

WWW.LIVELAW.IN
HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No. 1387 of 2021

Nar Singh ...Applicant

Versus

State of UttarakhandRespondent

Present:-

Mr. R.S. Sammal, Advocate for the applicant.

Mr. Lalit Miglani, A.G.A. for the State of Uttarakhand.

Mr. Kaushal Sah Jagati and Mr. P.C. Petshali, Advocates for the informant.

With

First Bail Application No. 1377 of 2021

Diwan SinghApplicant

Versus

State of UttarakhandRespondent

Present:-

Mr. Sanjay Bhatt, Advocate for the applicant.

Mr. Lalit Miglani, A.G.A. for the State of Uttarakhand

Mr. Kaushal Sah Jagati and Mr. P.C. Petshali, Advocates for the informant.

With

First Bail Application No. 1440 of 2021

Mahesh Chandra PandeyApplicant

Versus

State of UttarakhandRespondent

Present:-

Mr. R.S. Sammal, Advocate for the applicant.

Mr. Lalit Miglani, A.G.A. for the State of Uttarakhand

Mr. Kaushal Sah Jagati and Mr. P.C. Petshali, Advocates for the informant.

With

WWW.LIVELAW.IN

First Bail Application No. 1449 of 2021

Daya Kishan PandeyApplicant

Versus

State of UttarakhandRespondent

Present:-

Mr. Deep Chandra Joshi, Advocate for the applicant.

Mr. Lalit Miglani, A.G.A. for the State of Uttarakhand

Mr. Kaushal Sah Jagati and Mr. P.C. Petshali, Advocates for the informant.

With

First Bail Application No. 1582 of 2021

Harish Chandra PandeyApplicant

Versus

State of UttarakhandRespondent

Present:-

Mr. D.K. Sharma, Senior Advocate for the applicant.

Mr. Lalit Miglani, A.G.A. for the State of Uttarakhand

Mr. Kaushal Sah Jagati and Mr. P.C. Petshali, Advocates for the informant.

Hon'ble Ravindra Maithani, J.

Since common question of law and facts have been raised in all these bail applications, they are being decided by this common order.

2. Applicants Nar Singh, Diwan Singh, Mahesh Chandra Pandey, Daya Kishan Pandey and Harish Chandra Pandey are in judicial custody, in

FIR No.14 of 2021, under Sections 323, 504, 506, 147, 149, 304 IPC, Police Station Daniya, District Almora. They have sought their release on bail.

3. Heard learned counsel for the parties through video conferencing.

4. The deceased Bhuwan Chandra and co-accused Deepa Pandey were friends. On 28.04.2021, Deepa Pandey called deceased Bhuwan Chandra in her Village Sulpade, District Almora. Deceased Bhuwan Chandra alongwith his friends Kailash and Lalit Singh visited Deepa's village on a motorcycle. There Deepa Pandey was waiting for her friend to arrive. There in a Government Inter College, Kailash and Lalit sat on one side of the building and the deceased Bhuwan Chandra and Deepa sat on the other side of the building. At that time, the applicants alongwith co-accused surrounded Bhuwan Chandra and Deepa and they assaulted Bhuwan Chandra and Kailash mercilessly. Both were injured. Not only this, in order to implicate Bhuwan Chandra, an FIR was also lodged by a co-accused and the police was called at the spot. The police arrested the deceased Bhuwan Chandra and injured Kailash. Both were medically examined at the Community Health Center, Dhauladevi and they were lodged in the Police Thana. The report was lodged by the father of Deepa regarding molestation etc. with Deepa. Bhuwan Chandra's health started deteriorating due to beating given to him by the applicants and co-accused, and subsequently, he died. A report of the incident was lodged on 29.04.2021 by the brother of the deceased.

5. Learned counsel for Nar Singh and Mahesh Chandra Pandey has raised various issues. According to him, father of Deepa had already filed the FIR on 28.04.2021 against the deceased and others. FIR in the instant case had been filed a day thereafter; when for the first time, the deceased and the injured were taken to CHC, Dhauladevi, they were medically examined and simple injuries were noted on their body. It is argued that had there been grievous or dangerous injuries, the deceased and the injured would have been referred to some higher center, but it was not done, instead they were lodged in the police station, where they did not complain about any injury and they had their meals. It is also argued that there is reference to poison having been taken by the deceased Bhuwan Chandra, but the doctors who conducted the post mortem

WWW.LIVELAW.IN

have not stated about it, instead according to them, the deceased died due to injury on his head. State has filed some video clippings of the incident. Learned counsel would submit that credibility of this video is yet to be examined. It is argued that it is a case of custodial death and the applicant have been falsely implicated. Hence, it is a case fit for bail.

6. On behalf of the applicant Diwan Singh, learned counsel adopts the arguments as advanced by the learned counsel appearing for Nar Singh and Mahesh Chandra Pandey. It is further submitted that the applicant Diwan Singh is poor villager of 63 years of age. He has no criminal history. He is not named in the FIR and he is entitled to bail.

7. On behalf of the applicant Daya Kishan Pandey, learned counsel adopts the arguments as advanced on behalf applicants Nar Singh and Mahesh Chandra Pandey and further it is argued that a day before the FIR in the instant case was lodged, the father of Deepa Pandey had already filed an FIR against the deceased and others. It is argued that not only this but after lodging of the instant case, the father of Deepa Pandey received threatening calls, of which he had already lodged a report on 01.05.2021.

