

HIGH COURT OF UTTARAKHAND AT NAINITAL

Second Bail Application No. 186 of 2023

Monty Applicant

Versus

State of Uttarakhand Respondent

Present:-

Ms. Manisha Bhandari and Mr. Dhruv Chandra, Advocates
for the applicant.

Mr. Amit Bhatt, Deputy Advocate General for the State.

Hon'ble Ravindra Maithani, J. (Oral)

Applicant Monty in judicial custody in FIR No.297 of 2020, under Sections 302, 420, 201 IPC, Police Station SIDCUL, District Haridwar. He has sought his release on bail. This is second bail application of the applicant. His first bail application has already been rejected on 09.11.2022.

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

3. Learned counsel for the applicant would submit that the whole prosecution case has been changed during investigation. She would submit that as per initial case of the prosecution, witness Kale Ram S/o Sadhu Ram had accompanied the deceased when they met the applicant and thereafter, the deceased was

not traceable. But, she would argue that PW3 Kale Ram S/o Babu Ram has given last seen evidence whereas, he was not the witness of last seen evidence as per the Investigating Officer ("the IO"). She has referred to the statement of PW1 Hari Dass, the brother of the deceased and the statement of the PW3 Kale Ram S/o Babu Ram. It is argued that it makes out the case for bail.

4. On the other hand, learned State counsel would submit that it is an error of the court Reader in writing the name of PW3 Kale Ram. He would submit that the name has wrongly been written. In addition to it, he would also submit that at the instance of the applicant dead body and other articles were also recovered. Therefore, there is no changed circumstance, which may entitle the applicant to bail.

5. It is the stage of bail. Much of the discussion at this stage is to be avoided. To the extent of appreciating the controversy the matter may be examined with the caveat that any observation made at this stage shall have no bearing at any subsequent stage of the case.

6. As per the IO, the deceased had left the working place along with Kale Ram S/o Sadhu Ram on a motorcycle. On the way they met the applicant, who also took ride with them. Subsequently, Kale Ram S/o Sadhu Ram alighted from the motorcycle. Thereafter, the deceased was not traceable. PW1 Hari Dass has also stated so, but PW3 Kale Ram S/o Babu Ram has stated that he had accompanied the deceased on a motorcycle on the fateful day, when they met the applicant.

7. Kale Ram S/o Babu Ram as per IO is not the witness of the last seen; as per the IO Kale Ram S/o Babu Ram did not accompanied the deceased on the motorcycle instead Kale Ram S/o Sadhu Ram had done so. According to the IO, police reached to the applicant based on the last seen evidence given by Kale Ram S/o Sadhu Ram not by the evidence given by Kale Ram S/o Babu Ram. As per the IO, there were no two Kale Ram on the motorcycle along with the deceased; it was only one Kale Ram S/o Sadhu Ram. But, as stated PW3 Kale Ram S/o Babu Ram has stated during trial that he had accompanied the deceased on the motorcycle when the

deceased went missing. It is a great change in the circumstances, which entitles the applicant to bail.

8. Having considered, this Court is of the view that it is a case fit for bail and the applicant deserves to be enlarged on bail.

9. The bail application is allowed.

10. Let the applicant be released on bail, on his executing a personal bond and furnishing two reliable sureties, each of the like amount, to the satisfaction of the court concerned.

(Ravindra Maithani, J.)
27.12.2023

Sanjay