



2026:AHC:169142

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 6131 of 2026

Durgesh Yadav

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s) : Pradeep Yadav

Counsel for Respondent(s) : G.A., Saurabh Kumar Pandey

Court No. - 76

HON'BLE SAMIT GOPAL, J.

1. List revised.

2. Heard Sri Pradeep Yadav, learned counsel for the appellant, Sri Saurabh Kumar Pandey, learned counsel for the opposite party no.2/first informant, Sri Ajay Singh, learned A.G.A.-I for the State and perused the record.

3. This criminal appeal under Section 14A(2) of SC/ST (Prevention of Atrocities) Act, 1989 has been filed by the appellant Durgesh Yadav with the following prayers:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the present appeal by setting aside the impugned order dated 29.05.2026 passed by the learned Special Judge (SC/ST Act), Azamgarh, in Second Bail Application No. 1935 of 2026 arising out of Case Crime No. 0068 of 2026, registered under Sections 115(2), 352, 351(3), 117(2) and 109 of the Bharatiya Nyaya Sanhita, 2023, read with Sections 3(1)(dha), 3(1)(da) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, at Police Station Rani Ki Sarai, District Azamgarh; and further be pleased to enlarge the appellant on bail during the pendency of trial in Case Crime No. 0068 of 2026, registered under Sections 115(2), 352, 351(3), 117(2) and 109 of the Bharatiya Nyaya Sanhita, 2023, read with Sections 3(1)(dha), 3(1)(da) and 3(2)(v) of the SC/ST Act, 1989, Police Station Rani Ki Sarai, District Azamgarh, in the interest of justice, equity, and fair play, and pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the interest of justice. And/or pass such further order or direction as this Hon'ble Court may deem fit and proper under the law and under the facts and circumstances of the case."

4. The FIR of the matter was lodged on 28.03.2026 by Smt. Urmila against the appellant under Sections 115(2), 352, 351(3) BNS and 3(1)(द),

3(1)(घ), 3(2)(va) S.C./S.T. (Prevention of Atrocities) Act, 1989 (Amended 2015), alleging therein that on 27.3.2026 at about 8.00 p.m. her husband Subhash Ram was present in his tea shop in Shakti Nagar Bazar wherein Durgesh Yadav due to some reason started hurling abuses to him and assaulted him with lathi, danda, bamboo stick and kicks and fists, due to which her husband received injuries on his head and many other places. He is threatening him of life and also used caste relates abuses. Her husband is being treated in Sadar Hospital, Azamgarh. Her report be lodged and action be taken.

5. The injured Subhash Ram was examined by the doctor in Divisional District Hospital, Azamgarh on 28.03.2026 at 02:35 p.m. and was found to have received the following injuries:-

"1. Stitched wound 7cm long with 8 stitch in situ over left side front of skull 5cm above left eyebrow, advice CT Head.

2. COP back of skull.

3. COP chest.

4. Abraded contusion on 3cm x 2cm over right elbow joint, advice X-Ray.

5. Scabbed abrasion 3cm x 1cm over right lower leg, 10cm below knee joint."

6. Injury no. 1 and 4 were kept under observation and referred to Radiologist, Surgeon and Ortho Surgeon for expert opinion. Rest of the injuries were opined to be simple in nature caused by hard and blunt object. Patient was admitted in male medical ward. C.T. Scan of NCCT/CECT Head of the injured was done in the same hospital wherein the bone window found as under:-

"Depressed multiple fracture seen in left temporal parietal bone of skull."

7. Impression noted by the doctor therein is as under:-

" Haemorrhagic contusion seen in left temporal parietal region in brain with fracture as noted."

8. Subsequently he was treated in Shiva Hospital & Trauma Centre, Azamgarh from 03.04.2026 to 07.04.2026 wherein diagnosis was as under:-

"Comminuted depressed fracture LT frontal with temporal bone with underlying EDH/SDH with small LT frontal contusion with SAH."

