

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47730 of 2023

Applicant :- Rashid

Opposite Party :- State of U.P.

Counsel for Applicant :- Sayeed Saif Ullah, Sufia Saba

Counsel for Opposite Party :- G.A., Hanuman Prasad Mishra

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Ms. Sufia Saba, learned counsel for the applicant, Sri Hanuman Prasad Mishra, learned counsel for the first informant and Sri Ajay Singh, learned AGA-I for the State and perused the material on record.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant **Rashid**, seeking enlargement on bail during trial in connection with Case Crime No. 314 of 2022, under Section 302 I.P.C., registered at Police Station Kotwali Nagar, District Muzaffar Nagar.

4. The FIR of the matter was lodged on 01.06.2022 by Javed against the applicant alleging therein that he went in the morning to do his job. His wife Anjum was in the house and the children had gone to Madarsa in the locality to study. At about 03:15 pm his son Nabeel came back to the house from Madarsa and found Rashid in the house. Subsequently there was some quarrel between Smt. Anjum and Rashid in the house after which Rashid fired on her and also slit her neck with razor. The incident has been witnessed by Nabeel and other persons. The body of his wife is lying on the bed in the room.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that Nabeel was interrogated by the police as an eye witness who is aged about 11 years who states that Rashid was sitting in the room and also states that there was one other lady sitting in the room after which he states that he had clicked a photo of Rashid and later on he came to know that Rashid has murdered his mother. It is argued that there is no credible evidence against the applicant. The implication of the applicant in the present case is without any credible evidence. It is argued that Nabeel is a child aged about 11 years and his statement is a tutored statement. It is argued that although the police has shown the recovery of a .32 bore country

made pistol, one live cartridge, one empty cartridge and a knife which was blood stained from the possession of the applicant, the said material has been sent to the forensic lab but the report of examination is still awaited. It is argued that charge sheet in the matter has been submitted and as such there are no chances of the applicant tampering with evidence or threatening the witnesses. She further argued that the applicant has no criminal history as stated in para 21 of the affidavit and is in jail since 02.06.2022.

6. Per contra, learned counsel for the first informant and learned counsel for the State opposed the prayer for bail and argued that the applicant is named in the FIR in which Nabeel is stated to be an eye witness to the incident. It is argued that the medical evidence corroborates with the prosecution case as the deceased was found to have received a firearm injury, three incised wounds and multiple abrasions. The cause of death was opined as a result of coma due to antemortem firearm injury. In so far as the applicant is concerned, his presence in the room where the deceased was murdered, cannot be ruled out on this evidence. It is argued that there is a recovery of a country made pistol, one live cartridge and one empty cartridge from the pointing out of the applicant along with a blood stained knife which has been sent for chemical analysis. It is argued that there is no reason for false implication of the applicant and as such the prayer for bail of the applicant be rejected.

7. After having heard learned counsels for the parties and perusing the records, it is evident that the applicant is named in the FIR and in the statement of Nabeel the 11 years old son of the informant and the deceased Anjum. He states of the applicant being present in the room with his mother and there was a quarrel between them. The postmortem examination report corroborates with the prosecution story. There is a recovery of a country made pistol, cartridges (live and empty) and a blood stained knife on the pointing out of the applicant. I do not find it a fit case for bail.

8. Considering the totality of the case in particular, nature of evidence available on record, I am not inclined to release the applicant on bail.

9. The bail application is, accordingly, **rejected**.

Order Date :- 13.12.2023

M. ARIF

(Samit Gopal, J.)