



2026:AHC:71092

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 29240 of 2025

Rohit Patel

.....Applicant(s)

Versus

State of U.P.

.....Opposite Party(s)

Counsel for Applicant(s) : Ghan Shyam Das
Counsel for Opposite Party(s) : Arun Kumar Shukla, G.A., Govind Tiwari,
Ram Saumitra Tripathi, Shivam Agarwal,
Tanu Shree

Court No. - 67

HON'BLE ARUN KUMAR SINGH DESHWAL, J.

1. Heard Sri Kamal Krishna, learned Senior Advocate, assisted by Sri Ghan Shyam Das, learned counsel for the applicant, Sri Arun Kumar Shukla along with Sri Shivam Agarwal, learned counsel for the first informant and Sri Ram Kumar Verma, learned A.G.A. for the State and perused the record.
2. The instant bail application has been filed with a prayer to release the applicant on bail in Case Crime No.90 of 2025, under Section-103(1) BNS, Police Station-Lalauli, District-Fatehpur, during the pendency of the trial.
3. Contention of learned counsel for the applicant is that as per the prosecution story, the applicant is the husband of the deceased and he used to quarrel with the deceased and on previous occasion also, he had beaten the deceased regarding which an FIR was also lodged. Subsequently in police station, both the parties had entered into compromise and deceased started living with the applicant. It is further mentioned in the FIR that on 19.03.2025, the applicant has murdered his wife and other co-accused were also in collusion with the applicant. After the investigation, the names of the other co-accused were exonerated and chargesheet was filed only against the present applicant.
4. It is submitted by the applicant's counsel that as per the postmortem report of the deceased, cause of death is strangulation

but hyoid bone was intact, therefore, it cannot be a case of strangulation. It is further submitted that there is no eye witness of the incident and even the children themselves admitted that they were sleeping in the night and in the morning, they found the deceased dead. It is further submitted that there is no evidence that at the time of incident, applicant was inside the house along with the deceased, therefore, presumption u/s 109 of BSA will not be attracted against the applicant. Learned counsel for the applicant has also relied upon the judgement of the Apex Court in the case of **State of Rajasthan Vs. Ramanand** reported in **AIR 2017 SUPREME COURT 2100**. It is further submitted that the applicant has no criminal history and charge sheet has been filed in the present case, therefore, there is no requirement of custodial interrogation. It is further submitted that though the daughter of the applicant in her statement recorded u/s 180 of BNSS has stated that she had not seen the incident in question. However, she changed her statement during trial and stated that at the time of incident, she was not sleeping but has herself seen the incident where the two other persons along with his father committed the murder of their mother. Therefore statement of applicant's daughter during trial itself makes the prosecution story doubtful. It is further submitted that the statement of the daughter of the deceased, Rishika was recorded on 16.04.2025 and the statement of Utkarsh who was the applicant's sister's son, who allegedly resided in the same house, was recorded on 18.04.2025. Therefore, delayed recording of statement u/s 180 of BNSS is not reliable. In support of his contention, learned counsel for the applicant has relied upon the judgement of the Apex Court in the case of **Shahid Khan Vs. State of Rajasthan** reported in **2016 AIR (SC) 1178** wherein the Apex Court discarded the statement of two witnesses recorded after three days of the occurrence. The applicant is a law abiding citizen and he is languishing in jail since 25.03.2025. In case, he is granted bail, he will not misuse the liberty of bail and would cooperate in the trial proceedings.

5. Per contra, learned counsel for the first informant has vehemently opposed the prayer for bail and submitted that the daughter of the applicant stated in her statement u/s 180 BNSS that the applicant was present in the house at the time of the incident and he had also beaten his mother in the night. It is further submitted that the statement of applicant's sister's son, Utkarsh was also recorded on 27.03.2025 who stated that in the night of the date of incident, the

