

HIGH COURT OF UTTARAKHAND AT NAINITAL

Second Bail Application No. 20 of 2023

Ashish Applicant

Versus

State of Uttarakhand and another Respondents

Present:-

Ms. Divya Jain, Advocate for the applicant.

Mr. K.S. Bora, Deputy Advocate General for the State.

Mr. Shobhit Saharia, Advocate for the Narcotics Control Bureau.

Hon'ble Ravindra Maithani, J. (Oral)

Applicant Ashish in judicial custody in NCB Crime No.01 of 2019, under Sections 8/22/27/29 of The Narcotic Drugs and Psychotropic Substances Act, 1985 ("the Act"), Police Station NCB Zone, District Dehradun. He has sought his release on bail. This is second bail application of the applicant. His first bail application has already been rejected on 01.07.2022.

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

3. According to the FIR, on 27.07.2019, narcotic substances in commercial quantity were recovered from the possession of the applicant.

4. Learned counsel for the applicant would submit that in the instant matter, Narcotic Control Bureau (“NCB”) did file complaint on 23.09.2019; charges were framed on 02.11.2019; PW1 was examined on 22.02.2020, PW2 was examined on 30.01.2023 and PW3 was examined on 07.08.2023 and trial has yet not been concluded.

5. Learned State counsel would submit that the offences are quite serious. It contains the provisions of Section 37 of the Act. Narcotic substances in huge quantity have been recovered from the possession of the applicant. He would refer to the judgment in the case of Mohd. Muslim alias Hussain vs. State (NCT of Delhi), 2023 SCC OnLine SC 352, to argue that, in fact, a satisfaction need to be recorded while considering bail in such matters in view of Section 37 of the Act. Reference has been made to paras 20 and 21 of the judgment, which reads as follows:-

20. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as

enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a *prima facie* look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

21. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only *prima facie*, based on a *reasonable reading*, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India v. Rattan Malik*). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. *Satender Kumar Antil* supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

6. It is a case of recovery of commercial quantity of narcotic substance and in such cases Section 37 of the Act makes specific provisions. Bail in such cases may not be granted, unless the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. But, denial of

bail does not give unfettered liberty to the prosecution to keep a person in custody without conducting a trial.

7. The applicant is in custody for more than a year. For more than six months in between trial did not proceed.

8. Having considered, this Court is of the view that it is a case fit for bail and the applicant deserves to be enlarged on bail.

9. The bail application is allowed.

10. 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.)
27.12.2023

Sanjay