

HIGH COURT OF UTTARAKHAND AT NAINITAL
Second Bail Application No. 236 of 2024

Rohit Kumar Tamta

.....Applicant

Versus

State of Uttarakhand

.....Respondent

Present:-

Mr. Anand Kumar Pandey, Advocate for the applicant.

Ms. Manisha Rana Singh, AGA for the State.

Hon'ble Ravindra Maithani, J. (Oral)

Applicant Rohit Kumar Tamta is in judicial custody in FIR No. 86 of 2021 dated 16.09.2021, under Sections 8, 60 & 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Tanakpur, District Champawat. He has sought his release on bail.

2. This is second bail application of the applicant. His first bail application has been dismissed as withdrawn by this Court on 01.04.2024.

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

4. According to the prosecution, on 16.09.2021, 2.300 kgs. *Charas* was allegedly recovered from the possession of the applicant, which was in strip form.

5. Learned counsel for the applicant would submit that according to the prosecution case, the allegedly recovered contraband was in strip form, but the samples

were not taken from each of the strips, instead, collectively, 100 gms. sample have been taken, which cannot be termed as representative sample. It is also the case of the applicant that he has been falsely implicated; nothing was recovered from him; there is no independent witness.

6. In support of his contention, learned counsel for the applicant has placed reliance on the law, as laid down in the case of Gaunter Edwin Kircher Vs. State of Goa, Secretariat Panaji, Goa (1993)3 SCC 145. In that case, two pieces of 07 Grams and 05 Grams each were recovered from the accused, but only a piece of 05 Grams was sent for forensic examination. Under those circumstances, Hon'ble Supreme Court observed that, **"From this report alone it cannot be presumed or inferred that the substance in the other piece weighing 7 gms also contained Charas. It has to be borne in mind that the Act applies to certain narcotic drugs and psychotropic substances and not to all other kinds of intoxicating substances. In any event in the absence of positive proof that both the pieces recovered from the accused contained Charas only, it is not safe to hold that 12 gms of Charas were recovered from the accused. In view of the evidence of PW 1 it must be held that the prosecution has proved positively that Charas weighing about 4.570 gms was recovered from the accused."**

7. Learned State Counsel was required to get instructions. Today, learned State Counsel would submit that there were multiple strips, which were recovered from the possession of the applicant, but, collectively, 100 gms. sample was taken, and it was not taken from each of the strips.

8. Since, the allegedly recovered contraband was in strip forms and only 100 gms. of sample was taken randomly and not from each of the strips, it cannot be said as representative sample of the allegedly recovered contraband.

9. 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.

10. The bail application is allowed.

11. Let the applicant 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.

(Ravindra Maithani, J)
25.10.2024