applicant came to the house and was present in the house at the time of incident. It is further submitted that statement of Utkarsh was promptly recorded on 27.03.2025 not on 18.04.2025 and he further submitted that even if the statement of the daughter of the applicant was recorded on 16.04.2025 that could be the fault on the part of the Investigating Officer because of the reason that daughter was under shock after the death of her mother (deceased). It is further submitted that the postmortem report shows that the deceased was also having other injuries apart from mark of strangulation which shows that at the time of strangulation, she also resisted and he also submitted that it is not always true that hyoid bone should be fractured during strangulation. In support of his contention, he has relied upon the judgement of the Apex Court in the case of **Ravirala Laxmaiah Vs. State of Andhra Pradesh** reported in **2013 (9) SCC 283** wherein the Apex Court observed that fracture of hyoid bone is not always found fractured in the case of strangulation. Learned counsel for the first informant has also relied upon Clause 9 of the **Modi's Medical Jurisprudence and Toxicology** wherein it was opined by Modi that it is not always necessary that hyoid bone should be fractured during strangulation. Learned counsel for the first informant has further relied upon the judgement of this court in **Criminal Misc. Bail Application No.27556 of 2018 (Pushkar Katiyar Vs. State of U.P.)** decided on **10.07.2019** wherein this Court has also taken a view that fracture of hyoid bone is not always necessary in case of strangulation. Therefore, applicant is not entitled to be released on bail.

6. Learned A.G.A. has also adopted the arguments of learned counsel for the first informant.

7. After hearing the submissions of learned counsel for the parties, two legal questions arise which need to be addressed before coming to the merits of this case. These two questions are as follows:

(i) Whether the hyoid bone will necessarily be fractured in the case of strangulation?

(ii) Whether the delay in recording the statement of witness during investigation will always be fatal to prosecution case?

8. Before dealing with the question no.i, it would be appropriate to define the hyoid bone.

"The hyoid bone is a small U-shaped floating bone located in front of the neck, between the lower jaw and the thyroid cartilage serving as a critical anchor point for tongue, throat and larynx muscles. It is only bone in the body that does not articulate with another bone, instead of suspended by muscles and ligaments."

9. In *Modi's Medical Jurisprudence and Toxicology* 23rd Edition at page 583 difference between hanging and strangulation was given in tabulated form wherein paragraph no.12 discusses the differences in hanging and strangulation regarding fracture of hyoid bone which is mentioned as below:

12.	Hanging	Strangulation
(1)	Fracture of larynx and trachea - Very rare and that too in judicial hanging.	(1) Fracture of larynx and trachea - Often found also hyoid bone (sic-fracture)

10. In the *Journal of Forensic Sciences, Vol-41* under the title 'fracture of the hyoid bone in strangulation', paragraph no.24 of **Ponnusamy's** case is being quoted as under:

"24. In Journal of Forensic Sciences, Vol. 41 under the title — Fracture of the Hyoid Bone in Strangulation: Comparison of Fractured and Unfractured Hyoids from Victims of Strangulation, it is stated:

"The hyoid is the U-shaped bone of the neck that is fractured in one-third of all homicides by strangulation. On this basis, post-mortem detection of hyoid fracture is relevant to the diagnosis of strangulation. However, since many cases lack a hyoid fracture, the absence of this finding does not exclude strangulation as a cause of death. The reasons why some hyoids fracture and others do not may relate to the nature and magnitude of force applied to the neck, age of the victim, nature of the instrument (ligature or hands) used to strangle, and intrinsic anatomic features of the hyoid bone. We compared the case profiles and xeroradiographic appearance of the hyoids of 20 victims of homicidal strangulation with and without hyoid fracture (n = 10, each). The fractured hyoids occurred in older victims of strangulation (39 ± 14 years) when compared to the victims with unfractured hyoids (30 ± 10 years). The age dependency of hyoid fracture correlated with the degree of ossification or fusion of the hyoid synchondroses. The hyoid was fused in older victims of strangulation (41 ± 12 years) whereas the unfused hyoids were found in the younger victims (28 ± 10 years). In addition, the hyoid bone was ossified or fused in 70% of all fractured hyoids, but, only 30% of the unfractured hyoids were fused. The shape of the hyoid bone was also

found to differentiate fractured and unfractured hyoids. Fractured hyoids were longer in the anterior-posterior plane and were more steeply sloping when compared with unfractured hyoids. These data indicate that hyoids of strangulation victims, with and without fracture, are distinguished by various indices of shape and rigidity. On this basis, it may be possible to explain why some victims of strangulation do not have fractured hyoid bones."

11. The Hon'ble Apex Court in the case of **Ponnusamy Vs. State of Tamil Nadu** reported in **(2008) 5 SCC 587** also observed that it is not necessary that fracture of hyoid bone is must in all the cases. Similarly, in the case of **Ravirala Laxmaiah Vs. State of Andhra Pradesh** reported in **(2013) 9 SCC 283**, the Hon'ble Apex Court relied upon the judgement of **Ponnusamy (supra)** and observed that fracture of hyoid bone is not always found in the case of strangulation.

