



2026:UHC:3711

**HIGH COURT OF UTTARAKHAND AT NAINITAL**

**First Bail Application No. 539 of 2026**

Jai Bisht

.....Applicant

*Versus*

State of Uttarakhand

.....Respondent

**Counsel Presence:**

Mr. D.K. Sharma, learned senior counsel assisted by Mr. Vipul Sharma, learned counsel for the applicant for the applicant.

Mr. Chitrartha Kandpal, learned Brief Holder for the State.

**Hon'ble Ashish Naithani, J (Oral)**

The present first bail application has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking enlargement on bail in connection with FIR No. 07 of 2026, registered under Sections 103(1), 352 and 3(5) of the Bharatiya Nyaya Sanhita, 2023 at Police Station Haldwani, District Nainital.

2. As per the prosecution case, the FIR came to be lodged on 05.01.2026 at about 12:10 p.m. on the complaint of one Piyush Lohani regarding an incident alleged to have occurred during the intervening night of 04/05.01.2026. The allegation in the FIR is that the complainant's younger brother, namely, Nitin Lohani, was returning home along with Kamal Bhandari when they reached near S.K.M. School and the deceased allegedly went to meet the present Applicant Jai Bisht, who was stated to be his friend. It is alleged that upon Kamal Bhandari ringing the bell, co-accused Amit Bisht, father of the present Applicant, came out



armed with a firearm and after an altercation allegedly fired upon the deceased, causing his death on the spot.

3. The FIR primarily attributes the act of firing to co-accused Amit Bisht. The present Applicant was admittedly not named as an assailant in the FIR and no overt act of firing has been attributed to him in the foundational version of the prosecution case.

4. Learned Senior Counsel appearing for the Applicant submits that the implication of the present Applicant is an afterthought and has surfaced only subsequently in the statements recorded during investigation. It is submitted that the FIR, which constitutes the earliest version of the prosecution case, is completely silent with regard to any active participation, exhortation, sharing of common intention or use of weapon by the Applicant. Learned Senior Counsel submits that even according to the prosecution itself, the role assigned subsequently to the Applicant is merely that of exhortation.

5. Learned Senior Counsel for the Applicant would further submit that the entire prosecution case against the Applicant hinges upon the statement of alleged eye-witness Kamal Bhandari recorded subsequently under Section 180 BNSS, wherein for the first time an allegation of exhortation has been introduced. It is argued that such improvement goes to the root of the matter, particularly when no such allegation finds mention in the FIR lodged after deliberation and after considerable lapse of time from the incident.



6. It is further submitted that even the credibility of the said witness is itself doubtful inasmuch as the witness in his own statement admits that prior to the incident he and the deceased had attended a party and consumed liquor. Learned Senior Counsel submits that in a sudden night incident involving panic and commotion, the possibility of mistaken perception and exaggerated narration cannot be ruled out, particularly at the stage of bail.

7. Learned Senior Counsel for the Applicant further submits that there exists no material showing any prior enmity, motive or animosity between the present Applicant and the deceased. It is argued that the prosecution has failed to place on record any material suggesting prior concert, meeting of minds or premeditated intention so as to attract the rigours of common intention against the present Applicant. It is submitted that mere presence at the spot or a generalized allegation of exhortation, particularly when introduced subsequently, would not by itself justify continued incarceration.

8. Learned Senior Counsel would also submit that the prosecution itself alleges recovery of a pistol from the Applicant, whereas the postmortem report allegedly records injuries caused by multiple pellets from a smooth bore firearm. It is argued that the alleged recovered weapon and the medical evidence do not reconcile with each other and no ballistic or forensic linkage has been brought on record connecting the alleged weapon recovered from the Applicant with the injuries sustained by the deceased.

9. It is further argued that the prosecution seeks to rely upon CCTV footage; however, according to learned Senior Counsel,



the CCTV footage merely shows movement of certain persons and does not capture the actual firing incident. It is submitted that the footage neither depicts the commission of the offence nor attributes any overt act to the present Applicant and therefore the same cannot be treated as conclusive material at this stage.

10. Learned Senior Counsel for the Applicant further submits that prior to the present incident, on 01.01.2026, an incident had allegedly taken place at the hotel owned by co-accused Amit Bisht, wherein certain persons allegedly created disturbance, vandalized the property and threatened the family members of the Applicant. It is argued that complaints were made to the police authorities and threatening calls were also allegedly received by the Applicant and his family members prior to the occurrence in question.

11. Learned Senior Counsel submits that the father of the Applicant had himself allegedly called the police immediately around the relevant time of the occurrence and such conduct itself probabalizes the defence version. It is argued that had the prosecution story been true in its entirety, there would have been no occasion for the family members themselves to contact the police authorities immediately after the occurrence.

12. It is further argued that there is substantial and unexplained delay in lodging the FIR. According to learned Senior Counsel, the alleged occurrence took place between approximately 11:30 p.m. and midnight, whereas the FIR came to be registered only on the following afternoon. It is submitted that such delay assumes significance particularly when the role attributed to the



Applicant appears to have evolved subsequently during investigation.

13. Learned Senior Counsel further submits that the Applicant is a young law student aged about 20 years, pursuing a five-year integrated law course and has no criminal antecedents whatsoever. It is argued that the Applicant is a permanent resident of the district, has deep social roots and there exists no likelihood either of absconding or tampering with evidence. Continued incarceration, according to learned Senior Counsel, would irreparably prejudice the academic career and future prospects of the Applicant.

