

Court No. - 10

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4365 of 2022

Applicant :- Rizwan Zaheer S/O Zaheerul Haq

Opposite Party :- State Of U.P. Thru. Its Prin. Secy. Home

Counsel for Applicant :- Arun Sinha, Amrendra Nath Tripathi, Brij Mohan Sahai, Rajendra Kumar Dwivedi, Ram Chandra Singh, Siddhartha Sinha, Sushil Kumar Singh, Umang Agarwal, Vivek Pandey

Counsel for Opposite Party :- G.A., Mohammad Airaj Siddiqui, Sushil Kumar Singh

Hon'ble Dinesh Kumar Singh, J.

1. The present application under Section 439 Cr.P.C. has been filed seeking bail in FIR No.02 of 2022, under Section 302 and 120-B IPC, Police Station Tulsipur, District Balrampur.
2. The FIR was registered against unknown persons. As per the allegations in the FIR, which was lodged on a complaint given by the brother of the deceased, Firoz Ahmad @ Pappu, when the deceased was going to his house at around 10.20 PM on 4.1.2022 after he got alighted from the car of Shahid Pradhan, two unknown persons having iron rod and sharp edged weapon, attacked the deceased and he was killed mercilessly. On alarm when the complainant reached at the place of incident, he found his brother dead. The assailants had fled away from the scene of occurrence. In the complaint, it was said that the murder of brother of the complainant was committed in a pre-planned manner due to the political reasons
3. The police during the course of investigation, recorded the statement of the complainant, who reiterated the FIR version. Wife of the deceased in her statement recorded under Section 161 Cr.P.C. said that she was President of the Nagar Panchayat, Tulsipur and before her, the deceased husband was Chairman of the Nagar Panchayat. He was very active in politics. Her husband was very popular in the constituency. His supporters were requesting him to fight the Vidhan Sabha election from

Tulsipur Constituency on the ticket of Samajwadi Party. It was said that her husband went to Lucknow for several times and met the top senior leaders of the Samajwadi Party. It was further said that her husband was very hopeful of getting the ticket from Samajwadi Party to fight Vidhan Sabha election from Tulsipur Constituency.

4. On the other hand, the present accused-applicant, who is ex-MP, was trying to get ticket from Samajwadi Party for his daughter, Zeba Rizwan, to contest the election of Vidhan Sabha from Tulsipur Constituency, and in this effort, the present accused-applicant's son-in-law, Rameez was also assisting the present accused-applicant. It was said that the deceased husband had told her that he feared for his life from the present accused-applicant, his son-in-law, Rameez, his daughter, Zeba Rizwan and Shakeel, who resides in the bungalow of the present accused-applicant.

5. On 31.12.2021, her deceased husband went to Lucknow and on 41.2022 he came back at around 6.30 PM and after sometime, he went out in the car Shahid Pradhan and came back at around 10.20 PM. After he got alighted from the car of Shahid Pradhan when he was going on foot to his house, he was attacked and killed. Two assailants were arrested and they confessed their crime before the police. They had also said that they had executed the offence at the behest of the present accused-applicant and other accused.

6. The accused-applicant has been member of the Vidhan Sabha once from his home town and, thereafter, he was elected as Member of Parliament twice from Balrampur. To his credit, there have been as many as fifteen cases, which have been mentioned in paragraph 47 of the affidavit filed in support of the bail application, which are as under:-

1. Case Crime No.45 of 1987, under Sections 307, 323, 504, 506

IPC, Police Station Tulsipur, District Balrampur;

2. Case Crime No.54 of 1987, under Sections 147, 148, 149, 307, 364, 302 IPC, Police Station Tulsipur, District Balrampur;

3. Case Crime No.94 of 1987, under Section 25 Arms Act;

4. Case Crime No.117 of 1991, under Section 302 and 120-B IPC;

5. Case Crime No.27 of 1992, under Sections 147, 148, 149, 302, 307 IPC, Police Station Harraiya, District Balrampur;

6. Case Crime No.110 of 1989, under Sections 302 and 120-B IPC, Police Station Kotwali Nagar, District Gonda;

7. Case Crime No.1087 of 1992, under Sections 147, 148, 149, 336, 307, 282, 353, 188 IPC, Section 7 Criminal Law Amendment Act and Section 34 Explosive Substances Act, Police Station Kotwali Nagar, District Gonda;

8. Case Crime No.1092 of 1993, under Section 3(2) NSA;

9. Case Crime No.178 of 1992, under Sections 307, 302 IPC and Section 95 Exp. Act, Police Station Tulsipur, District Balrampur;

