

HIGH COURT OF UTTARAKHAND AT NAINITAL

1st Bail Application No. 1381 of 2023

Pulkit Arya

.....Applicant

Versus

State of Uttarakhand

.....Respondent

Present:-

Mr. Aditya Singh, Advocate for the applicant.

Mr. G.S. Sandhu, Government Advocate assisted by Ms. Manisha Rana Singh, AGA for the State.

Mr. Navnish Negi, Advocate for the father of the deceased.

Hon'ble Ravindra Maithani, J. (Oral)

Applicant Pulkit Arya is in judicial custody in FIR No. 1 of 2022 dated 20.09.2022, under Sections 302, 201, 354-A, 120-B IPC and Section 5(1)(b) of the Immoral Traffic (Prevention) Act, 1956, P.S./Patti Udaypur Palla-2, Pauri Garhwal. He has sought his release on bail.

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

3. The prosecution case, as unfolded, is as follows; the applicant owns a resort far from the city area. The deceased, a young girl, who had completed Class 12th in the year 2020 had secured a job of receptionist in the resort. She was found missing from there. It is the applicant, who first lodged the FIR in the matter with the averments that the deceased was under tremendous tension due to certain reasons. The applicant wanted to

speak to her father, therefore, he asked the telephone number of the father of the deceased. Due to this, the deceased was further troubled. Since the deceased was fond of outing, the applicant asked one of his colleagues to take the deceased out from the resort, but at the instance of the colleague, the applicant also joined them. They took 2 two-wheelers and returned at the resort. Next day morning, according to the FIR, the applicant was told that the deceased was not in her room. During investigation, it was revealed that, in fact, the applicant and the co-accused were molesting the deceased in the resort; they were pestering her for immoral activities; they were pressurising her to give extra services to the guests, to which the deceased was not agreeable. The applicant and the co-accused had a sense of fear that perhaps the deceased might reveal it to others. Therefore, according to the prosecution, on 18.09.2022, the applicant along with the co-accused took the deceased out from the resort. They killed her and threw her in a canal. The dead body was recovered on 24.09.2022.

4. Learned counsel for the applicant would submit that there are no CCTV footages. The resort was destroyed and the DVR was damaged. He would also raise the following points in his submission:-

- (i) The friend of the deceased had visited her on 15.09.2022 and he stayed there till 17.07.2022; some most personal used articles were found in her room, which were brought to the notice of the applicant.
- (ii) The applicant was disturbed for that reason. The applicant wanted to speak to the father of the deceased, therefore, she became more perturbed.
- (iii) The applicant had asked one of his colleagues to take her out for walk, but on their instance, the applicant also joined them. They all had returned to the resort.
- (iv) The witnesses were called by the police on 19.09.2022, prior to lodging of the FIR. They were not allowed to meet anyone.
- (v) PW 24 Chandrakiran Bharti was examined at trial. He has admitted in para 13 of his statement that he had seen the deceased in the resort after their return on 18.09.2022.

- (vi) PW 29 Yashpal Singh Bisht, the Engineer of the Power House, has stated that the time of taking out the dead body from the boat is prior to the time when the boat reached at the spot. It is argued that even it is a case of planted dead body.
- (vii) It is not stated by any of the witnesses that he has not seen the deceased in her room on 18.09.2022. The witnesses have improvised their statement at trial. They have stated during trial, what they have not stated during investigation, even under Section 164 of the Code of Criminal Procedure, 1973.
- (viii) Material witnesses have already been examined. There is no chance of tampering with the evidence.
- (ix) The applicant has a deep root in the society. There are no chances of fleeing from justice.
- (x) There is no such evidence, which may deny bail to the applicant.

5. Learned counsel appearing for the father of the deceased would submit that much before the FIR was lodged, when the father of the deceased approached the applicant, he had stated that the CCTVs in his resort were not in the working order. The applicant never informed the informant that the deceased was missing. He would raise the following points as well in his submission:-

- (i) PW 23 Pushpdeep Baboria, who is friend of the deceased, had telephonic conversation with the deceased that she was along with the applicant and the co-accused. She apprehended that anything might happen to her, thereafter, she was not traceable.
- (ii) PW 9 Aman Rai, in paras 4 and 5 of the statement before the Court, has stated that, in fact, he was persuaded by the applicant and the co-accused to manufacture false evidence and tell that he had seen the deceased in her room of the resort in the night of 18.09.2022.

- (iii) PW 7 Kushraj has stated that, in fact, the applicant had been molesting the deceased.

6. Learned State Counsel would submit that the crime scene was protected in the instant case; PW 18 Sandhya Negi had visited the crime scene and a forensic team had also inspected it. She would submit that the investigation was transferred to the regular police.

