

HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No. 2674 of 2021

Shyamali Biswas

...Applicant

Versus

State of Uttarakhand

...Respondent

Present:-

Mr. Vikas Anand, Advocate for the applicant.

Ms. Manisha Rana Singh, A.G.A. for the State.

Hon'ble Ravindra Maithani, J. (Oral)

Applicant Shyamali Biswas is in judicial custody in FIR No. 166 of 2020, under Section 302, 120-B & 34 IPC, Police Station Transit Camp, District Udham Singh Nagar. She has sought her release on bail.

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

3. According to the FIR, the applicant and the deceased were married. But, the applicant had extramarital relationship with the co-accused Vishwajeet Rai. The deceased has on multiple occasions told that the co-accused Vishwajeet Rai had threatened him to life asking him to divorce the applicant so that he could marry her. FIR states that in intervening night on 19.06.2020 at about 2:30 in the morning, the deceased was shot dead in his house.

4. Learned counsel for the applicant would submit that there is no evidence against the applicant; FIR was lodged on 20.06.2020 at 2:45 PM, which is much delayed; there is no person named as an assailant, who had shot the deceased; there are contradictions in the statements of the witnesses, particularly the statement of Suraj Sircar has been referred to, to argue that, in fact, according to this witness, when after hearing the gunshot, he reached at the place of incident, he found that PW3 Prinyanka and the applicant, both were asleep in their room and he unlocked their room. It is also argued that the alleged recovery of the phone from the room of the applicant is concocted and false. It is a recovery made after three days of the incident. There is no CCTV footage. It is also argued that had the applicant been involved in the case, he would have been named in the FIR.

5. On the other hand, Learned State counsel would submit that PW3 Priyanka Gupta is an eyewitness. She has seen the co-accused running from the place of incident. She had stated as to how the applicant called the co-accused Vishwajeet Rai to kill the deceased. Learned State counsel also submits that the call details record also supports that on the date of incident, the applicant was constantly in touch with the co-accused Vishwajeet Rai.

6. Learned counsel for the informant would submit that it is a case of direct evidence.

7. 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.

8. The statements of various witnesses have been enclosed and they have been referred to. The Court refrains to make deeper scrutiny of any material at this stage.

9. It is true that FIR is not named as to who is the actual shooter. It is true that the FIR was lodged on 20.06.2020 at 2:45 PM. Is it any delay in the instant case? And if so, what is its impact? It would be examined during trial. FIR has been lodged by PW1 Nitai Biswas, the father of the deceased. He has stated about the extramarital relationship between the applicant and the co-accused. He has also stated about the presence of other persons, including PW3 at the scene of crime. PW3 Priyanka Gupta and other witnesses have stated about the extramarital relationship of the applicant with co-accused Vishwajeet Rai. Witnesses have stated that they have seen the co-accused running from the place of incident. In fact, PW3 Priyanka Gupta is quite in detail when she tells as to how

the applicant called co-accused Vishwajeet Rai after telephonically calling him and facilitating his entry in the house.

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

11. The bail application is rejected.

(Ravindra Maithani, J.)
19.12.2023

Jitendra