

10. However, as per allegation under the false promise of marriage appellant sexually exploited the opposite party no.2 and committed rape upon her and also prepared obscene video of opposite party no.2 but alleged obscene video of the opposite party no.2 is not on record to substantiate her allegation in this regard.

11. Further, admittedly, opposite party no.2 i.e. informant of the case is major lady and considering the nature of allegation levelled against the appellant prima facie present case appears to be a case of consensual relationship.

12. Further, appellant is not having any previous criminal history and in the present matter he is in jail since 19.01.2025.

13. Therefore, considering the facts and circumstances of the case, discussed above, in my view, impugned order dated 05.03.2025 by which bail application of the appellant has been dismissed by the court concerned is illegal and is liable to be set aside and appellant is entitled to be released on bail in the instant matter.

14. Accordingly, the instant appeal stands allowed and the impugned order dated 05.03.2025 passed by the court concerned is hereby set aside and without expressing any opinion on the merit of the case, appellant is directed to be enlarged on bail in the instant matter.

15. Let appellant **Anshu Kushwaha**, be released on bail in the aforesaid case on his furnishing a personal bond and two reliable sureties in the like

amount to the satisfaction of the court concerned with the following conditions:

(i) The appellant will not tamper with the evidence during the trial.

(ii) The appellant will not pressurize/ intimidate the prosecution witness.

(iii) The appellant will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The appellant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(v) The appellant 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.

16. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

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**(2025) 6 ILRA 66**  
**APPELLATE JURISDICTION**  
**CRIMINAL SIDE**  
**DATED: ALLAHABAD 19.06.2025**

**BEFORE**

**THE HON'BLE SAMEER JAIN, J.**

Criminal Appeal No. 2284 of 2025

**Danish @ Bakra @ Dilshad ...Appellant**  
**Versus**  
**State of U.P. & Anr. ...Opposite Parties**

**Counsel for the Appellant:**

Sri J.B. Singh

**Counsel for the Opposite Parties:**

G.A.

**Criminal Law – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3(2)(5) & 14-A(2) – Indian Penal Code, 1860 - Section – 201 & 302-** Criminal Appeal - filed u/s 14-A(2) of SC/ST Act, – for quashing the impugned order – whereby court below rejected the Bail Application – FIR – offence of murder - arrest – Bail application – Rejected - plea taken in defence that, though appellant is named in FIR but it is a case of circumstantial evidence and merely on the basis of alleged evidence of last seen appellant has been made accused - court finds that, it is a case of circumstantial evidence and it appears except the evidence of last seen and the fact that on the pointing out of the appellant on brick allegedly used in crime was recovered and there is no other evidence – as well as no any previous criminal history – held, merely on the basis of recovery of a brick on the pointing out of the appellant at this stage it cannot be said that appellant committed the murder – consequently, impugned order by which bail application of the applicant has been dismissed by the court concerned is illegal and is liable to be set aside and appellant is entitled to be released on bail – instant appeal stands allowed - Appellant be released on bail with strict conditions to prevent tampering with evidence or influencing witnesses, allowing the prosecution to seek cancellation if any condition is breached. (Para – 11, 13, 14, 15, 16)

**Application Allowed.** (E-11)

(Delivered by Hon'ble Sameer Jain, J.)

1. As per office report dated 30.04.2025 notice has been served to the opposite no.2. personally. Despite service of notice none appeared on behalf of opposite party no.2. therefore the instant appeal is being heard on merits.

2. Heard Sri J.B. Singh, learned counsel for the appellant and Sri Rajeev Dhar Dwivedi, learned Additional Government Advocate for the State-respondent.

3. This criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, has been filed by the appellant with a prayer to quash the order dated 29-11-2024 passed by learned Special Judge (S.C./S.T. Act), Gautam Budh Nagar in Bail Application No. 4489 of 2024 (Danish @ Bakra @ Dilshad Vs. State of U.P.) arising out of Case Crime No. 177 of 2024 Under Section- 302/201 I.P.C. & section- 3(2)5 of S.C. /S.T. Act Police Station- Dankaur, District-Gautam Budh Nagar.

4. Learned counsel for the appellant submits, however appellant is named in the FIR but it is a case of circumstantial evidence and it appears merely on the basis of alleged evidence of last seen appellant has been made accused in the present matter.

5. He next submits, from the statements of witnesses who provided the evidence of last seen it reflects even the evidence of last seen is not convincing.

6. He next submits, however, apart from the evidence of last seen as per prosecution when appellant was arrested then on his pointing out one brick used in the crime was also recovered but entire recovery is false and baseless. He further submits, even merely on the basis of such recovery at this stage, it cannot be said that appellant committed the murder of the deceased.

7. He further submits except the above evidence, there is no other evidence against the appellant on record but in spite of that court concerned dismissed the bail application of the appellant vide impugned order dated 29.11.2024 and therefore, committed gross illegality and impugned order dated 29.11.2024 passed by the court concerned is illegal and is liable to be set aside and appellant is entitled to be enlarged on bail in the present matter.

8. He next submits, appellant is not having any previous criminal history and in the present matter he is in jail since 02.07.2024 i.e. for last more than 11 months.

9. Per contra, learned AGA opposed the prayer for bail but could not dispute the aforesaid facts.

10. I have heard both the parties and perused the record of the case.

11. It is a case of circumstantial evidence and it appears except the evidence of last seen and the fact that on the pointing out of the appellant one brick allegedly used in the crime was recovered there is no other evidence against the appellant on record.

12. As far as evidence of last seen is concerned after considering the statements of the witnesses this court finds merit in the arguments advanced by the learned counsel for the appellant that evidence of last seen is not convincing.

13. Further, this court also finds merit in the arguments advanced by the learned counsel for the appellant that merely on the basis of recovery of a brick on the pointing out of the appellant at this

stage it cannot be said that appellant committed the murder of the deceased.

14. Further, appellant is not having any previous criminal history and in the present matter he is in jail since 02.07.2024 i.e. for last more than 11 months.

15. Therefore, considering the facts and circumstances of the case, discussed above, in my view, impugned order dated 29-11-2024 by which bail application of the appellant has been dismissed by the court concerned is illegal and is liable to be set aside and appellant is entitled to be released on bail in the instant matter.

16. Accordingly, the instant appeal stands allowed and the impugned order dated 29-11-2024 passed by the court concerned is hereby set aside and without expressing any opinion on the merit of the case, appellant is directed to be enlarged on bail in the instant matter.

17. Let appellant **Danish @ Bakra @ Dilshad**, be released on bail in the aforesaid case on his furnishing a personal bond and two reliable sureties in the like amount to the satisfaction of the court concerned with the following conditions:

(i) The appellant will not tamper with the evidence during the trial.

(ii) The appellant will not pressurize/ intimidate the prosecution witness.

(iii) The appellant will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The appellant shall not commit an offence similar to the offence of

