HIGH COURT OF UTTARAKHAND AT NAINITAL

Second Bail Application No. 127 of 2020

Pankaj Kumar ...Applicant

Versus

State of Uttarakhand ….Respondent

And

Second Bail Application No. 128 of 2020

Yashwant Alias Yashpal ...Applicant

Versus

State of Uttarakhand ….Respondent

Present:-

Mr. Aditya Singh, Advocate for the applicants.
Mr. S.S. Adhikari, DAG for the State.

Hon'ble Ravindra Maithani, J. (Oral)

Applicants Pankaj Kumar and Yashwant @ Yashpal, who are in judicial custody, in Case Crime No. 25 of 2020, under Sections 323, 354A IPC and Section 9 (g)/10 of the Protection of Children From Sexual Offences Act, 2012, Police Station Bhimtal, District Nainital have sought their release on bail.

2. This matter is heard through Video Conferencing.

3. The case is based on an FIR lodged by the father of the victim. According to it, from 02.07.2020 at 2:00-3:00 PM, the victim, a girl aged 15 years left her house. On 03.07.2020, the informant was told that the victim is in Bhimtal. The informant reached Police Station Bhimtal, where he met the victim. The victim told it to the informant that co-accused Kishore forcibly took her to Bhimtal and established physical relations with her. During investigation, the victim told it to the Investigating Officer that co-accused Kishore established physical relations with her forcibly and three other persons also tried to establish physical relations with her, but they were not successful due to resistance made by the victim. Three persons were also named by her, but when asked by the IO, the victim told it to the IO that she did not know the applicants and even she cannot recognize them by their face. Since, the

assailants were talking with each other by calling their names, therefore, she is naming them. In her statement recorded under Section 164 of the Code of Criminal Procedure, 1973 (for short “the Code”), the victim did not name the applicants. She simply said that Kishore and two other persons tried to pull her forcibly and when she resisted to it, she was beaten.

4. Learned counsel for the applicants would submit that applicants are not named in the FIR; they are not named in the statement recorded under Section 164 of the Code; there is no identification of them; they have not committed any offence; hence, it is a case fit for bail.

5. It is admitted that in her statement recorded under Section 164 of the Code, the victim did name the applicants. Although, in her statement recorded under Section 161 of the Code, there are four persons named, but except Kishore, the victim told it to the IO that she does not recognize them and even she cannot recognize them. Merely, on the basis of calling each other by their names, she named them. Test Identification Parade has also not been conducted. As stated, the FIR is only against co-accused Kishore only.

6. Having considered all the facts and circumstances of the case, this Court is of the view that it is a case fit for bail.

7. The bail applications are allowed.

8. Let the applicants, namely, Pankaj Kumar and Yashwant @ Yashpal be released on bail, on their executing a personal bond and furnishing two reliable sureties by each one of them, each of the like amount, to the satisfaction of the Court concerned.

9. This bail order be forwarded to concerned Court as well as the concerned jail through e-mail also.

(Ravindra Maithani, J.)
23.12.2020

Jitendra