

05.08.2024

IA/1/2023 (Bail Application)

In

CRLA No.702 of 2023

**Hon'ble Vivek Bharti Sharma, J.**

Present Mr. Aditya Pratap Singh, learned counsel for the appellant/applicant.

2. Mr. Pankaj Joshi, learned Assistant Government Advocate for the State.

3. Present criminal appeal has been preferred against the judgment and order dated 06.09.2023 passed by learned Special Judge, N.D.P.S. Act, Udham Singh Nagar in Special Session Trial No.558 of 2018 whereby the appellant/convict has been convicted for the offence under Sections 8/20 of the N.D.P.S. Act, 1985 and sentenced to undergo five years rigorous imprisonment along with fine of ₹10,000/-.

4. Heard on bail application (*IA 1 of 2023*).

5. Learned counsel for the appellant/convict would submit that appellant/convict is 51 years of age at present; that, the appellant/ convict is not a previous convict; that, the appellant/convict was on bail during trial but she did not misuse the same; that, the appellant/convict may be released on bail as the appeal may take considerable time for its conclusion due to heavy pendency of cases.

6. Learned counsel for the appellant/convict would further submit that there are gross inconsistencies in the statements of the witnesses examined before the trial Court and the important evidences were not produced before trial Court and at the same time, no compliance of the mandatory statutory provisions of N.D.P.S. Act was ensured during the investigation and no evidence of the compliance of the mandatory provisions were produced and proved in the Trial Court, hence, the appellant/convict is entitled to bail.

7. Learned counsel for the appellant/convict

would further submit that there is no compliance of Section 52A(2) of the N.D.P.S. Act as no certification was taken from the Judicial Magistrate, therefore, the inventory/ photograph, if any, is not evidence against the appellant/convict; that, PW5 has stated that the alleged sample taken from the alleged contraband recovered from the possession of the appellant/convict was taken by Constable Shravan Saini, who deposited it on 06.11.2017 in the FSL but this witness is neither in the list of witnesses nor was he prayed to be summoned by the prosecution to prove this important link evidence.

8. Learned counsel for the appellant/convict would further submit that PW5 has stated that he deposited all the allegedly recovered contraband from the appellant/convict, which was entered in the Register of the Malkhana by then Malkhana Moharir HCP Anand Singh. HCP Anand Singh was a very important link witness against the appellant/convict but neither HCP Anand Singh was in the list of witnesses nor was there any application by the prosecution to summon the HCP Anand Singh.

9. Per contra, Counsel for the State strongly opposed the bail application on the ground that serious allegations have been proved against the appellant/convict, however, he admitted that important link witnesses Constable Shravan Saini and HCP Anand Singh were not included in the list of witnesses nor there was any application by the Investigating Officer or prosecution to summon these witnesses.

10. Having considered the entirety of the facts and without expressing any final opinion on the merits of the case, the appellant/convict is admitted to bail.

11. Let the appellant/convict be released on bail, during the pendency of present criminal appeal, on furnishing bail bond with two sureties in the amount of ₹50,000/- and personal bond of the like amount to the satisfaction of the learned Trial Court.

12. Bail application (*IA 1 of 2023*) stands disposed of accordingly.

13. **Last but not the least**, this Court needs to emphasize that investigation in all the criminal



matters, especially, when an offence is punishable under N.D.P.S. Act, should be conducted with utmost care, caution and diligence by ensuring the compliance of all the mandatory statutory provisions.

14. It is trite that when there are stringent provisions, the investigation and the compliance of the mandatory statutory provisions should be strictly followed.

15. In the present case what is admitted by the State is that Constable Shravan Saini and HCP Anand Singh were not included in the list of witnesses while submitting the charge-sheet. It goes without saying that these two witnesses were important witnesses to prove the link evidence in depositing the alleged contraband, allegedly recovered from the appellant/convict and taking the sample therefrom for forensic examination.

16. In the view of this Court, the Investigating Officer had failed in discharge of his duties as an Investigating Officer and so the Government Counsel, who had concluded the evidence of the prosecution and advanced the arguments, by not making an application under Section 311 Cr.P.C.(as the then Criminal Procedure Code) to summon these two witnesses. Court would not hesitate to say that even Trial Court also failed to summon these two witnesses by exercising its power under Section 311 Cr.P.C.(as the Criminal Procedure Law was) and now Section 348 of Bharatiya Nagarik Suraksha Sanhita, 2023, which is extracted hereunder:-

*"348. Power to summon material witness, or examine person present.—Any Court may, at any stage of any inquiry, trial or other proceeding under this Sanhita, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or re-call and re-examine any person already examined; and the Court shall summon and examine or re-call and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."*

17. Perusal of the Lower Court Record also reflects that there is a cover letter to the FSL report at page no.15 and FSL report is at page no.16 but there is no envelope on record in which the FSL report was received. The envelope was also an important piece of link evidence to prove originality and authenticity

of the forensic report.

