



HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 4800 of 2023

Vijay Bahadur And Another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

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|---------------------------|---|------------------------------|
| Counsel for Appellant(s)  | : | Rajeev Upadhyay, Vikas Singh |
| Counsel for Respondent(s) | : | G.A.                         |

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**Court No. - 42**

**HON'BLE SIDDHARTHA VARMA, J.**  
**HON'BLE PRASHANT MISHRA-I, J.**

**Ref:** Criminal Misc. Suspension of Sentence Application No.1 of 2023 in Crl. Appeal No.4800 of 2023 moved on behalf of the appellant- Vijay Bahadur and Vijay Narayan and Criminal Misc. Suspension of Sentence Application No. 1 of 2023 in Crl. Appeal No. 4782 of 2023 moved on behalf of the appellant- Batole.

1. Heard, Sri I.K. Chaturvedi, learned Senior Advocate assisted by Sri Rajeev Upadhyay, Sri Vikas Singh, learned counsel for the appellants, learned A.G.A. for the State and perused the record.

2. The instant applications have been filed under Section 389 of Cr.P.C. to suspend the sentence of conviction and to release the applicant - Vijay Bahadur and Vijay Narayan on bail in Session Trial No.174 of 1979 arising out of Case Crime No. 209 of 1979, under Sections 147, 148, 149 and 302 of I.P.C., Police Station Bhognipur, District - Kanpur Dehat **and** Appellant- Batole in Session Trial No. 174 of 1979 arising out of Case Crime No. 209 of 1979, under Sections 147, 148, 149 and 302 of I.P.C., Police Station Bhognipur, District - Kanpur Dehat.

3. Contention of the learned counsel for the applicants is that the applicants in both the appeals are innocent and have been falsely implicated in the instant case. It is further submitted that the incident was at midnight and that it was very difficult for the first informant to have recognized 21 accused persons. Still further, he says that it was even more difficult to remember who was carrying which weapons. Learned counsel for the appellants further submitted that the appellants are elderly persons aged about more than 70 years years of age and that they were on bail during the trial and had never misused the liberty of bail.

4. Learned counsel for the applicant has placed reliance on the decisions of **Anil Ari vs. State of West Bengal rendered in AIR 2009 SC 1564 dated 9.2.2009** and has submitted that the applicant has remained in jail for a fairly long time and, therefore, they should be released on bail.

5. In rebuttal, learned AGA has opposed the bail application but could not deny the fact that the applicants are more than 70 years of age and that they were on bail during the trial and had never misused the liberty of bail.

6. In view of the above arguments/reasons, we do find that the case as was taken by the appellants, which was that he had seen 21 persons at midnight and had remembered as to who was carrying the weapons, is actually likely improbable. We are also of the view that the appellants are above 70 years and therefore they are entitle as per the judgement in *Anil Ari vs. State of West Bengal rendered in AIR 2009 SC 1564 dated 9.2.2009*. We also find that the appellants were on bail during the trial, and they never misused the liberty of bail, and the applicants have no criminal history; we consider it a fit case for the grant of bail.

7. Consequently, the prayer for bail is granted. The bail applications are **allowed**.

8. Without expressing any opinion on the merit of the case, let the applicants- **Vijay Bahadur, Vijay Narayan and Batole** convicted and sentenced in the aforesaid case, be released on bail on their furnishing personal bonds with two sureties each in the like amount to the satisfaction of the court concerned.

9. The realization of fine shall remain stayed till the decision of the appeal.

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

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

### **Order on Appeal**

12. Trial court record has been received.

13. Office is directed to prepare the paper book if is not ready.

14. List this case on 10.08.2026 for final hearing before the appropriate bench.

**March 19, 2026**  
vijay krishna

**(Prashant Mishra-I,J.) (Siddhartha Varma,J.)**