



IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

Criminal Appeal No. 792 of 2024

Shubham Kumar

.....Appellant

Vs.

State of Uttarakhand

.....Respondent

Counsel Presence:

Mr. Shailabh Pandey learned counsel for the Appellant.

Mr. Vikas Uniyal, learned Brief Holder for the State Respondent

Hon'ble Ashish Naithani, J.

Present appeal has been moved by the appellant under Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking commutation/remission of the sentence awarded in default of payment of fine arising out of impugned judgment and order dated 22.06.2024 as well as order of sentence dated 22.06.2024, passed by learned Court of learned Special Sessions Judge, Chamoli, Gopeshwar, in Special Sessions Trial No. 09 of 2020, "State vs. Shubham Kumar" for the offence punishable under Sections 8 and 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The facts, in brief, are that on 07.03.2019 the police authorities allegedly intercepted the appellant and conducted his search after obtaining his consent. During the course of search, 8 grams of smack was allegedly recovered from his possession, which was immediately weighed at the spot by the police authorities. Since the appellant failed to produce any valid licence or authority for possession of the contraband substance, an FIR came to be lodged against him under Sections 8/21 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Upon completion of investigation, charge-sheet was filed and the learned Trial Court, after conclusion of trial, convicted the appellant and sentenced

him to rigorous imprisonment for a period of four years along with a fine of Rs. 20,000/-, with an additional sentence of six months' rigorous imprisonment in default of payment of fine.

3. Heard learned counsel for the parties and perused the material available on record.

4. Learned counsel for the appellant submits that the appellant has already undergone the substantive sentence awarded to him by the learned Trial Court and has also undergone substantial incarceration in default of payment of fine. It is argued that the appellant belongs to a poor financial background and due to financial incapacity he could not deposit the amount of fine imposed upon him.

5. It is submitted that the appellant has no criminal antecedents and his continued incarceration solely on account of inability to deposit fine would cause undue hardship and defeat the ends of justice.

6. Per contra, learned State counsel opposed the appeal and submitted that the conviction of the appellant has already been recorded after due appreciation of evidence by the competent Court and therefore no interference is warranted.

7. This Court finds that the appellant has already undergone the substantive sentence awarded by the learned Trial Court and the remaining incarceration pertains only to the sentence imposed in default of payment of fine. The purpose of imprisonment in default of payment of fine is primarily coercive in nature and not punitive to the extent of indefinitely depriving a person of his liberty solely on account of financial incapacity.

8. This Court also takes note of the submission advanced on behalf of the appellant that he belongs to a poor financial background and his inability to deposit the amount of fine appears to be genuine and

bona fide. Continued incarceration merely on account of inability to pay fine would result in disproportionate hardship and would offend the principles of fairness and reasonableness enshrined under Article 21 of the Constitution of India.

9. It is well settled that the sentence imposed in default of payment of fine is not a substantive sentence but only a penalty attached for enforcing recovery of fine. Such imprisonment cannot be permitted to operate harshly against a convict who lacks the financial means to pay the amount imposed by the Court. The object of criminal law is reformatory as well as corrective and not merely punitive.

10. Considering the nature of allegations, the quantity allegedly recovered, the period of incarceration already undergone by the appellant, absence of criminal antecedents, financial incapacity of the appellant and the fact that the substantive sentence already stands completed, this Court is of the considered opinion that no useful purpose would be served by keeping the appellant in further incarceration solely for non-payment of fine.

ORDER

Accordingly, without expressing any opinion on the merits of the conviction recorded by the learned Trial Court, this Court finds it to be a fit case for commutation of the sentence imposed upon the appellant in default of payment of fine, in the interest of justice.

(Ashish Naithani, J.)

15.05.2026

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