

Court had initially granted interim anticipatory bail to the applicants vide order dated 3.3.2023 passed in Crl. Misc. Anticipatory Bail Application No. 650 of 2023 and the said order was thereafter made absolute vide order dated 19.7.2023 and the anticipatory bail application was allowed. It is also relevant that earlier this Court had granted protection to the applicants vide order dated 19.6.2023 in Crl. Misc. Writ Petition No. 4726 of 2023 which, however, was dismissed as withdrawn vide order dated 5.12.2024 due to filing of charge sheet.

23. In view of the above, it is provided that in the event of arrest, the applicants **Tatheer Jafri (in FIR-Tatheer Jafri @ Allika), Roshani Rizvi and Sayyad Naseem** shall be released on anticipatory bail in aforesaid Case Crime number on their furnishing a personal bond with two sureties each in the like amount to the satisfaction of the arresting officer/investigating officer/S.H.O. concerned with the following conditions:-

(1) The applicant(s) shall cooperate in the investigation and they will not influence the witnesses.

(2) The accused-applicant(s) will remain present as and when the arresting officer/I.O./S.H.O. concerned call(s) for investigation/interrogation.

(3) The applicant(s) shall not leave India without previous permission of the Court.

(4) In case of default, it would be open for the investigating agency to move application for vacation of this interim protection.

24. The application stands **disposed of.**

(2025) 4 ILRA 744
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 09.04.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Misc Bail Application No. 8027 of 2024

Rajeev Yadav @ Rinku **...Applicant**
Versus
State of U.P. **...Respondent**

Counsel for the Applicant:

Karunesh Singh, Arun Sinha, Ram Chandra Singh, Vijay Pratap Singh

Counsel for the Respondents:

G.A., Rina Pandey, Sanjay Shankar Pandey

Criminal Law - Criminal Procedure Code, 1973-Section 439- Indian Penal Code, 1860-Section 302/34-The applicant sought bail regarding the murder of the deceased-The prosecution primarily relied on the custodial confessional statement of a co-accused and a disputed dying declaration inferred from a witness statement under section 161 CrPC- The only material directly linking the applicant was the co-accused's confession, which is not sufficient alone for conviction-Santosh Yadav's statement, claimed to be a dying declaration, lacked crucial details such as timing and direct threat from the applicant-The court found that the statement did not specifically implicate the applicant, nor was it proximate in time or content to the deceased's death, thus affecting its evidentiary weight-The court also held that subsequent FIR alleging witness threats did not involve the applicant directly-Questions of admissibility and evidentiary value should be examined during the trial-Bail could be granted subject to conditions.(Para 1 to 26)

The application is allowed. (E-6)

List of Cases cited:

1. Pakala Narayana Swami Vs Emperor (1939)
41 Bom LR 428

2. Irfan Vs St. of U.P.(2023) SCC OnLine SC
1060

(Delivered by Hon'ble Subhash Vidyarthi,
J.)

1. Heard Sri Arun Sinha, the learned counsel for the applicant, Sri Jayant Singh Tomar, learned Additional Government Advocate-I for the State, Shri Sanjay Shankar Pandey, learned counsel for the informant-complainant, and perused the records.

2. The learned Counsel for the applicant has filed 'Rejoinder affidavit/reply to the complainant's supplementary affidavit' which is taken on record.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 063 of 2024, under Section 302/34 I.P.C. registered at Police Station Cantt., District Ayodhya.

4. The aforesaid case has been registered on the basis of an F.I.R. lodged on 26.02.2024 at 04:58 hours, stating that the informant was told by some unnamed villagers in the night of 26.02.2024 at 12:30 hours that his 25 years' old son had met with an accident near house of Ram Karan Yadav. The injured was taken to a hospital where the doctor told that he had died due to gun-shot injury.

5. The post-mortem examination report mentions lacerated entry wounds on back of chest, waist, as well as left arm and lacerated exit wound on left

arm. The cause of death has been opined to be shock and hemorrhage as a result of ante-mortem firearm injuries.

