

Counsel for the Applicant:

Abhishek Kumar Mishra, Chandrakesh Mishra, Sr. Advocate

Counsel for the Opposite Party:

G.A., Ghanshyam Das Mishra

Criminal Law — Criminal Procedure Code, 1973 - Section 439 — Indian Penal Code, 1860 - Sections 406, 419, 420, 467, 468, 471 & 120-B — Bail — Delay in lodging FIR — Counter-blast to earlier complaint — Applicant accused of cheating and forgery in alleged sale of teaching post — Six-year delay unexplained — Criminal history not resulting in conviction — Pre-trial incarceration and Article 21 — Imposition of monetary condition on bail deprecated — Held, prolonged custody without trial violates Article 21 — Delay in FIR and absence of conviction entitle applicant to bail — Courts not to act as recovery agents or impose deposit conditions for bail. (Paras 5, 12, 15, 16, 17 and 19)

HELD:

It is a fundamental principle of natural justice that accused of an offence is presumed to be innocent till he is convicted. Thus though the applicant herein has been involved in various cases he has not been convicted in any of the cases till date. Therefore a presumption of innocence is in his favour. Pre trial incarceration is a serious matter, which is violative of the fundamental right of an accused. (Para 15)

The Apex Court has deprecated the practice of imposing the amount as a condition for payment as a condition for release on bail at pre trial stage. It cannot be said that the amount alleged to be paid by the complainant was actually paid to the accused at this stage. In such circumstances direction for payment cannot be imposed while granting bail to the applicant. (Para 16)

In the totality of the facts and circumstances of the case and considering the case in its entirety specifically the delay in lodging the FIR that too as a counter blast to the FIR lodged by the applicant against the relatives of the informant and further that though there is criminal history

but in none of the those cases the applicant has been convicted so far and out of 34 cases 11 cases are under section 138 of the N.I. Act, which arise out of civil transaction between the parties and cannot be said to be a criminal case in strict sense. (Para 18)

Bail Application allowed. (E-14)

List of cases cited:

1. R.D. Upadhyay Vs St. of A.P., 1996 0 Supreme Court (SC) 624
2. Ram Gopal Gautam VS St. of Raj. & anr. (judgement dated 1.2.2021 passed in Criminal Appeal No. 95 of 2021 arising out of SLP (Crl.) 4166 of 2020
3. Rabi Prakash Vs St. of Odisha, SLP (Crl.) No. 4169 of 2023, decided on 13.07.2023
4. Dataram Singh Vs St. of U.P. & anr., (2018) 3 SCC 22
5. Srikant Kumar @ Shrikant Kumar Vs. St. of Bihar & anr. (judgement dated 6.1.2025 passed in Criminal Appeal arising out of SLP (Crl.) Nos. 13083/2023
6. Moti Ram & ors. Vs. St. of M.P. 1978 4 SCC 47
7. U.N. Gupta Vs St. of Bihar, Criminal Appeal No. 3067 of 2024, decided on 22.07.2024
8. *Ramesh Kumar Vs State (NCT of Delhi)*, (2023) 7 SCC 461

(Delivered by Hon'ble Anish Kumar Gupta, J.)

1. Heard Shri Daya Shanker Mishra, learned senior counsel assisted by Shri Chandrakesh Mishra for the applicant, Shri Ghanshyam Das Mishra, learned counsel for the informant and Shri D.P.S. Chauhan, learned A.G.A. for the State.

2. The instant bail application has been filed by the applicant seeking his release on

bail in Case Crime No. 292 of 2022 under sections 406, 419, 420, 467, 468, 471 and 120-B IPC police station George Town, Prayagraj.

3. Brief facts of the case are that on 8.8.2022 the informant Smt. Shikha Mishra has lodged the instant FIR stating therein that an advertisement was issued for filling up of the post of Asstt. Teacher (English) in Shri Shakti Vidyapeeth, Junior High School, Bendo Karchhana, Allahabad. The applicant was the Manager of the said Institution/School at that point of time. In pursuance of the said advertisement she went to the School and met the applicant. Thereafter the applicant has taken her to his house where they talked to each other and also other family members of the applicant. Thereafter she had applied for the said post and in connection with the appointment on the said post the applicant and his wife has demanded Rs.20,00,000/- and the deal was finalized for Rs.15,00,000/- and informant has given Rs.15,00,000/- in cash in the presence of the family members of the applicant. Subsequently though the appointment letter was issued in her favour. However, a further demand of Rs.5,00,000/- was made stating that only after making the payment of Rs.5,00,000/- she will be allowed to join in the School. She could not fulfil the demand of Rs.5,00,000/- therefore she was not allowed to join in the School. Thereafter neither she has been allowed to join in the School nor the amount of Rs.15,00,000/- paid by her has been returned. Therefore, after about 6 years of the incident the instant F.I.R. has been lodged by the informant against the applicant and other family members of the applicant.

