criminal revision have been connected and listed before this Bench. Sri Nadeem Murtaza, who is counsel for the revisionist in the aforesaid criminal revision, has stated that he is ready to argue the revision.

4. Before advertng to the arguments of learned counsel for the parties and the case laws so cited, we hereby refer our order dated 04.02.2026, which reads as under:-

"1. Heard Sri Brij Mohan Sahai, assisted by Sri A.P. Mishra, learned counsel for the appellant as well as Sri V.K. Shahi, learned Addl. Advocate General, assisted by Sri Anurag Verma, learned AGA, and Sri Ajeet Singh, learned State counsel for the State-respondent and Sri Nadeem Murtaza, learned counsel for the victim.

2. Learned counsels for the parties have concluded their arguments on the bail application but so as to address the Court on the merits of the appeal as well as revision filed by the victim, they have sought a week's time.

3. List/ put up on 11.02.2026 within top ten cases.

4. This matter may be taken up immediately after fresh cases."

5. On 04.02.2026, learned counsels for the parties concluded their arguments on the bail application but on their request that they are willing to address the Court on the merits of the appeal and the revision, one week's time was granted listing the case for 11.02.2026. On 11.02.2026, learned counsel for the appellant did not appear, however, learned AGA and learned counsel for the victim were present. On subsequent date i.e. 18.02.2026, the case got adjourned on the request of learned counsel for the appellant and any date after Holi vacation was requested. On that too, Sri Vinod Kumar Shahi, learned Additional Advocate General, Sri Anurag Verma, learned AGA-I and Sri Nadeem Murtaza, learned counsel for the victim were present and had stated that they had no objection on request. On 19.03.2026, Sri Nadeem Murtaza, learned counsel for the victim was reported to be out of station, therefore, the case was adjourned for the next date. On subsequent dates, the case was adjourned on the request of learned counsel for the parties. On 21.07.2026, Sri A.P. Mishra, learned counsel for the appellant argued at substantial length but could not conclude his arguments, therefore, the case was listed next day i.e. 22.07.2026. On 22.07.2026, Sri A.P. Mishra, learned counsel for the appellant has submitted that he has no instructions from his client to argue the appeal, therefore, his bail application may be disposed of.

6. Though Sri A.P. Mishra had already concluded his arguments on the bail application on 04.02.2026 but he again argued on his bail application. Sri Anurag Verma, learned AGA and Sri Nadeem Murtaza, learned counsel for the victim insisted that once learned counsels for the parties have given their consent to argue the appeal on merits and they are ready to argue the appeal on merits, then this appeal should be decided finally and should not be kept pending for the reason that the appellant is not willing for final disposal of the appeal. On such

submission, Sri A.P. Mishra was not agree and pressed his bail application. Sri A.P. Mishra has placed reliance on the decision of the Apex Court in re; **Purushothaman v. State of Tamil Nadu, AIR ONLINE 2023 SC 937**, referring para- 9 thereof that the application for suspension of sentence should be decided at the earliest. Para-9 of the aforesaid judgment reads as under:-

“9. We have come across cases where an application for suspension of sentence was rejected by the High Court only on the ground that the advocate for the accused declined to argue the appeal on merits. When only the application for suspension of sentence is listed for hearing, the advocate for the accused is not expected to be ready to argue the appeal.”

7. We find it appropriate to deal the observation of the Apex Court of para-9 of the judgment in re; **Purushothaman** (supra) at this stage itself. In the matter before the Apex Court in re; **Purushothaman** (supra), only the application for suspension of sentence was listed before the High Court and the application for suspension of sentence was rejected by the High Court, but in the present case, the application for suspension of sentence has not been rejected as on today and the criminal appeal as well as the criminal revision are listed alongwith bail application. Besides, learned counsels for the parties had sought a week's time on 04.02.2026 to argue the appeal on merits and for so many dates, he did not argue the appeal on merits instead he is pressing his bail application today, therefore, the observation of the Apex Court in re; **Purushothaman** (supra) would not be applicable in the present case.

8. Sri Mishra has also stated that on 04.02.2026, he had not taken time to argue the appeal on merits but had taken time to seek instructions from his clients as to whether he can argue the appeal on merits or not.

9. Sri A.P. Mishra has further submitted that this is the case where the present appellant has been awarded maximum sentence of seven years' rigorous imprisonment with fine and he

has already served more than two years' sentence in jail, so the further sentence may be suspended till disposal of the appeal and he shall argue the appeal on merits after seeking specific instruction to that effect from his client. Sri Mishra has further submitted that in the present case the appellant has been falsely implicated. Most of the fact witnesses and alleged eye witnesses have not supported the prosecution story. As per those witnesses, the appellant was not present on the spot.

