
Shahnawaz Ahmed & Others Vs State Of Uttarakhand

First Bail Application No. 361, 363 Of 2023

Court: Uttarakhand High Court

Date of Decision: Nov. 7, 2023

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 " Section 2(3)b, 8, 20, 37, 60, 436A

Hon'ble Judges: Ravindra Maithani, J

Bench: Single Bench

Advocate: Siddhartha Sah, Amit Bhatt

Final Decision: Dismissed

Judgement

Ravindra Maithani, J

1. Since both the bail applications arise from the same FIR, they are being decided by this common order.

2. Applicants Shahnawaz Ahmed and Nasir Ahmed are in judicial custody in Case Crime No.0002 of 2023, under Sections 8/20/60 of the Narcotic

Drugs and Psychotropic Substances Act, 1985 (the Act), Police Station Bhatronjkhana, District- Almora. They have sought their release on bail.

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

4. According to the FIR, on 15.01.2023, total 27.030 Kgs Ganja was recovered from the possession of the applicants, which they were carrying in a

bag.

5. Learned counsel for the applicants would submit that, according to the FIR, the articles that were allegedly recovered, do not confirm that it was

Ganja, in view of the definition of Ganja, as given under Section 2(iii)(b) of the Act; according to the FIR, leaves of Ganja and seeds of Bhang

were recovered.

6. Learned counsel for the applicants would also submit that the jurisprudence with regard to the bail under the Act has been widened by the

Hon'ble Supreme Court in a number of cases. He would refer to the judgments in the cases of Mohd. Muslim alias Hussain Vs. State (NCT of

Delhi), (2023) SCC OnLine SC 352, Hasubhai Kamabhai Thakor Vs. The State of Gujarat, Special Leave to Appeal (Crl.) No. 2523 of 2023, Kunal

Dattu Kadu Vs. Union of India, 2022 SCC OnLine Bom 1770, Konstantin Isaev Vs. State as rep. Officer In Charge and Another, 2023 SCC OnLine

Bom 969, and Ibrahim Khwaja Miya Sayeed @ Raju Vs. The State of Maharashtra, in Bail Application no. 1296 of 2022, passed by the Hon'ble

High Court of Judicature at Bombay.

7. It is argued that the applicants have been arrested on 15.01.2023, in view of the allegedly recovered material, which does not confirm under the

definition of Ganja.

8. Learned State Counsel would submit that commercial quantity of Ganja was recovered from the applicants, which has been confirmed by the

Forensic Science Laboratory Report.

9. 'Ganja' has been defined under Section 2(3)b of the Act, which reads as hereunder:-

"2. Definitions.—In this Act, unless the context otherwise requires,—

(iii) "cannabis (hemp)" means—

(a).....

(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever

name they may be known or designated; and

(c).....

10. In the case of Mohd. Muslim (supra), the Hon'ble Supreme Court, while discussing the provisions of Section 37 of the Act, has observed that.

"Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of

Section 436A which is applicable to offences under the NDPS Act too. In the case of Mohd. Muslim (supra), the arrest was made in the

year 2015, and the appellant in that case has been in custody for over 7 years and 4 months, when the matter was decided.

11. In the case of Hasubhai Kamabhai (supra), no principle of law, as such, has been laid down by the Hon'ble Supreme Court. Having

considered the facts that the State had not filed counter affidavit in that case and the period of custody in that case, the bail was granted to the

appellant of that case. The Hon'ble Supreme Court observed that, "at best the petitioner can be said to have supplied Ganja seeds for

plantation."

12. In the case of Konstantin Isaev (supra), in Para 8 of the judgment, the Hon'ble Supreme Court has noted the discrepancies in the material

that has been seized and the material that has been analysed, and noted that the allegedly recovered quantity would not bring the substance within the

purview of term Ganja, the contraband.

13. In the case of Ibrahim Khwaja (supra), also, In Para 9, the Hon'ble High Court of Judicature at Bombay, has noted the definition of Ganja, as

given under the Act, and has noted that, "A plain reading of this section would reveal seeds and leaves would not be covered under the

definition of Ganja unless they are accompanied by the flowering or fruiting tops of the Cannabis plant.

14. In the instant case, it is categorically written in the FIR that Ganja was recovered from the applicants. It records leaves of Ganja and seeds of

Bhang. Whether the seeds and leaves were accompanied by tops, as such, it is not stated in the FIR. It also does not reveal that there were no tops

of the plants, when it was recovered. The Forensic Science Laboratory report confirms that the allegedly recovered article was Ganja.

15. At this stage, this Court cannot go deeper into the scrutiny of the material.

16. Having considered, this Court is of the view that there is no ground, which may entitle the applicants to bail. Accordingly, the bail applications

deserve to be rejected.

17. Both the bail applications are rejected.