



2026:UHC:3884

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

Bail Application 1st No. 606 of 2026

Rakhal Banerjee Applicant

Vs.

State of Uttarakhand Respondent

Presence:

Mr. Ravi Shankar Kandpal, learned counsel for the Applicant.

Mr. Vipul Painuli, learned A.G.A. for the State of Uttarakhand.

Hon'ble Ashish Naithani, J

The present bail application has been filed by the applicant Rakhal Banerjee, who is in custody since 17.07.2024, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), arising out of Case Crime No. 26 of 2024 registered at Police Station Lambgaon, District Tehri Garhwal, for offences punishable under Sections 103(1) (Murder), 238 (Causing disappearance of evidence) and 3(5) (Common intention) of the Bharatiya Nyaya Sanhita, 2023 (BNS).

2. The State's version, as emerging from the record, is that on the night of 12.07.2024, between 11:00 PM and 12:00 AM, the deceased Gaurav Jha, a labourer working at the construction site of a Nagar Panchayat building in Lambgaon, Uttarakhand, was allegedly subjected to assault and strangulation by the accused persons, including the present applicant and co-accused. Thereafter, the dead body of the deceased was allegedly thrown into bushes beneath a room situated near the new Nagar Panchayat parking area

at Lambgaon. The FIR came to be lodged on 15.07.2024 at Police Station Lambgaon on the basis of information furnished to the complainant Deepak Panwar by the present applicant himself.

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

4. Learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case and is not named in the FIR. It was argued that the allegation of actual assault is against the co-accused persons, whereas the present applicant merely informed the complainant about the incident.

5. It was further submitted that the applicant himself recorded the incident and provided the video to the police, which prima facie shows that he was not involved in the commission of murder. Learned counsel contended that there is no independent eyewitness against the applicant and no credible material connecting him with the alleged offence.

6. Learned counsel also submitted that the applicant has no criminal history, is in custody since 17.07.2024, charge-sheet has already been filed and the trial has commenced. It was argued that continued incarceration of the applicant would serve no useful purpose.

7. Per contra, learned State Counsel opposed the bail application and submitted that although the applicant was not named in the FIR, his involvement surfaced during investigation. It was argued that the video recovered from the applicant's mobile phone, which was later retrieved through FSL examination, clearly shows the participation of the applicant along with the co-accused in the commission of the offence.

8. It was further submitted that, on the pointing out of the applicant and co-accused persons, the murder weapon was recovered by the Investigating Officer. Learned State Counsel

argued that there is sufficient material collected during investigation establishing the complicity of the applicant in the offence and, considering the gravity of allegations, he does not deserve to be enlarged on bail.

9. Upon due consideration, this Court observes that the State's case against the applicant is not founded merely upon suspicion or circumstantial association. The State has specifically asserted that the applicant was present at the spot at the time of the incident and that the transcripts of videos recovered during forensic examination prima facie depict the participation of the present applicant along with co-accused persons in the alleged occurrence.

10. The FSL report with respect to the recovered videos has also been relied upon by the State during investigation. At the stage of consideration of bail, this Court is not expected to undertake a meticulous examination of the evidentiary value of such material; however, the same cannot be ignored while assessing the prima facie involvement of the applicant.

11. This Court finds that the allegations against the applicant pertain to a grave and heinous offence involving brutal assault and murder of the deceased. The State has further alleged recovery of the weapon used in the commission of offence on the pointing out of the accused persons during investigation. The seriousness of the accusation, the nature of evidence collected during investigation and the manner in which the offence is alleged to have been committed are all relevant considerations while adjudicating a prayer for bail.

12. A perusal of the material placed before this Court prima facie indicates that the role attributed to the applicant is not merely passive in nature. The State's case is not confined to the allegation that the applicant was only present at the spot or happened to

witness the occurrence. Rather, the recovered video transcripts prima facie indicate that while the co-accused persons were allegedly assaulting and strangulating the deceased, the present applicant was continuously recording the acts, uttering words of instigation and exhortation, and encouraging the co-accused persons during commission of the offence. The act of continuously recording the occurrence, instead of attempting to prevent it or dissociate himself from it, prima facie reflects conscious alignment with the ongoing criminal acts.

13. In criminal jurisprudence, participation in crime is not confined only to the hand that physically executes the final act. The law equally attributes culpability to those who, by words, conduct, encouragement or intentional facilitation, provide moral support and psychological reinforcement to the principal offenders during commission of crime. A mere bystander or passive witness may stand on a different footing; however, where the conduct of an accused demonstrates conscious facilitation, encouragement, provocation or psychological reinforcement to the principal offenders during the occurrence itself, such conduct prima facie enters the realm of active complicity and abetment. Instigation need not always be by explicit command; even words, gestures, conduct or acts intended to embolden the principal offenders may amount to active participation in the crime.

14. In the present case, the allegations against the applicant, as emerging from the recovered video material, prima facie indicate that he was not a detached observer but was allegedly encouraging and provoking the co-accused persons while the deceased was being subjected to assault and alleged sexual assault. The repeated act of recording the incident while simultaneously exhorting the co-accused persons cannot, at this stage, be viewed as an act of mere passive witnessing. Rather, such conduct prima facie appears to

have provided moral support and psychological reinforcement to the principal assailants during the occurrence itself.

15. This Court also cannot ignore the allegation of the State that the applicant had subsequently deleted the said video recordings from his mobile phone and that the same were later retrieved through forensic examination. Prima facie, such conduct assumes significance at this stage, as it may indicate an attempt to obliterate incriminating material after realising the gravity and consequences of the occurrence.

16. The Court is further constrained to observe that the allegations in the present case depict a disturbing facet of criminal behaviour where acts of violence and alleged sexual assault are stated to have been recorded contemporaneously during commission of the offence itself. Such recordings, apart from reflecting insensitivity towards human dignity, also prima facie indicate a disturbing tendency of documenting criminal acts of violence and alleged sexual assault for possible later viewing, circulation or exploitative use. Though these aspects shall ultimately be tested during trial on the basis of evidence led by the parties, the allegations nevertheless add to the gravity and depravity of the offence at the present stage.

17. At the stage of consideration of bail, this Court is not expected to meticulously appreciate the evidentiary value of the recovered material or record conclusive findings on merits; however, the prima facie material collected during investigation cannot be ignored altogether.

18. So far as the submission regarding prolonged incarceration is concerned, although the applicant is in custody since 17.07.2024 and charge-sheet has already been submitted, the trial has already commenced before the court concerned. Therefore, merely on the

ground of custody period, this Court is not persuaded to enlarge the applicant on bail.

ORDER

Considering the overall facts and circumstances of the case, the gravity and nature of allegations, the prima facie material collected during investigation, the alleged conduct attributed to the applicant during and after the occurrence, and without expressing any opinion on the merits of the case, this Court is of the considered view that the applicant has failed to make out a case for grant of bail.

Accordingly, the bail application stands **rejected**.

(Ashish Naithani, J.)

19.05.2026

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