

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

29TH DECEMBER, 2023

FIRST BAIL APPLICATION NO.720 of 2022

Mohd. Faisal. Applicant

Versus

Narcotics Control Bureau. Respondent

Counsel for the Applicant : Ms. Divya Jain, Advocate.

Counsel for the Narcotics : Mr. Shobhit Saharia, Advocate
Control Bureau through video conferencing.

Hon'ble Alok Kumar Verma,J.

Present Application has been filed for grant of regular bail in connection with the Narcotics Control Bureau (in short, "NCB") Crime No.III/NCB/DDN/Seize/01/2022.

2. The present applicant is in judicial custody under Section 8 read with Section 21 (c), Section 27 A and Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. Reply affidavit to the supplementary affidavit, filed by the respondent, is taken on record.

4. A Baleno car bearing Registration No.UA08C0909 was intercepted by the NCB team on 12.01.2022. Two other co-accused persons were present along with the present applicant in the said car. 265 grams of heroin was recovered from the possession of the co-accused Mohd. Danish.

5. Heard Ms. Divya Jain, learned counsel for applicant and Mr. Shobhit Saharia, learned counsel for Narcotics Control Bureau through video conferencing.

6. Ms. Divya Jain, Advocate contended that the applicant is an innocent person. He has been falsely implicated by the NCB team. As per the NCB, the alleged contraband was recovered from the possession of the co-accused Mohd. Danish. The allegation against the present applicant is that he was sitting in the said car at the time of the alleged recovery. Applicant is in judicial custody since 13.01.2022. The Complaint was filed on 08.07.2022. The charges were framed on 01.10.2022. Partial testimony of PW1 was recorded on 13.12.2022. He (PW1) never appeared for recording his remaining evidence. The evidence of PW2 was recorded on 21.09.2023. Since then the prosecution is continuously seeking adjournments. Applicant does not have any criminal antecedents. He is a permanent resident of District Dehradun, therefore, there is no chance of his absconding.

7. The bail application has been opposed by Mr. Shobhit Saharia, Advocate, however he has conceded that out of the five prosecution witnesses only evidence of PW2 has been completed so far, and, there is nothing on record to show that the applicant had earlier been involved in any unacceptable activity.

8. Personal liberty under Article 21 of the Constitution of India is a very precious fundamental right and it should be

curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.

9. In **Rabi Prakash vs. The State of Odisha, 2023 0 Supreme (SC) 707**, the Hon'ble Supreme Court observed;

“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. Having considered the submissions of learned counsel for the parties and in the facts and circumstances of the case, no reason is found to keep the applicant behind the bars for an indefinite period, therefore, without commenting on the merits of the case, this Court is of the view that the applicant deserves bail at this stage.

11. The First Bail Application (No.720 of 2022) is allowed.

12. Applicant – Mohd. Faisal is directed 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.

13. It is clarified that if the applicant misuses or violates any of the conditions, imposed upon him, the prosecution agency will be free to move the court for cancellation of bail.

ALOK KUMAR VERMA, J.

Dated:29.12.2023
Neha