10. Sri A.P. Mishra has drawn attention of this Court towards the rejoinder affidavit filed on 02.05.2025 bearing I.A. No.6 of 2026 showing para-22 wherein the criminal history of 93 cases of the present appellant has been explained. Sri Mishra has demonstrated that out of 93 criminal cases, the present appellant has been convicted in the present case for seven years' rigorous imprisonment with fine and in one more case bearing Case Crime No.54 of 2022, he has been convicted for six months imprisonment. Except these two cases, he has been acquitted in most of the cases; in some cases either charge sheet has not been filed or he is on bail and in some other cases, notice was not given to the appellant. He has placed reliance on the decision of the Apex Court dated 24.01.2020 rendered in **Criminal Appeal No.152 of 2020 (arising out of Special Leave Petition (Crl.) No.9207/2019), Prabhakar Tewari Vs. State of U.P. & Anr.**, referring para-7 thereof wherein the Apex Court has observed that the criminal history of an accused may not be the basis for refusal of prayer for bail. He has also referred the judgment of the Apex court dated 12.09.2022 passed in **Criminal Appeal No.1548 of 2022 (Arising out of SLP (Criminal) No.7544/2022), Indra Pratap Tiwari Vs. The State of Uttar Pradesh**, on the same submission that the criminal history, if it is properly explained, may not be the reason to deny the bail.

11. The case in re; **Prabhakar Tewari** (supra), State Appeal was filed challenging the order of the High Court whereby the

order granting bail to the accused-appellant was challenged showing the chequered criminal history of the accused-appellant and the Apex Court dismiss the appeal upholding the order of the High Court granting bail.

12. Therefore, Sri Mishra has submitted that keeping in view his aforesaid submissions, particularly the fact that the present appellant has served more than two years' sentence out of seven years' rigorous imprisonment, most of the fact witnesses have not supported the prosecution story so far as the role of the appellant is concerned, and he has properly explained the criminal history of the appellant, the sentence of the appellant may be stayed till final disposal of the appeal.

13. On the other hand, Sri Anurag Verma, learned AGA, has submitted that he has strong objection on the submission of Sri A.P. Mishra that on 04.02.2026, he had taken time to seek instructions from his client as to whether he can address the Court on merits of the appeal, rather the order dated 04.02.2026 is absolutely clear that the arguments on bail application had been concluded but addressing the Court on the merits of the appeal, time was sought as the aforesaid fact has been clearly reflected in the order dated 04.02.2026. The intent of the order may not be interpreted by any counsel in any other manner when the language of the order is clear and definite. So as to buttress his aforesaid contention, Sri Anurag Verma has referred the decision of the Apex Court in re; **State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, (1982) 2 SCC 463**, referring para-4 thereof, which reads as under:-

“4. When we drew the attention of the learned Attorney-General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot

launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation." [Per Lord Atkinson in Somasundaram Chetty v. Subramanian Chetty, AIR 1926 PC 136 : 99 IC 742] We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. [Per Lord Buckmaster in Madhu Sudan Chowdhri v. Chandrabati Chowdhrair, AIR 1917 PC 30 : 42 IC 527] That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment."

14. Sri Anurag Verma has submitted that the chequered criminal history of the present appellant may not be ignored, though he has been acquitted in some of the cases. Besides, he has also stated with vehemence that this is not a case where the bail application of an accused is being argued but the appellant is a convicted person, having his chequered criminal history, so his presumption of innocence would not drawn here as the Trial Court has not accepted his innocence, rather holding him guilty convicted him. The perversity and illegality of the conviction

order may be demolished only in appeal, not in bail application. In support of his aforesaid contentions, attention has been drawn towards the decision of the Apex Court dated 10.04.2026 in re; **Dhan Jee Pandey Vs. The State of Bihar & Another, Criminal Appeal No.1864 of 2026 [Arising out of SLP (Cri.) No.4241 of 2025]**, referring paragraphs no.14, 15, 16, 21 & 22, which reads as under:-

“14. The issue that arises for consideration herein is whether the order granting suspension of sentence to Respondent No. 2 calls for interference. At the outset, it must be emphasised that the parameters governing suspension of sentence post-conviction are qualitatively distinct from those applicable at the stage of pre-trial bail. Upon conviction, the presumption of innocence stands displaced by a judicial determination of guilt, and the appellate court is required to exercise its jurisdiction under Section 389 Cr. P.C. with due circumspection and restraint.

15. In State of Haryana v. Hasmat, (2004) 6 SCC 176, this Court has categorically held that suspension of sentence in serious offences must not be granted as a matter of routine, and that the appellate court must apply its mind to the nature of the offence, the manner of its commission, and the gravity of the findings recorded by the trial Court. It was further emphasised that reasons must be recorded in writing, reflecting due consideration of relevant factors, and that orders granting suspension of sentence should not be passed mechanically.....”

