

HIGH COURT OF UTTARAKHAND AT NAINITAL
First Bail Application No. 2341 of 2025

Raju

--Applicant

Versus

State Of Uttarakhand

--Respondent

Presence:-

Mr. Lalit Sharma and Mrs. Sheetal Selwal, learned counsel for the applicant.

Mr. Bhaskar Chandra Joshi, learned A.G.A. for the State.

Hon'ble Mr. Justice Rakesh Thapliyal, J.

1. The instant bail application is moved on behalf of the applicant 'Raju' S/o Rahmat Ali, who is languishing in jail since 11.04.2025 in relation to First Information Report dated 11.04.2025 bearing FIR No. 0052 of 2025, P.S. Pulbhatta, District Udham Singh Nagar, wherein, the present applicant along with one Suresh Gupta have been implicated for the offences punishable under section 8/20 r/w section 29/60 of NDPS Act.

2. The applicant is chargesheeted only for the offence punishable under section 8/20 of NDPS Act. As per the prosecution story a Vehicle No. U.K. 06-CB-4534 was intercepted by the police team and upon searching the vehicle multiple packets containing a total of 437.748 kgs. "Green Leafy Substance" called as "Ganja" was recovered. After search and seizure the inventory was also prepared and certified by the Magistrate; the samples were also sent for Forensic Analysis to

Forensic Science laboratory and the FSL report confirms the presence of “cannabis element”.

3. Learned counsel for the applicant argued that the seizure documents explicitly describe the recovered contraband as “Dry Green Colour Leaf” and section 2(iii)(b) of NDPS Act defines “Ganja” as the “Flower or Fruiting tops of cannabis plant, expressly excluded the seeds and leafs when not accompanied by the tops. Learned counsel submits that since the recovery consists of “Dry Green Leaf” a strong doubt arise whether the entire bulk quantity can legally be termed as “Ganja”. He submits that weight of sample leafs cannot be clubbed to establish commercial quantity (which is 20 kg) to attract the stringent embargo to section 37 of NDPS Act. He also submits that while small samples from each packet tested positive the qualitative separation and exact weight of the actual “Flower or Fruiting Tops” were never determined by the Investigating Agency.

4. Learned counsel for the applicant further submits that the applicant has been languishing in judicial custody since 11.04.2025 and the trial is likely to take considerable time and prolonged incarceration of the applicant dilutes Article 21 of the Constitution of India. Learned counsel further submits that although the applicant has one prior criminal antecedent under the NDPS Act, however, he has already been granted bail in that matter also and has not misusing the liberty.

5. Per contra, Mr. Bhaskar Chandra Joshi, learned A.G.A. strongly oppose the bail application by arguing that a huge quantity i.e. 437.748 kgs of “Ganja” was recovered from a vehicle, which is much above the commercial quantity. He further submits that the procedural requirement of inventory is

also properly certified and the samples from each packet tested positive in the FSL report. Furthermore, the applicant is a habitual offender with criminal antecedent of a similar nature under the NDPS Act, which itself reveals that he is indulged in illicit drug trafficking and thus fails the fulfillment of twin conditions in terms of section 37 of the NDPS Act.

6. After considering the rival submissions of learned counsel for the parties and perusing the record the primary legal issue turns on the physical description of the contraband. The recovery memo describes the substance as “Dry Green Colour Leaf”. It has been consistently reiterated that the definition of “Ganja” under section 2(iii)(b) leaves no room for ambiguity, it encompasses only the Flowering or Fruit tops. Leafs, stalks and seeds when separate or mixed without distinct separation of the tops, create a reasonable doubt regarding the exact weight of the prohibited substance. Clubbing weight of the entire mass of dry leafs to cross 20 kgs. commercial bench mark without exact quantification of the flowering tops, prima-facie dilutes the absolute bar of section 37 of NDPS Act, therefore, at this stage this court finds reasonable grounds to believe that the applicant may not be guilty of possessing the commercial quantity of legally defined “Ganja”.

Regarding the criminal antecedent, this court is of the view that mere existence of one pending case where the applicant is already on bail cannot act as an absolute bar to deny bail when the recovery of the contraband is legally doubtful. The applicant is languishing in jail for over 16 months (since 11.04.2025), the investigation is complete and the trial is at initial stage, no purpose will be served by keeping him incarcerated indefinitely.

7. For the reasons stated above, without expressing any opinion on the merit of the case, the instant bail application is allowed.

8. Let the applicant 'Raju' be released on bail by furnishing his personal bond in the sum of Rs. 1 lakh with two local sureties of the like amount to the satisfaction of the court concerned subject to the following strict conditions:

- i. The applicant shall not directly or indirectly make an inducement, threat or promise to any person acquainted with the facts of the case.
- ii. The applicant shall surrender his passport, if any, before the Trial Court and shall not leave the country without prior permission of the Trial Court.
- iii. The applicant shall attend Trial Court proceeding on each and every date without seeking any unnecessary adjournment.
- iv. Any involvement in a subsequent criminal offence of similar nature the prosecution is free to move for cancellation of bail.

9. It is made clear that the Trial Court may proceed with the trial without being influenced with the observation as above.

(Rakesh Thapliyal, J.)

21.08.2026

PR