7. Learned State Counsel would also submit that there are circumstances, which prove that it is the applicant and the co-accused, who killed the deceased. She would submit that PW 6 Abhinav Kashyap and PW 7 Khushraj had stated that they have seen that on the 18.09.2022, four persons left the resort, including the applicant, but the deceased did not return. PW 14 SI Omkant Bhushan, who has studied the telephonic location, has confirmed that the deceased was along with the applicant and the co-accused, but suddenly she disappeared from the place, near to which her dead body was found from a canal.

8. Learned State Counsel would also submit that :

- (i) PW 8 Vivek Arya and PW 13 Ayush Kumar also stated that on 18.09.2022, in the

evening, the deceased was much perturbed; she wanted to leave the resort; she was crying.

- (ii) PW 15 Dr. Ravi Prakash Mishra and PW 16 Dr. Ashish Ramesh Bhute have confirmed that the deceased did not die due to accidental slip, instead she was thrown into the canal.

9. Learned State Counsel would argue that the conduct of the applicant proves that it is not a case for bail. Witnesses were pressurized to make statement that the deceased had returned in the resort on 18.09.2022.

10. It is a stage of bail. Much of the discussion is not expected of. The discussion is being made with the caveat that any observation made in this order shall not have any bearing at the trial.

11. Definitely, it is a case based on circumstantial evidence. The evidence has been read over to a certain extent. This Court refrains to make deeper scrutiny of the statements, but the fact remains that PW 6 Abhinav Kashyap and PW 7 Khushraj have seen that in the evening of 18.09.2022, the applicant along with the co-accused and the deceased had left the resort. In fact, PW

6 Abhinav Kashyap has also stated that when, for the first time, in the evening, he saw the deceased, the applicant was in her room. The deceased was crying that she should be taken out from the resort, but the applicant snatched the mobile phone of the deceased and pulled her inside the room. These witnesses have stated that, thereafter, the deceased did not return. They did not see her. When the meal was to be served, the applicant and the co-accused stopped him to take the meal in the room of the deceased.

12. PW 10 Saurab Bisht and PW 12 Manveer Singh Chauhan have also stated that they have not seen the deceased back in the resort. In fact, they have stated that they were not permitted to take meal in the room of the deceased.

13. PW 23 Pushpadeep Baboria has categorically stated as to what happened on 18.09.2022. He has stated that the deceased was much uncomfortable because she was being molested in the resort; she was being pestered for immoral activities in the resort, which she was denying.

14. There are WhatsApp chats on the record, although before the trial court it has to be proved in

accordance with law. PW 23 Pushpadeep Baboria has been cross-examined on this aspect. These WhatsApp chats reveal as if the deceased was, in fact, pressurized. She was in tremendous trauma. In one of her chats on 17.09.2022, it is written at 09:38 p.m. **“Esa hki VIP guest arhe h.”** Thereafter at 09:38 p.m., on the same day, she again texted **“Th unhe extra service chaiy.”**. Same day again, at 09:42 p.m. she texted to Pushpadeep **“Mene bola bhai tu kya sochta ki m gareeb hu th y 10 k m bhik jau.”**. At 09:48 p.m., she again writes **“Rand bnane me tule h.”**

15. PW 23 Pushpadeep Baboria did speak to the deceased at 08:32 p.m. on 18.09.2022, therefore, her phone was switched off. PW 14 SI Omkant Bhushan has confirmed that from her location, the telephone of the deceased was not traceable. It is near the place of the incidence.

16. PW 8 Vivek Arya and PW 13 Ayush Kumar both have stated that on 11.09.2022, the applicant had kissed her. She was being pressurized to give extra services.

17. PW 1, the father of the deceased, has stated that on 20.09.2022, he had questioned the applicant

about CCTV footages and he was told that they are not in order.

18. PW 15 Dr. Ravi Prakash Mishra and PW 16 Dr. Ashish Ramesh Bhute have quite extensively stated that the death of the deceased was not by accidental slip.

19. PW 9 Aman Rai has, in paras 4 and 5 of the statement, stated that he was persuaded by the co-accused to give false statement that the deceased had returned.

20. A young girl was molested; she was pressurized to undergo immoral activities in the resort; she was pressurized to give extra services; her trauma is reflected in WhatsApp texts sent to PW 23 Pushpadeep Baboria and according to the prosecution, under a design to eliminate her, she has been killed.

21. Having considered the gravity of offence and all other attending factors, this Court is of the view that it is not a case fit for bail. Accordingly, the bail application deserves to be rejected.

22. The bail application is rejected.

(Ravindra Maithani, J)
20.12.2023