



2026:AHC:7800-DB

Reserved On :- 18.12.2025

Delivered On :- 13.01.2026

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**CRIMINAL APPEAL No. - 5242 of 2025**

Ayush Dixit

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

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|---------------------------|----------------------------------------------|
| Counsel for Appellant(s)  | : Deenanath Mishra, Raj Kumar, Rajrshi Gupta |
| Counsel for Respondent(s) | : G.A., Naveen Tiwari, Vimlendu Tripathi     |

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**In Chamber**

**HON'BLE SIDDHARTH, J.**

**HON'BLE PRASHANT MISHRA-I, J.**

**(Delivered By Hon'ble Siddharth, J.)**

1. Heard Sri Rajrshi Gupta and Sri D.N. Mishra, learned counsel for the appellant and Sri Vimlendu Tripathi, learned Government Advocate for the State and perused the record.
2. This bail application has been moved on behalf of appellant-applicant, Ayush Dixit, praying to enlarge him on bail in Sessions Trial No. 1363 of 2020 (State vs. Ayush Dixit) arising out of Case Crime No. 57 of 2020, under Sections- 302, 504, 384 IPC, Police Station- Derapur, District- Kanpur Dehat and Sessions Case No. 1362 of 2020 (State vs. Ayush Dixit) arising out of Case Crime No. 58 of 2020, under Sections- 3/25 of Arms Act, Police Station- Derapur, District- Kanpur Dehat, during the pendency of this appeal.
3. The prosecution case is that on 06.03.2020 at about 09:30 p.m., son of the informant, Amit alias Ramji Shukla, was closing his shop, when the appellant, Ayush, came and demanded money, after his son refused to pay money, he started abusing him and after catching hold the collar of his shirt caused one fire on his head and one on his neck. The informant and the

people around ran to save Amit and the appellant escaped from the spot. His son died during treatment.

4. The learned counsel for appellant submits that there are two gunshot injuries which were caused to deceased on head and neck, same does not corroborate with the post-mortem report and the statement of Doctor; as per Doctor, only one entry and exit wound were found on the body of the deceased; as per prosecution case, it is close range fire arm injury caused to the deceased, but charring, blackening and tattooing were not present upon the body of the deceased; it has not been considered by the trial court that the alleged incident has taken place on 06.03.2020 and statement of two witnesses, Mukund and Arun Kumar, have been recorded after 2.5 months from the alleged incident admitted as Investigating Officer i.e., P.W.-5 in his cross-examination; all the eye witnesses are interested witnesses and P.W.-1 is father of the deceased; P.W.-3 is Mama of the deceased and P.W.-2 is close friend and customer of the deceased; as per F.S.L. Report, Nitrite and Copper were found in the pistol, but the same was not found in the used cartridge of the alleged incident; prior to the statements recorded U/S.161 of Cr.P.C of prosecution witnesses and informant that have not disclosed the use of weapon i.e. country made pistol which was thrown by the appellant near the dead body/injured/deceased; as per prosecution story, the dead body of the deceased was carried by the brother of the deceased, namely, Sumit Shukla, to the hospital, but surprisingly, report of *fauti* has been given by the hospital staff; learned trial court while passing the judgment and order dated 08.04.2025, has not considered the Inquest Report, in which it is clearly mentioned that P.W.03, who has not seen the incident as per Inquest Report has given contradictory statement during trial P.W.-1 stated that the deceased has received two gunshot injuries, one on the head and the other on the neck, while P.W.-2 and P.W.-3 stated that one injury was caused on the neck and one of the chin; the alleged incident took place at 09:30 P.M., but no source of light as evident from the Site Plan and the recovery memo prepared by the Investigating Officer; the entire prosecution story as well as judgment dated 08.04.2025 fails to show that how much money has been demanded as extortion; as per prosecution, there were three witnesses present when the alleged incident of extortion and illegal demand took place, but no one came forward to save the alleged deceased; there is no material evidence available on record to show the involvement of the appellant in the present criminal case; the entire prosecution story is based on presumption

and suspicion. The appellant is in Jail since 07.03.2020 and has no criminal history apart from the present implication.

