

GAHC010156522022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./1927/2022

JEADUL ISLAM
SON OF JOYNAL ABDIN
PERMANENT R/O VILL- SIBINANG, P.O. BHULARBHITA
P.S. PHULBARI, DIST. WEST GARO HILLS, MEGHALAYA, PIN-794104,
PRESENTLY RESIDING AT C/O MAINU BEGUM, HOUSE NO. 215,
GARIGAON, BEZPARA P.O. PANDU
P.S. JALUKBARI, GUWAHATI, DIST. KAMRUP (METRO), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. B K MAHAJAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 16.02.2023

Heard Mr. A. Choudhury, learned counsel for the petitioner and
also heard Mr. R.J. Baruah, learned Addl. P.P. for the State.

2. The petitioner, namely, Md. Jeadul Islam, who was arrested on

03.07.2022 and has spent 228 days in custody in connection with North Guwahati P.S. Case No. 68/2022, under Sections 419/420/468/471 IPC, read with sections 22(c)/29 of the NDPS Act, 1985, has prayed for regular bail under section 439 Cr.P.C.

3. The learned counsel for the petitioner has extensively referred to the contents of the FIR, forwarding report, and other documents annexed to this application for bail and it is submitted that the petitioner was not at all present at the place from where contraband narcotic drugs has been seized and no seizure was made from him. It is submitted that the petitioner apprehends that perhaps owing to some enmity, he has been falsely implicated by some arrested accused. It is submitted that the statement of a co-accused is not enough for the continued detention of the petitioner. It is also submitted that the petitioner is a private driver by profession. In support of his submissions, the learned counsel for the petitioner has relied on the following cases, viz., (i) *State by (NCB) Bengaluru Vs. Pallulabid Ahmed Arimutta & Anr., (2022) SCC OnLine SC 47*, (ii) *Bharat Chaudhary Vs. Union of India, (2021) SCC OnLine SC 1235*, (iii) *Mokbul Hussain Vs. The State of Assam, Criminal Appeal No. 116/2023*, (iv) *H. Lalmalsawma Vs. The State of Assam, Bail Appln. 975/2020*.

4. The LCR is received from the learned Court below. The learned Addl. P.P. has perused the same and has opposed the prayer for bail.

5. Perused the case diary. The case diary reveals that on 02.07.2022, information was received from reliable source that a group of drugs peddlers were camping at Nirupama Lodge at Gorchuk (Guwahati) and their prupose was to sell/supply narcotics to consumers, other peddlers etc. at Kamrup, West Bengal etc. and accordingly, FIR was lodged. In a raid conducted

by the Officer-in-Charge of North Guwahati P.S. at the said lodge and in White Orchid Guest House in Room No.304, 5 packets wrapped in yellow paper bound by cellotape was found, inside which there were 249 blue coloured plastic packets containing 49800 WY Tablets (containing Methamphetamine) weighing 04.731 kg without cover and other things, as mentioned in the FIR were seized.

6. In the case of *Pallulabid Ahmad Arimutta (supra)*, the Supreme Court of India had observed as follows:-

“9. *Having gone through the records alongwith the tabulated statement of the respondents submitted on behalf of the petitioner-NCB and on carefully perusing the impugned orders passed in each case, it emerges that except for the voluntary statements of A-1 and A-2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, prima facie, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking. It has not been denied by the prosecution that except for the respondent in SLP (Crl.) No. 1569/2021, none of the other respondents were found to be in possession of commercial quantities of psychotropic substances, as contemplated under the NDPS Act.*

10. *It has been held in clear terms in Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No@ Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless.”*

7. It must be mentioned that in the case of *Pallulabid Ahmad Arimutta (supra)*, the case was lodged for committing offence under sections 20(b), 21, 22, 27A, 27B, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, whereas the present case has been lodged and investigated for committing offence under section 21(c)/25/29 of the NDPS Act, 1985. In the said case, the drugs were being smuggled outside India, whereas in the present case, it is suspected that the contraband was smuggled into India.

8. In view of the fact that the investigation is being carried out for committing offence under sections 21(c)/25/29 of NDPS Act, one of the relevant considerations under section 37 of the NDPS Act, 1985 for considering prayer for bail is that the Court is required to be satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

9. In the case of *Brijmani Devi v. Pappu Kumar*, (2022) 4 SCC 497, a 3-Judge Bench of the Supreme Court of India had observed and held as follows:-

“**21.** In *Gudikanti Narasimhulu v. Public Prosecutor, A.P. High Court*, (1978) 1 SCC 240, Krishna Iyer, J., while elaborating on the content and meaning of Article 21 of the Constitution of India, has also elaborated the factors that have to be considered while granting bail which are extracted as under:

"7. It is thus obvious that the nature of the charge is the vital factor and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

8. Another relevant factor is as to whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being.

9. Thus the legal principles and practice validate the Court considering the

likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record - particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further about the criminal record of a defendant, is therefore not an exercise in irrelevance."

