

IA No. 04/2024
SC No. 272/2022
State Vs. Naushad
FIR No. 601/22
PS: New Usmanpur
U/s: 302/34 of IPC

06.5.2024

**ORDER ON THE APPLICATION UNDER SECTION 439
Cr.P.C FOR GRANT OF BAIL MOVED ON BEHALF OF THE
APPLICANT/ACCUSED NAUSHAD.**

1. This order of mine will dispose of the application under Section 439 of Cr.P.C for grant of bail filed by the applicant/accused Naushad.
2. I have heard Ld. Counsels for the parties.
3. Sh. Sarfraz Asif, Ld. Counsel for the applicant/accused has submitted that in the case I hand, FIR was registered u/s. 304/34 of IPC, but, without having any sufficient reason, charge-sheet has been filed u/s. 302/34 of IPC. He has also submitted that this applicant/accused is not previously involved in any other criminal case and further submitted that four public witnesses have been examined and two eyewitnesses Nadeem and Shahjahan failed to support the case of the prosecution and submitted that initially, PW-2 Salama, who is the widow the deceased did not support the case of the prosecution, but, when she was cross-examined by the Ld. Addl. PP for the State, she had deposed against the accused, but, her testimony is not of much relevance, because, she is not eyewitness and submitted that this applicant/accused was arrested on dated 01.06.2022 and since then, he is behind bars. He has also submitted that five witnesses are yet to be examined and ten witnesses have been examined in this case

and it may take time in completion of the trial, so, this accused may be granted bail.

4. On the other hand, Sh. F. M. Ansari, Ld. Addl. PP for the State has vehemently opposed this application and submitted that co-accused had given piccus blows on the person of the deceased and this applicant/accused had given fist blows on the person of the deceased, as a result of which, deceased had expired. He has also submitted that no doubt that Nadeem and another witness namely Smt. Shahjahan have failed to support the case of the prosecution, as they were won over by the accused persons and further submitted that the widow of the deceased has been examined as PW-2 and from the testimony of PW-2, it is clear that on dated 31.5.2022, between 3:00 PM to 3:30 PM, this applicant/accused and co-accused had gone to the house of the deceased and asked to PW-2 Salma about the deceased, but, at that time, deceased was not at home and this applicant/accused and co-accused had started abusing the husband of the PW-2 and told her that “AAJ JAVED NAHI BACHEGA HUM USE JAAN SE KHATAM KAR DENGE” and submitted that on the same evening, the deceased was killed by this applicant/accused and co-accused and further submitted that PW-2 Salma has also deposed in this court that son of the co-accused and relatives of this applicant/accused had threatened to Ms. Salma and Salma has also deposed that she is having two minor children and she is having danger to her life and the lives of her minor children from the relatives of both the accused and during the cross-examination of PW-2 by the Ld. Addl. PP for the State, she had also deposed that initially she had resiled from her previous statement, because relatives of both the accused had threatened her and submitted that this court has already framed charges u/s. 302/34 of

IPC and further submitted that even at the time of argument on charge, counsel for this applicant/accused had submitted that this applicant /accused was not having any intention to kill the deceased, nor he was having knowledge that with such beatings, the deceased would die and submitted that father-in-law of the deceased has been examined as PW-5. He has also deposed in the court that when he was there in his shop, 3-4 boys had told him and Kamru and Naushad had killed his son-in-law Javed and submitted that since this applicant/accused and co-accused had beaten to the deceased with piccus and as result of the same injuries, the deceased had expired and since, this applicant /accused has committed heinous offences punishable u/s. 302/34 of IPC and in case, this applicant/accused is released on bail, he may flee from justice and trial may be delayed and it may be proved to fatal to the lives and liberty of the widow and children of the deceased and prayed for dismissal of this application.

5. I have given thoughtful consideration to the submissions made by the Ld. Counsels for the parties and perused the record.

6. The perusal of the record reveals that the co-accused is alleged to have mercilessly beaten to the deceased with a piccus and this applicant/accused is also alleged to have given fist blows on the person of the deceased and deceased is alleged to have received eight antemortem injuries and the deceased is alleged to have died in view of the same injuries, which are alleged to have been caused by the applicant/accused and his co-accused and charges under Section 302 r/w Section 34 of IPC have been framed against this applicant/accused and co-accused Kamruddin. It is alleged by PW-2 that the relatives of this accused and co-accused have threatened to the widow and children of the deceased. Since, ten witnesses have already been

examined and cross-examined and four witnesses are yet to be examined and in case, this applicant/accused is granted bail, he may flee from justice. Since, this applicant/accused is alleged to have committed heinous crime of murder punishable under Section 302/34 of IPC. So taking into consideration the nature of accusation and gravity of offence and likelihood of fleeing from justice, this applicant/accused does not deserve for the bail.

7. In the above terms, the application for grant of bail filed by the applicant/accused Naushad is **dismissed**. Dasti copy of this order be provided to the parties. **Attested copy of this order be sent to the Superintendent of Central Jail, Tihar for supplying the same to this applicant/accused Nausahd.**

(PAWAN KUMAR MATTO)
Addl. Sessions Judge (Special Judge NDPS)
North East/KKD Courts/Delhi/06.5.2024