

**Court No. - 70**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 46453 of 2023

**Applicant :-** Sabir

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Satyam Narayan

**Counsel for Opposite Party :-** G.A.

**Hon'ble Sameer Jain,J.**

1. Heard Sri Satyam Narayan, learned counsel for the applicant and Sri Ghanshyam Mishra, learned Brief Holder for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 236 of 2022, S.T. No. 895 of 2022, under Sections 302 IPC, Police Station Lisarigate, District Meerut during pendency of the trial.

3. FIR of the present case was lodged by the sister of the applicant and according to the FIR the another brother of the informant namely Javed used to consume liquor and two days before he demanded Rs. 50,000/- from his mother but applicant objected and thereafter Javed after making assault upon his mother ran away and on 28.04.2022 applicant came at about 4.00 PM and in anger due to the assault made by Javed upon the mother, he opened fire upon Javed and due to the fire opened by the applicant his brother Javed sustained serious injury.

4. Learned counsel for the applicant submitted that initially FIR of the present case was lodged under Section 307 IPC but after the death of the injured case was converted under Section 302 IPC. He further submits that the statement of the deceased could not be recorded. He further submits that although in the FIR and in the statements there is allegation that applicant opened fire upon his brother but even from perusal of the FIR and the statements recorded during investigation it appears that in anger applicant opened fire upon the deceased as deceased made assault upon his mother two days before.

5. He further submits that when informant and other witnesses appeared before the trial court then they did not support the prosecution case and were declared hostile and according to them

some unknown persons caused firearm injury to the deceased. He further submits that statement of the witnesses recorded by the trial court have been annexed along with the instant application.

6. He further submits that although in the charge-sheet Shadab was also one of the witness of fact but during trial prosecution moved an application for his discharge and application moved by the prosecution has been allowed, therefore, no witnesses of fact is remain to examine. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 30.04.2022 i.e. for more than one and half years.

7. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that all the witnesses of fact during trial have declared hostile and applicant is not having any criminal history and in the present matter he is in jail since 30.04.2022 i.e. for more than one and half years.

8. I have heard learned counsel for the parties and perused the record of the case.

9. Although, it appears that as per allegation applicant committed the murder of his brother by causing firearm injury to him but during trial all the witnesses of fact have been examined and they did not support the prosecution case and all the witnesses of fact have been declared hostile.

10. Further, even from perusal of the FIR and statement of witnesses recorded during investigation, it appears that two days before the incident deceased i.e. brother of the applicant assaulted his mother and only due to this reason in anger applicant opened fire upon him.

11. Further, applicant is not having any criminal history and in the present matter he is in jail since 30.04.2022 i.e. for more than one and half years.

12. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

13. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

14. Let the applicant - **Sabir** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the

like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

15. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

16. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

**Order Date :- 2.11.2023**

AK Pandey