IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Leave to Appeal No. 259 of 2025
With
Government Appeal No. 77 of 2025

State of Uttarakhand ... Applicant

Versus

Kautilya ... Respondent

Mr. Dinesh Chauhan, AGA, for the State/appellant.

AND
Leave to Appeal No. 260 of 2025
With
Government Appeal No. 78 of 2025

State of Uttarakhand ... Applicant

Versus

Rishabh ... Respondent

Mr. Dinesh Chauhan, AGA, for the State/appellant.

J U D G M E N T

Hon'ble Manoj Kumar Tiwari, J.

For the reasons indicated in the delay condonation applications, the same are allowed. Delay of 51 days in filing these appeals are condoned.

2. Since judgment and order against which leave to appeal has been sought in both these petitions is same, therefore, both the special leave petitions are being decided by this common judgment.

3. By these petitions under Section 419(3) of BNSS, State/petitioner is seeking leave to appeal against the judgment and order dated 12.6.2025, passed by Special Judge (NDPS Act)/Sessions Judge, Uttarkashi in Special Sessions Trial No. 19/2023 and Special Sessions Trial No. 18/2023, thereby acquitting the respondents from the charges framed against them for the offences punishable under Section 8 read with Section 20 of the NDPS Act.

4. The case of the prosecution, in brief, is that on 28.10.2022 at about 9:10 PM, the accused Kautilya was allegedly found in possession of 404.5 gram charas and accused Rishabh in possession of 299.5 gram charas, while both were travelling on a scooty bearing registration no. UK-07-DG-3479. The contraband was said to have been recovered from them at the spot itself and proceedings were allegedly conducted between 9:10 PM and around 11:30 PM. The trial court, upon appreciation of oral and documentary evidence, recorded several material deficiencies and contradictions in the prosecution case and consequently acquitted the accused persons.

5. Having heard learned State Counsel and perused the record, this Court is of the view that the trial court's findings are based on a correct appreciation of evidence and do not call for interference.

6. The trial court recorded that although the alleged recovery took place in an area having several houses and shops, but no independent witness could be procured. All witnesses examined by the prosecution belonged to the police department. While it is true that independent witnesses are not indispensable, however their absence, when admittedly available, requires satisfactory explanation. No such explanation was offered. The trial court, therefore, rightly viewed this lapse as affecting the credibility of the prosecution case.

7. The trial court noted significant contradictions among prosecution witnesses with respect to the exact place of recovery. Trial court noted that it appears that the Investigation Officer did not inspect the place of recovery. The trial court further noted that prosecution led no evidence to prove who was the registered owner of the scooty on which both accused were said to be travelling. The recovery was allegedly made at 9:10 PM and subsequent proceedings continued for over two hours at the spot at night, however the prosecution did not disclose what source of light was used to conduct the search, seizure and preparation of documents. Such inconsistencies and omission assume significance given the circumstances and timing of the alleged recovery.

8. The trial court recorded non-compliance of Section 50, 52-A and 55 of the NDPS Act. Compliance of Section 50 was not satisfactorily

proved. No inventory report was prepared either by the complainant or the Investigating Officer. Safe custody procedures under Section 55 were not adhered to. These lapses, individually and cumulatively, seriously undermine the prosecution case.

9. Upon an overall consideration, this Court finds that the trial court has meticulously evaluated the evidence and has assigned cogent reasons for recording acquittal. It is a settled law that while exercising appellate power, even if two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court. Accordingly, this Court is of the considered opinion that no case is made out for grant of leave to appeal. Consequently, leave petitions are dismissed. Government appeals also stand dismissed accordingly.

(Manoj Kumar Tiwari, J.)

4.11.2025
Pr

PRABODH KUMAR