9. As per medical certificate he underwent left fronto-temporal decompressive craniotomy & evacuation of haematoma and duroplasty fall

dural lower lebel creanioplasty titanium mess & screw.

10. On 14.07.2026 when the matter was argued this Court passed the following order:-

"1. List revised.

2. Heard Sri Pradeep Yadav, learned counsel for the appellant, Sri Saurabh Kumar Pandey, learned counsel for the opposite party no.2 and Sri Bade Lal Bind, learned counsel for the State and perused the record.

3. This appeal has been filed by the appellant Durgesh Yadav with the prayer for bail challenging the order dated 29.05.2026 passed by the Special Judge, SC/ST Act, Azamgarh in second Bail Application No. 1935 of 2026 by which his prayer for bail has been rejected arising out of Case Crime No. 0068 of 2026, under Sections 115(2), 352, 351(3), 117(2), 109 BNS and Section 3(1)(dha), 3(1)(da) and 3(2)(v) of SC/ST Act, P.S. Rani Ki Sarai, District Azamgarh.

4. The submission of learned counsel for the appellant is that the appellant was granted interim bail vide order dated 09.04.2026 and the said order was extended on subsequent dates but after attending the court proceedings while the appellant was proceeding to take possession of his motorcycle in the court premises he was apprehended by the police without any justification and without obtaining any specific order from the court concerned on 06.05.2026 even during the pendency of his regular bail application and in the period while he was on interim bail. Paragraph nos. 19, 20 and 21 of the affidavit have been placed before this Court, the said paragraphs read as under:

"19. That the appellant had earlier appeared before the learned Special Judge (SC/ST Act), Azamgarh was granted interim bail in Bail Application No. 1548 of 2026 Durgesh Yadav vs. State of U.P. in Case Crime No. 0068 of 2026, registered under Sections 115(2), 352, 351(3), of the Bharatiya Nyaya Sanhita, 2023, read with Sections 3(1)(d), 3(2)(v)/(5-A) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Police Station Rani Ki Sarai, District Azamgarh. Certified copy of the interim bail order dated 09.04.2026 is being filed herewith and marked as Annexure No.2 to the affidavit.

20. That in compliance with the directions of the court, the appellant regularly appeared on the dates fixed, including on 05.05.2026. Thereafter, the interim protection granted to the appellant was extended and the matter was fixed for 08.05.2026.

21. That after attending the court proceedings and while the appellant was proceeding to take possession of his motorcycle from the court premises, he was allegedly apprehended by the police/C.O. City/I.O. of the case without any justification and without obtaining any specific order from the learned court concerned."

5. Learned counsel for the State on being countered prays for a weeks time to seek specific instructions with regards to the said three paragraphs and file an affidavit of a responsible officer not below the rank of Deputy Superintendent of Police. The matter also be looked into by the Senior Superintendent of Police, Azamgarh in the meantime.

6. It is well settled law that an accused if is on bail or interim bail and there are any amendments in the section in the said case he cannot be automatically apprehended but the Investigating Agency has to seek permission from the court or make an application for cancellation of his bail or interim bail to proceed for his arrest. Reference is taken of the following judgments of the Apex Court:

(i) Pradeep Ram Vs. State of Jharkhand : (2019) 17 SCC 326,

(ii) Manoj Suresh Jhadav Vs. State of Maharashtra : (2019) 17 SCC 362,

(iii) Bhadresh Bipinbhai Sheth Vs. State of Gujarat : (2016) 1 SCC 152,

(iv) and judgment of this Court in the case of Shahzad Vs. State of U.P. : Anticipatory Bail Application U/s 438 Cr.P.C. No. 9391 of 2022 : decided on 30.09.2022.

7. If this is the situation then the matter is serious in nature.

8. Let the matter be listed on 29.07.2026 as fresh.

9. In the meantime, learned counsel for the opposite party no.2 may prepare the mater.

10. Registrar (Compliance) and learned AGA to communicate this order to the Senior Superintendent of Police/Superintendent of Police, Azamgarh forthwith for compliance and necessary action."

