



2026:AHC:192776

A.F.R.

**HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. BAIL APPLICATION No. - 30325 of 2026**

Smt Chandrakanta

.....Applicant(s)

Versus

State of U.P.

.....Opposite Party(s)

Counsel for Applicant(s) : Himanshu Mishra
Counsel for Opposite Party(s) : Ashish Kumar Srivastava, G.A.,
Virendra Kumar Srivastava

Court No. - 66

HON'BLE ARUN KUMAR SINGH DESHWAL, J.

1. Heard Sri Himanshu Mishra, learned counsel for the applicant, Sri Virendra Kumar Srivastava, learned counsel for the first informant and Sri D.P.S. Chauhan, learned A.G.A. for the State and perused the record.
2. Instant bail application has been filed with a prayer to release the applicant on bail during the trial in Case Crime No.17 of 2026, under Sections 85, 80(2), 352, 115(2), 351(3) B.N.S and Section 3/4 Dowry Prohibition Act, Police Station- Basauni, District-Agra.
3. In pursuance of the order dated 31st August, 2026, I.O. of this case Sri Anil Kumar, Assistant Commissioner of Police, Agra is present. He apprised to the Court that he has not prepared audio and video during recording the statement of first informant under Section 180 BNSS. When the Court confronted him regarding DGP's Circular No.24 of 2025 dated 21.07.2025 and Circular No.39 of 2026 dated 04.08.2026 which makes it clear that while recording the statement of witnesses under Section 180 BNSS, audio-video may also be prepared, he could not reply the same except to offer unconditional apology.
4. This Court came across in number of cases, wherein taking advantage of option given by the DGP in his circulars to prepare the audio-video during recording the statement of the witnesses under Section 180 BNSS, I.Os. have not prepared the audio-video. In many cases the I.Os. do not prepare the audio and video just to save themselves from the allegation that the statements of the witnesses under Section 180 BNSS are written by I.Os.

themselves by copying the FIR itself.

5. As per proviso of Section 180(3) BNSS and as per Rule 20(1) of BNSS Rules, 2024, the investigating officer may also record the statement of witnesses through audio-video electronic communication.

6. Therefore, DGP had issued directions to prepare audio-video at different stages of investigation. As per the direction of DGP through Circular No.24 of 2025 dated 21.07.2025 preparation of audio-video of statement of rape victim has made compulsory but preparation of audio-video of the statement under Section 180 BNSS in other cases is made optional which has been widely misused by several Investigating Officers.

7. A DGP's Circular 2024 was also issued regarding the procedure of investigation which includes mandatorily asking the question in case FIR is lodged after delay but same is not followed by the several Investigating Officer in U.P.

8. Section 176 of BNSS, 2023 provides the procedure for investigation which includes; to immediately proceed to spot, to investigate the fact and circumstances and if necessary to take measure for discovery and arrest of the offender immediately after receiving the information about the cognizable offence.

9. Section 179 of BNSS provides that, during investigation if the police officer came to know any person appears to be acquainted with fact and circumstance then the police officer by order **in writing** require the attendance of that person before himself except the male below 15 years or above 60 years or women or mentally or physically disabled person or a person with acute illness should examine at the place of their residence.

10. Section 180 of BNSS further provides that to examination of persons who appear before the police station or police officer reached at the place of their residence and also bound to answer truly all questions.

11. The procedure of investigation has also been mentioned in Regulation 106 to 128 of U.P. Police Regulations. The para 107 of the Regulation provides that an Investigating Officer is not to be regarded as mere clerk for recording the statements. He is duty bound to observe and to infer in any cases by using his expert observations of the scene of the offence and general circumstances to check the evidence of witnesses. It is further

mentioned that it is duty of Investigating Officer to find out the truth not merely to obtain conviction and he must not prematurely commit himself to any view of the facts for or against any person. Investigating Officer must always give opportunity to the accused persons to produce defence evidence before him and he must consider carefully, if produced. Para 107 of U.P. Police Regulations is being quoted as under;

