

HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No. 1668 of 2023

Shahadat Ali Applicant

Versus

State of Uttarakhand Respondent

Present:-

Mr. S.R.S. Gill, Advocate for the applicant.

Mr. Amit Bhatt, D.A.G. for the State.

Mr. Vaibhav Singh Chauhan, Advocate for the informant.

First Bail Application No. 1658 of 2023

Nipendra Kumar Applicant

Versus

State of Uttarakhand Respondent

Present:-

Mr. M.S. Pal, Senior Advocate assisted by Mr. Sachin,
Advocate for the applicant.

Mr. Amit Bhatt, D.A.G. for the State.

Mr. Vaibhav Singh Chauhan, Advocate for the informant.

Hon'ble Ravindra Maithani, J. (Oral)

Since both the bail applications arise from the same FIR, they are heard together and are being decided by this common order.

2. Applicants Shahadat Ali and Nipendra Kumar are in judicial custody in FIR No.08 of 2023, under Sections 364-A, 302, 201 and 34 IPC, Police Station Bahadarabad, District- Haridwar. They have sought their release on bail.

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

4. According to the FIR, the deceased Kartik, aged 22 years, had left his house on 12.01.2023, but, thereafter, he was not traceable. It is the prosecution case that during investigation, the applicants were interrogated by the police, and it is they, who revealed that for ransom, they both killed together the deceased and dumped his dead body in a portion, which was rented out to applicant Shahadat Ali.

5. Learned counsel for the applicants would raise a legal issue. According to them, the police allegedly interrogated the applicants on 13.01.2023, and recorded their disclosure statement, and according to the police, based on the alleged disclosure statement, the dead body was allegedly recovered at the instance of the applicants. But, learned counsel for the applicants would submit that when allegedly such disclosure statement and alleged recovery was made, both the applicants were “neither the accused” of the case nor were they “in custody”. Therefore, it is argued that the alleged recovery may not be proved under Section 27 of the Indian Evidence Act, 1872.

6. In support of their contention, learned counsel for the applicants has placed reliance upon the principles of law, as laid down in the case of *Rajesh and Another Vs. State of Madhya Pradesh*, 2023 SCC OnLine SC 1202, in which, under the similar facts, when the persons who made a disclosure were not accused, and were not in custody, the Hon'ble Supreme Court held that, **“Therefore, it was his arrest which resulted in actual ‘police custody’, and the confession made by him, before such arrest and prior to his being ‘accused of any offence’, would be directly hit by Section 26 of the Evidence Act and there is no possibility of applying the exception under Section 27 to any information given by him in the course of such confession, even if it may have led to the discovery of any fact. In consequence, the purported discovery of the dead body, the murder weapon and the other material objects, even if it was at the behest of Rajesh Yadav, cannot be proved against him, as he was not ‘accused of any offence’ and was not in ‘police custody’ at the point of time he allegedly made a confession.”**

7. Learned State Counsel does not dispute the proposition of law.

8. Learned counsel for the informant would submit that the previous conduct of the applicants may deny them bail. He would also submit that the rented accommodation was taken by the applications on 10.01.2023, and the dead body was recovered on 13.01.2023. But he admits the proposition of law.

9. Having considered, this Court is of the view that it is a case fit for bail and the applicants deserve to be enlarged on bail.

10. The bail applications are allowed.

11. Let the applicants be released on bail, on their executing a personal bond and furnishing two reliable sureties, each of the like amount, by each one of them, to the satisfaction of the court concerned.

(Ravindra Maithani, J)
26.12.2023