

**Court No. - 8**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 599 of 2023

**Applicant :-** Rizwan Zaheer

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

**Counsel for Applicant :-** Siddhartha Sinha, Brij Mohan Sahai, Imran Asim Khan

**Counsel for Opposite Party :-** G.A., Bal Keshwar Srivastava, Masood Ali, Mohammad Airaj Siddiqui, Sushil Kumar Singh

**Hon'ble Dinesh Kumar Singh, J.**

1. Heard S/Sri B.M. Sahai, Siddhartha Sinha and Imran Asim Khan, learned counsel for the accused-applicant as well as Sti Bhanu Pratap Singh, learned AGA and S/Sri Sushil Kumar Singh and Mohd. Airaj Siddiqui, learned counsels for the complainant.
2. This is the second bail application. First bail application got rejected vide a detailed judgment and order dated 6.7.2022 passed in Criminal Misc. Bail Application No.4365 of 2022.
3. The present application under Section 439 Cr.P.C. has been filed seeking bail in FIR/Case Crime No.02 of 2022, under Sections 302 and 120-B IPC, Police Station Tulsipur, District Balrampur.
4. This Court vide detailed judgement and order dated 6.7.2022 had rejected the first bail application of the accused-applicant in Criminal Misc. Bail Application No.4365 of 2022. Against the said judgment and order dated 6.7.2022, the accused-applicant had approached the Supreme Court in Special Leave to Appeal (Crl) No.8862 of 2022. After some arguments, learned counsel for the accused-applicant had withdrawn the said Special Leave to Appeal. The order dated 30.9.2022 passed by the Supreme Court in the aforesaid Special Leave to Appeal would read as

under:

*“After some arguments, learned counsel for the petitioner seeks to withdraw the petitioner and rightly so.*

*The special leave petitioner, is accordingly, dismissed as withdrawn.*

*Pending applications stand disposed of.”*

5. The details of facts of the case have been mentioned in the rejection order of the first bail application dated 6.7.2022. For the sake of convenience, the facts are reproduced as under:-

*“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*

*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.*

*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.*

*On 31.12.2021, her deceased husband went to Lucknow and on 41.2022 he came back at around 6.30 PM and after some time, 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. Before considering the second bail application, it would be relevant to take note of the character of the accused-applicant. He has been Member of the Vidhan Parishad once from his home town and, thereafter, he was elected as Member of Parliament twice from Balrampur. It is said that the accused-applicant is one of the biggest criminal, gangster and bahubali of the eastern Uttar Pradesh and Oudh Region. As of today, he has been accused of the following cases registered against him in different police stations:-

*“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.96 of 1987, under Sections 25/27 Arms Act, Police Station Tulsipur, District Balrampur;*

*4. Case Crime No.117 of 1991, under Sections 302, 120-B IPC, Police Station Tulsipur, District Balrampur;*

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

6. Case Crime No.110 of 1989, under Sections 302, 120-B IPC, Police Station Kotwali Nagar, District Balrampur;
7. Case Crime No.1087 of 1993, under Sections 147, 148, 149, 336, 307, 382 353, 188 IPC, Section 7 Criminal Law Amendment Act and Section 3/4 Explosive Substance Act, Police Station Kotwali Nagar, District Gonda;
8. Case Crime No.1092 of 1993, under Sections 3(2) National Security Act, Police Station Kotwali Nagar, District Gonda;
9. Case Crime No.178 of 1992, under Sections 307, 302 IPC and 3/4 Explosive Substance Act, Police Station Tulsipur, District Balrampur;
10. Case Crime No.486 of 2000, under Sections 309 IPC, Police Station Kotwali Utroula, District Balrampur;
11. Case Crime No.351 of 2003, under Sections 147, 148, 323, 352, 504, 506 IPC, Police Station Tulsipur, District Balrampur;
12. Case Crime No.93 of 2021, under Sections 147, 149, 332, 353, 504, 506, 393, 307, 427, 435 IPC and Section 7 Criminal Law Amendment Act, Police Station Tulsipur, District Balrampur; and
13. Case Crime No.94 of 2021, under Sections 147, 149, 435, 427, 323, 504, 506 IPC, Police Station Tulsipur, District Balrampur;
14. Case Crime No.Nil of 2021, under Sections 3(2) National Security Act, Police Station Tulsipur, District Balrampur;
15. Case Crime No.02 of 2022, under Sections 302, 120-B IPC, Police Station Tulsipur, District Balrampur;
16. Case Crime No.54 of 2022, under Sections 3(1) U.P. Gangster Act, Police Station Tulsipur, District Balrampur;
17. Case Crime No.Nil of 2022, under Sections 3(2) National Security Act, Police Station Tulsipur, District Balrampur; and
18. Case Crime No.182 of 2022, under Sections 307, 323, 327, 447, 504, 506 IPC, Police Station Tulsipur, District Balrampur”