8. Learned senior counsel appearing for the applicant Harish Chandra Pandey would argue that he is though named in the FIR, but it is merely based on hearsay. The person, who allegedly told the name of the applicant Harish Chandra Pandey to the informant has not been examined by the IO. His statements are not enclosed and even it is not revealed as to how the person Pawan came to know about the involvement of the applicant. It is also argued that even the witnesses who have further revealed the name of the applicant has not assigned any specific role of the applicant Harish Chandra Pandey. Hence, it is argued that it is a case fit for bail.

9. On behalf of the State, it is argued that, in fact, it is the case of murder. The deceased was brutally beaten by the applicants and co-accused. Some persons from the public wanted to stop the applicants and co-accused, but they did not stop and continued beatings the deceased and the injured. It is

also argued that the injured witness Kailash has categorically stated about the case as to how poison was given to the deceased.

10. Learned counsel for the informant also argued that it is cold blooded murder. The deceased was beaten by the applicants and co-accused from 3:00 PM to 8:00 PM and when the police was called they were given in police custody.

11. Video clippings have been filed by the State which were run in the Court at the time of hearing.

12. It is an unfortunate incident. A young boy lost his life. According to the FIR, the deceased was in a relationship with the co-accused Deepa of village Sulpade It is Deepa who called the deceased in her village. The deceased was not alone. He was there alongwith witness Kailash and a Lalit Singh. Deceased Bhuwan Chandra was with Deepa, when it appears, that he was spotted by the villagers. He was beaten. Injured Kailash is eye-witness of the entire incident. He has categorically stated as to what had happened on that date. He tells the Investigating Officer that a crowd had gathered and started beating them mercilessly. Some were capturing a video of the incident. They sustained multiple injuries. The video of the incident was shown to the witness Kailash Singh and he distinctly identified each of the applicants and stated about it to the Investigating Officer. Most importantly, Nandan Singh Dalakoti is a witness who is village Prahari of the village, where the incident occurred. He was also shown the video clippings of the incident and he identified each of the applicants.

13. It is true that when the deceased, Bhuwan Chandra was examined at 08:45 in community health centre, Dhaulidevi, he was not referred by the doctor to the higher centre. But, it cannot be said that this report says that injuries were simple. What doctor has opined is as hereunder;

“Pt conscious oriented to T/p/p at time of examination, history and local examination suggestive of some trauma which is look like simple injury (hurt) but confirmation of injury only after investigation.”

14. It appears that instead of proceeding further to provide medical aid to Bhuwan Chandra Joshi, he was confined in the Police Thana. The doctors who conducted post-mortem of the deceased Bhuwan Chandra have categorically stated that he died of head injury. Dr. Chanchal Singh Marchal and Dr. Akhilesh Kumar, both have stated it to the Investigating Officer.

15. Who prepared the video? What is its source? Why the deceased was not referred to the higher centre or sent for investigation as suggested by the doctor at community health centre, Dhauladevi are matters, which will definitely be raised at some subsequent stage. But, it is definitely a case of mob lynching. A young boy has been brutally beaten allegedly by the applicants and co-accused. Witnesses have stated that applicants also assaulted mercilessly the deceased and injured Kailash. Witnesses have verified it by examining the video clippings. There is no room for bail for such an offences. It is a heinous offence. Therefore, the bail application of all the applicants are liable to be rejected.

16. A young boy has been beaten to death by the villagers in a group. After giving him merciless beating, the deceased was handed over to Police, who, though, got him examined medically, but, did not follow the treatment, did not go for investigation. Why the role of the Police Officers, in-charge of the Police Station Dania be not investigated?

17. Learned State Counsel is not in a position to tell as to how and from whose device, the video clippings were obtained. This is scientific evidence. The way it is being projected before the Court, particularly, the learned State Counsel is not in a position to tell as to from whose device the video clippings are taken, this Court considers that Senior Superintendant of Police, Almora should look into this aspect and entrust the investigation of the instant case to some senior officer who is conversant with collection of scientific evidence and production of them in the Court.

18. The bail applications of all the applicants are hereby rejected.

19. Superintendant of Police, Almora is directed to see that investigation of the instant case is conducted by some senior Police Officer, who is well versed with the collection of scientific evidence.

20. Superintendant of Police, Almora shall further examine the role of the in-charge Police Station, Dania, who instead of further pursuing the medical advice of doctor of C.H.C. Dhauladevi, confined the injured Bhuwan Chandra in Police Thana, who subsequently died. The role shall be investigated particularly on the following points:-

- On 28.04.2021, deceased Bhuwan Chandra was examined at C.H.C. Dhauladevi and doctor advised for X-ray. Why X-ray was not done?
- Doctors at C.H.C. Dhauladevi after examining deceased Bhuwan Chandra on 28.04.2021 did not give any conclusive opinion it was subject to investigation. Why without further investigation as suggested by the Doctor deceased Bhuwan Chandra was lodged in Police Station?

21. Let a copy of this order be forwarded to SSP Almora for necessary actions.

(Ravindra Maithani, J.)
16.07.2021

Ujjwal