



2026:AHC:165189

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 23500 of 2026

Mahendra Kumar Dubey

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s) : Ashutosh Mishra, Shailendra Kumar
Ojha
Counsel for Opposite Party(s) : G.A.

Court No. - 70

HON'BLE JAI PRAKASH TIWARI, J.

1. Heard learned counsel for the applicant and learned AGA for the State-respondent and perused the record of the case.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 101 of 2007, under Sections 467, 468, 420 BNS, Police Station- Rura, District- Kanpur Dehat, during pendency of the trial in the court concerned.

3. Learned counsel for the applicant submitted that the applicant is innocent and has been falsely implicated in the present case due to ulterior motives. The present FIR was lodged on 12.03.2007, alleging that the accused persons manipulated the official records and committed forgery by fabricating documents, including making fraudulent alterations in the revenue records. The allegation against the applicant is that he manipulated the revenue records and made an incorrect revenue entry in favour of co-accused Shiv Prasad in respect of land belonging to the Forest Department. At that time, the applicant was working as a Lekhpal. Learned counsel further submitted that the applicant has no concern with the allegations levelled against him and has not committed any offence as alleged by the prosecution. The applicant had submitted a report dated 08.11.2004 before the concerned Tehsildar, admitting that the alteration in the revenue records had wrongly been made and requesting that the same be corrected. Thereafter, vide order dated 08.02.2007 passed by the Tehsildar, Derapur, the name of Shiv Prasad was deleted from the revenue records and the name

of the Forest Department was restored in the official records. It is further submitted that however, departmental proceedings were initiated against the applicant and he was suspended from service by the competent authority but he was subsequently reinstated in service, which shows that the applicant had no intention to commit any forgery. It is next submitted that however, cognizance was taken in the matter vide order dated 16.02.2007 and summons and warrants were issued but the applicant came to know about the present criminal proceedings only in April, 2026. Immediately thereafter, he approached his counsel and surrendered before the court concerned. He has been languishing in jail since 05.05.2026. It is also submitted that the applicant undertakes that he will not misuse the liberty, if granted. It has also been pointed out that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

4. The prayer for bail has been vehemently opposed by learned A.G.A.

5. Considering the facts and circumstances of the case, perusing the record, evidence and also considering the nature of allegations, arguments advanced by the learned counsel for the parties, this Court is of the view that the applicant is entitled to be enlarged on bail during the pendency of the trial.

6. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

7. Let applicant, **Mahendra Kumar Dubey** be released on bail in the aforesaid case on his executing a personal bond and furnishing 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 the trial.

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

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

(iv). The applicant 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 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.

8. It is further directed that the identity, status and residence proof of the sureties be verified by the authorities concerned before they are accepted.

9. In case of breach of any of the above conditions, the trial court will be at liberty to cancel the bail.

10. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

11. The trial court concerned is directed conclude the trial of the present case in accordance with law, as expeditiously as possible, without granting any unnecessary or long adjournments to either of the parties, if there is no other legal impediment.

12. Before parting with the judgment, this Court deems it apposite to record certain findings which, having regard to the facts and circumstances of the case, are considered necessary. It is also considered appropriate to make certain observations in this regard.

13. In the present case, the First Information Report came to be lodged on 12.03.2007. Upon completion of the investigation, the Investigating Officer submitted the charge-sheet on 26.11.2007, where after cognizance of the offence was taken by the learned Magistrate/concerned Court on 16.12.2007. It is thereafter, that the applicant came to be arrested/had surrendered before the learned Trial Court on 05.05.2026.

14. As per learned counsel for the applicant, the applicant came to know about the present case only in April, 2026, when the non-bailable warrant issued against him was served. However, the order-sheet annexed along with the instant bail application indicates that after taking cognizance, summons and thereafter warrants/non-bailable warrants were issued repeatedly by the trial court for securing the presence of the applicant.

15. In view of the aforesaid facts and circumstances, this Court, vide order dated 10.07.2026, directed the Superintendent of Police, Kanpur Dehat, to conduct a discreet inquiry into the matter and to place on record his personal affidavit in that regard. Relevant paragraph of the said order is reproduced herein below:

“In view of the aforesaid facts and circumstances, the S.S.P./S.P. Kanpur Dehat, is directed to file his personal affidavit after conducting the discreet inquiry, explaining the circumstances under which the summons, bailable warrant and non-bailable warrant, were issued against the applicant and have remained pending till date even when the place of work and residence were known to the authorities concerned, as the applicant was a government servant.”