11. Learned counsel for the appellant submits that the appellant has been falsely implicated in the present case. It is submitted that the appellant has no motive to commit the aforesaid offence. It is submitted further that the appellant was granted interim bail vide order dated 09.4.2026 by the court of Special Judge (S.C./S.T. Act), Azamgarh and the said order was extended on subsequent dates. He then attended the court on 05.5.2026 and the interim bail granted to him was extended and the matter was fixed on 08.5.2026. It is submitted that subsequently on 06.5.2026 the appellant was arrested from the court premises without any justification and without obtaining any specific order from the learned trial court. It is submitted that arrest of the appellant was totally uncalled for and the same was in utter disregard to the judgement of the Apex Court in the cases of **i) Pradeep Ram Vs. State of Jharkhand : (2019) 17 SCC 326, (ii) Manoj Suresh Jhadav Vs. State of Maharashtra : (2019) 17 SCC 362, & (iii) Bhadresb Bipinbhai Sheth Vs. State of Gujarat : (2016) 1 SCC 152.** It is submitted that investigation in the matter has concluded and a charge sheet has been submitted on 17.6.2026. It is submitted that there is no criminal history of the appellant as stated in para-36 of the affidavit in support of bail application in the appeal. The appellant is in jail since 06.5.2026.

12. Learned A.G.A. opposed the submissions of learned counsel for the appellant and submitted that the appellant is named in the F.I.R., in the statement of the injured recorded under Section 180 BNS and has been assigned the role of assault on him. It is further submitted that the injuries as received by the injured are corroborated with the prosecution version. While placing the affidavit of compliance dated 28.07.2026 of the State, filed by Shubham Todi, Circle Officer, Nagar Azamgarh, it is submitted that the deponent of the same is the Investigating Officer of the matter from 30.03.2026. It is submitted that F.I.R. in the matter was lodged under Sections 115(2), 352, 351(3) BNS and 3(1)(द), 3(1)(ख), 3(2)(va) S.C./S.T. (Prevention of Atrocities) Act, 1989 on 28.03.2026 and on 30.03.2026 Sections 109, 117(2) BNS was added and Section 3(2)5ka was amended to Section 3(2)5 of S.C./S.T. Act. While placing para-3 of the same it is submitted that the appellant obtained interim bail in the matter under Sections 115(2), 352, 351(3) BNS and 3(1)(द), 3(1)(ख), 3(2)(va) S.C./S.T. (Prevention of Atrocities) Act, 1989 from the trial court on 09.4.2026 which was granted till 17.4.2026. It is submitted further that before grant of interim bail to the appellant on 09.4.2026,

Sections were amended in the matter on 30.3.2026. It is submitted that period of interim bail was extended till 17.4.2026, however, on 06.5.2026 he was arrested by Sub-Inspector Amitabh Chandra of Police Station Rani Ki Sarai from an area near Nizamabad Mod railway crossing, after which he was produced before the court concerned and remand was granted for 14 days. It is submitted that thus the interim bail as applied for and granted, was not in the correct sections in which the investigation in the matter was going on from 30.03.2026.

13. After having heard learned counsels for the parties and perusing the records, it is evident from the rejoinder affidavit dated 10.08.2026 filed on behalf of the appellant in reply to the affidavit of compliance of the State, that the appellant was granted interim bail vide order dated 09.04.2026 by the court of Special Judge (S.C./S.T. Act), Azamgarh under Sections 115(2), 352, 351(3) BNS and 3(1)(द), 3(1)(ख), 3(2)(va) S.C./S.T. (Prevention of Atrocities) Act, 1989 and again on 17.04.2026 the accused/appellant was granted interim bail and the matter was fixed for 28.04.2026. At that time the State was duly represented by its Special Public Prosecutor. Subsequently the appellant was again granted interim bail vide order dated 28.4.2026 by the In-charge Special Judge (S.C./S.T. Act), Azamgarh. The said order states that the prosecution papers and the case diary were not available. Subsequently on 29.04.2026 again the same situation was there before the court concerned and the appellant was granted interim bail and the matter was directed to be listed on 05.05.2026 by the same court. Then on 05.05.2026 again the prosecution papers were not available and it was ordered that interim bail granted vide order dated 09.04.2026 is extended till 08.05.2026. In the meantime, on 06.05.2026 the accused/appellant was arrested.

