

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (Criminal) No. 778 of 2020

Ajeet Pal

.....Petitioner

Versus

State of Uttarakhand

.....Respondents

Present:- Ms. Gauri Devi Dev, Advocate for the petitioner.
Mr. V.K. Gemini, D.A.G for the State.

JUDGMENT

Hon'ble Ravindra Maithani, J.(Oral)

Petitioner Ajeet Pal, who is in judicial custody in Crime No. 56 of 2018, under Section 8/20 of the Narcotics Drugs and Psychotropic Substances Act, 1985, Police Station Premnagar, District Dehradun, challenges order dated 10.10.2019 passed by the Special Court Dehradun, by which, his request to reduce the amount of sureties has been rejected.

2. Heard learned counsel for the parties through video conferencing.

3. The story of the petitioner is not much encouraging. The applicant was enlarged on bail by this Court, on 16.08.2018, in Bail Application No. 1317 of 2018, but he could not get his freedom back because he could not arrange for sureties.

4. On behalf of the State, it is argued that applicant is resident of Uttar Pradesh and commercial quantity of *charas* was recovered from him. If he is released on bail, he may not appear.

5. In fact, it appears that after orders of this Court, petitioner was required to submit sureties by the concerned court, on 28.08.2018, but as stated, he could not manage the sureties. In the month of October, 2019 he moved an application from jail that the amount of sureties may be reduced, but this application was rejected by the court concerned, on 10.10.2019, on

the ground that the orders passed cannot be reviewed in view of Section 362 of the Code of Criminal Procedure, 1973. It appears that he moved the Legal Services Authorities and the High Court Legal Service Committee, Nainital has taken this cause, which needs great appreciation.

6. Petitioner is not in jail because he has been convicted, petitioner is not in jail because he has denied bail, but he is in jail because he cannot secure sureties. In the case of Moti Ram and others Vs. State of Madhya Pradesh (1978) 4 SCC 47, the Hon'ble Supreme Court observed certain observation of American President Lyndon B. Johnson, in para no. 15 as hereunder:-

"15. It is interesting that American criminological thinking and research had legislative response and the Bail Reforms Act, 1966 came into being. The then President, Lyndon B. Johnson made certain observations at the signing ceremony:

Today, we join to recognize a major development in our system of criminal justice : the reform of the bail system.

This system has endured-archaic, unjust and virtually unexamined -since the Judiciary Act of 1789.

The principal purpose of bail is to insure that an accused person will return for trial if he is released after arrest.

How is that purpose met under the present system? *The defendant with means can afford to pay bail.* He can afford to buy his freedom. But the *poorer defendant cannot pay the price.* He languishes in jail weeks, months and perhaps even years before trial.

He does not stay in jail because he is guilty.

He does not stay in jail because any sentence has been passed.

He does not stay in jail because he is any More likely to flee before trial.

He stays in jail for one reason only-because he is poor"

7. In the instant case also petitioner is in jail because he is poor. It cannot be afforded, it should not happen and this Court will not allow it to happen. Let the applicant be enlarged on bail, subject to his furnishing a personal bond of Rs.5,000/- only.

8. The instant writ petition stands disposed of accordingly.

9. Let a copy of this order be sent to the concerned jail and court today, itself for compliance.

(Ravindra Maithani, J.)
10.09.2020