16. In compliance thereof, a personal affidavit of the S.P., Kanpur Dehat has been filed, which is on record.

17. The order-sheet filed along with the personal affidavit shows that after cognizance was taken, summons were issued several times against the applicant. Thereafter, for the first time, a bailable warrant was issued against him on 25.02.2010. Despite issuance of bailable warrants on several dates, the applicant did not appear before the trial court. Subsequently, on 21.06.2011, a non-bailable warrant was issued against him. Since, the applicant continued to remain absent, proceedings under Section 82 Cr.P.C. were initiated against him on 16.01.2026. Again, on 18.04.2026, a non-bailable warrant alongwith process under Section 82 Cr.P.C. was issued. In pursuance thereof, the applicant was arrested and produced before the trial court on 05.05.2026.

18. The personal affidavit further states that in compliance of the order dated 07.10.2026 passed by this Court, an order was passed on 16.07.2026, directing the Station House Officer, Rura, Kanpur Dehat and the Circle Officer, Akbarpur, Kanpur Dehat to conduct an inquiry into the matter.

19. In pursuance of the said direction, the S.H.O., Rura submitted a report regarding the summons and warrants received at the concerned police station. In the said report, it has been stated that the non-bailable warrant issued against the applicant on 08.07.2025 was received at the police station.

The non-bailable warrant issued on 21.08.2025 was also received at the police station. It has further been stated that the non-bailable warrant and process under Section 82 Cr.P.C. issued against the applicant on 18.04.2026 were received at the police station. It is further mentioned in the report that summons issued against the applicant on 29.04.2011 and 01.12.2010 had also been received at the police station. Apart from the aforesaid summons and warrants, no other summons or warrants issued by the office of the trial court against the applicant were received at the concerned police station. It has been stated that, if any other summons, warrant or non-bailable warrant had been issued by the office of the trial court, the same would have been forwarded to the concerned police station and an entry thereof would have been made in the relevant record.

20. It is further stated in the personal affidavit that the S.H.O., Rura sought information from the office of the trial court concerned on Form-7. In response thereto, it was informed that summons had been issued against the applicant on 01.12.2010. It was further informed that although an order for issuance of bailable warrant against the applicant had been passed by the trial court on 02.04.2014, the said warrant had not been issued from its office. It is further stated that a non-bailable warrant against the applicant was issued on 18.04.2026.

21. In pursuance of the direction made vide order dated 16.07.2026, the Circle Officer, Akbarpur has also submitted a report dated 18.07.2026. According to the said report, a bailable warrant dated 29.04.2011 issued against the applicant was served upon his wife, namely Smt. Sushma Devi, on 19.05.2011. Thereafter, a non-bailable warrant was issued against the applicant on 21.08.2025, however, the same could not be served upon the applicant. Subsequently, on 18.04.2026, a non-bailable warrant was again issued against the applicant. In pursuance thereof, the applicant was arrested on 05.05.2026, produced before the trial court and thereafter sent to jail.

22. The personal affidavit further states that, vide order dated 18.07.2026, a preliminary inquiry was directed to be conducted into the negligence, if any, committed by the police personnel in executing the processes issued by the trial court, and to take appropriate action against the erring official(s) in accordance with law.

23. From the facts and material placed on record, it appears that although the trial court had issued summons, bailable warrants and non-bailable warrants from time to time for securing the presence of the applicant, the inquiry conducted by the police authorities indicates that most of the processes allegedly issued against the applicant were not received at the concerned police station. The police authorities have specifically stated that the processes received at the police station were duly entered in the relevant records and that, apart from the processes mentioned in their reports, no other summons, bailable warrants or non-bailable warrants issued by the office of the trial court were received by the concerned police station.

24. Thus, there appears to be a discrepancy between the processes reflected in the order-sheets of the trial court and the processes actually received at the concerned police station. The material placed before this Court also indicates that certain warrants shown in the order-sheet were not issued from the office of the trial court, whereas some processes issued by the trial court were received by the police authorities but could not be executed.

