

HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No. 1044 of 2023

Aakash and AnotherApplicants

Versus

State of UttarakhandRespondent

Present:-

Mr. Shashi Kant Shandilya, Advocate for the applicants.

Ms. Manisha Rana Singh, A.G.A. for the State.

Hon'ble Ravindra Maithani, J. (Oral)

Applicants Aakash and Amit Chandel are in judicial custody in FIR No.101 of 2023, under Section 8/22/60 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the Act"), Police Station Piran Kaliyar, District Haridwar. They have sought their release on bail.

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

3. According to the FIR, on 05.03.2023, narcotic substances in commercial quantity were recovered from the possession of the applicant.

4. Learned counsel for the applicant would submit that on 02.09.2023, the Investigating Officer had sought extension of time to file chargesheet under Section 36A sub-Section 4 of the Act on the ground that the property valuation and ITR reports are required to be investigated

and the court had extended time for a week by its order dated 02.09.2023. But, it is argued that without completing the financial investigation, chargesheet has been submitted, which is incomplete, and since the application for bail had already been filed by the applicant on 11.09.2023, he is entitled to default bail.

5. Learned State Counsel would submit that the chargesheet is complete, insofar as the penal offences under the Act are concerned. She would submit that the financial investigation is quite separate subject. It has nothing to do with the penal offences. She would refer to the judgment in the case of Central Bureau of Investigation Vs. Kapil Wadhawan and Another, (2024) 3 SCC 734, particularly para 21 of it has been referred to, which reads as hereunder:-

“21. In our opinion, the Constitution Bench in K. Veeraswami v. Union of India [K. Veeraswami v. Union of India, (1991) 3 SCC 655 : 1991 SCC (Cri) 734] has aptly explained the scope of Section 173(2) : (SCC p. 716, para 76)

“76. The charge-sheet is nothing but a final report of police officer under Section 173(2) of the CrPC. The Section 173(2) provides that on completion of the investigation the police officer investigating into a cognizable offence shall submit a report. The report must be in the form prescribed by the State Government and stating therein (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed and, if so, by whom (e) whether the accused has been arrested; (f) whether he had been released on his bond and, if so, whether with or without sureties; and (g) whether

he has been forwarded in custody under Section 170. As observed by this Court in *Satya Narain Musadi v. State of Bihar*, (1980) 3 SCC 152, that the statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the Investigating Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. In fact, the report under Section 173(2) purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence.”

(emphasis supplied)

6. It is a stage of bail. Much of the discussion is not expected of. Arguments are being appreciated with the caveat that any observation made in this order shall have no bearing at any subsequent stage of the trial, or in any other proceeding.

7. It is true that on 02.09.2023, the Investigating Officer sought extension of time for filing of the chargesheet for collection of evidence. In the bracket, he has stated ITR reports and property valuation report of the applicant. Thereafter, chargesheet was prepared by the Investigating Officer on 06.09.2023, and in the chargesheet, he has stated that the financial investigation is still underway. This is claimed to be incomplete investigation. In fact, the applicant

had filed the bail application on 11.09.2023, when both the bail application as well as the chargesheet was placed before the court. On default bail, a report was sought from the concerned court, and according to the report, chargesheet was received in the court on 08.09.2023, and the default bail application was moved on 11.09.2023.

8. The question is as to whether the chargesheet is incomplete? Financial investigation is probed under the provisions of the Act under Chapter VA. There is a complete procedure for it with regard to seizure or freezing of illegally acquired property, etc. and such orders are appealable. A separate mechanism, in terms of Appellate Tribunal has also been provided under Sections 68-N and 68-O of the Act. It has nothing to do with the penal offences under Section 8/22/60 or 29 of the Act. The chargesheet has been submitted after collecting material for substantiating the offence under which the chargesheet has been submitted. Therefore, this Court is of the view that the chargesheet in the instant case cannot be termed as incomplete. The default bail application was filed subsequent to filing of the chargesheet. No other point has been raised.

9. Having considered, this Court does not see any reason, which may entitle the applicant to bail. Accordingly, the bail application deserves to be rejected.

10. The bail application is rejected.

(Ravindra Maithani, J.)
27.08.2024

Ravi Bisht