"107. Duties of an Investigating Officer.- An investigating officer is not to regard himself as a mere clerk for the recording of statements. It is his duty to observe and to infer. In every case he must use his own expert observations of the scene of the offence and of the general circumstances to check the evidence of witnesses, and in cases in which the culprits are unknown to determine the direction in which he shall look for them. He must study the methods of local offenders who are known to the police with a view to recognizing their handiwork, and he must be on his guard against accepting the suspicions of witness and complainants when they conflict with obvious inferences from facts. He must remember that it is his duty to find out the truth and not merely to obtain convictions. He must not prematurely commit himself to any view of the facts for or against any person and though he need not go out of his way to hunt up evidence for the defence in a case in which he has satisfactory grounds for believing that an accused person is guilty, he must always give accused persons an opportunity of producing defence evidence before him, and must consider such evidence carefully if produced. Burglary investigations should be conducted in accordance with the special orders on the subject."

12. Similarly, in paragraph 108 of U.P. Police Regulations, it has been mentioned that on beginning the investigation, Investigating Officers are immediately inspect the scene of offence and question the complainant or any other persons, who may be able to throw lights on the circumstances. Para 108 of Regulations is being quoted as follows;

"108. Steps for Investigating Officer to investigate the case.- The first step of the investigating officer should be to note in the case diary prescribed by Section 172 of the Code of Criminal Procedure, 1973 (2 of 1974) the time and place at which he has received the information on which he acts and to make in the diary a copy of the first information report. When beginning his investigation he must note in the diary the time and place at which he begins. He should then inspect the scene of the alleged offence and question the complainant and any other persons who may be able to throw light on the circumstances. At an early stage of the investigation he should consult the village crime note-book to learn of any matter recorded there which may have a bearing on the case."

13. Similarly Para 109 of the Regulations further prescribes, if there is

variation in the statement of complainant from the first information report that should be mentioned in the case diary by recording the supplementary statement of the complainant, if any.

14. Procedure of Test Identification Parade as well as procedure for identification of stolen property recovered from the suspect allegedly stolen the property are mentioned in paras 116 and 117 of the Regulation.

"116. Identification parade of suspects.- In all cases in which there is any likelihood that suspects will at any stage have to be paraded for identification by witness, the investigating officer must take steps from the very beginning of his investigation to ensure that witnesses are given no opportunity of seeing the suspects before identification proceedings are held. Such proceedings should whenever possible, be postponed until they can be held in the jail under the provisions of the Manual of Government Orders and Paragraph 31 of these regulations, for the due observance of which, as far as the police are concerned, the Public Prosecutor will then be responsible. When identification proceedings cannot be held in the jails, owing to there being no sufficient evidence on which the suspects can be arrested for any other reason, the instructions referred to above must be followed by the investigating officer as far as they can be made applicable. In such cases the proceedings should take place before a Magistrate, as they would if they were held in the jails or if no magistrate is available before two respectable and impartial persons who should be asked to satisfy themselves that the proceedings are fair both to witnesses and to accused. In any case of importance, when no Magistrate is available to conduct identification proceedings not held in the jails, a gazetted police officer should arrange to attend.

117. Identification of articles of property recovered from suspects:- In important cases the practice of having articles of property, recovered from suspects and suspected to be stolen, mixed up with other articles of a similar nature when the property is shown to complainants for identification may often be followed with advantage. In such cases precautions should be taken similar to those laid down for observance in the case of identification parades of accused persons, the person before whom the identification is held must be above suspicion, and it will be essential to prove that neither the property suspected, nor that with which it has been mixed could have been seen by the witnesses beforehand."

15. From the above quoted provision, it is clear that the Police Officer should not mechanically proceed to record the statement of witnesses at the instance of complainant but he should try to extract the truth by recording the statement of independent witnesses.

16. The purpose of investigation is to collect the material not to create the

materiel regarding the offence in question and in several cases, the I.Os. themselves suggested the incriminating material to the first informant or witnesses and same was seriously deprecated by this Court and direction was issued to the DGP in **Criminal Misc. Bail Application No. 24645 of 2026 (Aatish @ Krishnkant vs State of U.P.) vide order dated 06.08.2026**. In pursuance of the direction of this Court, the DGP has also issued circular directing the all the Police of U.P. not to suggest incriminating material to the witness except asking question which is clarificatory in nature.