25. Before proceeding further, it is pertinent to refer to relevant legal provisions of Cr.P.C and General Rules (CRIMINAL) -

Section 190 Cr.P.C. empowers a Magistrate to take "cognizance"

**190. Cognizance of offences by Magistrates
(Corresponding section 210 BNSS) -**

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence--

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own

knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

Section 204 Cr.P.C. deals with the "issue of process" by a Magistrate.

204. Issue of process (Corresponding section 227 BNSS) -

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be -

(a) a summons case, he shall issue his summons for the attendance of the accused, or

(b) a warrant case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the

provisions of section 87.

Section 205 Cr.P.C. empowers a Magistrate to excuse an accused person from coming to court in person.

205. Magistrate may dispense with personal attendance of accused (Corresponding section 228 BNSS) -

(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided.

Chapter VI of the Code of Criminal Procedure covers the processes to compel appearance in court.

Section 62 – Summons how served (Corresponding section 64 BNSS) -

(1) Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant.

(2) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

(3) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefore on the back of the other

duplicate.

**Section 66 – Service on Government Servant
(Corresponding section 68 BNSS) -**

(1) Where the person summoned is in the active service of the Government, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in the manner provided by section 62, and shall return it to the Court under his signature with the endorsement required by that section.

(2) Such signature shall be evidence of due service.

**Section 71 – Form of warrant of arrest and duration
(Corresponding section 72 BNSS) -**

(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court.

(2) Every such warrant shall remain in force until it is canceled by the Court which issued it, or until it is executed.

Section 72 – Warrants to whom directed (Corresponding section 74 BNSS)

(1) A warrant of arrest shall ordinarily be directed to one or more police officers; but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any

13. Summons to Government servants.-

When under Section 66(1) of the code a summon is to be served on a person in the active service of the State, the "head of the office" to whom the summons shall ordinarily be sent (in duplicate) shall in the case of a person in the civil employ or a soldier, sailor or airman in the Defence Department, be the local head of the office or local officer in command of the corps or department in which such person may be serving at the time, and in the case of a local "head of the office", be the authority to which he is immediately subordinate..."

14. Arrest of Government servants.-

When circumstances permit notice of the intended arrest of a Government servant shall be given to the head of the office in which the Government servant is working, and in the case of a Government servant working in the Secretariat, to the Chief Secretary to Government so as to allow proper arrangement to be made to have such person relieved, deferring arrest until he is relieved.

With a view to avoid delay, the court may transmit the notice under this rule by registered post with acknowledgement due, speed post, e-mail, fax or other effective means of electronic communication.

In the case of a police personnel, the court may, in addition to the above mode, send the notice under this rule in special circumstance by utilising the police wireless grid subject to the

conditions provided in this behalf in Rule 13.

26. The aforesaid discrepancy is a matter of serious concern. Any discrepancy in the issuance, transmission or execution of summons, warrants or non-bailable warrants not only affects the rights of the accused but also raises serious questions regarding the maintenance and sanctity of the judicial record.

27. It is, therefore, necessary that the matter be examined at the end of the trial court, particularly with regard to the issuance and dispatch of the processes. Such an inquiry is also necessary to ascertain whether the discrepancy occurred on account of any inadvertent error, omission or negligence on the part of any official/employee attached to the office of the trial court.

28. The confidence of the common public in the judicial system depends, *inter alia*, upon the accuracy and sanctity of the judicial record. Therefore, any lapse in the maintenance or transmission of judicial processes cannot be treated lightly.

29. Accordingly, the learned District Judge, Kanpur Dehat is directed to initiate a preliminary inquiry to be conducted through a Judicial Officer (who has no connection with the present matter) and to take all necessary actions at his own ends.

30. Registrar (Compliance) is directed to send a copy of this order forthwith to the learned District Judge, Kanpur Dehat for necessary compliance.

31. A copy of this order shall also be circulated amongst all the District Judges in the State of Uttar Pradesh, with a direction to apprise all the Presiding Judges to remain vigilant regarding the issue of process, as it is one of the very genesis of a speedy trial.

August 6, 2026

KK Patel

(Jai Prakash Tiwari,J.)