



2026:AHC:260

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 40989 of 2025

Shadab

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Asheesh Kumar Tiwari
Counsel for Opposite Party(s)	:	G.A.

Court No. - 69

HON'BLE ARUN KUMAR SINGH DESHWAL, J.

1. Heard Sri Asheesh Kumar Tiwari, learned counsel for the applicant, Sri Rakesh Kumar Mishra, learned A.G.A. for the State and perused the record.
2. The instant bail application has been filed with a prayer to release the applicant on bail in Case Crime No.185 of 2024, under Sections- 305(2), 317(2) BNS, Police Station-Mansoorpur, District-Muzaffar Nagar, during the pendency of the trial.
3. Contention of learned counsel for the applicant is that applicant was not named in the FIR. Subsequently, on the basis of information, the applicant along with four other co-accused persons were arrested and from their joint possession, 40 motor cycles were also shown to be recovered, though, there was no private witness or videography of the aforesaid recovery. Though, the videography of recovery is compulsory as per Section 105 BNSS. This creates doubt over the entire prosecution story. It is further submitted that co-accused Shoeb and Owais, have already been released on bail by a coordinate Bench of this Court in Criminal Misc. Bail Application Nos. 30403 of 2025 and 22485 of 2025 vide orders dated 04.09.2025 and 22.07.2025, as applicant is also on similar footing. Therefore, the applicant is also entitled to be released on bail on the ground of

parity. It is further submitted that the applicant has explained the criminal history of six cases which were planted against the applicant subsequent to the recovery of the present case. It is further submitted that charge sheet has been filed in the present case, therefore, there is no requirement of custodial interrogation. The applicant is a law abiding citizen and he is languishing in jail since 16.04.2025. In case, he is granted bail, he will not misuse the liberty of bail and would cooperate in the trial proceedings.

4. Per contra, learned A.G.A. has vehemently opposed the prayer for bail but could not dispute the aforesaid facts.

5. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties and taking into account overcrowded jails and heavy pendency of criminal cases before the trial courts and keeping in view the nature of offence, evidence, complicity of the accused as well as considering the mandate of the judgement of the Apex Court in the case of **Kapil Wadhawan vs Central Bureau of Investigation in SLP No.16953 of 2025 decided on 11.12.2025** and without expressing any opinion on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

6. Let the applicant- **Shadab**, involved in the aforementioned crime be released on bail, on his furnishing a personal bond and two sureties each in the like amount, to the satisfaction of the court concerned, with the following conditions:-

- i. The applicant 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.
- ii. The applicant shall cooperate in the trial/investigation sincerely without seeking any adjournment.
- iii. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

iv. The applicant shall attend in accordance with the conditions of the bond executed by him.

7. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

8. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

9. It is made clear that the applicant shall be released on the basis of computer generated copy of this order, downloaded from the official website of High Court Allahabad and verified by the concerned counsel with the undertaking that the certified copy will be filed within 15 days.

10. It is further directed that the trial court shall send the release order to the concerned jail through Bail Order Management System (BOMS) to ensure early release of the applicant.

11. Office is directed to send a copy of this order to the applicant through concerned Jail Superintendent via e-mail or e-prison portal in compliance of the order of the Apex Court in the case of **Policy Strategy for Grant of Bail, In Re: Suo Motu Writ Petition (Crl.) No.4 of 2021 decided on 31.01.2023** reported in **(2024) 10 SCC 685**.

12. From the perusal of the record of this case, it is clear that police has not conducted any videography of the recovery of motor cycles from the applicant or preparation of list of seized motor cycles, though, same is mandatory as per Section 105 of BNSS and uploading the videography on the portal of E-Sakshya is also necessary but the police has not complied the aforesaid provision of BNSS. This fact shows not only the negligence but arbitrariness on the part of police which creates doubt over the prosecution story regarding the recovery of seized articles.

13. Section 105 BNSS prescribes the process of videography regarding search of a place or taking possession of any property or

articles including the preparation of list of all things seized to prevent the plantation of false recovery by certain police officials and also create legal material for the fair trial. Section 105 BNSS is being quoted as under:

"105. Recording of search and seizure through audio-video electronic means.—*The process of conducting search of a place or taking possession of any property, article or thing under this Chapter or under Section 185, including preparation of the list of all things seized in the course of such search and seizure and signing of such list by witnesses, shall be recorded through any audio-video electronic means preferably mobile phone and the police officer shall without delay forward such recording to the District Magistrate, Sub-divisional Magistrate or Judicial Magistrate of the first class."*

14. Rule 18 of Uttar Pradesh Bharatiya Nagarik Suraksha Rules, 2024 further provides the procedure of audio video recording of search of any place or taking possession of any property. Rule 18 also provides that audio video recording or searching any person place or taking possession of any property or article or material including preparation of list of articles seized as well as signature of witnesses on such list shall be done mandatorily through E-Sakshya app or other audio video electronic means which includes mobile phone.

