

**Court No. - 45**

Criminal Misc. Application for Suspension of Sentence/Bail  
Application No. 01 of 2024

in

**Case :- CRIMINAL APPEAL No. - 325 of 2024**

**Appellant :-** Rajkumar Tiwari

**Respondent :-** State of U.P.

**Counsel for Appellant :-** Ashwini Kumar Ojha, Vishnu Kant  
Tiwari

**Counsel for Respondent :-** G.A.

With

Criminal Misc. Application for Suspension of Sentence/Bail  
Application No. 01 of 2024

in

**Case :- CRIMINAL APPEAL No. - 294 of 2024**

**Appellant :-** Rajendra

**Respondent :-** State of U.P.

**Counsel for Appellant :-** Ashwini Kumar Ojha, Vishnu Kant  
Tiwari

**Counsel for Respondent :-** G.A.

**Hon'ble Saumitra Dayal Singh, J.**

**Hon'ble Dr. Gautam Chowdhary, J.**

1. Heard Sri Ashwini Kumar Ojha learned counsel for the appellants, Sri Nagendra Kumar Srivastava learned counsel for the State and perused the record.

2. Learned AGA confirms the medical condition of the appellant-Rajkumar Tiwari. He has produced medical report submitted by Senior Superintendent of Jail, Jhansi, dated 03.02.2025. It is marked as 'X' and retained on record. Accordingly, the bail applications have been heard on priority.

3. In these applications, the appellants seek suspension of sentence and grant of bail in Sessions Trial No. 113 of 2023 (Old Sessions Trial No. 100 of 2022) (State Vs. Rajesh and Others) arising out of Case Crime No. 161 of 2021 under Sections 304, 120-B, 34 IPC against appellant-Rajendra, Police Station Tehrauli, District Jhansi and Sessions Trial No. 112 of 2023 (Old Sessions Trial No. 99 of 2022) (State Vs. Rajkumar Tiwari) arising out of Case Crime No. 161 of 2021 under Sections 304, 120-B, 34 IPC, Police Station Tehrauli, District Jhansi, against appellant-Rajkumar Tiwari.

4. On merits, it has been submitted that the prosecution has emerged on a wholly doubtful testimony of P.W.-1. The occurrence being of late night, none had seen the occurrence. The dead body of the deceased was found lying in the open in an agricultural field. Only for reason of past bad relations, prosecution accusation emerged against the present appellants.

5. On the other hand, learned AGA would submit, besides long criminal history cited against appellant-Rajkumar Tiwari, the First Information Report is wholly prompt. Though there may be some time gap between the occurrence and the F.I.R. being lodged, at the same time there is no delay in recovery of the dead body or the *Panchayatnama* being drawn or the post mortem being conducted. The F.I.R. offers both narration of last seen as also direct evidence. Nature of assault described in the F.I.R. is wholly corroborated by the ante mortem injuries. Thus, no case is made out for grant of bail, at this stage.

6. Having heard learned counsel for parties and having perused the record, all submissions being advanced by learned counsel for appellants may be tested at the stage of final hearing upon due appraisal of evidence. At this preliminary state, without making

any observation as to merits as may affect the final outcome of the appeal, it is noted, at first the prosecution story emerged on evidence of last seen. It was also supported with evidence of the prosecution witness having followed the assailants after one hour, at which time i.e. at around 11-12 midnight, they claim to have seen the assailants in torch light. It is also noted, the FIR was lodged the next day, at about 1.30 p.m.. Though recoveries are doubted, extensive inquiries have been noted in the autopsy report, revealing assault by a group of assailants. Accordingly, **bail applications filed on behalf of appellants are rejected.**

7. Though bail sought has been rejected, additionally serious medical condition of the appellant-Rajkumar Tiwari has been cited. Perusal of the report produced by learned AGA clearly suggests that the appellant is in need of surgical intervention.

8. Purely for that reason, we deem it appropriate to **enlarge the appellant-Rajkumar Tiwari on short term bail.** He may be released on short term bail from 26.03.2025 to 05.05.2025 in the aforesaid case, subject to following conditions:

(i) That the appellant shall observe peace and tranquility during the period of short term bail and shall not indulge in any unlawful activity.

(ii) That for the period of short term bail, the appellant shall be accompanied by necessary police guard(s), who shall keep him under 24 hours vigil, but the appellant will be free to move about to places that he may need to visit in connection with the medical treatment required.

(iii) That the appellant shall surrender before the concerned C.J.M. on 06.05.2025 and shall be lodged back in jail.

9. This order be intimated to the C.J.M., Jhansi through the Registrar (Compliance), High Court, Allahabad for making proper arrangement.

10. The concerned authority shall ensure that appropriate security steps are taken so that no uncalled for incident takes place.

11. Meanwhile, the appellant may receive the treatment as he may be advised.

12. List on 28.04.2025, on which date learned AGA may produce report of the C.M.O., Jhansi as to the medical condition of the appellant to be determined on the basis of examination by a team of expert doctors to be constituted by that authority. Such medical examination may be completed preferably by 21.04.2025.

13. Let a copy of this order be communicated to the C.M.O. Jhansi and the Chief Judicial Magistrate, Jhansi through Registrar (Compliance).

14. Also, let a copy of this order be supplied to the learned counsel for the appellant.

15. The concerned C.J.M. shall submit its report/ certificate regarding compliance of the order of this Court within a week.

**Order on Appeals**

16. Paperbooks be prepared.

**Order Date :- 24.3.2025**

Faraz

**(Dr. Gautam Chowdhary, J.) (S. D. Singh, J.)**