7. The inglorious criminal history of the accused-applicant would disclose that in seven cases he has been accused under Section 302 IPC besides other heinous offences. The said criminal history of the accused-applicant is part of the counter affidavit (Annexure-CA-11) filed on behalf of the State.

8. The Supreme Court was when almost dismissing the Special Leave to Appeal, which is evident from the order dated 30.9.2022 passed by the Supreme Court. Learned counsel for the accused-applicant showed his ingenuity and prayed for withdrawal of the Special Leave to Appeal. The Supreme Court

dismissed the Special Leave to Appeal as withdrawn.

9. The only ground which has been taken in the present second bail applicant, is that other accused have been granted bail by a coordinate Bench of this Court. However, one of the order granting bail to co-accused, Mahfooz would disclose that his case has been distinguished from the present accused-applicant as the said accused has no criminal history.

10. Paragraphs 19 to 21 of the said order dated 26.5.2023 passed by this Court while granting bail to co-accused, Mahfooz in Criminal Misc. Bail Application No.4769 of 2022, would read as under:-

*“19. So far as the question of rejection of bail of co-accused Rizwan Zaheer is concerned, it is settled law that there is no parity in rejection of bail. Moreover, the narration made in the order dated 06.07.2022 rejecting the bail application of co-accused Rizwan Zaheer indicates that Court had noted that he has a long criminal history of 15 cases, including 6 cases of murder, whereas the applicant has no criminal history.*

*20. While rejecting the bail application of Rizwan Zaheer, the Court has observed “As per prosecution story, the accused-applicant is the prime architect of the offence to remove his political opponent from the scene’. ‘He is ‘Bahubali’ with long record of heinous offences registered against him’. The Court rejected the bail application of co-accused Rizwan Zaheer observing that ‘considering the heinousness of the crime, impact on the society, influence and might of the present accused-applicant, his past record of heinous offences’. However, the present applicant has no criminal history and there is no allegation regarding he being an influential person, like the co-accused Rizwan Zaheer.*

*21. Without making any further observation which may affect the merits of the case and keeping in view the aforesaid facts, coupled with the facts that six persons have already been examined and in case of his release, the applicant will not be in a position to influence the witnesses of the case, I am of the view that the aforesaid facts are sufficient for making out a case for enlargement of the applicant on bail.”*

11. So far only eight witnesses of fact have been examined. Mere long incarceration of the accused-applicant pending trial cannot be a ground to enlarge the accused-applicant bail while he has been accused in seven murder cases as noted above.

Even otherwise, parity is not an absolute ground for granting bail particularly when the co-accused have no criminal history. I am of the view that setting the accused-applicant on liberty before conclusion of the trial, would be in the peril to the family members of the deceased and the witnesses. Considering his might, influence and terror which he commands in hearts and minds of the people, fair trial and justice to the victims and society at large would be a distant dream.

12. Considering the entirety of the facts and circumstances of the case, gravity of offence, heinousness of crime, societal impact and the manner in which the offence was committed by hiring the contract killers allegedly by the accused-applicant for his political hegemony, this Court is of the view that such an accused for the offence for which he is being tried, is not entitled to be enlarged on bail.

13. Thus, second bail application is ***rejected***.

.

( Dinesh Kumar Singh, J)

**Order Date :- 12.7.2023**

Rao/-