6. In the statement of the informant recorded under Section 161 Cr.P.C., he reiterated the F.I.R. version.

7. On 01.03.2024, the investigating officer recorded statement of one Sunil Yadav, who stated that Ritesh Yadav and the applicant Rajeev Yadav had come to him and they had told that they had killed Vishal Yadav. They stated that the police was suspecting their involvement in commission of the offence and was searching for them and they requested the said witness to save them. The police claimed that on the basis of aforesaid information, when the police party apprehended the applicant and co-accused Ritesh Yadav, the accused persons fired gun-shots towards the police personnel, but no police person received any injury in the incident. The co-accused Ritesh Yadav suffered a gun-shot injury on his leg due to retaliatory firing.

8. In his custodial confessional statement recorded in that case, Ritesh Yadav alleged involvement of the applicant also in the present case.

9. In para-25 of the affidavit filed in support of the bail application, the applicant's involvement in ten other criminal cases has been disclosed. In four cases the applicant has been granted bail. In four cases, he has been implicated after his arrest in the present case and two cases under the Gangsters Act have been registered on the basis of the applicant's involvement in the other cases.

10. The learned Counsel for the applicant submitted that apart from the custodial confessional statement of the co-accused Ritesh Yadav, there is no other material to connect the applicant with commission of the alleged offence.

11. Sri. Jayant Singh Tomar, the learned A.G.A.-I opposed the bail application and he has submitted that the applicant's involvement in commission of the offence has been established during investigation and a charge-sheet has been submitted against him. However, he could not dispute the submission of the learned Counsel for the applicant that the only material against the applicant is the custodial confessional statement of the co-accused Ritesh Yadav.

12. Sri Sanjay Shankar Pandey, learned counsel for the informant, has vehemently opposed the bail application and he submitted that the deceased had given a dying-declaration implicating the applicant. As per him, the dying-declaration can be inferred from statement of the informant's son Santosh Yadav recorded by the investigating officer, which has been annexed along with the bail application as well as along with the counter affidavit filed by the State. He stated that Sandeep Yadav, son of Chandradev Yadav had telephonically informed Vinod Yadav that Vishal Yadav had met with an accident. This witness further stated that this information had been given to Vinod Yadav by Naveen Gaur by making a phone call. In spite of a query made by the Court to the learned counsel for the informant to explain this discrepancy in the statement as to whether the information of the incident was given to Vinod Yadav by Sandeep Yadav or Naveen Gaur, the learned counsel for the informant could not give any reply. Santosh

Yadav further stated that upon receipt of this information, he had gone to the spot along with his brother Akash and father Ram Bali Yadav (the informant) and found his brother lying there. Santosh Yadav took him to the district hospital where the doctor told that the victim had died due to gunshot injury. Thereafter, the FIR was lodged.

13. Santosh Yadav further stated that his father was involved in business of land with Ritesh Yadav. His brother Vishal Yadav also used to accompany his father Rambali Yadav (the informant). Rambali Yadav and Ritesh Yadav had entered into an agreement regarding land of Smt. Poonam Devi in the year 2021 which was subject to a family litigation. The litigation was decided in favour of Smt. Poonam Devi in the month of January. Meanwhile, price of the land had increased and Ritesh Yadav wanted to get a sale-deed executed in his own favour, which was opposed by Vishal Yadav. Vishal Yadav had told his brother Santosh Yadav that Ritesh Yadav had threatened him but Santosh Yadav had not given any importance to this information.

14. The learned counsel for the informant has stated that the aforesaid statement of Santosh Yadav wherein he stated that the deceased had informed him that Ritesh Yadav had threatened him, amounts to his dying-declaration.

15. The statutory provision regarding dying declarations is contained in Section 32(1) of the Evidence Act, which reads as follows: -

“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.— Statements, written or verbal, of relevant

facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:—

(1) When it relates to cause of death.—When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.”