17. The Hon'ble Apex Court in the case of **State of Uttar Pradesh vs Bhagwant Kishore Joshi; 1913 SCC OnLine SC 91** observed about investigation and its purpose. The relevant extract of para 17 of the **Bhagwant Kishore Joshi (supra)** is being quoted as follows;

"17. What is investigation is not defined in the Code of Criminal Procedure; but in H.N Rishbud and Inder Singh v. State of Delhi this Court has described the procedure for investigation as follows:

"Thus, under the Code investigation consists generally of the following steps; (1) Proceeding to the spot,(2) Ascertainment of the facts and circumstances of the case,(3) Discovery and arrest of the suspected offender, (4)Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge sheet under S. 173."

Investigation, in substance, means collection of evidence relating to the commission of the offence. The Investigating Officer is, for this purpose, entitled to question persons who, in his opinion, are able to throw light on the offence which has been committed and is likewise entitled to question the suspect and is entitled to reduce the statements of persons questioned by him to writing. He is also entitled to search the place of the offence and to search other places with the object of seizing articles connected with the offence. No doubt, for this purpose he has to proceed to the spot where the offence was committed and do various other things. But the main object of investigation being to bring home the offence to the offender the essential part of the duties of an Investigating Officer in this connection is, apart from arresting the offender, to collect all material necessary for establishing the accusation against the offender. Merely making some preliminary enquiries upon receipt of information from an anonymous source or a source of doubtful reliability for checking up the correctness of the information does not amount to collection of evidence and so cannot be regarded as

investigation. In the absence of any prohibition in the Code, express or implied, I am of opinion that it is open to a Police Officer to make preliminary enquiries before registering an offence and making a full scale investigation into it.

18. The Hon'ble Apex Court in the case of **Vinay Tyagi vs Irshad Ali alia Deepak and others reported in (2013) 5 SCC 762** further observed that the investigation must be fair and proper to bring out the truth of case before the court of competent jurisdiction. The para 48 of the **Vinay Tyagi (supra)** case is being quoted as follows;

"48. What ultimately is the aim or significance of the expression "fair and proper investigation" in criminal jurisprudence? It has a twin purpose: Firstly, the investigation must be unbiased, honest, just and in accordance with law; secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons."

19. From the above quoted provision as well as observation of the Hon'ble Apex Court, it is clear the basic purpose of investigation is to collect the evidence to bring out the truth of the case and not to collect the evidence with the prejudice against any person to hold him guilty. Therefore, if the accused want to produce any evidence before the Investigating Officer to prove his innocence the same must also be considered carefully by the investigating officer. . Now a day, it has become a tendency in certain type of cases like demand of dowry, dowry death, offence under POCSO Act and SC/ST Act to falsely implicate, even to those persons who are not involved therein. Therefore, it is the duty of investigating officer to collect the evidence fairly to bring out the real culprit before the court of competent jurisdiction and initiation of criminal proceeding itself should not be allowed to be a mode to harass the innocence persons on the part of the complainant. Taking cue from above analysis, this Court issues following directions which has to be followed by the Investigating Officer during investigation;

i. Immediately after receiving information about the cognizable offence, Investigating Officer should rush to the place of incident and record the

statement of first informant and other witnesses as expeditiously as possible without any delay and audio-video of statement should also be prepared preferably with E-Sakshya App and same should be available to the concerned court on its demand.

ii. During investigation, the Investigating Officer not only record the statement of complainant, victim and other persons associates to him but should also try to record the statement of independent witnesses to extract the truth regarding incident in question.

iii. In case of rape and sexual assault, the statement of victim should be recorded at her place of residence or as per her convenience by the women police officer (Second proviso of Section 180(3) of BNSS). In such cases, the victim should be sent to the registered practitioner for her medical examination with her consent within 24 hours from the time of receiving information relating to the commission of such offence (Section 184(1) BNSS, 2023)

iii. Where the offence is punishable with imprisonment for 10 years or more, then the police officer should produce the witnesses before the concerned Magistrate to record his statement and in case of offence of rape or sexual assault, the victim should be produced before the Magistrate to record her statement as soon as commission of offence is brought to notice to the police. In such cases, there should not be unnecessary delay which may some time result in tutoring the victim by her family members. (Section 183(6) of BNSS, 2023).