5. Learned counsel for informant and learned A.G.A. have vehemently opposed the submissions made by learned counsel for appellant, they have submitted that the oral testimony of P.W.-1, P.W.-2 and P.W.-3 can not be disbelieved only because of being in conflict with medical evidence. They have submitted that the post-mortem report of the deceased corroborates the oral testimony of the above noted witnesses.

6. After hearing the rival submissions this court finds the following ante-mortem injuries on the body of the deceased-

*"(i) Firearm wound entry size 1 cm x 1 cm on right side neck, 2.5 cm. Above middle and off right clavicle margin inverted.*

*(ii) Firearm wound of exit size 1cm x 1cm margin inverted on right back of chest 10 cm. Middle to left mid of scapula.*

*(iii) On probing injury nos. 1 and 2 right side pleura lacerated exit wound entry no. 2 found between third to fourth ribs (intercostal space).*

*(iv) Lacerated wound with black colour present on middle of chin 5 cm x 1 cm just 3 cm above lower lip."*

7. P.W.-4, the autopsy doctor has opined that injury no.1 is the wound of entry and injury no.2 is the corresponding wound of exit. There was no charring, tattooing and blackening present around wound no.1. If fire is made from revolver or pistol, then in case of firing from 3-4 inch charring is caused; if firing is made from 2-3 feet, blackening is found around the wound and in case of firing from 4-6 feet tattooing is found around the wound. He has opined that injury no.1 is not of close range fire.

8. Therefore, the ocular testimony of the witnesses, testifying to close range firing on the deceased by fire arm, after catching hold of the collar of the shirt of the deceased does not appears to be probable in view of the medical evidence discussed herein above with reference to the statement of P.W.-4.

9. Generally, if there is inconsistency between the ocular and medical evidence, the ocular evidence prevails; but if medical evidence is found to be correct after examination of autopsy doctor of the deceased and the oral

evidence does not inspire confidence, the prosecution version can be disbelieved and discarded (see *Sunil Kundu Vs. State of Jharkhand*, 2013 SCC (Cri) 427; *Chanali Maddilety Vs. State of A.P.*, 2011 2 SCC (Cri) 445; *Purushottam and Another Vs. State of M.P.*, 1980 AIR (SC) 1873 & *Niranjan Prasad and Others Vs. State of M.P.* 1996 AIR SC 3010).

10. After hearing the rival submissions and considering the fact that there are more than two hundreds criminal appeals being listed before this court per day and it is not humanly possible to decide all on merit. There is remote possibility of hearing of this appeal in near future hence prayer for grant of bail to the applicant is allowed.

11. Let the applicant-appellant convicted and sentenced in the aforesaid crime be released on bail on his furnishing a personal bond and two sureties each of the like amount to the satisfaction of court concerned.

12. The sentence awarded to applicant-appellant shall also remain suspended during the pendency of this appeal.

13. Applicant-appellant shall not transfer, sell, alienate or create any charge on the immovable property in his name, while on bail save with leave of this court.

14. As soon as personal and surety bonds are furnished, photocopies of the same are directed to be transmitted to this Court forthwith by the concerned court to be kept on record.

15. The appellant-applicant is directed to deposit 50% of fine within a period of one month from the date of his release from jail. Remaining 50% of fine shall remain stayed till the pendency of criminal appeal.

16. It is made clear that in case, the fine is not deposited within the time as specified above, the same shall be recovered in accordance with law.

### **Order on Appeal**

17. Trial Court record has been received.

18. Office is directed to get the paper books prepared.

19. List the appeal for hearing in due course.

**January 13, 2026**  
Rohit

**(Prashant Mishra-I,J.) (Siddharth,J.)**