

(2007) 01 AHC CK 0019
In the Allahabad High Court
Case No : Criminal M.B.A. No. 19315 of 2006

Mohd. Haseem Faruq

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 24-01-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 302

Citation : (2007) 2 ACR 2096

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : G.P. Dikshit, for the Appellant; Sunil Vashisth, Zaffar Abbas, Vijay Kumar Rai and A.G.A., for the Respondent

Judgement

Ravindra Singh, J.—This application has been filed by Mohd. Haseem Faruq with a prayer that he may be released on bail in Case Crime No. 125 of 2006 under Sections 302 and 120B, I.P.C, P.S. Ubhaon, district Ballia.

2. The prosecution story in brief is that F.I.R. of this case has been lodged by Mohd. Zafar Shafiq on 28.7.2006 at 10.30 p.m., in respect of the incident which had occurred on 28.7.2006 at about 9.15 p.m. The applicant is named in F.I.R. as accused whereas two accused were unknown. It is alleged that applicant and two other co-accused persons came on a motorcycle, he asked the deceased to stop the motorcycle, thereafter the applicant discharged a shot by the country made pistol from a close range, which hit the deceased, consequently he fell down. Thereafter the second miscreants caused gun shot injury on the left side chest of the deceased. The first informant made hue and cry then the people came on the place of occurrence and saw the incident. After committing the alleged offence the applicant and other co-accused persons fled away by their motorcycle. The deceased was having litigation with Haseem Faruq. After receiving injuries the deceased died on the spot. According to the post mortem examination report, the deceased had received four gun shot injuries.

3. Heard Sri G. P. Dikshit, learned Counsel for the applicant, learned A.G.A., Sri

Sunil Vashisth and Sri Vijay Kumar Rai, learned Counsel for the complainant.

4. It is contended by learned Counsel for the applicant that the alleged occurrence has taken place in the dark hours of night. The presence of the first informant and other witnesses at the alleged place of occurrence is highly doubtful. The first informant is not injured witness, even no attempt was made by the accused persons to cause the injuries on his person. The F.I.R. is ante-timed, it was not in existence at the time of the preparation of inquest report. The applicant was not present at the time of the alleged occurrence. The applicant was ailing, who was admitted in Heart Line, Elgin Road, Civil Lines, Allahabad on 22.7.2006, from where he was discharged on 28.7.2006 at 8.00 p.m. It was not possible to reach within 1.15 hours at the place of the occurrence which was in district Ballia. The naming of the applicant is afterthought and due to litigation pending with the deceased. The applicant is innocent and the prosecution story is not corroborated by the medical evidence. He has not committed the alleged offence, he may be released on bail.

5. In reply to the above contention, it is submitted by learned Counsel for the applicant that active role of causing injury is assigned to the applicant, he is father-in-law of the deceased. The prosecution story is fully corroborated by the medical evidence, the F.I.R. was promptly lodged. The plea of the alibi shall be considered at the stage of the trial. The applicant is the main accused, he was having strong motive, in case the applicant is released on bail, he shall tamper with the evidence.

6. Considering the facts, circumstances of the case, submissions made by learned Counsel for the applicant, learned A.G.A. and learned Counsel for the complainant, I am of the view that plea of the alibi shall be considered by the trial court if it is taken the specific role of causing gun shot injury is assigned to the applicant and without expressing any opinion on the merits of the case, the applicant is not entitled for bail. The prayer for bail is refused.

7. According this application is rejected.