16. In reply to the Court's query that the statement of Santosh Yadav does not make a mention as to when such a statement had been made by the deceased and whether the statement which was not made in close proximity of the death of the victim or while he was apprehending his death, can be treated to be his dying declaration, the learned Counsel for the informant submitted that the law in this regard had been settled in the case of *Pakala Narain Swamy*. However, he did not provide a copy of the judgment relied upon by him and he even could not give citation of the judgment.

17. This is not the proper manner to place reliance on a case-law before a Court. PART III of the Allahabad High Court Rules contains provisions regarding Criminal Jurisdiction. Chapter XVIII falling in Part III of the Rules deals with

Proceedings Other Than Original Trials. Rule 3(2) falling in Chapter XVIII of the Allahabad High Court Rules provides that: -

“If the advocates are relying upon any judgement, they must have three photocopies thereof ready, two for the Judges and one for the other side.”

18. An Advocate appearing before the High Court must be well versed with the Rules of the High Court and must comply with the same. Even otherwise, when the Courts are over burdened with cases, it should be the endeavor of the Advocates appearing before the Courts – who are officers of the Court, to render assistance by advancing submissions in a precise and concise manner so as to prevent wastage of precious time of the Court. Relying upon a case-law without providing a photocopy of the same to the Court and without even providing its citation, does not serve as a proper assistance in delivery of justice.

19. Sri. Arun Sinha has provided citation of the judgment relied upon by Sri. Shanjay Shankar Pandey, which is “**Pakala Narayana Swami Vs. Emperor:** (1939) 41 BomLR 428”. The facts of **Pakala Narayana Swami** were that on March 20, 1937, the deceased man had received an unsigned letter inviting him to come that day or next day to Berhampur. The widow of the deceased said that on that day her husband had showed her a letter and said that he was going to Berhampur as the appellant's wife had written to him and told him to go and receive payment of his due. The deceased left his house on Sunday, March 21, in time to catch the train for Berhampur. On Tuesday, March 23, his body was found in the train at Puri. The admission of this statement of the

deceased's wife was challenged in appeal. The first question framed by the Court was whether the statement of the widow, that on March 20 the deceased had told her that he was going to Berhampur as the accused's wife had written and told him to go and receive payment of his dues, was admissible under Section 32(1) of the Indian Evidence Act, 1872. The Bombay High Court held that: -

*"The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transaction: **general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible.** But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be circumstances of the transaction, and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused. "Circumstances of the transaction" is a phrase, no doubt, that conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence" which includes evidence of all relevant facts. It is on the other hand narrower than "res gest". Circumstances must have some proximate relation to the actual occurrence : though as for instance in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of the actual fatal dose."*

(Emphasis added)

20. In **Irfan v. State of U.P.**, 2023 SCC OnLine SC 1060, the Hon'ble Supreme Court has considered the law relating to dying declarations and has referred to numerous precedents on the point. The Hon'ble Supreme Court has drawn the following conclusions:-

"62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility:—

(i) Whether the person making the statement was in expectation of death?

(ii) Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"

(iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?

(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

(v) Whether the statement was not recorded properly?

(vi) Whether, the dying declarant had opportunity to clearly observe the incident?

(vii) Whether, the dying declaration has been consistent throughout?

(viii) Whether, the dying declaration in itself is a manifestation/fiction of the dying person's imagination of what he thinks transpired?

(ix) *Whether, the dying declaration was itself voluntary?*

(x) *In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?*

(xi) *Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?*

63. *It is the duty of the prosecution to establish the charge against the accused beyond the reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. It is just not enough for the court to say that the dying declaration is reliable as the accused is named in the dying declaration as the assailant.*

64. It is unsafe to record the conviction on the basis of a dying declaration alone in the cases where suspicion, like the case on hand is raised, as regards the correctness of the dying declaration. In such cases, the Court may have to look for some corroborative evidence by treating the dying declaration only as a piece of evidence. The evidence and material available on record must be properly weighed in each case to arrive at an appropriate conclusion...