22. *Prahlad Singh Bhati v. NCT of Delhi & Ors., (2001) 4 SCC 280 is a case wherein this Court proceeded to state the following principles which are to be considered while granting bail:*

"4.(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

23. *This Court in Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598, speaking through Banerjee, J., observed as under:*

"3. Grant of bail though being a discretionary order - but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail - more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter."

24. In *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Anr.*, (2004) 7 SCC 528, this Court observed in paragraph 11 as under:

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly, where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
- (c) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598 and *Puran v. Rambilas*, (2001) 6 SCC 338."

25. *Gobarbhai Naranbhai Singala v. State of Gujarat & Ors.*, (2008) 3 SCC 775, is a case which concerns cancellation of bail by this Court in a petition filed under Article 136 of the Constitution of India. In the said case reliance was placed on *Panchanan Mishra v. Digambar Mishra* - (2005) 3 SCC 143 wherein in para 13 it was observed as under:

"13. The object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in the heinous crime-It hardly requires to be stated that once a person is released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the deceased victim and also create problems of law and order situation."

26. Further on referring to the *State of UP v. Amarmani Tripathi*, (2005) 8 SCC 21, this Court noted the facts of the case therein to the effect that the respondent therein had been named in ten other criminal cases in the last 25 years or so, out of which five cases were under section 307 IPC for attempt to murder and another under section 302 IPC for committing murder. That in most of the cases he was acquitted for want of sufficient evidence. Without saying anything further this Court noted that the High Court in the said case completely ignored the general principle for grant of bail in a heinous crime of commission of murder in which the

sentence, if convicted, is death or life imprisonment.

27. *It was further observed that in the impugned order therein the findings recorded touched upon the merits of the case and the learned Judge had proceeded as if an order of acquittal was being passed, contrary to what had been said in Amarmani Tripathi (supra) which is that only a brief examination has to be made to satisfy about the facts and circumstances or a prima facie case.*

28. *This Court in Ash Mohammad v. Shiv Raj Singh @ Lalla Bahu & Anr., (2012) 9 SCC 446, observed that though the period of custody is a relevant factor, the same has to be weighed simultaneously with the totality of the circumstances and the criminal antecedents. That these are to be weighed in the scale of collective cry and desire and that societal concern has to be kept in view in juxtaposition to individual liberty, was underlined.*

29. *In Neeru Yadav v. State of UP & Anr., (2016) 15 SCC 422, after referring to a catena of judgments of this Court on the consideration of factors for grant of bail observed through Dipak Misra, J. (as His Lordship then was) in paragraphs 15 and 18 as under:*

"15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightning having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.

* * *

18. Before parting with the case, we may repeat with profit that it is not an appeal for cancellation of bail as the cancellation is not sought because of supervening circumstances. The annulment of the order passed by the High Court is sought as many relevant factors have not been taken into consideration which includes the criminal antecedents of the accused and that makes the order a deviant one. Therefore, the inevitable result is the lancing of the impugned order."

30. *In Anil Kumar Yadav v. State (NCT of Delhi), (2018) 12 SCC 129, this Court has spelt out some of the significant considerations which must be placed in the balance in deciding whether to grant bail:*

"17. While granting bail, the relevant considerations are: (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances

which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard-and-fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court."

31. *Recently in Bhoopindra Singh v. State of Rajasthan & Anr. (2021) 17 SCC 220, this Court has observed as under in the matter of exercise of an appellate power to determine whether bail has been granted for valid reasons as distinct from an application for cancellation of bail by quoting Mahipal v. Rajesh Kumar (2020) 2 SCC 118:*

"16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted."

32. *On the aspect of the duty to accord reasons for a decision arrived at by a court, or for that matter, even a quasi-judicial authority, it would be useful to refer to a judgment of this Court in Kranti Associates Private Limited & Anr. v. Masood Ahmed Khan & Ors., (2010) 9 SCC 496, wherein after referring to a number of judgments this Court summarised at paragraph 47 the law on the point. The relevant principles for the purpose of this case are extracted as under:*

32.1 *Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*

32.2 *Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*

32.3 *Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.*

32.4 *Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*

32.5 *The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on*

relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

32.6 Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

32.7 Insistence on reason is a requirement for both judicial accountability and transparency.

32.8 If a judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

32.9 Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

32.10 It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. [See David Shapiro in Defence of Judicial Candor, (1987) 100 Harvard Law Review 731- 37].

32.11 In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

33. *Though the aforesaid judgment was rendered in the context of a dismissal of a revision petition by a cryptic order by the National Consumer Disputes Redressal Commission, reliance could be placed on the said judgment on the need to give reasons while deciding a matter.*

34. *The Latin maxim "cessante ratione legis cessat ipsa lex" meaning "reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself", is also apposite.*

35. *While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail Courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a Court to arrive at a prima facie conclusion. While considering an application for grant of bail a prima facie conclusion must be supported by reasons and must be arrived at after having*

regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence/s alleged against an accused.

