2025:AHC:183754

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 15179 of 2025

Ashfak Husain

.....Applicant(s)

Versus

State of U.P.

.....Opposite Party(s)

Counsel for Applicant(s)	:	Atul Srivastava, Mohd. Farooq
Counsel for Opposite Party(s)	:	G.A., Manoj Kumar Tewari, Pradeep Kumar Pandey

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Court No. - 67

HON'BLE KRISHAN PAHAL, J.

1. List has been revised.

2. Heard Sri Mohd. Farooq, learned counsel for the applicant, Sri Pradeep Kumar Pandey assisted by Sri Manoj Kumar Tewari, learned counsel for the informant as well as Sri Pankaj Kumar, learned A.G.A. for the State and perused the material placed on record.

3. Applicant seeks bail in Case Crime No. 319 of 2019, under Sections 302, 120-B, 34, 201, 409, 420 I.P.C. and Section 3/4/25 Arms Act and Section 9 of the I.T. Act, Police Station-Naka Hindola, District-Lucknow, during the pendency of trial.

PROSECUTION STORY:

4. The informant instituted an FIR at Police Station Naka, Hindola, Lucknow on 18.10.2019 at 19:43 hours stating:

> *Today at about 12:30 PM, the husband of the informant was at the first floor of his office and two unknown persons reached there, the informant went to the back room. The two unknown persons started talking to the husband of the informant. As the informant did not hear any conversation going on between them for about 4-5 minutes, she came back to the office and found her husband lying in a pool of blood and the two persons who were talking to her husband, had run away using the stairs. She stated that she could recognise the two unknown persons, if presented*

before her.

About three years ago in the year 2016, Mohammed Mufti Naeem Kazmi of Kiratpur, P.S. Bhaneda, District Bijnor had announced a reward of Rs. 51 lakhs on the head of deceased and Maulana Anwarul Haq, Bijnor had announced a reward of 1.5 crore for the same.

ARGUMENTS ON BEHALF OF THE APPLICANT:

5. The applicant has been falsely implicated in the case. He has nothing to do with the said offence.

6. The applicant is not named in the FIR. The name of applicant has come up subsequently during investigation that too based on vague and non-admissible evidence.

7. The applicant and the other co-accused persons moved a Transfer Petition (Crl.) No. 126 of 2020 before the Supreme Court. The Supreme Court was pleased to allow the transfer petition and thereby transferred the Sessions case No. 151 of 2020 (State versus Ashfaq Hussain and others) pending before the court of learned Additional Sessions, Judge-1, Lucknow, Uttar Pradesh to Prayagraj, Uttar Pradesh.

8. The inquest proceedings of the deceased were conducted on 18.10.2019 by the police, wherein it is mentioned that some unknown persons had put the deceased to death by assaulting him with a knife. He was brought to the Trauma Centre, Lucknow, where the doctors declared him "brought dead."

9. The postmortem of the deceased was conducted the same day at 4:00 PM. The FIR has been instituted after a delay of about seven hours that too after the inquest and postmortem examination of the deceased was complete. The place of occurrence is only about 1 km away from the police station. The said delay has not been explained.

10. The investigating officer after inspecting the place of occurrence and preparing the site plan, obtained the call details of the mobile number of applicant and on the basis of his confessional statement, a .32 bore pistol was recovered from his possession. A knife was recovered from the possession of co-accused Moinuddin.

11. The applicant was actually taken into custody on 18.10.2019 and was shown arrested on 24.10.2019.

12. The informant and the other eye witnesses, namely Rohit Dixit, Pradeep Yadav, and Saurashtra Jeet Singh have not nominated the applicant in their statements recorded under Section 164 CrPC.

13. The co-accused person Zafar Sadiq Kulu has been released on bail by this Court vide order dated 14.07.2024 passed in Criminal Misc. Bail Application No. 50546 of 2022. The other co-accused persons namely Yusuf Khan, Mohsin Salim Shaikh, Faizan Member and Pathan Rashid Ahmed have also been released by this court vide orders dated 02.05.2024, 29.05.2024, 5.08.2024, and 13.12.2024 respectively, as such the applicant is also entitled for bail on ground of parity.