(Emphasis added)

21. When we examine the facts of the present case in light of the law laid down by the Hon'ble Supreme Court in view of the aforesaid law laid down by the Hon'ble Supreme Court, what comes to light is that the statement of Santosh Yadav that Vishal Yadav had told him that Ritesh Yadav had threatened him but Santosh Yadav had not given any importance to this information,

does not disclose as to when was the threat extended by co-accused Ritesh Yadav and when had Vishal Yadav told it to Santosh Yadav. The threat had not been extended by the applicant. The threat was not to kill Vishal Yadav. Even after coming to know about the threat, Santosh Yadav himself had not given any importance to it. These facts adversely affect the weight of the so called dying declaration.

22. The questions regarding admissibility, relevancy and weight of the evidence would be better left to be dealt with by the trial Court, but since submissions have been advanced by the learned Counsel for the informant on these points, merely this much is being observed that for the purpose of deciding the bail application, it is relevant to be noted that witness Santosh Yadav is the brother of the deceased and informant's son. He has stated in his statement recorded that he had reached the spot of occurrence along with his father. The FIR was lodged by his father afterwards. This witness did not disclose the fact that the deceased was threatened by co-accused- Ritesh Yadav prior to lodging of the FIR and this fact has been disclosed for the first time while recording his statement under Section 161 Cr.P.C. This statement does not make even a mention of applicant's name.

23. Therefore, I am of the considered view that the statement of Santosh Yadav recorded under Section 161 Cr.P.C. does not make out a case for rejection of the bail application of the applicant.

24. The learned counsel for the informant further submitted that the accused persons are threatening the witnesses of the present case and in this regard FIR No.0070 of 2025 has been

lodged in Police Station Pura Kalander, District Ayodhya under Sections 351(3) B.N.S. alleging that a witness in the present case, Suneel Yadav received a phone call on 09.01.2025 from some unknown person who introduced himself as Ritesh who threatened the said person not to give evidence in the matter. The Telephone call is said to have been received on 09.01.2025, whereas the FIR has been lodged on 09.02.2025. The FIR makes no mention of the applicant's name and there is no allegation that the phone call had been made at the behest of the applicant. The exact conversation that took place in that phone call has not been reproduced in the F.I.R. Therefore, I am of the considered view that lodging of the aforesaid FIR a month after receipt of the alleged phone call, does not make any difference while considering the bail application of the applicant.

25. Having considered all the aforesaid facts and circumstances 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 in the aforesaid crime. However, it is clarified that the observations made in this order would not affect the outcome of the trial.

26. Let the applicant- **Rajeev Yadav alias Rinku** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of magistrate/court concerned, subject to following conditions: -

(i) the applicant shall not tamper with the prosecution evidence;

(ii) the applicant shall not pressurize the prosecution witnesses;

(iii) the applicant shall appear on each and every date fixed by the trial court, unless his appearance is exempted by the learned trial court.

(2025) 4 ILRA 750
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 09.04.2025

BEFORE

THE HON'BLE KRISHAN PAHAL, J.

Criminal Misc Bail Application No. 9861 of 2025

Arun Kumar Mishra	...Applicant
Versus	
State of U.P.	...Respondent

Counsel for the Applicant:

Sri Nitin Chandra Mishra, Sri R.B. Tripathi, Sri Anoop Trivedi (Sr. Adv.)

Counsel for the Respondents:

G.A., Sri Devendra Singh

Criminal Law – Indian Penal Code, 1860 - Sections 313 & 377 - Bail – Allegation of rape on false promise of marriage – Consent – Adult prosecutrix – Delay of five months in FIR – Relationship admitted to be consensual – Admitted deletion of charges under Sections 313 & 377 I.P.C. – Disputed marital status – Prima facie no intention to deceive from inception – Courts not to criminalise failed relationships – Law does not enforce all aspects of morality – Bail granted. (Paras 5, 30 to 42)

HELD:

This case is reflective of a broader societal shift, where the sanctity and solemnity once associated with intimate relationships have seen a marked decline. The prevalence of transient and uncommitted relationships, often formed and dissolved at will, raises critical questions about individual responsibility and the misuse of legal provisions, especially when such