

HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No.876 of 2023

Anil SinghApplicant

Versus

State of UttarakhandRespondent

Present:-

Mr. Hari Om Bhakuni, Advocate for the applicant.
Ms. Manisha Rana Singh, AGA for the State.

Hon'ble Ravindra Maithani, J. (Oral)

Applicant Anil Singh is in judicial custody in FIR/Case Crime No.1 of 2023, dated 05.01.2023, under Sections 8/20 of The Narcotic Drugs And Psychotropic Substances Act, 1985 ("the Act"), Police Station Tharali, District Chamoli. He has sought his release on bail.

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

3. According to the FIR, on 04.01.223, police recovered 5.985 Kg. *Charas* from the possession of the applicant. According to the prosecution, *Charas* on that date was also recovered from the co-accused in large quantity.

4. Learned counsel for the applicant would submit that the FIR is delayed by 04 hours; the applicant was produced before the Magistrate beyond 24 hours which vitiates the arrest and it is a case of non-compliance of Section 42 of the Act. In support of his contention, learned counsel has placed reliance in the case of Kishan Chand vs. State of Haryana, (2013)2 SCC 502.

5. On the other hand, learned State counsel would submit that after arrest on 04.01.2023, the revisionist was remanded to the judicial custody on 05.01.2023 within 24 hours from his arrest. It is argued that it was a recovery from a public place.

6. It is the stage of bail. Much of the discussion at this stage is to be avoided. To the extent of appreciating the controversy the matter may be examined with the caveat that any observation made at this stage shall have no bearing at any subsequent stage of the case.

7. It is true that the police had already information about suspects at 06:53 PM on 04.01.2023. The applicant and another co-accused were apprehended

and finally *Charas* was recovered and they were arrested at 10:10 PM. The FIR was lodged at 02:15 on 05.01.2023 at police station which is at 11 Kms. distance from the place of occurrence.

8. It is a case of recovery of commercial quantity of *Charas* 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.

9. During the course of hearing learned State counsel has produced for perusal of the Court the remand-sheet, which reveals that the applicant was produced before the Magistrate within 24 hours and on 05.01.2023, he was remanded to judicial custody.

10. In so far as the application under Section 42 of the Act, in the case of Kishan Chand (*supra*), the search of a Scooter was made. Section 42 of the Act comes into place when search of

a building, conveyance or place is to be made by the empowered officer. Instant is not such a case.

11. Having considered, this Court is of the view that it is not a case fit for bail and the bail application of the applicant deserves to be rejected.

12. The bail application is rejected.

(Ravindra Maithani, J.)
22.03.2024

Sanjay