

(2023) 11 UK CK 0076

Uttarakhand High Court

Case No: First Bail Application No. 883 Of 2022

Sameer Alias Chand

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

Date of Decision: Nov. 21, 2023

Acts Referred:

- Narcotic Drugs And Psychotropic Substances Act, 1985 - Section 8, 20, 22, 37(1)(b)(ii)
- Constitution Of India, 1950 - Article 21

Hon'ble Judges: Alok Kumar Verma, J

Bench: Single Bench

Advocate: Vikas Anand, Bhaskar Joshi

Final Decision: Allowed

Judgement

Alok Kumar Verma, J

1. Present Application has been filed for grant of regular bail in connection with the First Information Report No.313 of 2020, registered at police station Khatima, District Udham Singh Nagar.
2. Applicant-Sameer alias Chand is in judicial custody under Section 8/20/22 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
3. The case of the prosecution is that on 08.12.2022, when the police party was on patrolling duty near Tigri crossroad, three persons, including the present applicant, were coming on a motorcycle. On suspicion, police party apprehended them. They disclosed that they have contraband articles. The Circle Officer of police was informed. He reached at the spot. A search was conducted. Police party recovered 2 Kg. Charas and 10 gm. Smack (Heroin) from the bag of co-accused Mohd. Tariq and 2 Kg. Charas and 10 gm. Smack (Heroin) were recovered from the present applicant's bag. They were arrested. In spite of an endeavor, no public witness could be secured. Samples were sent to the Forensic Science Laboratory for examination. On conclusion of the investigation, charge-sheet was filed.
4. Heard Mr. Vikas Anand, learned counsel for the applicant and Mr. Bhaskar Joshi, learned A.G.A. for the State.
5. Mr. Vikas Anand, Advocate, appearing for the applicant, contended that the applicant has been falsely implicated in the present matter. Nothing was recovered from his possession. The said recovery was planted. There was no independent witness at the time of the alleged recovery. Applicant is not a previous convict. He is a permanent resident of District Udham Singh Nagar, therefore, there is no likelihood of his

absconding. The charge was framed on 21.03.2023, and only examination-in-chief of PW1 has been concluded till date, whereas, applicant is in judicial custody since 09.12.2020, and, co-accused of similar role namely Mohd. Tariq, has been granted bail by the Coordinate Bench of this Court.

6 Mr. Bhaskar Joshi, A.G.A. for the State has opposed the bail application. However, he has fairly conceded that applicant has no criminal history.

7. In **Rabi Prakash vs. The State of Odisha, 2023 0 Supreme (SC) 707**, the Hon'ble Supreme Court observed;

"The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

8. Having considered the submissions of learned counsel for both the parties and in the facts and circumstances of the case, without expressing any opinion as to the merit of the case, this Court is of the view that the applicant deserves bail at this stage.

9. First Bail Application is allowed.

10. Let the applicant – Sameer alias Chand be released on bail on his executing a personal bond and furnishing two reliable sureties, each in the like amount, to the satisfaction of the court concerned on the following conditions:-

i) Applicant shall attend the Trial Court regularly and he shall not seek any unnecessary adjournment;

(ii) Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of this case;

11. It is made clear that if the applicant misuses or violates any of the conditions, imposed upon him, application may be filed to cancel the bail order.