HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No.1788 of 2024

Rahul Pratap Singh .....Applicant

Versus

State of Uttarakhand .....Respondent

Present:-

Mr. Gaurav Singh, Advocate for the applicant.
Mr. Pankaj Kumar Joshi, A.G.A for the State.

And

First Bail Application No.1602 of 2024

Lokesh Kumar Sharma .....Applicant

Versus

State of Uttarakhand .....Respondent

Present:-

Mr. Gaurav Singh, Advocate for the applicant.
Mr. Pankaj Kumar Joshi, A.G.A for the State.

Hon'ble Ravindra Maithani, J. (Oral)

Since both these bail applications arise from one and the same FIR, they are decided by this common order.

2. Applicants are in judicial custody in FIR/Case Crime No. 603 of 2024, under Sections 8/20/60 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Kotwali Jwalapur, District Haridwar. They have sought their release on bail.

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

4. According to the FIR, on 24.07.2024, 25 Kg. *ganja* was recovered from a vehicle, the applicants were its occupants.

5. Learned counsel for the applicants would submit that as per prosecution, there were five packets of *ganja* of 5 Kg. each, but the sample was taken from one packet, which it is argued that it cannot be said to be representative sample of the *ganja.* In support of his contention, learned counsel has placed reliance on the principles of law, as laid down by the Hon'ble Supreme Court, in the case of Gaunter Edwin Kircher Vs. State of Goa, Secretariat Panaji, Goa, (1993) 3SCC 145.

6. In the case of Gaunter Edwin Kircher *(supra),* the Hon'ble Supreme Court observed that "**before examining the scope of this provision, we shall first consider whether the prosecution has established beyond all reasonable doubt that the accused had in his possession two pieces of Charas weighing 7 gms and 5 gms respectively. As already mentioned only one piece was sent for chemical analysis and PW 1, the Junior Scientific Officer who examined the same found it to contain Charas but it was less than 5 gms. From this report alone it cannot be presumed or inferred that the substance in the other piece weighing 7 gms also contained Charas. It has to be borne in mind that the**

Act applies to certain narcotic drugs and psychotropic substances and not to all other kinds of intoxicating substances. In any event in the absence of positive proof that both the pieces recovered from the accused contained Charas only, it is not safe to hold that 12 gms of Charas were recovered from the accused. In view of the evidence of PW 1 it must be held that the prosecution has proved positively that Charas weighing about 4.570 gms was recovered from the accused."

7. Learned State counsel admits that sample was taken from one packet of 5 Kg.

8. Allegedly five packets of *ganja* was recovered from the possession of the applicants, but sample was taken from only one packet. Can it be said to be representative sample of the alleged recovered articles? This and many more questions would find answer during trial.

9. Having considered the entirety of facts, this Court is of the view that the applicants deserve to be enlarged on bail.

10. The bail applications are allowed.

11. Let the applicants be released on bail, on their executing a personal bond and furnishing two reliable

sureties by each one of them, each of the like amount, to the satisfaction of the Court concerned.

(Ravindra Maithani, J)
11.12.2024

Jitendra

JITENDRA MOHAN

Digitally signed by JITENDRA MOHAN
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