12. From the above discussion, it is clear that though there are more chances of fracture in hyoid bone in older victims of strangulation but when the victims of homicide strangulation is of younger age (30±10 years) then hyoid bone may remain unfractured. Therefore, it is not necessary in the case of strangulation that there should be fracture in hyoid bone and there may be cases of strangulation without fracture in hyoid bone.

13. So far as the second question regarding delayed recording of statement of witnesses is concerned, this issue was considered by the Apex Court in several cases. In the case of **Ganesh Bhavan Patel And Another Vs. State of Maharashtra** reported in **(1978) 4 SCC 371**, three Judges Bench of Hon'ble Supreme Court observed that inordinate delay in registration of the 'FIR' and further delay in recording the statement of material witnesses casts a cloud of suspicion over the prosecution story. Paragraph no.29 of the said judgement is being quoted as under:

"29. Thus considered in the light of the surrounding circumstances, this inordinate delay in registration of the 'FIR' and further delay in recording the statements of the material witnesses, casts a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story."

14. Hon'ble Apex Court in the case of **Shahid Khan Vs. State of Rajasthan** reported in **(2016) 4 SCC 96**, observed that if there is no explanation for the delayed recording of statement, it casts a serious doubt about their being the eye witnesses to the occurrence and if

there is no corroboration of their evidence from any other independent source then it would be unsafe to rely upon the statement of such evidences to uphold the conviction. Paragraph no.20 of the said judgement is being quoted as under:

"20. The statements of PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir were recorded after 3 days of the occurrence. No explanation is forthcoming as to why they were not examined for 3 days. It is also not known as to how the police came to know that these witnesses saw the occurrence. The delay in recording the statements casts a serious doubt about their being eyewitnesses to the occurrence. It may suggest that the investigating officer was deliberately marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced. The circumstances in this case lend such significance to this delay. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir, in view of their unexplained silence and delayed statement to the police, do not appear to us to be wholly reliable witnesses. There is no corroboration of their evidence from any other independent source either. We find it rather unsafe to rely upon their evidence only to uphold the conviction and sentence of the appellants. The High Court has failed to advert to the contentions raised by the appellants and reappreciate the evidence thereby resulting in miscarriage of justice. In our opinion, the case against the appellants has not been proved beyond reasonable doubt."

15. In the case of **Jafarudheen and Others Vs. State of Kerala** reported in **(2022) 8 SCC 440**, the Hon'ble Apex Court considered the issue of delayed recording of statement of witness during investigation and observed that an inordinate and unexplained delay in recording the statement of witness u/s 161 Cr.P.C. may be fatal to the prosecution's case but it also depends upon the fact of each case. Paragraph no.33 of the said judgement is being quoted as under:

"33. The investigating officer is expected to kick start his investigation immediately after registration of a cognizable offence. An inordinate and unexplained delay may be fatal to the prosecution's case but only to be considered by the court, on the facts of each case. There may be adequate circumstances for not examining a witness at an appropriate time. However, non-examination of the witness despite being available may call for an explanation from the investigating officer. It only causes doubt in the mind of the court, which is required to be cleared."

16. The 3 Judges Bench of Hon'ble Apex Court in the case of **Goutam Joardar Vs. State of West Bengal** reported in **(2022) 17 SCC 549**, considered the earlier cases and observed that mere *factum* of delay by itself cannot result in rejection of the testimony of

witnesses as there may be number of reasons for delayed recording of the statement which can be considered by the court and taking into account the fact of the particular case. Paragraph nos.10 and 11 of the said judgement are being quoted as under:

"10. It is true that there was some delay in recording the statements of the eyewitnesses concerned but mere factum of delay by itself cannot result in rejection of their testimonies.

11. The material on record definitely establishes the fear created by the accused. If the witnesses felt terrorised and frightened and did not come forward for some time, the delay in recording their statements stood adequately explained. Nothing has been brought on record to suggest that during the interregnum, the witnesses were carrying on their ordinary pursuits. Thus, the eyewitness account unfolded through PW 18 and PW 19 cannot be discarded. We have gone through their testimonies and are convinced that their statements were cogent, consistent and trustworthy."