36. *We have extracted the relevant portions of the impugned orders above. At the outset, we observe that the extracted portions are the only portions forming part of the "reasoning" of the High court while granting bail. As noted from the aforecited judgments, it is not necessary for a Court to give elaborate reasons while granting bail particularly when the case is at the initial stage and the allegations of the offences by the accused would not have been crystalised as such. There cannot be elaborate details recorded to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal while passing an order on an application for grant of bail. At the same time, a balance would have to be struck between the nature of the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the Court in support of the charge against the accused.*

37. *Ultimately, the Court considering an application for bail has to exercise discretion in a judicious manner and in accordance with the settled principles of law having regard to the crime alleged to be committed by the accused on the one hand and ensuring purity of the trial of the case on the other.*

38. *Thus, while elaborating reasons may not be assigned for grant of bail, at the same time an order de hors reasoning or bereft of the relevant reasons cannot result in grant of bail. It would be only a non speaking order which is an instance of violation of principles of natural justice. In such a case the prosecution or the informant has a right to assail the order before a higher forum."*

10. In the case of *Narcotic Control Bureau Vs. Mohit Aggarwal*, AIR (2022) SC 3444, the case was lodged under section 8/22/29 of the NDPS Act, 1985. In the said case, the 3 Judge Bench of the Supreme Court of India had observed and held as follows:-

11. *It is evident from a plain reading of the non-obstante clause inserted in sub-section (1) and the conditions imposed in sub-section (2) of Section 37 that there are certain restrictions placed on the power of the Court when granting bail to a person accused of having committed an offence under the NDPS Act. Not only*

are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be factored in. The conditions imposed in sub-section (1) of Section 37 is that (i) the Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offence while on bail.

12. *The expression "reasonable grounds" has come up for discussion in several rulings of this Court. In Collector of Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549 a decision rendered by a Three Judges Bench of this Court, it has been held thus:-*

'7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.'
[emphasis added]

13. *The expression 'reasonable ground' came up for discussion in ' State of Kerala and others Vs. Rajesh and others', (2020) 12 SCC 122 and this Court has observed as below:*

"20. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal

approach in the matter of bail under the NDPS Act is indeed uncalled for.” [emphasis added]

14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.

16. Coming back to the facts of the instant case, the learned Single Judge of the High Court cannot be faulted for holding that the appellant- NCB could not have relied on the confessional statements of the respondent and the other co-accused recorded under Section 67 of the NDPS Act in the light of law laid down by a Three Judges Bench of this Court in *Tofan Singh (supra)*, wherein as per the majority decision, a confessional statement recorded under Section 67 of the NDPS Act has been held to be inadmissible in the trial of an offence under the NDPS Act. Therefore, the admissions made by the respondent while in custody to the effect that he had illegally traded in narcotic drugs, will have to be kept aside. However, this was not the only material that the appellant- NCB had relied on to oppose the bail application filed by the respondent. The appellant-NCB had specifically stated that it was the disclosures made by the respondent that had led the NCB team to arrive at and raid the godown of the co-accused, Promod Jaipuria which resulted in the recovery of a large haul of different psychotropic substances in the form of tablets, injections and syrups. Counsel for the appellant-NCB had also pointed out that it was the respondent who had disclosed the address and location of the co-accused, Promod Jaipuria who was arrested later on and the CDR details of the mobile phones of all co-accused including the respondent herein showed that they were in touch with

each other.

17. *Even dehors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant-NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by the submission made by learned counsel for the respondent and the observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage.*

11. Thus, although there is no quarrel with the ratio laid down in the case of *Tofan Singh*, as followed in the case of *Pallulabid Ahmad Arimutta (supra)* cited by the learned counsel for the petitioner and *Mohit Aggarwal (supra)*, but the present case is also being investigated in the angle of abatement and conspiracy as also the angle of International drug smuggling. Hence, the Court is of the considered opinion that on facts, the present case is distinguishable from the facts of the said two cases cited by the learned counsel for the petitioner. Moreover, the investigation is still at the nascent stage because the I.O. is trying to find out the international drug smuggling racket, the Court is not inclined to release the petitioner on bail. Moreover, in the case of *Mokbul Hussain (supra)*, the nature and quantity of contraband seized is not known. In the case of *Bharat Chaudhary (supra)*, the quantitative analysis of contraband could not be carried out for want of facilities, which was a ground to restore the order of the trial Court. The present case is distinguishable on facts.

12. The case of *Mohit Aggarwal (supra)* would have more precedential value than the case of *H. Lalmalsawma (supra)* and *Mokbul Hussain (supra)*.

13. As investigation is at the nascent stage to examine the role of the petitioner and to unearth international drugs smuggling racket, and commercial quantity of contraband narcotic substance has been seized the Court is unable to arrive at a *prima facie* conclusion that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

14. Thus, the Court is of the considered opinion that this is not a fit case for enlarging the petitioner on bail at this stage. Hence, this application for bail is rejected.

15. The case diary is returned.

JUDGE

Comparing Assistant