14. Law on the subject is clear and distinct and it has been held, reiterated and reaffirmed by the Courts that if an accused is already on bail in some sections and there is subsequent addition of other sections against him during the course of investigation, then arrest of the accused by the police ignoring the earlier bail order was not permissible as has been held by the Apex Court in the cases of **i) Pradeep Ram (Supra)**, **(ii) Manoj Suresh Jhadav(Supra)**, **(iii) Bhadresh Bipinbhai Sheth(Supra)**.

15. In view of the same, it would have been appropriate for the Investigating Agency to send a report to the court concerned from where the appellant was granted interim bail bringing the facts to its notice and await the decision of the court, but the police on its own could not have jumped to arrest him in the same case crime number even after alteration of sections. It is, at this stage, relevant to point out that even the said court was handicapped in coming to know of the actual sections in which investigation was going on as would be apparent from the orders of the court which specificity mentioned that the police report and the case diary are not produced before it. The Investigating Agency should have had patient to inform the court and seek appropriate orders in the facts of

the case and then proceed in accordance with law, but could not have proceeded to arrest the accused even during the subsistence of an order granting interim bail to him in the same case crime number. It would be, at this stage also, relevant to point that the regular bail application and the prayer for regular bail of the accused/appellant was pending before the court concerned and thus even the situation was slightly different than a case where bail is granted in some sections and then some sections are added or modified after which the Investigating Agency would have had the only option of filing a bail cancellation application. The act of the said police officer is arbitrary.

16. Looking to the facts of the case, the appellant- Duregesh Yadav, is directed to be released on bail at this stage in Case Crime No. 0068 of 2026, under Sections 115(2), 352, 351(3), 117(2) and 109 of the Bharatiya Nyaya Sanhita, 2023, read with Sections 3(1)(dha), 3(1)(da) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Police Station Rani Ki Sarai, District Azamgarh, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The appellant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The appellant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The appellant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The appellant will not misuse the liberty of bail in any manner whatsoever. In case, the appellant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 84 BNSS/82 Cr.P.C., may be issued and if appellant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 209 BNS/174-A I.P.C.

(v) The appellant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 251 BNSS/313 Cr.P.C. If in the opinion of the trial court absence of the appellant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance

with law and the trial court may proceed against him under Section 269 BNS/229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the appellant.

17. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the appellant to prison.

18. Accordingly, the appeal succeeds and the same stands **allowed**.

19. The impugned order dated 29.5.2026 passed by Special Judge, SC/ST Act, Azamgarh, is hereby set aside.

20. Pending application(s), if any, shall stand disposed of.

21. It is directed that Senior Superintendent of Police, Azamgarh, shall institute an inquiry into the conduct of the concerned officer(s) which shall be conducted by an officer not below the rank of Additional Superintendent of Police, and shall reach to its logical conclusion at the earliest. A report regarding compliance of this order shall be sent to this Court within three weeks by the Senior Superintendent of Police, Azamgarh. The same shall be placed on record in the present matter.

22. Registrar (Compliance) is directed to communicate this order to the Special Judge (S.C./S.T. Act) and the S.S.P. concerned for information and necessary compliance within one week.

23. Learned A.G.A. shall also communicate this order to the officer concerned forthwith.

24. Put up along with the said report on 14.09.2026 at 04:15 P.M. in Chamber for perusal.

(Samit Gopal,J.)

August 12, 2026

Naresh