16. In Om Prakash Sahni v. Jai Shankar Chaudhary, (2023) 6 SCC 123, this Court has clarified the scope of power under Section 389 Cr. P.C. by holding that suspension of sentence may be justified only where a palpable infirmity is apparent on the face of the record, indicating that the conviction may not ultimately withstand scrutiny. It has been expressly held that at this stage, the appellate court is not expected to undertake a reappraisal of evidence or delve into a detailed evaluation of the prosecution case....”

21. As held in State of Haryana v. Hasmat (supra), undue weight cannot be accorded to the period of incarceration or the pendency of the appeal in isolation, particularly where the conviction is founded on credible evidence.

22. The criminal antecedents of Respondent No. 2 also assume significance. The prosecution has brought on record multiple prior cases registered against him, including offences involving violence and use of arms. Though it has been contended that such cases arose out of political rivalry and have culminated in acquittal, such a contention cannot, at this stage, efface the relevance of antecedents as a factor in assessing the propriety of granting suspension of sentence.”.

15. He has also placed reliance on the decision of the Apex Court in re; **Rajni v. State of Punjab and Another, 2026 SCC OnLine SC 1050**, referring para-12, which reads as under:-

“12. While the period of incarceration and delay in trial are undoubtedly relevant considerations, they cannot serve as the sole or determinative basis for the grant of bail in a case involving the alleged killing of a person by an armed mob. Criminal antecedents are not merely a matter of record, but bear directly on whether an accused is likely to abide by bail conditions, refrain from repeating offences, or desist from intimidating witnesses. Where an accused carries multiple antecedents for offences as grave as those under Sections 302 and 307 of the IPC, such antecedents must weigh heavily against the grant of bail. The fact that this material was placed before the High Court yet received no consideration in the impugned order is a serious infirmity. The High Court's failure to individualize its reasoning and to weigh these disentitling factors renders the impugned order unsustainable insofar as it pertains to Respondent Nos. 2, 3 and 5.”

16. Sri Verma has further submitted that the Hon'ble Supreme Court in re; **Dhan Jee Pandey** (supra) in para-22 has observed that even if the criminal cases are an outcome of political rivalry and such criminal cases culminated in acquittal, such a contention cannot efface the relevance of antecedents as a factor in assessing the propriety of granting suspension of sentence. Further, the Apex Court in re; **Rajni** (supra) in para-12 has categorically observed that criminal antecedents are not merely a matter of record, but bear directly on whether an accused is likely to abide by bail conditions, refrain from repeating offences, or

desist from intimidating witnesses, so such antecedents must weigh heavily against the grant of bail. Sri Verma has, therefore, submitted that since the present appellant has committed the gruesome offence in the present case alongwith other co-accused wherein injured Anil Kumar Singh (PW-7) has recorded his testimony before the court against the present appellant, so instead of awarding seven years' rigorous imprisonment, he should have been awarded life imprisonment. Sri Verma has informed that one criminal revision bearing No.370 of 2025 (supra) has been filed from the side of the victim seeking enhancement of the punishment, so instead of deciding the application for suspension of sentence, the criminal appeal and the criminal revision may be decided on merits. He has prepared both the cases to address the Court on merits, so rejecting the application for suspension of sentence, any short date may be fixed for final hearing of the appeal and the criminal revision.

17. Sri Nadeem Murtaza, learned counsel for the victim has stated that he is appearing on behalf of the victim Nirbhay Singh son of Late Anil Kumar Singh, who was injured witness in the present case. His father Anil Kumar Singh had received very serious injuries including firearm injuries caused by the appellant using deadly firearm weapons in broad day light in a busy market. He has further submitted that the appellant is a hardened and habitual criminal with an extensive criminal history spanning from 1984 to 2022. He has also stated that the incident in question took place on 26.06.1990 and for the aforesaid incident, the trial concluded on 04.01.2025, therefore, Sri Murtaza has stated that it took about 35 years to conclude the trial and the present appellant was not cooperating in the trial proceedings. Sri Murtaza has filed photostat copy of some order sheets to show non-cooperation of the appellant in the sessions trial case. Attention has been drawn towards the order dated 24.03.2009 passed by the learned Trial Court whereby noting the fact that the