10. Case Crime No.82 of 1992, under Section 34 Goonda Act;

11. Case Crime No.406 of 2000, under Section 309 IPC, Police Station Utraula;

12. Case Crime No.357 of 2003, under Sections 147, 148, 323, 352, 504, 506 IPC, Police Station Tulsipur, District Balrampur;

13. Case Crime No.93 of 2021, under Sections 147, 149, 332, 353, 504, 506, 307, 427, 393, 435 IPC and Section 7 Criminal Law Amendment Act, Police Station Tulsipur, District Balrampur;

14. Case Crime No.94 of 2021, under Sections 323, 504, 506, 435 IPC, Police Station Tulsipur, District Balrampur; and

15. FIR No.02 of 1987, under Sections 302 and 120-B IPC, Police Station Tulsipur, District Balrampur.”

7. There have been six cases of murder, including the present one. Further, it has been submitted that except for cases

mentioned at serial nos.11, 13, 14 and the present one, the accused-applicant has been able to secure acquittal in all other cases.

8. Sri Siddhartha Sinha, learned counsel for the accused-applicant submits that this is a case of no evidence. The accused-applicant has been falsely implicated due to political reasons. He further submits that statements of the co-accused, who are allegedly two assailants, cannot be read against the accused-applicant as the same are not admissible in evidence. He also submits that there is no eye witness to the incident. The case is based on circumstantial evidence. The police has falsely implicated the accused-applicant in the crime in question. He further submits that daughter of the accused-applicant and co-accused, Zeba Rizwan has been enlarged on bail by this Court vide order dated 23.5.2022 in Criminal Misc. bail Application No.4691 of 2022.

9. Learned counsel for the accused-applicant further submits that accused-applicant has been in jail since 10.1.2022, and he is not keeping good health inasmuch he has been suffering from heart ailment and is highly diabetic. He also submits that the accused-applicant is not in a position to tamper with the evidence or influence the witnesses and considering these facts, he may be enlarged on bail.

10. On the other hand, Sri Rao Narendra Singh, learned AGA and Sri Sushil Kumar Singh, learned counsel for the complainant have opposed the bail application and submitted that accused-applicant is a hardened criminal and 'bahubali'. Out of fifteen cases, six cases are relating to murder etc., inter alia, registered under Section 302 IPC. Accused-applicant has been twice Member of Parliament and twice Member of Legislative Council and once Member of Legislative Assembly. The accused-applicant started his career in the crime world way

back in 1987 and on each time when he was enlarged on bail, he indulged in another heinous offence and because of his terror and influence, the witnesses could not dare to depose against him and he secured acquittal on the ground that the prosecution could not prove the case against him beyond reasonable doubt as he was able to influence the witnesses and tamper with the evidence because of his terror, might, money and muscle power.

11. Learned AGA and the learned counsel for the complainant have further submitted that the proceedings under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 Act 7 of 1986 have also been undertaken against him and his benami properties of several crores have been attached under Section 14(1) of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 by the District Magistrate, Balrampur. The deceased has been killed in a very gruesome manner for the reason that he was potential challenge to the political career of the accused-applicant. It has been submitted that there is sufficient evidence available on record against the accused-applicant. If the accused-applicant is enlarged on bail, he will influence the witnesses and tamper with the evidence and free and fair trial would not be possible because of terror, might, money and muscle power in his possession.

12. Learned counsel for the accused-applicant, in rejoinder, has submitted that merely because the accused-applicant has criminal history of few cases, bail should not be denied to him as there is no evidence against him, which would lead his conviction in the present offence.

13. I have considered the submissions advanced on behalf of the learned counsel for the parties and perused the record.

14. It is not in dispute that the deceased was trying to get ticket from Samajwadi Party for Assembly Elections of 2022 from

Tulsipur Constituency. The accused-applicant was trying to get ticket from the same constituency from the Samajwadi Party for his daughter, co-accused, Zeba Rizwan. The role of accused-applicant has come to light during the course of investigation and the charge sheet has been filed against him and other co-accused. As per the prosecution story, the accused-applicant is the prime architect of the offence to remove his political opponent from the scene. He is a "bahubali" with long record of heinous offences registered against him.

15. Considering the heinousness of the crime, impact on the society, influence and might of the present accused-applicant, his past record of heinous offences and without commenting on the merits of the case, this Court does not find that it is a fit case to enlarge the accused-applicant on bail at this stage.

16. Bail application is accordingly ***rejected***.

Order Date :- 6.7.2022

Rao/-