HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No.1433 of 2024

Gulsher .....Applicant

Versus

State of Uttarakhand .....Respondent

Present:-

Mr. M.S. Pal, Senior Advocate, assisted by Mr. Kunwar Vikramaditya Shah, Advocate for the applicant.
Mr. Siddharth Bisht, A.G.A. for the State.
Mr. Arvind Vashistha, Senior Advocate, assisted by Mr. Rachit Manglik, Advocate for the informant.

Hon'ble Ravindra Maithani, J. (Oral)

Applicant is in judicial custody in FIR No. 308 of 2024, under Section 302, 404, 201 IPC, Police Station Kotwali Laksar, District Haridwar. He has sought his release on bail.

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

3. The deceased was found missing from 11:00 in the morning on 05.04.2024. The informant, who happens to be father of the deceased was told by the villagers that the applicant alongwith co-accused was with the deceased on that dated at 11:30 in the morning. Subsequently, when the applicant and co-accused were asked about it, they feigned ignorance, but told that they had some fight in the morning. Thereafter, in an under-construction house, the dead body of the deceased was recovered.

4. Learned Senior Counsel for the applicant would submit that the dead body of the deceased was found by the police on 05.04.2024 and the FIR was lodged on 06.04.2024. He would submit that the entire case is false. The applicant has not committed any offence.

5. Learned Senior Counsel appearing for the informant would submit that on the date of incident at about 11:30 in the morning, the applicant alongwith the co-accused were spotted in the under construction house of one Mukkarram by the villagers including witness Sanjida. FIR was thereafter lodged. The dead body was found from the same under construction house. It had injuries and the cause of death was asphyxia as a result of ante mortem strangulation. It is argued that the witnesses have stated that at 11:30 on the date of incident, they had seen the applicant and co-accused having some fight with the deceased.

6. Learned State counsel would submit that at the instance of the co-accused, his shirt was also recovered from an open place by which the deceased was strangulated.

7. It is the 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. In the FIR, four persons are named. The informant in his statement tells that on the date of incident, the deceased was spotted with the applicant and one more co-accused. He did not name Ahtshan and Gulzar as an accused in his statement. These both persons are named as accused in the FIR.

9. The Court wanted to know from learned State counsel as well as learned counsel for the informant as to how the names of Ahtshan and Gulzar have been recorded in the FIR. Nobody has told their names to the Investigating Officer.

10. Learned Senior counsel for the informant would submit that the informant has stated that the applicant, one more co-accused and some other persons were spotted in the under construction house. He would submit that other persons were suspects.

11. Admittedly, the FIR was lodged after the dead body of the deceased was recovered. FIR names four persons with whom the deceased allegedly had some fight on the date of incident at 11:30 a.m. The witnesses have not stated about four persons.

12. Having considered the entirety of facts, this Court is of the view that the applicant deserves to be enlarged on bail.

13. The bail application is allowed.

14. Let the applicant be released on bail, on his executing a personal bond and furnishing two reliable sureties, each of the like amount, to the satisfaction of the Court concerned.

(Ravindra Maithani, J)
13.12.2024

Jitendra