

HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No.1274 of 2023

Omkar @ Om Kumar and another ...Applicants

Versus

State of Uttarakhand ...Respondent

Present:-

Mr. Lokendra Dobhal, Advocate for the applicants.

Mr. K.S. Bora, D.A.G for the State.

Hon'ble Ravindra Maithani, J. (Oral)

Applicants Omkar @ Om Kumar and Diksha are in judicial custody in Case Crime/FIR No. 193 of 2022, under Section 302 IPC, Police Station Kotwali Kotdwar, District Pauri Garhwal. They have sought their release on bail.

2. Heard learned counsel for the parties and perused the record.

3. The deceased Rinku Kumar was staying separate from his family. His wife was staying with her father. On 25.07.2022, according to the FIR, the wife of the deceased ie. the applicant Diksha came into the house of the deceased, there the applicant Omkar, who happens to be the younger brother of the deceased was also present. A quarrel took place between them. Thereafter, both the applicants locked the door of Rinku Kumar and left the place. Subsequently, when the neighbours suspected some

foul play and the door was got opened by the applicant Omkar, the dead body of the deceased Rinku Kumar was found on a cot.

4. Learned counsel for the applicants would submit that there is no evidence against the applicants. the informant has not supported the prosecution case. PW5 Ravi Kant has categorically stated that whatever he has stated that is based on suspicion. He has not seen the incident. It is argued that had the applicant Omkar, committed any offence, he would have been arrested on the same date. There has been no occasion for him to visit the place on 26.07.2022 again. Learned counsel would also submit that a pillow was allegedly recovered at the instance of the applicant, but he would submit that the inquest report records that the pillow was beneath the dead body. Therefore, the alleged recovery does not serve any purpose. It is argued that, in fact, the applicant Omkar was present at the time of inquest. Had he been the offender, he would not have been present during inquest.

5. Learned State counsel would submit that, in fact, the deceased died due to asphyxia. He was found dead on his cot. The wife of the applicant i.e. the applicant Diksha had extramarital relationship with the applicant Omkar.

6. It is a stage of bail. Much of the discussion is not expected of. Arguments are being appreciated with the caveat that any observation made in this order shall have no bearing at any subsequent stage of the trial or in any other proceedings.

7. It is true that PW1, the father of the deceased has not supported the prosecution case at trial. There are other witnesses who have already been examined at the trial, i.e. PW2 Shashikant, PW3 Rakesh Kumar, PW4 Kanti Prasad and PW5 Ravi Kant. They have stated that there was a quarrel in the room of the deceased. PW5 Ravi Kant is the landlord. He has categorically stated that on the date of incident, both the applicants were in the house of the deceased. Subsequently, he spotted the applicant Omkar; inquired about deceased and when the lock was broken the dead body was found. It is a case based on circumstantial evidence. There were injuries on the person of the deceased. Death was due to asphyxia.

8. Having considered, this Court is of the view that there is no ground to enlarge the applicants on bail. Accordingly, the bail application deserves to be rejected.

9. The bail application is rejected.

(Ravindra Maithani, J.)
29.12. 2023