

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 55 of 2022

With

Bail Application (IA) No. 2 of 2022

AashiqAppellant

Versus

State of UttarakhandRespondent

Present:-

Mr. Raj Kumar Singh, Advocate for the appellant.

Mr. J.S. Virk, Deputy Advocate General, along with Mr. Rakesh Joshi, Brief Holder, for the State

Coram : **Hon'ble Sharad Kumar Sharma, J.**

Hon'ble Ravindra Maithani, J.

Hon'ble Ravindra Maithani, J. (Oral)

The appellant has been convicted in Special Sessions Trial No. 41 of 2021, State Vs. Aashiq by the Court of Special Judge N.D.P.S. Act, Dehradun, District Dehradun under Section 8/22(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "the Act") and sentenced to 14 years of rigorous imprisonment with a fine of Rs. 1,00,000/-. The appellant seeks bail.

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

3. The learned counsel for the appellant would submit that in the instant case, compliance of Section 50 of the Act has not been made, which vitiates the entire

recovery. He would further submit that the personal search of the appellant was also conducted. It makes compliance of Section 50 of the Act mandatory. He would cite the principle of law as laid down in the case of S.K. Raju alias Abdul Haque alias Jagga Vs. State of West Bengal (2018) 9 SCC 708 and the bail order dated 19.07.2022 passed by a Division Bench of this Court in Criminal Appeal No. 188 of 2021, Harpal Vs. State of Uttarakhand.

4. In fact, in the case of S.K. Raju (supra), the Hon'ble Supreme Court, while relying on the principle of law in the case of State of Rajasthan Vs. Parmanand and another, (2014) 5 SCC 345, in para 18 observed as hereunder:-

“18. In Parmanand [State of Rajasthan v. Parmanand, (2014) 5 SCC 345: (2014) 2 SCC (Cri) 563] , on a search of the person of the respondent, no substance was found. However, subsequently, opium was recovered from the bag of the respondent. A two-Judge Bench of this Court considered whether compliance with Section 50(1) was required. This Court held that the empowered officer was required to comply with the requirements of Section 50(1) as the person of the respondent was also searched. [Reference may also be made to the decision of a two-Judge Bench of this Court in Dilip v. State of M.P. [Dilip v. State of M.P., (2007) 1 SCC 450 : (2007) 1 SCC (Cri) 377]] It was held thus : (Parmanand [State of Rajasthan v. Parmanand, (2014) 5 SCC 345 : (2014) 2 SCC (Cri) 563] , SCC p. 351, para 15)

“15. Thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application.”

5. In Criminal Appeal No. 188 of 2021, Harpal Vs. State of Uttarakhand, the Division Bench of this Court, in fact, has not laid down any principle of law.

6. Learned State Counsel, on the other hand, argues that it is the case of sudden search and recovery was found from the bag, and therefore there was no requirement of compliance with Section 50 of the Act. In the case of Dilip Vs. State of M.P., (2007) 1 SCC 450, the Hon'ble Supreme Court has considered the applicability of Section 50 of the Act in cases where search is made of a person and other than the personal search. The Hon'ble Supreme Court observed **“In this case, the provisions of Section 50 might not have been required to be complied with so far as the search of scooter is concerned, but, keeping in view the fact that the person of the appellant was also searched, it was obligatory on the part of P.W.10 to comply with the said provisions. It was not done.”**

7. In the case of S.K. Raju (*supra*), the Hon'ble Supreme Court did not as such lay down any law, but followed the principles of law, as laid down in the case of Parmanand (*supra*). Be it noted that in the case of Parmanand (*supra*), the Hon'ble Supreme Court has followed the principles of law, as laid down in the case of Dilip (*supra*).

8. In the case of State of Punjab Vs. Baljinder Singh and Another, (2019) 10 SCC 473, the Hon'ble Supreme Court discussed the principles of law and held that the law as laid down in the case of Dilip (*supra*) is not good law. In para 17 & 18 of the judgment, the Hon'ble Supreme Court observed as hereunder:-

“17. In the instant case, the personal search of the accused did not result in recovery of any contraband. Even if there was any such recovery, the same could not be relied upon for want of compliance of the requirements of Section 50 of the Act. But the search of the vehicle and recovery of contraband pursuant thereto having stood proved, merely because there was non-compliance of Section 50 of the Act as far as “personal search” was concerned, no benefit can be extended so as to invalidate the effect of recovery from the search of the vehicle. Any such idea would be directly in the teeth of conclusion (3) as aforesaid.

18. The decision of this Court in Dilip case [Dilip v. State of M.P., (2007) 1 SCC 450 : (2007) 1 SCC (Cri) 377] , however, has not adverted to the

distinction as discussed hereinabove and proceeded to confer advantage upon the accused even in respect of recovery from the vehicle, on the ground that the requirements of Section 50 relating to personal search were not complied with. In our view, the decision of this Court in the said judgment in Dilip case [Dilip v. State of M.P., (2007) 1 SCC 450 : (2007) 1 SCC (Cri) 377] is not correct and is opposed to the law laid down by this Court in Baldev Singh [State of Punjab v. Baldev Singh, (1999) 6 SCC 172 : 1999 SCC (Cri) 1080] and other judgments.”

9. In the instant case, recovery has not been made from the personal search of the appellant. In fact, it was recovered from a bag which the appellant was holding. In view of the law as laid down in the case of Baljinder Singh (*supra*), there was no requirement of compliance of Section 50 of the Act and this aspect has already been considered by the Court below in the impugned judgment and order.

10. It is a case of recovery of commercial quantity of narcotic substances. This Court does not see any reasons to grant bail to the appellant. Accordingly, the bail application deserves to be rejected.

11. The bail application is rejected.

(Ravindra Maithani, J.)

(Sharad Kumar Sharma, J.)

23.02.2023