15. Rule 18(5) of Uttar Pradesh Bharatiya Nagarik Suraksha Rules, 2024 further provides issuance of SOP by D.G.P. for live recording of audio, video of the search or recovery of any article of E-Sakshya portal and uploading and downloading the same. Rule 18 of the Uttar Pradesh Bharatiya Nagarik Suraksha Rules, 2024 is being quoted as under:

"18. Recording of Search and seizure by audio-video electronic means. -
(1) The process of searching any person or place and taking possession of any property, article or material, including preparation of a list of all articles seized during the search and seizure and signature of witnesses on such list, shall mandatorily be done through E-Sakshya App specified by the Government of India or any other audio-video electronic means specified by the State Government, for which mobile phone or other audio-video electronic device of the police station or police officer on duty shall be used. The video-recording so made shall form part of the case diary. As far as possible, the latitude-longitude and time of recording shall also be recorded along with the video.
(2) The police officer shall, without delay, but not later than 48 hours, send a copy of the list of articles seized along with signatures of witnesses

- and video-recording of the search and seizure process to the Magistrate.*
- (3) An Inter-operable Criminal Justice System (ICJS) Nodal Officer for each district of the State shall be nominated by the Home Department, Government of Uttar Pradesh and authorized users for accessing the 'e-Sakshya Mobile Application' on the ICJS platform shall be created by Uttar Pradesh Technical Services, Headquarters, Police Station wise.*
- (4) The authorized users of the Police Station as above shall be able to download the e-Sakshya Mobile Application from the m-Seva Mobile App store and install the e-Sakshya Mobile App on the mobile phone allotted to them.*
- (5) The standard operating procedure for going live on the e-Sakshya Portal and uploading and downloading of evidence collected on it shall be determined by the director general of police, uttar pradesh in coordination with NCRB."*

16. From perusal of Rules 18(1) and 18(2) of the Uttar Pradesh Bharatiya Nagarik Suraksha Rules, 2024, it is clear that video recording of the search or seizure process should be made part of case diary and same shall be sent to Magistrate within 48 hours.

17. The Director General of Police, U.P., Lucknow has also issued DGP Circular dated 21.07.2025 wherein it is clearly mentioned that audio-video recording of conducting search or taking possession of any property is mandatory on the part of the police at the place of search or where the recovery is made but detailed SOP as required by Rule 18(5) of the Uttar Pradesh Bharatiya Nagarik Suraksha Rules, 2024 has not been issued by the Director General of Police in coordination with NCRB. The relevant extract of DGP Circular dated 21.07.2025 is being quoted as under:

S.N.	Particulars	Relevant Legal Provision	Legal Mandate	Place of recording or capturing
2.	Recording of search and seizure	Section 105: Recording of search and seizure through audio-video electronic means.	Mandatory	Place of search from where recovery is

		The process of conducting search of a place or taking possession of any property, article or thing under this Chapter or under section 185, including preparation of the list of all things seized in the course of such search and seizure and signing of such list by witnesses, shall be recorded through any audio video electronic means preferably mobile phone and the police officer shall without delay forward such recording to the District magistrate, Sub-divisional Magistrate or Judicial Magistrate of the first class. Section 185(2)- Search by Police Officer. A police officer proceeding under sub-section(1), shall, if practicable, conduct the search in person: Provided that the search conducted under this section shall be recorded through audio-video		to be made
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		electronic means preferably by mobile phone.		
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18. This court came across number of cases where independent witness could not be found regarding recovery of any article and even then audio video recording through E-Sakshya portal or other audio, video electronic means was not conducted by the police which gives benefit to the criminals during bail as well as trial.

19. Therefore, this Court directs the Director General of Police, U.P., Lucknow to issue detailed SOP as required by Rules 18(5) of the Uttar Pradesh Bharatiya Nagarik Suraksha Rules, 2024 for mandatorily conducting audio video recording of search, seizure or possession of property or other incriminating material including the preparation of list of articles or property seized as well as signature of witnesses on E-Sakshya portal and uploading the same or through other audio, video electronic means including mobile phone of police officers on duty and direction may also be issued that failing to comply mandatory requirement of Section 105 of BNSS read with Rule 18 of the the Uttar Pradesh Bharatiya Nagarik Suraksha Rules, 2024 may attract disciplinary proceeding against the concerned police officer so that on the one hand it would save innocent persons from false implication by showing false recovery of property or articles and on the other hand to prepare foolproof evidence against the criminals for hearing the bail application as well as during trial.

20. **Registrar (Compliance)** is directed to send a copy of this order to the Director General of Police, U.P., Lucknow for necessary compliance.

(Arun Kumar Singh Deshwal,J.)

January 5, 2026
S.C.