

HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No. 2436 of 2022

Mukesh Sharma Applicant

Versus

State of Uttarakhand Respondent

First Bail Application No. 2670 of 2022

Vivek Verma Applicant

Versus

State of Uttarakhand Respondent

First Bail Application No. 2677 of 2022

Ranu Rastogi Applicant

Versus

State of Uttarakhand Respondent

Present:-

Mr. R.S. Sammal, Ms. Sarita Bisht and Mr. Lalit Sharma,
Advocates for the applicants.

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

Hon'ble Ravindra Maithani, J. (Oral)

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

2. Applicants Mukesh Sharma, Vivek Verma and Ranu Rastogi are in judicial custody in FIR No.351 of 2021, under Sections 302, 201, 394 and 34 IPC, Police Station Nanakmatta, District Udham Singh Nagar. They have sought their release on bail.

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

4. The dead bodies of the brother, mother, maternal grandmother and cousin of the informant were located at different places. According to the prosecution, the applicants, under a conspiracy, along with one more co-accused, in order to loot, first killed the brother of the informant and his cousin at a secluded place, and, thereafter, they visited the house of the deceased and demanded keys and other valuables from the mother of the deceased, Ankit. When she resisted, she and her mother were also killed.

5. Learned counsel appearing for the applicants would submit that there is no evidence against the applicants; it is a case based on circumstantial evidence, but it is such a weak evidence collected by the Investigating Officer, which even not remotely connect the applicants to the crime. Learned counsel for the applicants would submit as follows:-

- (i) There is no motive shown by the prosecution. If the motive was to loot, the applicants would not have any occasion to

leave the gold ornaments, which the deceased, Ankit, had worn. Similarly, the deceased, Shanno Devi, also had gold ornaments intact when her dead body was recovered.

(ii) The alleged recovery of Rs. 35,000/- from the house of applicant Ranu Rastogi is not believable. The amount is not connected with the crime, in any manner.

(iii) The prosecution connects the applicant Ranu Rastogi with the crime on the ground that some hair were found in the fist of the deceased, Asha Devi, and the DNA analysis confirms that it belongs to the applicant- Ranu Rastogi. It is argued that the scene of crime was populated by many persons, before police did reach there. The inquest was done on 29.09.2021, but, it is not shown as to where the hair, recovered from the fist of the deceased, Asha Devi, were kept. Were they in safe custody? Or it is argued that after the arrest of applicant Ranu Rastogi

on 03.10.2021, the tampering was done.

It is submitted that this may not be ruled out.

(iv) In addition to it, learned counsel for the applicant would also submit that in order to admit the DNA report, first and foremost, it has to be established that the samples were intact, and sampling was as per procedure, which has not been shown in the case.

(v) The evidence of CCTV footages does not help the prosecution because even the witnesses have not identified any of the applicants in the CCTV footages.

(vi) The recovery of car from the open place makes no evidence. The car was open. It was allegedly recovered from an open place, which was accessible to all.

(vii) It is also submitted that the evidence of PW11, Akhilesh, is not reliable because he happens to be much interested, as he has

admitted that the deceased, Ankit, was his brother-in-law.

6. On the other hand, learned State Counsel would submit that the case is based on circumstantial evidence, which connects the applicants to the crime. She would submit that:-

- (i) From the dead body of the deceased, Asha Devi, hair was recovered from her fist, which, on DNA examination confirms that they belong to the applicant Ranu Rastogi.
- (ii) From the house of the applicant Ranu Rastogi, at his instance, Rs. 35,000/- were recovered, which were looted from the house of the deceased Asha Devi and Shanno Devi.
- (iii) A jeans worn by applicant Vivek Verma, at the time of incident, as well as the blade, which is the weapon of offence, was recovered at the instance of applicant Vivek Verma from an isolated place.

(iv) the applicants took the deceased, Ankit and Udit, under some pretext and killed them. The vehicle has been identified. It was recovered.

(v) The iron rod, by which the deceased Ankit and Udit were killed, was also recovered, which is connected with the offence by the DNA examination.

7. Learned State Counsel would also submit that, in fact, a day prior to the date of incident, the applicants had taken the deceased, Ankit and Udit, at a secluded place, but they could not execute their plan on that date. Next day, the offence was committed, and in the midnight, the vehicle went out of order, when a mechanic was called. He has also confirmed it.

8. 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 proceeding.

9. Admittedly, much of the evidence, at trial, has been recorded. In fact, it is stated that the Investigating

Officer has been examined, and the trial is at the final stage.

10. The Court refrains to make deeper scrutiny at this stage. According to the prosecution, the motive was to loot the money from the house of the deceased, Ankit, because the applicants knew that the deceased, Ankit, had opened a jewellery shop, and they were under the impression that he had earned a lot of money. The inquest of the deceased Asha Devi records that there were some hair on her fist. The forensic report connects the hair with the applicant Ranu Rastogi. The forensic report has been referred to. There are witnesses, who have stated that in the night of the incident, the applicants did call a mechanic, as their car had gone out of order. It was damaged. There have been evidence of recovery.

11. Having considered, this Court is of the view that it is not a case fit for bail. Accordingly, the bail applications deserve to be rejected.

12. The bail applications are rejected.

(Ravindra Maithani, J.)
28.12.2023