



HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1504 of 2026

Nihal

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Jainendra Kumar Shukla, Laxmi Kant Shukla
Counsel for Respondent(s)	: G.A.

Court No. - 42

**HON'BLE SIDDHARTHA VARMA, J.
HON'BLE JAI KRISHNA UPADHYAY, J.**

Ref: Criminal Misc. Bail Application (Suspension of Sentence)

1. Counter affidavit filed today on behalf of the State is taken on record.
2. Heard Laxmi Kant Shukla, learned counsel for the applicant and learned A.G.A. for the State and perused the record.
3. The instant application has been filed under Section 389 of Cr.P.C. to suspend the sentence of conviction and to release the applicant on bail in Session Trial No. 785 of 2023 (State of U.P. versus Nihal) arising out of Case Crime No. 30 of 2023, under Sections 376, 323, 326 of I.P.C., Police Station - Meja, District - Prayagraj.
4. Prosecution case as per the FIR was that on 20.1.2023 at about 4.00 a.m. when the victim, who was the first informant, had gone out of her house to answer the call of natural, Nihal and one more boy, whose name she was not knowing, were standing and the moment she went out of her house they took her under their control and went towards the railway track where they committed the offence of rape on her and left her there unconscious. When the victim regained consciousness, she came back home and gave information to her family members and FIR was lodged at 4.30 p.m. on the same day.
5. Contention of the learned counsel for the applicant is that the applicant is innocent and has been falsely implicated. It has further been submitted that even though in the FIR it was stated that when she had gone out of her house

to answer the call of nature the accused persons took her under their control and led her towards railway track where they committed rape with her whereas in her testimony before the Court she had deposed that the moment she returned to her home after relieving herself, Nihal and his friend took her towards the railway track. It has also been submitted that although in the FIR she had mentioned the name of the accused but in the cross-examination she had stated that neither Nihal was knowing her nor she was knowing Nihal. He states that since it was a case of false implication, these material contradictions had occurred. Still further, learned counsel for the appellant referring to the statement of PW-7 - Dr. Pooja Pandey has stated that even though there was injuries all over the body of the victim but hardly there was any injury on her private parts. The only medical prognosis with regard to crime of rape was that there was some effort to enter the private part. No spermatozoa was found in the vaginal smear. Learned counsel for the appellant further stated that the FSL report was also not indicating the offence under Section 376 IPC. He further submits that the reason for false implication could be that the appellant was living in the neighbourhood and there was no harmony amongst the neighbours. Learned counsel for the appellant also submits that the appellant had remained in jail for about three years and has no criminal history. Still further learned counsel for the applicant has submitted that there is very little chance of the appeal being heard and decided expeditiously in the near future and, therefore, the applicant is entitled to be released on bail.

6. In rebuttal, learned A.G.A. has opposed the bail application but could not deny the fact that the appellant has no criminal history and there were contradictions in the FIR version and the statement of the victim in the Court.

7. We have perused the judgment of the court below with the assistance of the learned counsel for the parties. We find that, prima facie, there were contradictions in the FIR version and the statement of the victim in the Court, appellant has no criminal history, medical report does not support the prosecution version. For these reasons, we are of the opinion that the sentence awarded by the trial court be kept in abeyance in respect of the applicant and he be enlarged on bail.

8. Consequently, the prayer for bail is granted. The bail application is **allowed**.

9. Without expressing any opinion on the merit of the case, let the applicant - **Nihal** convicted and sentenced in the aforesaid case, be released on bail on his furnishing personal bonds with two sureties each in the like amount to

the satisfaction of the court concerned.

10. The realization of 50% fine shall remain stayed till the decision of the appeal, however, compensation would be paid in full.

11. On acceptance of bail bond and personal bond, the lower court shall transmit photostat copies thereof to this Court for being kept on the record.

12. Office to inform the concerned Jail Superintendent through Chief Judicial Magistrate concerned to ensure compliance of the order.

Order on Appeal

13. Order sheet indicates that Trial Court Record has been received. Office to prepare the paper book.

14. List this appeal on 7.12.2026 for final hearing.

April 28, 2026

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(Jai Krishna Upadhyay,J.) (Siddhartha Varma,J.)