It is a matter of common knowledge that whenever the FSL report is sent by the FSL to the Court, the same is sent in a sealed envelope to the Court. Therefore, every Court shall, whenever such a report from FSL is received, after opening the sealed envelope, take out all the papers contained therein and make the endorsement on the envelope, such as:-

- i) The date of receiving;
- ii) How the report was received, by post or by Messenger, if by Messenger, then name of the Messenger;
- iii) The number of papers contained in that envelope with brief description, if possible, and sign this description with stamp of the concerned Court.
- iv) Each paper/document, letter/report, taken out from envelope, be signed by that Court with seal and be kept in judicial file in which the charge-sheet has been filed;
- v) If the charge-sheet has not been filed, then the same be sent by placing the same in a new envelope with seal of the Court and, thereafter, that envelope be handed over to the Investigating Officer for placing it in the investigation file, and;
- vi) The Investigating Officer shall note the receipt of report by the Court in the case diary.

18. Perusal by this Court shows that PW1 Vijay Singh, who is witness to the recovery memo of the alleged contraband recovered from the possession of the appellant/convict, has simply stated that the case property is before the Court in a sealed cover and the same is opened, from which the packet is taken out in which on opening, the dry leaves *Bhang* were found; looking at the same, the witness says that *this is indeed the alleged contraband recovered from the possession of the appellant/convict* and in which the material receipt was placed.

In the view of this Court, **whenever any case property is adduced in evidence, then every Court shall ensure that before opening it, all the description stated on that sealed cover, like case**



number, description etc. should be noted down in the evidence of that witness in inverted commas without missing any full stop or comma. Only after noting down the description mentioned on that sealed packet containing the case property, it should be opened and proved.

19. In the considered view of this Court, these measures would help in the dispensation of justice to one and all, may that be the State or the accused of the offence.

20. A copy of this order be sent to all the Courts of the State for compliance and to the Director, Uttarakhand Judicial and Legal Academy, Bhowali Nainital to see that these observations with directions should be brought in the knowledge of the judges who come there for their refresher courses and induction training. The District Judges of all districts shall also discuss these observations and directions in the monthly meeting.

21. A copy of this order be sent to the Principal Secretary (Law), Government of Uttarakhand to take appropriate action to preclude the instances of negligence in prosecution in the Trial Court by not moving an application under Section 311 Cr.P.C. to summon all important witnesses whether named in list of witnesses or not whose evidence is necessary to bring the offence home against the accused. Copy of this order also be circulated among all Government Counsel (Criminal) and Prosecution Officers of the State.

22. It is trite that India is facing one of its big challenges in the form of illicit trafficking of narcotic drugs and psychotropic substances. The cartels of traffickers have active international network and involvement of disruptive forces with active support and participation of local criminal elements.

It is a matter of common knowledge that the fissiparous forces inimical to the country have unleashed the war of drugs to achieve their ultimate unholy goal to balkanise India.

The Narcotics Control Bureau of India on its website says that the drug traffickers have been increasingly taking the help of innovations in

technology to challenge drug law enforcement agencies all over the world including the use of darknet to sell drugs and use of drones to transport drugs from across the border.

23. But the investigations in offences punishable under N.D.P.S. Act are being done not only in an unprofessional manner but are faulty also. In majority of time such faulty and unprofessional investigations lead to the acquittal of accused persons in serious offences. This situation is not only unfortunate but dangerous also because acquittal from charge of such serious offences not only emboldens the acquitted persons but the deterrence element of punitive provisions also loses its force. To preclude such unfortunate situation, it is very necessary that personnel of investigative wing of police undergo refresher courses and training from the expert persons/officers.

This is not a part of musings or wishful thinking of this Court, but need of the hour.

With hope that the above observation would permeate the administrative conscious of the persons at the helm of the affairs, a copy of this order be also sent to the Director General of Police, Uttarakhand to take appropriate action to preclude the dereliction of duty and negligence in investigation with further direction that all the officers, who can be entrusted with the investigation of the offences under the N.D.P.S. Act, be imparted training for two days with the co-ordination of Narcotic Control Bureau, Dehradun and the Uttarakhand Judicial and Legal Academy, Bhowali, Nainital.

24. List this case on 17.12.2024 for final hearing.

  
(Vivek Bharti Sharma, J.)

05.08.2024

ss

  
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(63)

IN THE HIGH COURT OF UTTARAKHAND AT  
NAINITAL

CRIMINAL APPEAL NO 702 of 2023

(Under Section 374(2) of Criminal Procedure Code)

DISTRICT- Udham Singh Nagar

Smt Dayavati (female), aged about 68 years, W/o Ramavtar R/o  
Amiya Wala, Jaspur, Udham Singh Nagar.

.....Appellant (in Jail )

Versus

State of Uttarakhand through Secretary Home, Secretariat,  
Dehradun

.....Respondent

Criminal Appeal against the Judgment and Order dated 6.09.2023,  
(punishment 6.09.2023) passed by Special Judge, NDPS Act,  
Udham Singh Nagar in Special Session Trial No. 558 of 2018 (in  
Case Crime No. 631 of 2017) u/s 8/20 of the NDPS Act, P.S.  
Kashipur, District Udham Singh Nagar, whereby the learned Court  
below had convicted the appellant u/s 8/20 of NDPS Act, 1985 and  
sentence her to 5 years rigorous imprisonment and fine of Rs.