present appellant was absent before the Court without any cogent reasons, so non-bailable warrants were issued. On 30.03.2009, non-bailable warrants were again issued. On 21.04.2009, on account of deliberate absence of the present appellant non-bailable warrants were issued. On 24.04.2009, application for recall of the non-bailable warrants was filed by the present appellant, which was rejected by the learned Trial Court vide order dated 30.04.2009 and he was taken into custody on 30.04.2009 itself. However, on the same date, i.e. 30.04.2009 he was enlarged on bail. Sri Murtaza has also shown the photostat copy of the application of the present appellant dated 21.08.1993 filed before the Third Judicial Magistrate, Faizabad seeking bail. In the aforesaid application, the appellant has categorically indicated that he is in judicial custody w.e.f. 18.08.1993. The photostat copy of the bail order has also been filed showing that the present appellant was granted bail by the Second Additional Sessions Judge, Faizabad on 23.09.1993. Therefore, Sri Murtaza has stated that the appellant remained in jail for about 35 days during trial. Hence, Sri Murtaza has stated that contention of learned counsel for the appellant that the present appellant remained in jail for more than two years is wrong inasmuch as he remained in jail during trial for about 35 days (from 18.08.1993 to 23.09.1993 and pursuant to the conviction order he is jail w.e.f. 04.01.2025 till date). So his total period in jail would be about one year and seven months against seven years' rigorous imprisonment awarded by the Trial Court.

18. Sri Murtaza has further submitted that criminal revision has been filed by the victim wherein he is counsel for the victim/revisionist challenging the conviction order praying for enhancement of the punishment inasmuch as the manner under which the appellant committed a gruesome offence, he should have been awarded life imprisonment but he has been awarded only rigorous imprisonment of seven years by the learned Trial

Court without considering and appreciating the evidence and material available on record. Further, he is ready to address the Court on the merits of the revision, therefore, the present appeal as well the criminal revision may be listed at any short date so that the criminal appeal and the criminal revision, both, may be decided finally on merits. He has also drawn attention of this Court towards the decision of the Apex Court dated 17.09.2025 in re; **Central Bureau of Investigation Vs. Rajendra Sadashiv Nikalje alias Chhota Rajan @ Nana Sheth @ SIR & Anr. Criminal Appeal No...../2025 [SLP (Crl.) No. /2025 D.No.5707/2025**, referring paragraphs no.8 & 9, which read as under:-

“8. In Sidhartha Vashisht v. State (NCT of Delhi), (2008) 5 SCC 230, this Court also had the occasion to discuss the scope of power to suspend sentence under Section 389 CrPC in a case involving serious offence like murder. The Court held that:

"30.....It is no doubt true that even thereafter, it is open to the appellate court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in Vijay Kumar [(2002) 9 SCC 364] 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 all 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, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted.

(emphasis supplied)

Thus, it is clear that in considering prayer for suspension of sentence, the Court should consider all 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.”

9. *The ambit of power under Section 389 CrPC is to protect rights of convicted-accused in those cases where the likelihood of success of his appeal against conviction is very high or in case, where a fixed term of imprisonment is ordered, the appeal is unlikely to be heard in the near future.”*

19. Having heard learned counsel for the parties; having perused the case laws so cited by the learned counsel for the respective parties, the material available on record and considering the fact that on 04.02.2026, learned counsels for the parties were ready to argue the appeal on merits, for that a week's time was prayed but learned counsel for the appellant instead of arguing the appeal on merits insisted that the bail application may be decided as he has specific instructions from his client not to argue the appeal on merits but to press the bail application, we are not inclined to pass an order suspending the sentence of the appellant.

20. The Hon'ble Supreme Court has consistently observed that the application for suspension of sentence should be disposed of if in any case the appeal could not be heard finally for any cogent reasons. If the counsels are ready to argue the criminal appeal or the criminal revision on merits, the application for suspension of sentence may not be given preference over final disposal of the criminal appeal or the criminal revision. As per our considered opinion, endeavour of the Court should be to decide the criminal appeal at the earliest if parties are ready to argue the appeal on merits.

21. In the present case, Sri Vinod Kumar Shahi, learned Additional Advocate General, assisted by Sri Anurag Verma, learned AGA-I and Sri Nadeem Murtaza, learned counsel for the

victim were ready to address the Court on the merits of the criminal appeal as well as the criminal revision and learned counsel for the appellant had also shown his willingness to argue the appeal on merits, then such hearing of the appeal and the criminal revision may not be postponed on the choice of the appellant. Besides, on various dates, learned counsels for the parties argued the case at substantial length. We cannot permit the appellant to adopt delaying tactics in disposal of the criminal appeal or the criminal revision.

22. Therefore, in the light of what has been considered herein above and without entering into merits of the criminal appeal and the criminal revision, which is connected with this criminal appeal, we hereby **reject** the application for suspension of sentence.

23. Since the matter has already been argued at substantial length by the learned counsels for the parties, therefore, we fix the date on 19.08.2026 for final disposal of this criminal appeal and the connected criminal revision.

(Ram Manohar Narayan Mishra,J.) (Rajesh Singh Chauhan,J.)

July 28, 2026

RBS/-