

IN THE HIGH COURT OF
UTTARAKHAND
AT NAINITAL

SRI JUSTICE RAKESH THAPLIYAL, J.

DECEMBER 20, 2023

First Bail Application No. 374 OF 2021

Sundar Singh Mehra alias Mahrana Applicant.

Versus

State of Uttarakhand. Respondent.

Counsel for the applicant:

Mr. Sanjay Bhatt, learned
counsel for the applicant.

Counsel for the State:

Mr. Saurabh Pandey, learned
Brief Holder for the State.

Upon hearing the learned Counsel, the Court made the following Order: (per Sri Rakesh Thapliyal, J.)

1. The present applicant is in judicial custody in FIR No.140 of 2020, dated 14.10.2020, under Sections 8/20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the Act"), Police Station Champawat, District Champawat. By the present bail application, the applicant has sought his release on bail.

2. As per the prosecution, when the police party was on daily routine of patrolling, they saw a vehicle (white in colour) bearing registration no. UK-03-TA-1542) coming from Tanakpur. The applicant along with co-accused was the occupant of the vehicle. When the police apprehended the applicant and the co-accused, they confessed that they have *charas* with them. The search was made before the Gazetted Officer and during search, in a bag, 4 Kgs 50 grams *charas* was allegedly recovered from the possession of the present applicant. From the co-accused, who was driving the vehicle, 3Kgs 50 grams *charas* was allegedly recovered.

3. It is the case of the prosecution that both of them confessed that they were in possession of illicit contraband (*charas*), which was inside a bag. The recovery, as shown from the co-accused, Prakash Singh Mehra, is 3 kg 50 grams of *charas*, whereas, 4 kg and 50 gram contraband (*charas*) was shown to be recovered from the present applicant.

4. The learned counsel for the applicant submits that the mandatory provisions of the NDPS Act have not been complied with and the applicant is innocent. The learned counsel further submits that the applicant has no criminal history. Applicant is in jail since 14.10.2020.

5. Per contra, the learned State counsel seriously opposed the bail application by saying that by virtue of Section 37 of the NDPS Act, since the alleged recovered contraband is commercial quantity, therefore, the applicant is not entitled to bail.

6. At this juncture, it is necessary to reproduce Section 37 of the NDPS Act. The same reads as under:-

“37. Offences to be cognizable and nonbailable.— (1)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) —

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless —

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. (2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal

Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

7. Section 37 of the NDPS Act is a very rigorous provision. As per Section 37 of the NDPS Act, the conditions which the Court has to examine are 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.

8. In response to this, learned counsel for the applicant submits that no doubt, as per Section 37 of the NDPS Act, 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.

9. Learned counsel for the applicant further submits that the applicant, who has already spent in custody more than three years, is entitled for bail, particularly when he has no criminal antecedents. In respect of the period of incarceration, which the applicant has suffered for more than three years, counsel for the applicant placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of *Mohd Muslim @Hussain v State(NCT of Delhi)* 2023 SCC OnLine SC 352. Another judgment rendered by the Hon'ble Supreme Court in the case of *Rabi Prakash vs. The State of Odisha* 2023 SCC OnLine SC 1109 is also placed reliance upon by Mr. Sanjay Bhatt, wherein in Paragraph 4, the Hon'ble Supreme Court observed as follows:-

"As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally

militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

10. Learned counsel for the applicant also placed reliance upon a judgment rendered by the Hon'ble Supreme Court in the case of ***Dheeraj Kumar Shukla versus State of Uttar Pradesh, (2023) SCC OnLine SC 918***, wherein, the Hon'ble Supreme Court, while granting bail to the accused from whom 92 kgs Ganja was recovered, observed as under:-

"It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed."

11. Having considered the submissions of the learned counsel for the applicant as well as Mr. Saurabh Pandey, Brief Holder for the State and in view of the observation made in the judgment, as relied upon by the learned counsel for the applicant, that the prolonged incarceration generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 32(1)(b)(ii) of the NDPS Act, there is no reason to keep the applicant behind the bars for an indefinite period. Further after taking into consideration the fact that the applicant has no criminal history, and he is in jail since for last more than three years, the conditions, as stipulated under Section 37 of the NDPS Act, can be dispensed with at this stage.

12. Therefore, without expressing any opinion on the merits of the case, since the applicant is in jail since

14.10.2020, i.e., more than three years, this Court is of the view that the applicant deserves bail.

13. The First Bail Application is allowed.

14. Applicant-Sundar Singh Mehra alias Mahrana is ordered to be released on bail subject to his furnishing a personal bond and two reliable sureties, each in the like amount, to the satisfaction of the Court concerned with the following conditions:-

i) Applicant shall attend the Trial Court regularly and he shall not seek any unnecessary adjournment.

ii) Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of this case.

iii) Applicant shall not leave the country without prior permission of the Trial Court.

15. It is made clear that in addition to the conditions that may be imposed by the Trial Court, the applicant shall be required to appear before the Trial Court on every date of hearing. In case the applicant is found to be involved in future in any other similar case, the respondent-State shall be at liberty to seek cancellation of bail granted to him by this Court.

Reena Bisht

RAKESH THAPLIYAL, J.