4. It is submitted by learned senior counsel appearing for the applicant that

there is no plausible explanation of long delay of about 6 years in lodging the FIR. The applicant has not taken any amount, as alleged in the FIR. The applicant has been falsely implicated in the said case due to enmity. It is further submitted that relatives of the informant had kidnapped the applicant on 17.6.2021 and in connection of the said offence an FIR being Case Crime No. 322 of 2021 under section 364 IPC was got registered by the applicant against the relatives of the informant in which the said relatives of the informant were arrested, therefore, as a counter blast to the said FIR, the instant FIR has been lodged by the informant against the applicant herein on false allegations. It is further submitted that with regard to the alleged payment made by the informant to the applicant there is no eye witness. The allegations which have been made by the informant itself is an offence against the informant for which she is also liable to be prosecuted.

5. Learned senior counsel has further submitted that in the instant case the charge sheet has been submitted on 18.3.2023 and the cognizance has been taken. However, till date no witness has been examined. Therefore, there is no chance of the conclusion of the trial of the instant case in near future, therefore, by keeping the applicant in confinement during the trial for a long period is violation of Article 21 of the Constitution of India. In support of his submission he has relied upon the judgement of the Apex Court in the cases of *R.D. Upadhyay V. State of A.P. 1996 0 Supreme (SC) 624*; *Ram Gopal Gautam V. State of Rajasthan and another (judgement dated 1.2.2021 passed in Criminal Appeal No. 95 of 2021 arising out of SLP (Crl.) 4166 of 2020 by the Apex Court and Rabi Prakash V. The*

State of Odisha (judgement dated 13.7.2023 passed in SLP (Crl.) No. 4169 of 2023.

6. With regard to the criminal history of the applicant it has been explained that the cases relied upon by the opposite side are subsequent to the registration of the instant case, therefore, the same cannot be treated as a criminal history of the applicant. It is further submitted that the applicant has not yet been convicted in any case till date. Learned senior counsel has further relying upon the judgement of the Apex Court in the case of *Dataram Singh Vs. State of U.P. and another 2018 3 SCC 22*, submits that the bail is a rule and rejection of bail is an exception.

7. Learned senior counsel has also relied upon the judgement of the Apex Court in the case of *Prabhakar Tewari Vs. State of U.P. and another 2020 11 SCC 648* and submits that merely because there is criminal history of the applicant, the bail cannot be denied to him. He further submitted that though in two cases the applicant has been granted bail subject to deposit of 25% of the amount involved in those cases, however, relying upon the judgement of the Apex Court in the case of *Srikant Kumar @ Shrikant Kumar Vs. State of Bihar and another (judgement dated 6.1.2025 passed in Criminal Appeal arising out of SLP (Crl.) Nos. 13083/2023 and Moti Ram and others Vs. State of M.P. 1978 4 SCC 47*, submitted that the unreasonable conditions for the release of an accused on bail cannot be imposed.

8. Relying upon the judgement of the Apex Court in the case of *Ramesh Kumar Vs. State of NCT of Delhi 2023 7 SCC 461*, learned senior counsel has submitted that the Court cannot imposed condition of

deposit of heavy amount, as a condition for bail.

9. Per contra, Shri Ghanshyam Das Mishra, learned counsel appearing for the informant submitted that initially the FIR was registered under section 419, 420 and 406 IPC. However, during investigation it was transpired that the said appointment letter, which was given by the applicant was a fake and forged document, thus sections 467, 468, 471 and 120-B have also been added. He further submitted that informant has given Rs.15,00,000/- in cash just four days prior to the date when the appointment letter was given to her by the applicant. Thus a prima facie case has been made out against the applicant. It is further submitted that for the offence of similar nature the applicant has been granted bail on deposit of 25% of the amount involved in those cases. The applicant is also having criminal history of 34 cases, therefore, he is a habitual offender and if he is released on bail he will involve himself in other offence. Thus the learned counsel for the informant has prayed for rejection of the bail application.

