



CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).....OF 2025
(ARISING OUT OF SLP(CRL.) NO.8984 OF 2025)

IRFAN

...APPELLANT

VERSUS

STATE OF UTTAR PRADESH & ANR.

...RESPONDENTS

O R D E R

1. Leave granted.
2. The informant is before this Court assailing the correctness of the order dated 12.05.2025 passed by the High Court of Judicature at Allahabad¹ allowing the Criminal Miscellaneous Bail Application No. 11471 of 2025, titled *Riyasuddin vs. State of U.P.*, primarily on the ground that any further detention of the accused-applicant² therein would be detrimental to his defence in the trial and inconsistent with the norms of fairness in criminal processual jurisprudence.
3. Relevant facts for adjudication of this appeal are:
 - i. The appellant alleged in his complaint, which was registered as FIR No. 694 of 2022 at Police Station

¹ Hereinafter referred to as "High Court"

² Hereinafter referred to as "Respondent No.2"

Khurja Nagar, District Bulandshahar, under Sections 147, 148, 302, 304 and 34 of Indian Penal Code, 1860 that Respondent No.2, along with his two sons-Sarfraz and Umardin and one Afsar, committed the murder of his father-Idris and also caused injuries dangerous to life to his brother-Imram. It was further stated in the complaint that the accused had chased the complainant's father inside a mosque and opened fire on him. Investigation was commenced by the Police which culminated in submission of a chargesheet.

- ii. After submission of the charge sheet, the Magistrate took cognizance and committed the case for trial to the Court of Sessions, Bulandshahar³. The trial has proceeded substantially. After closure of the prosecution evidence, presently the matter has reached at the stage of recording the statement of the accused under Section 313 of the Code of Criminal Procedure, 1973.
- iii. Riyasuddin-Respondent No.2 had earlier applied for bail which stood rejected not only by the Trial Court but also by the High Court on 11.03.2024. It is the second bail application of the Respondent No.2 which has since been allowed by the High Court only for the reason that the Respondent No.2 would be deprived of effective defence strategy and

³ Hereinafter referred to as "Trial Court"

that any further incarceration would prevent him from gathering evidence and tendering the same before the Trial Court to establish his innocence. The relevant paragraph no. 6 of the impugned order containing the reasoning given by the High Court is reproduced hereunder:

“Continued incarceration of the applicant will disable his from crafting an effective defence strategy and prevent his from gathering evidence in his support thereof and tendering the same before the learned trial court to establish his innocence. Further detention of the applicant will be detrimental to his defence in the trial and inconsistent with the norms of fairness in criminal processual jurisprudence.”

- iv. The High Court relied upon a decision of another coordinate Bench, in the case of ***Prabhat Gangwar vs. State of U.P.*** (Criminal Misc. Bail Application No. 2586 of 2023) which is mentioned in the paragraph 7 of the impugned order, along with the relevant extract. The said paragraph of the impugned order is reproduced hereunder:

“This Court in ***Prabhat Gangwar vs. State of U. P. (Criminal Misc. Bail Application No. 2586 of 2023)*** while considering the grant of enlarging an accused on bail for preparing his defence and gathering evidence to tender the same before the learned trial court for establishing his innocence held:

“Nature and gravity of the offence is certainly liable to be considered by the court while considering grant of bail. The Court has also to factor the likelihood of whether the accused committed the offence while deciding a bail application. The court also

has to determine in the facts of the case whether the accused needs to be set at liberty to frame his defence and gather evidence to refute the prosecution case and establish his innocence. The bail court has to examine whether continued incarceration would disable the accused from tendering an effective defence of his case. This is a demand of processual fairness in criminal jurisprudence.

Setting an accused at liberty at large on this ground cannot be applied mechanically in all cases. The issue has to be considered in the facts and circumstances of each case while doing so. All relevant facts including the evidences in the record, the conduct of the accused during the investigation as well as trial have to be adverted to before a decision is made in this regard.”

(emphasis supplied)

4. In the case of **Prabhat Gangwar (supra)** the Coordinate Bench of the High Court clearly stated that in an application for grant of bail, the Court is competent to set an accused on liberty in order to afford him an opportunity to frame his defence and gather evidence, to enable him to refute the prosecution case and establish his innocence. However, the Court cautioned that such liberty on the said ground cannot be applied mechanically and would require to be considered in the facts and circumstances of each case. All relevant facts including the evidence on record, conduct of the

accused during the investigation as well as the trial have to be adverted to before a decision is made in this regard for enlarging the accused on bail.

5. The view expressed in **Prabhat Gangwar (supra)** may be applied in rare cases but that too would have to be considered in the light of the observations made therein. However, from the impugned order, we find that the High Court failed to evaluate the facts and circumstances of the present case especially the conduct of the accused, and in a blanket manner proceeded to grant bail solely on the ground that further incarceration will deprive the accused from an effective defence strategy. Apparently, no such basis has been set out by Respondent No.2 for seeking bail as to what kind of defence strategy and the evidence that was required to be collected or what were the special facts and circumstances of the case which required this kind of indulgence. We are, therefore, not satisfied with the impugned order and are accordingly inclined to set it aside.
6. Learned counsel for Respondent No.2 made strenuous submissions that since the trial is at the stage of conclusion as such this Court may not interfere with the impugned order. He thus, urged that the Court may consider issuing appropriate direction to conclude the trial.
7. On the other hand, learned senior counsel for the appellant submitted that if the order of the High Court

is bad in law, it is to be set aside, and no indulgence is to be granted in favour of Respondent No.2. An erroneous order cannot be allowed to stand and should be set aside.

8. Having considered the submissions and having expressed our *prima facie* view, we are unable to sustain the impugned order. Once we have found the order to be erroneous, it deserves to be set aside.
9. The appeal is accordingly allowed, and the impugned order dated 12.05.2025 is set aside.
10. Respondent No.2 shall surrender within four weeks from today, failing which the prosecuting agency as well as the Trial Court would be at liberty to take appropriate coercive measures to secure the custody of the Respondent No.2.
11. We further direct the Trial Court to conclude the trial within three months from the date on which the certified copy of this order is before the Trial Court. It goes without saying that the prosecution and defence shall extend full cooperation for the completion of the trial.

.....J.
[VIKRAM NATH]

.....J.
[SANDEEP MEHTA]

NEW DELHI;
AUGUST 18, 2025