14. Per contra, learned State Counsel has opposed the bail application and submits that the offence alleged is grave in nature involving the homicidal death of a young person caused by firearm injuries. It is submitted that the investigation has collected sufficient material showing the presence and involvement of the present Applicant in the incident.

15. Learned State Counsel submits that merely because the FIR does not elaborate every minute detail of the incident would not render subsequent statements recorded during investigation inadmissible or unreliable at this stage. It is argued that the statements of witnesses recorded during investigation specifically attribute the role of exhortation to the present Applicant and the same cannot be lightly brushed aside while considering bail in a murder case.

16. Learned State Counsel further submits that the CCTV footage collected during investigation corroborates the



prosecution version regarding the presence of the Applicant at the relevant place and time. It is argued that the cumulative effect of witness statements, electronic evidence and surrounding circumstances prima facie establish the involvement of the Applicant.

17. Learned State Counsel also submits that the question whether the exhortation was genuine, whether common intention existed, whether there are inconsistencies between medical and ocular evidence, and whether the CCTV footage conclusively proves the prosecution case are all matters requiring appreciation during trial and not at the stage of bail.

18. It is further submitted by the learned State Counsel that the offence alleged is punishable with severe punishment and involves serious societal ramifications. It is argued that considering the gravity of the offence and the nature of accusations, the Applicant does not deserve indulgence of bail at this stage.

19. This Court has heard learned counsel for the parties and perused the records.

20. At the very outset, it requires to be observed that the present matter is being considered at the stage of bail and therefore this Court is conscious of the settled principle that a detailed appreciation of evidence, likely to prejudice either side during trial, is not required to be undertaken. Nevertheless, for the limited purpose of determining whether the Applicant deserves enlargement on bail, the material collected during



investigation and the broad probabilities emerging therefrom are required to be examined.

21. Admittedly, the FIR attributes the actual act of firing to co-accused Amit Bisht. The present Applicant was not named in the FIR as the person who fired upon the deceased. The role attributed subsequently to the Applicant during investigation is essentially that of exhortation.

22. This Court also finds substance in the submission of learned Senior Counsel for the Applicant that no overt act of firing or assault has been attributed to the present Applicant. The case itself proceeds on the basis that the firearm injury causing death was allegedly inflicted by co-accused Amit Bisht.

23. It is also not disputed that the allegation of exhortation against the present Applicant surfaces primarily in the subsequent statement of witness Kamal Bhandari recorded during investigation. At least at this stage, it cannot be ignored that the FIR does not contain any specific allegation regarding exhortation or instigation by the present Applicant. Whether such omission is material, whether the subsequent statement constitutes an improvement, and what evidentiary value is ultimately to be attached thereto are all matters which would necessarily be tested during trial upon appreciation of evidence.

24. This Court further notices that according to the defence, the witness Kamal Bhandari himself admits that prior to the incident he and the deceased had attended a party and consumed liquor. The effect and reliability of such statement would again be a matter of evidence during trial; however, at the stage of bail, the



same does introduce an aspect requiring cautious evaluation of the prosecution version insofar as the precise role attributed to the present Applicant is concerned.

25. So far as the CCTV footage relied upon by the prosecution is concerned, the material presently placed before this Court does not prima facie appear to depict the actual firing incident. At this stage, the footage appears to primarily indicate movement and presence of individuals. The question whether the CCTV footage conclusively establishes participation of the present Applicant in the commission of the alleged offence would again be a matter requiring deeper evidentiary examination during trial.

26. Another aspect which assumes significance at this stage is that learned Senior Counsel for the Applicant has specifically argued that the alleged recovery effected from the present Applicant is of a pistol, whereas the postmortem report records injuries allegedly caused by pellets from a smooth bore firearm. Without expressing any final opinion upon such submission, this Court finds that the forensic and ballistic linkage sought to be established by the prosecution would also require detailed scrutiny during trial.

27. This Court also takes note of the fact that the Applicant is aged about 20 years and is stated to be a student pursuing a five-year integrated law course. It is also not disputed before this Court that the Applicant does not possess any previous criminal antecedents.

28. The settled principles governing grant of bail require the Court to balance the seriousness of allegations with the nature of



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evidence available against the accused, the possibility of tampering with evidence, likelihood of absconding and the requirement of custodial detention during trial. At the same time, the Court cannot lose sight of the fact that pre trial incarceration cannot be permitted to assume the character of punitive detention.

29. In the present case, considering the nature of role attributed to the Applicant, the absence of any allegation of actual firing against him, the fact that the allegation of exhortation emerges in the subsequent statements recorded during investigation, the age of the Applicant, absence of criminal history, and without expressing any opinion on the merits of the case, this Court is of the considered opinion that the Applicant has made out a case for grant of bail.

30. Accordingly, the bail application is allowed.

31. Let the Applicant, Jai Bisht, be released on bail in connection with FIR No. 0007 of 2026, under Sections 103(1), 352 and 3(5) of the Bharatiya Nyaya Sanhita, 2023, Police Station Haldwani, District Nainital, on his furnishing a personal bond and two reliable sureties, each of the like amount, to the satisfaction of the court concerned.

32. The Applicant shall appear before the trial court on each and every date fixed, unless his presence is exempted by the court concerned.

**(Ashish Naithani, J.)**  
12.05.2026

Anand/



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