10. Learned A.G.A.for the State has opposed the bail application relying upon the charge sheet submitted against the applicant.

11. Having heard the rival submissions advanced by the learned counsel for the parties, this court has carefully gone through the record of the case.

12. In *R.D. Upadhya (supra)*, the Apex Court has held that a speedy trial is guaranteed as fundamental rights under Article 21 of the Constitution of India and the following directions have been issued:

“So far as the cases regarding attempt to murder are concerned, we direct that the cases which are pending for more than 2 years, the under-trials shall be released on bail forthwith to the satisfaction of the respective trial courts. Persons facing trial for Kidnapping, Theft, Cheating, Arms Act, Counterfeiting, Custom, Under Section 326 IPC, Under Section 324 IPC, Riots and Under Section 354 IPC who are in jail for a period of more than one year, shall be released on bail forthwith to the satisfaction of the trial courts concerned. There may be cases where the under-trial persons may not be in a position to furnish sureties etc. In those cases, the trial courts may consider-keeping in view the facts of each case especially the period spent in jail-releasing them on bail by furnishing person bonds.

We make it clear that it shall not be necessary for any of the under-trials to move application for bail. The court shall, suo moto, on the authority of this Court’s order, consider the bail cases. This shall be done by all the courts concerned within two weeks of the receipt of this order. We give liberty to all concerned to approach this Court for further directions, if necessary.”

13. In ***Rabi Prakash (supra)***, the Apex Court has held that the prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created and holding the aforesaid, the Apex Court has issued direction for the release of the accused therein.

14. In ***Dataram (supra)***, the Apex Court has held in paragraphs 6 and 7 as under:

“The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nikesh Tarachand Shah V. Union of India, 2017 (13) SCALE 609 going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 in which it is observed that it was held way back in Nagendra v. King-Emperor, AIR 1924 Cal 476 that bail is not to be withheld as a punishment. Reference was also made to Emperor v. Hutchinson, AIR 1931 All 356 wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.”

15. It is a fundamental principle of natural justice that accused of an offence is presumed to be innocent till he is convicted. Thus though the applicant herein has been involved in various cases he has not been convicted in any of the cases till date. Therefore a presumption of innocence is in his favour. Pre trial incarceration is a serious matter, which is violative of the fundamental right of an accused.

16. The Apex Court has deprecated the practice of imposing the amount as a condition for payment as a condition for release on bail at pre trial stage. It cannot be said that the amount alleged to be paid by the complainant was actually paid to the accused at this stage. In such circumstances direction for payment cannot be imposed while granting bail to the applicant.

17. The Apex Court in the case of ***U.N. Gupta Vs. State of Bihar (Judgement dated 22.7.2024 passed in Criminal appeal***

No. 3067 of 2024 arising out of SLP (Crl.) No. 5916 of 2024 has made the following observation in paragraphs 3,4 and 5:

“3. The direction for deposit is in the teeth of a plethora of decisions of this Court. We can profitably refer to a few of them, viz. Ramesh Kumar vs. State (NCT of Delhi), (2023) 7 SCC 461; St. George Dsouza Vs. State (NCT of Delhi), (2023) SCC OnLine SC 1940 and Dilip Singh vs. State of M.P. and Anr. (2021) 2 SCC 779.

4. Learned counsel appearing for the respondent no. 2-complainant submits that since the High Court was invited by the appellants to impose a condition for depositing 25% of Rs.20,00,000/- (Rupees twenty lakhs only), the impugned order does not merit interference.

5. The High Court, in our considered view, ought to have examined the question of grant of bail without being swayed by the submission on behalf of the appellants. Having regard to the settled principles of law laid down in the decisions refereed to above, inter alia, to the effect that the courts, exercising jurisdiction to grant bail/pre-arrest bail, are not expected to act as recovery agents for realization of dues of the complainant from the accused, the High Court ought to have independently apply its mind and arrive a a conclusion as to whether a case for grant of bail had been made out or not on settled parameters, irrespective of whatever submission had been advanced on behalf of the appellants.”

