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Uttarakhand High Court: Conditional Liberty Prevails Over Statutory Restrictions, Prolonged Incarceration

Violates Fundamental Rights Under NDPS Act

Court: THE HIGH COURT OF UTTARAKHAND

Citation: SECOND BAIL APPLICATION No.52 of 2021

Case title: Amar Singh Bora v. State of Uttarakhand

Date of Order: 18TH JUNE, 2024

Bench: JUSTICE ALOK KUMAR VERMA

Parties: Amar Singh Bora Applicant

State of Uttarakhand Respondent

SUBJECT

The bail application has been filed for grant of regular bail in connection with the First Information Report registered at police station, Dharchula.

IMPORTANT PROVISIONS

• Narcotic Drugs and Psychotropic Substances Act, 1985.

Section 8 - Prohibition of certain operations

Section 20 - Punishment for contravention in relation to cannabis plant and cannabis

BRIEF FACTS

Sub-Inspector Hem Chandra Tiwari and several police officers were out on patrol on January 24, 2020, when they got a tip from a tip source. Based on this knowledge, they detained the petitioner, who acknowledged having charas. The applicant was made aware of his right to have a Gazetted Officer perform the search. After being called, Sub-Divisional Magistrate Anil Kumar Shukla showed up. A search of the applicant's bag turned up six kilogrammes and thirty-three grammes of charas.

ISSUE RAISED

Whether prolonged Incarceration Violates Fundamental Rights Under NDPS Act ?

CONTENTION OF THE PETITIONER

The applicant has been unfairly linked to the situation. The police staged the supposed retrieval; no things were found in the applicant's possession. Despite having ample time, the police failed to obtain any public witnesses, raising questions about the purported recovery. The matter is currently pending at the prosecution evidence stage, and the applicant has been detained since January 24, 2020. The applicant's permanent residence in Pithoragarh District lowers the possibility of an abscond. The candidate has no prior criminal history.

CONTENTION OF THE RESPONDENT

Brief Holder appealing for the State has opposed the bail application. However, he has submitted that the applicant does not have any criminal antecedents and conclusion of trial shall take some more time.

JUDGMENT ANALYSIS

Prolonged imprisonment typically works against the most valuable fundamental right protected by Article 21 of the Constitution; in such cases, conditional liberty must take precedence over the statutory embargo established by Section 37(1)(b)(ii) of the NDPS Act.

Bail Application is allowed. The applicant can be released on bail on his executing a personal bond and furnishing two reliable sureties. Applicant shall attend the Trial Court regularly and he shall not seek any unnecessary adjournment, make any inducement, threat or promise to any person acquainted with the facts of this case.

CONCLUSION

In summary, the NDPS Act's conditional liberty principle, which takes precedence above statutory constraints, emphasises the critical significance of individual rights. These fundamental rights are violated and the values of justice are compromised by prolonged detention, particularly when there is no valid reason for it. The protection of individual liberties is a constitutional duty that courts must uphold, making sure that incarceration is neither harsh nor arbitrary. Maintaining conditional liberty strikes a balance between statutory constraints and personal freedoms, while also being consistent with the spirit of the law and strengthening the commitment to human rights and the rule of law.

MATCHED SOURCES:

[Punishment for contravention in relation to cannabis plant and ...](https://www.indianemployees.com/acts-rules/section/punishmen....)

<https://www.indianemployees.com/acts-rules/section/punishmen....> (<https://www.indianemployees.com/acts-rules/section/punishment-for-contravention-in-relation-to-cannabis-plant-and-cannabis-2717>)