17. In recent judgement of **Firoz Khan Akbarkhan Vs. State of Maharashtra** reported in **2025 SCC OnLine SC 627**, three Judges Bench considering all earlier cases on the point of delayed recording of statement observed that **Ganesh Bhavan Patel (supra)** is not an authority to contain, that delay in recording witness statement is always fatal to the prosecution case and when such delay is explained then delayed recording of witness statement will not aid an accused. Paragraph no.21 of the said judgement is being quoted as under:

"21. Insofar as the delay of 2/3 days in recording the statements of the eye-witnesses under Section 161 of the Criminal Procedure Code, 1973 (hereinafter referred to as the 'Code') is concerned, the said delay has been thoroughly explained by the witnesses, including the Investigating Officer, to the effect that there were riots in the area. On this score, the Investigating Officer was involved in maintaining law and order in the affected area. In the attendant facts and circumstances, the course of action adopted by the police cannot be termed unjustified and no adverse inference can be drawn on this count. No doubt that Court has laid down that an inordinate delay in recording witness statements can prove to be fatal for the prosecution, as pointed out by three learned Judges in Ganesh Bhavan Patel v. State of Maharashtra, (1978) 4 SCC 371; however, therein, the delay in recording statements of the material witnesses was accompanied by a delay in registering of the FIR and the surrounding circumstances, which led the Court to hold that there was a 'a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story.' In Jagjit Singh v. State of Punjab, (2005) 3 SCC 689 and State of A.P. v. S Swarnalatha, (2009) 8 SCC

383, the Court held in favour of the convict/accused, as the inordinate delays therein could not be sufficiently explained. Delay of about 27 days, in a case where communal violence had broken out, was held not fatal, in *Lal Bahadur v. State (NCT of Delhi)*, (2013) 4 SCC 557. Delay of over 2 years in recording witness statements was deemed not fatal, when explained, in *Baldev Singh v. State of Punjab*, (2014) 12 SCC 473. Delay in recording witness statements was held not fatal per se in *Sunil Kumar v. State of Rajasthan*, (2005) 9 SCC 283 and *V K Mishra v. State of Uttarakhand*, (2015) 9 SCC 588. Delay in recording statements of witnesses was held to have cast serious doubts on the prosecution version in *Shahid Khan v. State of Rajasthan*, (2016) 4 SCC 96 and *Jafarudheen v. State of Kerala*, (2022) 8 SCC 440. It was held, in *Goutam Joardar v. State of W. B.*, (2022) 17 SCC 549, by a Coordinate Bench that 'there was some delay in recording the statements of the eyewitnesses concerned but mere factum of delay by itself cannot result in rejection of their testimonies.' Per our understanding, *Ganesh Bhavan Patel (supra)* is not an authority to contend that delay in recording witness statements is always fatal to the prosecution's case. Thus, stricto sensu, delay in recording witness statements, moreso when the said delay is explained, will not aid an accused. Of course, no hard-and-fast principle in this regard ought to be or can be laid down, as delay, if any, in recording statements will have to be examined by the Court concerned in conjunction with the peculiar facts of the case before it. Our reading of the above shall apply on all fours to delays in the context of Section 164 of the Code."

18. From the above quoted judgements regarding delayed recording of statements, it is clear that delay in recording the statement of witnesses is not always fatal to the prosecution case and other surrounding evidence should also be considered. If there is sufficient explanation for the delay in recording the statement then delayed recording of statements during investigation will not affect the prosecution's case and such explanation can be given during trial by the Investigating Officer or can be gathered from the facts of the case.

19. In the present case, FIR was registered on 20.03.2025 and statement of applicant's nephew was recorded on 27.03.2025 and the statement of the daughter of the applicant was recorded on 18.04.2025 as both the children were under shock because of the murder of the deceased. Therefore, some delay cannot be said to be fatal to the prosecution case. Even otherwise such issues are to be decided during trial not at this stage of bail.

20. Considering the aforesaid submission and taking into account that

it is not in dispute that as per the postmortem report, the cause of death is strangulation and other injuries are also present on the body of the deceased which shows that she resisted at the time of strangulation. It is also clear from the judgements relied upon by learned counsel for the first informant that fracture of hyoid bone is not always necessary in case of strangulation and the statement of the applicant's daughter as well as statement of applicant's sister's son, Utkarsh clearly establishes that at the time of incident, the applicant was present in the house. Therefore, Section 109 of BSA will be attracted as it is the case of murder and it is the applicant who has to explain but he failed to explain the same by simply taking the plea that he was not present in home. Therefore, this court is not inclined to release the applicant on bail.

21. Therefore, the bail application of the applicant is **rejected**.

22. The observations made in the bail application will not be binding on the trial court.

April 2, 2026
S.C.

(Arun Kumar Singh Deshwal,J.)