iv. Where there is allegation of preparing of obscene video in case of sexual assault, in such cases, the I.O. should collect the mobile phone of the accused and if require, the same should be sent to FSL to retrieve data. If there is allegation of making viral of obscene video of the victim, in such cases assistance of Cyber Cell and FSL should also be taken.

v. Where location of accused or any other persons as well as conversation with another person is relevant, in that cases CDR of mobile phone of that person should also be collected to extract the truth.

vi. Where the victim does not know the accused but only recognize him, in those cases, test identification parade must be conducted as per the procedure mentioned in para 116 of U.P. Police Regulation.

vii. Similarly when identification of recovered property from the suspect allegedly stolen, is required then in such cases identification of article of property should be conducted as per the procedure mentioned in para 117 of U.P. Police Regulation i.e mixing the recovered property with other articles of similar nature before conducting the identification of property.

20. Therefore, this Court directs the DGP, U.P. to consider, making it mandatory to prepare audio-video of statements recorded under Section 180 BNSS, so as to make the investigation more transparent and fair and same would also be helpful to the Court while deciding the bail application and other judicial proceedings. The, Director General of Police is further directed to apprise the above guidelines to all the Investigating Officers so that real culprit may be brought to the justice and innocence person may not be subject to harassment due to faulty investigation.

21. Now coming to the merit of this case, learned counsel for the applicant submitted that the applicant is mother-in-law of the deceased, who committed suicide by hanging herself after a petty dispute over household issues. It is further submitted that the story of first informant is different in FIR from his statement recorded under Section 180 BNSS. The applicant has been falsely implicated merely being mother-in-law of the deceased, though there is no sufficient material against her to show that she harassed the deceased for non- fulfillment of demand of dowry prior to death. The applicant has been falsely implicated by making general and vague allegations along with other family members. It is further submitted that for invoking presumption of dowry death in case of death under unnatural circumstances within 7 years of marriage, there must be sufficient material to show that the deceased was subjected to cruelty soon before the death, but there is no such material. It is lastly submitted that the applicant has no criminal history and being a lady, she is entitled to be released on bail in view of Section 480 BNSS. She is languishing in jail since 18.05.2026. In case, she is granted bail, she will not misuse the liberty of bail and would cooperate in the trial proceedings.

22. On the other hand, learned counsel for the first informant as well as learned A.G.A. for the State opposed the prayer for bail but could not dispute the aforesaid facts.

23. Considering the entire facts and circumstances of the case, submissions

of learned counsel for the parties and taking into account the fact that the applicant is **lady** (mother-in-law) and keeping in view the nature of offence, evidence, complicity of accused and taking into account overcrowded jails and heavy pendency of criminal cases before the trial courts as well as considering the mandate of the judgement of the Apex Court in the case of **Kapil Wadhawan vs Central Bureau of Investigation** reported in **2025 SCC Online SC 3038** as well as guideline of this Court in the case of **Maya Tiwari vs State of U.P.** reported in **2024 SCC Online All 6765** regarding grant of bail 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. Accordingly, the present application is allowed.

24. Let the applicant- **Smt. Chandrakanta** involved in the aforementioned crime be released on bail, on her 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 her 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.

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

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

27. Verification of mobile number as well as Aadhar Card of the applicant and sureties should also be conducted by the court concerned.

28. It is made clear that the applicant shall be released on the basis of

downloaded copy of this order 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.

29. It is 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.

30. Office is directed to send a copy of this order to the applicant through **Agra Jail Superintendent** via e-mail or e-prison portal and Trial Court via e-mode within 24 hours 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 as well as in the case of **Pila Pahan @ Peela Pahan and others vs State of Jharkhand and another, in Writ Petition (Criminal) No.169 of 2025** decided on **29.05.2026**.

31. Application, if any, stands disposed of.

32. **Registrar (Compliance)** is directed to send a copy of this order to the Director General of Police, U.P. for compliance of paragraph no.20 of this order.

September 15, 2026
A.Kr.

(Arun Kumar Singh Deshwal,J.)