14. The entire prosecution story is doubtful and is based on conjectures and fallacious evidence and applicant has been implicated with an ulterior motive.

15. The applicant has no previous criminal antecedents and he has been falsely implicated in a subsequent case instituted under sections 2/3 of UP Gangsters Act, 1986, vide FIR No. 92/2020 P.S. Naka Hindola, Lucknow.

16. The applicant is not a flight risk and there is no possibility of applicant absconding from trial.

17. The applicant has been languishing in jail since 24.10.2019, and the period of incarceration now comes to about six years. The fundamental rights of the applicant, as enshrined under Article 21 of the Constitution of India, stand violated.

18. The trial is moving at a snail's space and there is no possibility of its early conclusion as the charge sheet mentions the number of witnesses to be examined as 73. The prosecution has stated that it proposes to examine 33 witnesses of which 30 witnesses have only been examined.

19. The remaining witnesses are formal witnesses and are government officials. There is no likelihood of applicant tampering with evidence.

20. The applicant has been identified by the informant in the CCTV footage, which is against the settled law of the land. The said test

identification is not as per the provisions of Section 9 of the Indian Evidence Act.

21. There is no certificate on record as per the provisions of Section 65B of the Indian Evidence Act, thus, the said CCTV footage is not admissible in evidence and there are being no other cogent evidence against the applicant, he is entitled for bail.

ARGUMENTS ON BEHALF OF STATE/INFORMANT:

22. The applicant Ashfaq Hussain and co-accused Moinuddin Ahmed, have committed the said cold blood in murder of deceased Kamlesh Tiwari by entering his office at the fateful time of offence.

23. The said fact stands fortified by the statement of witness, Saurashtra Jeet Singh who has categorically identified the applicant and co-accused Moinuddin Ahmed in the CCTV footage shown to him by the investigating officer.

24. The applicant is a resident of the state of Gujarat, which is far away from the place of occurrence that is more than 1000 KM away, and the applicant had no business to be present at the place of occurrence at the time of offence. The said circumstance of his presence at the place of occurrence stands established by the statements of prosecution witnesses PW-2 and PW-7 in particular, and the applicant has been identified by the witnesses in dock.

25. The postmortem report categorically indicates that it is a crime of highest degree as the deceased had sustained one firearm injury and nine injuries have been caused by some sharp-edged weapon. There is recovery of a pistol of .32 bore from the possession of applicant and a knife from the co-accused person, Moinuddin.

26. The trial is at its conclusive end as of the 33 proposed witnesses, already 30 witnesses have been examined.

CONCLUSION:

27. It is true that India is a free country, and there exists no impediment to any person visiting any place of his or her choice. An individual may travel to visit relatives, friends, or places of tourist or religious significance, in

accordance with personal beliefs. However, no explanation has been furnished on behalf of the applicant regarding the purpose of his visit all the way from Gujarat to Lucknow.

28. After hearing the learned counsel for the parties and taking into consideration the fact that the applicant has been identified by two witnesses, namely P.W.2-Saurashtra Jeet Singh and P.W.7-Rishi Tiwari, and that his presence is also established through CCTV footage, as well as the fact that he is a resident of the State of Gujarat and had no ostensible business in Lucknow, Uttar Pradesh, and that no explanation has been given regarding his presence at the place of occurrence, coupled with the recovery of a .32 bore pistol from his possession, I do not find this to be a fit case for grant of bail to the applicant.

29. The bail application is found devoid of merits and is, accordingly, ***rejected***.

30. However, it is directed that the aforesaid case pending before the trial court be decided expeditiously in view of the principle as has been laid down in the recent judgments of the Supreme Court in the cases of ***Vinod Kumar vs. State of Punjab; 2015 (3) SCC 220*** and ***Hussain and Another vs. Union of India; (2017) 5 SCC 702***, if there is no legal impediment.

31. 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.

October 14, 2025
Karan

(Krishan Pahal,J.)