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**(2006) 08 AHC CK 0128**  
**In the Allahabad High Court**

**Case No :** Criminal Miscellaneous Bail Application No. 16158 of 2006

|                                        |            |
|----------------------------------------|------------|
| Raj Kumar Yadav @ Raju Yadav (In Jail) | APPELLANT  |
| Vs                                     |            |
| The State of U.P.                      | RESPONDENT |

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**Date of Decision :** 21-08-2006

**Acts Referred:**

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

**Citation :** (2006) 08 AHC CK 0128

**Hon'ble Judges :** Ravindra Singh, J

**Bench :** Single Bench

**Advocate :** R.K. Yadav and Sheo Ram Singh, for the Appellant; S.K. Mishra and A.G.A., for the Respondent

**Final Decision :** Dismissed

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## Judgement

Ravindra Singh, J.—This application has been filed by the applicant Raj Kumar Yadav alias Raju Yadav with a prayer that he may be released on bail in case crime No. 71 of 2006, under Sections 302 and 120B I.P.C., P.S. Ahiraula, District Azamgarh.

2. The prosecution story, in brief, is that the F.I.R. has been lodged by Smt Sahista at P.S. Ahiraula, Azamgarh on 17.3.2006 at 10.30 p.m. in respect of the incident which had occurred on 17.3.2006 at about 8.30 p.m. The distance of the police station was about 8 km from the alleged place of occurrence. The F.I.R. was lodged against two motorcycle borne unknown miscreants, alleging therein that two motorcycle borne unknown miscreants came at the house of the first informant and the deceased was called by them. The deceased came out and started some conversation with them, but they caused a gunshot injury on the stomach of the deceased. After causing such injury they fled away towards Phulwaria Market by their motorcycle. The deceased in injured condition was taken to the hospital at Phoolpur by the first informant and witness Raj Kumar, but the deceased died in the way, therefore, the dead body was taken to her house by the first informant. Thereafter, she went to the police station to lodge

the F.I.R. According to post mortem examination report the deceased had received only one firearm wound of entry. The injury was having blackening and charring and one yellow coloured metallic bullet was recovered from this wound and there was underlying bone fractured. During investigation the statement of the first informant was recorded, in which she stated that at the time of alleged occurrence the applicant was also present at the door. In his presence two unknown persons came there and one of them caused injury on the person of the deceased, but during investigation first informant Sahista, the applicant, Suresh Yadav and Firoz alias Sheru became the accused by alleging that the first informant was having illicit relations with the applicant. The informant and other co-accused persons hatched conspiracy. She gave a sum of Rs. 50,000/- to the applicant. The amount was transferred by the applicant to co-accused Suresh Yadav. Suresh Yadav and co-accused Firoz alias Sheru came at the door of the applicant and the shot discharged by co-accused Firoz alias Sheru hit the deceased.

3. Heard Sri Sheo Ram Singh and Sri Rajendra Kumar Yadav Learned Counsel for the applicant, learned A.G.A. for the state of U.P. and Sri S.K. Mishra learned Counsel for the complainant.

4. It is contended by the learned Counsel for the applicant that:

(i) The applicant is not named in the F.I.R. According to the F.I.R. the applicant was Driver of the tractor of the first informant. The applicant was the witness of the alleged incident and two unknown persons have committed the alleged offence. The F.I.R. has been lodged by the wife of the deceased, but without any cogent evidence the applicant has also been made an accused in the present case along with the first informant and two other co-accused persons.

(ii) The applicant has been falsely implicated in this case on the basis of the doubt and suspicion, because he was driving the tractor of the deceased for the last 2 ? years.

(iii) Even according to prosecution version the allegation against the applicant is that he is also a member of the conspiracy, which has been hatched by the wife of the deceased and she has given a sum of Rs. 50,000/- as a supari for the purpose of killing her husband. The same amount was given to the applicant by her, which has been given to co-accused Suresh Yadav by the applicant and co-accused Suresh Yadav has engaged co-accused Firoz alias Sheru to commit the murder of the deceased and from that money co-accused Suresh Yadav has purchased one motorcycle and a mobile phone and it is alleged that co-accused Suresh Yadav was talking with the applicant and co-accused Sahista by that mobile. It is alleged that the printout of that mobile phone was confirming the conversation of the applicant with the co-accused Suresh Yadav also.

(iv) There is no direct eyewitness account and nothing incriminating has been recovered from the possession of the applicant or at his pointing out and there is no evidence to show that the applicant was also a member of conspiracy. The

statement of co-accused shall not be read against the applicant and the statement of the applicant before the police is not admissible. There is no evidence to show the involvement of the applicant.

(v) The applicant is innocent. He is not having any criminal antecedents; therefore, he may be released on bail.

5. In reply of the above contention the learned A.G.A. and the learned Counsel for the complainant submit that deceased has been murdered in a pre-planned manner by hatching conspiracy by the applicant, co-accused Sahista the wife of the deceased, co-accused Suresh Yadav and co-accused Firoz alias Sheru. The deceased has performed 3 marriages. The relations between the deceased and first Informant Sahista became stained and the applicant has developed his relation with Smt Sahista, because he was in her touch for the last 2 ? years. He was driver of the tractor of the deceased. Smt Sahista gave a him to co-accused Suresh Yadav, who engaged co-accused Firoz alias Sheru to commit the murder of the deceased. Co-accused Suresh Yadav and Firoz alias Sheru came at the place of occurrence and committed the murder of the deceased in the presence of the first informant the wife of the deceased, but the first informant has lodged the F.I.R. against 2 unknown persons in which the applicant was made witness. This F.I.R. was lodged to divert the mind of the prosecution so that the real culprit may not be brought into the light. The applicant is the main person who has managed the whole deal through co-accused Suresh Yadav. The print out of the phone of the applicant and co-accused Suresh Yadav are confirming their conversations in respect of the alleged offence and the bail of co-accused Suresh Yadav has been rejected by this Court. In case the applicant is released on bail he may tamper with the evidence and abscond also, therefore, the applicant is not entitled for bail

6. Considering the facts and circumstances of the case and submissions made by the learned Counsel for the applicant, the learned A.G.A. and learned Counsel for the complainant and without expressing any opinion on the merits of the case. I am of the view that the applicant is not entitled for bail at this stage, therefore, the prayer for bail is refused at this stage.

7. Accordingly, the bail application is rejected.