18. In the totality of the facts and circumstances of the case and considering the case in its entirety specifically the delay in lodging the FIR that too as a counter blast to the FIR lodged by the applicant against the

relatives of the informant and further that though there is criminal history but in none of the those cases the applicant has been convicted so far and out of 34 cases 11 cases are under section 138 of the N.I. Act, which arise out of civil transaction between the parties and cannot be said to be a criminal case in strict sense.

19. For the aforesaid reasons and in view of the judgements of the Apex Court in the cases of R.D. Upadhyay (supra), Rabi Prakash (supra), Dataram (supra), and U.N. Gupta (supra), and without commenting upon the merits of the case, in the considered opinion of this Court, the applicant herein is entitled to be released on bail. Accordingly the bail application is **allowed**.

20. Let the applicant **Rajnikant Shukla** involved in Case Crime No. 292 of 2022 under sections 406, 419, 420, 467, 468, 471 and 120-B IPC police station George Town, Prayagraj be released on bail on his executing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:

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

(ii). The applicant will not pressurize/intimidate the prosecution witnesses.

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

(iv). The applicant will not try to contact, threat or otherwise influence the complainant or any of the witness of the case.

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21. In case of breach of any of the above conditions, the court concerned shall be at liberty to cancel the bail of applicant, in accordance with law.

(2025) 5 ILRA 1673

REVISIONAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 19.05.2025

BEFORE

THE HON'BLE ROHIT RANJAN AGARWAL, J.

Civil Revision No. 4 of 2025

Committee Of Management, Jami Masjid Sambhal Ahmed Marg Kot Sambhal

...Revisionist

Versus

Hari Shankar Jain & Ors. ...Opp. Parties

Counsel for the Revisionist:

Sri Syed Ahmed Faizan, Sri S.F.A. Naqvi, Sri Zaheer Asghar

Counsel for the Opp. Parties:

Sri A.S.G.I., C.S.C., Sri Manoj Kumar Singh, Sri Prabhash Pandey .

Civil Law- The Code of Civil Procedure, 1908-Sections-115 & 80(2) - Order XXVI Rule 9---

Revision filed under Section 115 against orders for grant of leave to institute the suit before expiry of period of notice under Section 80 (2) CPC, and the order for appointment of Commission for local investigation under Order XXVI Rule 9 and 10 CPC--- Revisionist being a private individual cannot object for want of notice under Section 80 which is for the benefit of Government and its officers--- The order was strictly passed in consonance with the provisions of Rule 9 of Order XXVI CPC read with Rule 68 and 69 of the General Rules Civil, as the court while appointing an Advocate Commissioner had directed for the survey to be made with the help of police force and necessary photography and videography was to be carried out of the site to be inspected and surveyed--- Present suit is not

prima facie barred by provisions of The Place of Worship (Special Provisions) Act, 1991, in fact, it has been filed seeking right to access to property in dispute under Section 18 of The Ancient Monument and Archaeological Sites and Remains Act, 1958 being a protected monument.

Revision dismissed. (E-15)

List of the cases referred:-

1. Mohd. Siddiq Vs Mahant Suresh Das, 2020 (1) SCC 1

2. Gopal Singh Visharad Vs Zahoor Ahmad, 2010 SCC OnLine (ALL) Page 1927

3. Civil Appeal No. 16899 of 1996, Karnataka Board of Waqf Vs Government of India & ors.

4. Raghunath Das Vs Union of India, AIR 1969 SC 674.

5. Ghanshyam Dass Vs Dominion of India, (1984) 3 SCC 46,

6. Bihari Chowdhary & anr.Vs St. of Bihar & ors., (1984) 2 SCC 627

7. St. of A.P. Vs Pioneer Builders, (2006) 12 SCC 119

8. Bajaj Hindustan Sugar & Industries Ltd. Vs Balrampur Chini Mills Ltd., (2007) 9 SCC 43

9. Smt. Janak Raji Devi Vs Chandrabati Devi, AIR 2002 Cal 11

10. T.VS Parangodan Vs District Collector, Trichur & ors., AIR 1989 Ker 276

11. Himachal Steel Rerollers and Fabricators Vs U.O.I.& ors., AIR 1988 All 191

12. St. of U.P. Vs Jaman Singh & anr., AIR 2007 UTT 10

13. K.K. Sharma Vs Punj. State, AIR 1989 P&H 7

14. St. of Karnataka Vs M. Muniraju, AIR 2002 Kar 287