

HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No.2560 of 2023

Sultan KhanApplicant

Versus

State of UttarakhandRespondent

Present:-

Mr. Harshpal Sekhon and Mr. Basant Singh, Advocates for the applicant.

Mr. Siddhartha Bisht, AGA with Mr. Himanshu Sain, Brief Holder for the State.

Hon'ble Ravindra Maithani, J. (Oral)

The applicant is in judicial custody in FIR/Case Crime No.486 of 2023, under Section 8/21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Kashipur, District Udham Singh Nagar. He has sought his release on bail.

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

3. According to the FIR, 1.024 Kg. Smack was allegedly recovered from the possession of the applicant Sultan Khan.

4. Learned counsel for the applicant would submit that the trial is much delayed; witnesses have not been examined for a long; the applicant was remanded to the judicial custody on 22.09.2023; charge-sheet was not

filed within 180 days from then; it was filed on 20.03.2024, not within 180 days; on 181th day i.e. on 20.03.2024, the applicant filed a default bail application; subsequent thereto, charge-sheet was filed in the case; the matter was taken up for hearing on 20.03.2024, but it was adjourned for hearing on 23.03.2024 and the default bail application of the applicant was rejected on the ground that 20.03.2024 is 180th day. It is argued that this is not correct.

5. Learned counsel for the applicant referred to the principle of law, as laid down in the case of Enforcement Directorate, Government of India vs. Kapil Wadhawan, (2024)7 SCC, 147. In this case, Hon'ble Supreme Court *inter alia* observed that, **"We therefore declare that the stipulated 60/90 day remand period under Section 167CrPC ought to be computed from the date when a Magistrate authorises remand. In other words, the very moment the stipulated 60/90 day remand period expires, an indefeasible right to default bail accrues to the accused."**

6. Learned counsel for the applicant would submit that if counted from the date of remand, the counting of days shall be as follows:-

- i. 09 days in the month of September, 2023.
- ii. 31 days in the month of October, 2023.
- iii. 30 days in the month of November, 2023.
- iv. 31 days in the month of December, 2023.
- v. 31 days in the month of January, 2024.
- vi. 29 days in the month of February, 2024.
- vii. 19 days in the month of March, 2024.

7. It is argued that the counting of the above days comes to 180 days, which expires on 19.03.2024. Accordingly, it is argued that 20.03.2024 would be 181th day from the date of remand. Till that date, charge-sheet was not filed in the case.

8. Learned State counsel would submit that in the instant matter, charge-sheet was submitted prior to filing of the bail application.

9. The court below had declined default bail to the applicant on the ground that 20.03.2024 is 180th day, whereas, as counted, 20.03.2024 admittedly is 180th day. Then a question arose, as to whether the applicant had

filed the bail application prior to filing of the charge-sheet in the case. When these questions are raised, the Court sought a report from the concerned court. The Court, in fact, passed the following order on that date:-

“Let a copy of this order be also sent to the concern court with a request to the court to give information to this Court, as to whether the bail application in the instant case was filed prior to receiving of the charge-sheet? Or the bail application was filed subsequently after receiving of the charge-sheet?”

10. A report was received from the concerned court that, in fact, charge-sheet was filed at 12:05 PM, which was produced before the Judge at 12:30 PM, whereas the bail application was filed by the applicant on 12:45 PM. There is no record of that. This report has been filed by the concerned court based on the statement of the concerned staff.

11. On the contrary, learned counsel for the applicant would submit that bail application was filed prior to filing of the charge-sheet, which it is argued is evident from the Case Information System (“CIS”) record, on which, the matters are uploaded. It is argued that the bail application was uploaded at Serial No.1064,

whereas the charge-sheet was filed at Serial No.1072 on the same date. This factual narration is not in dispute.

12. The default bail has been declined merely on the ground that 20.03.2024 is 180th day, which it is not correct. It is 181th day. There are contradictory versions with regard to filing of the bail application and charge-sheet. On the one hand, according to the applicant, the bail application was filed prior to filing of the charge-sheet and on the other hand, according to the State, charge-sheet had already been filed before filing of the bail application. It gives time, as to what time charge-sheet has been filed and at what time the bail application has been filed. There is no record of it. It is based on the memory of the concerned Clerk. How is it possible that a court employee may memorize, as to at what time application was filed in a particular case, unless something special has happened in that case on that particular date?

13. On the other hand, the CIS record has been filed, according to which, the serial number of bail application is 1064, whereas the serial number of the charge-sheet is 1070. Although, it is also stated on behalf of the State that collectively, the documents are sent for

uploading on the CIS and here the priority is not maintainable. This argument may not be accepted to uphold that charge-sheet was filed prior to filing of the bail application. According to the CIS, the charge-sheet was filed subsequent to filing of the bail application. This has to be accepted true in absence of any of the other record which maintains time of filing of any document in the court. In the instant case, there is no other document or record, maintained by the court to reveal as to at what time the charge-sheet was submitted and at what time the bail application has been filed.

14. This Court is of the view that in the instant case, charge-sheet was filed subsequent to filing of the bail application. Both these documents were filed beyond 180th day. Therefore, the applicant is entitled for default bail.

15. Having considered, this Court is of the view that it is a case fit for bail and the applicant deserves to be enlarged on bail.

16. The bail application is allowed.

17. Let the applicant be released on bail, on his executing a personal bond and furnishing two reliable

sureties, each of the like amount, to the satisfaction of the court concerned.

(Ravindra Maithani, J.)
10.01.2025

Sanjay