

GAHC010215942023



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

Case No. : Bail Appln./3415/2023

ABDUL SALIK
S/O LATE FOIZUL ISLAM
VILL- SOUTH KEUTI
P.O. ASHALKANDI
P.S. PATHARKANDI
DIST. KARIMGANJ, ASSAM, INDIA,
PIN NO. 788724

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

Linked Case : **Bail Appln./2999/2023**

ABDUL FATTHA
S/O LATE FOIZUL ISLAM
R/O VILL- SOUTH KEUTI
P.S. PATHARKANDI
DIST. KARIMGANJ
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR. A ISLAM
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 14.11.2023

Heard Mr. HRA Choudhury, learned senior counsel, assisted by Mr. J.M. Sulaiman, learned counsel for the petitioner in B.A. No. 3415/2023 and Mr. L.R. Mazumdar, learned counsel for the petitioner in B.A. No. 2999/2023. Also heard Mr. K. Baishya, learned Addl. PP for the State.

2) The petitioners, who were arrested on 07.05.2022, in connection with Patharkandi P.S. Case No. 130/2022 under Sections 21(c)/25/29 of the NDPS Act, 1984 have prayed for bail by filing this application under Section 439 Cr.P.C. The said case is being tried before the Court of learned Special Judge, Karimganj as Special (NDPS) Case No. 74/2022. This is the second bail application before this Court. The previous application, being B.A. No. 3398/2022, was rejected by order dated 23.01.2023.

3) The learned senior counsel for the petitioner in B.A. No. 3415/2023 and learned counsel for the petitioner in B.A. No. 2999/2023 have submitted that the petitioners were arrested on 07.05.2022 and produced on

08.05.2022 and as such they have spent 555 days in custody as on today. It has also been submitted that till date the prosecution has been able to examine only 3 (three) out of 10 (ten) listed prosecution witnesses till 12.09.2023. It has also been submitted that as their appreciation of evidence on three witnesses examined so far nothing incriminating against the petitioners could be proved. Hence, it was submitted that there is remote chance of an early trial.

4) By referring to the decision of the Supreme Court of India in the case of *Mohd. Muslim @ Hussain v. State (NCT of Delhi)*, S.L.P.(Crl.) No. 915/2023 (decided by 2- Judge Bench) and reported in (2023) 0 Supreme(SC) 289: 2023 LiveLaw (SC) 533, and the decision of the coordinate Bench of this Court in the case of *Asab Uddin v. The State of Assam*, B.A. No. 1995/2023, it has been submitted that it was permissible for the Court to examine the evidence for the limited purpose to consider the prayer for bail and that the provision of Section 37 of the NDPS Act cannot put fetters on the Constitutional Courts to consider the prayer for bail. It was submitted that by referring and relying on the said case of *Mohd. Muslim @ Hussain (supra)*, the coordinate Bench of this Court had released an accused charged with commission of offence under Section 22(C) of the NDPS Act, 1984 on bail.

5) It was also submitted that in cases, where there was delay in conclusion of trial of NDPS cases, the Supreme Court of India, cases mentioned hereinafter, had released the accused by invoking the principles of Article 21 of the Constitution of India. The cases decided by the Supreme Court of India, which were cited in this regard were: (i) *Shariful Islam @ Sarif v. State of West Bengal*, SLP (Crl.) 4173/2022 decided by 2-Judge Bench on 04.08.2022, (ii) *Nitish Adhikary @ Bapan v. The State of West Bengal*, SLP (Crl.) 5769/2022, decided by 2-Judge Bench on 01.08.2022, (iii) *Rabi Prakash v. The State of*

Odisha, SLP (Crl.) 4169/2023, decided by 2-Judge Bench on 13.07.2023.

6) The learned Addl. P.P. has opposed the prayer for bail and has placed reliance on the case of *Union of India v. Md. Nawaz Khan, (2021) 7 SCR 819*.

7) It would be now appropriate to refer to paragraphs 7, 8 and 12 of the case of *Asab Uddin (supra)*, on which heavy reliance was placed by the learned senior counsel for the petitioner, which is extracted below:-

“7. The learned counsel for the petitioner has also submitted that though the instant case has been registered under Section 22(C) of the NDPS Act, 1985 for possession of commercial quantity of contraband by the petitioner, however, rigors of Section 37 of the NDPS Act, 1985 cannot abridge the right to life and personal liberty to which the petitioner is entitled to under Article 21 of the Constitution of India and in this regard learned counsel for the petitioner has cited a ruling of Hon’ble Supreme Court of India in “Mohd Muslim @ Hussain Versus State (NCT of Delhi)” reported in “2023 SCC Online SC 352” wherein the Hon’ble Supreme Court of India has observed as follows :-

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused’s guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India V. Rattan

Malik 19). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (Ref. Satender Kumar Antil Supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail."

8. The learned counsel for the petitioner has also cited the ruling of Supreme Court of India in "Rabi Prakash vs. The State of Odisha" [Order dated 13.07.2023 passed in Special Leave to Appeal (Crl) No(s). 4169/2023] wherein the Hon'ble Supreme Court had observed that the prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act, 1985.

12. Though, this case involves commercial quantity of methamphetamine weighing 907 gram and charge has been framed against the present petitioner under Section 22(C) of the NDPS Act, 1985 on 13.12.2021 and apparently the embargo of Section 37 of the NDPS Act, 1985 appears to be applicable in the instant case. However, the present petitioner is detained behind the bars since last 10.08.2021 (720 days i.e. 1 year 11 months 21 days) and the evidence on the prosecution witnesses is yet to complete. It also appears that on 22.05.2023 summons were issued by the trial court to the last prosecution witness i.e. the Investigating Officer, however, the Investigating Officer remained absent on three consecutive dates thereafter the next date for examination of Investigating Officer is fixed on 24.08.2023. It is also pertinent to note that out of the eight prosecution witnesses, seven have become hostile and have not implicated the present petitioner. Considering the fact that Hon'ble Supreme Court of India has observed in "Mohd Muslim @ Hussain Versus State (NCT of Delhi)" (supra) that "Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act" and also considering the observations of Hon'ble Supreme Court of India in "Rabi Prakash vs. The State of Odisha" (supra) to the effect that "prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act, 1985", if this Court comes to a finding that there is an undue delay in completion in trial and there is prolonged incarceration of the petitioner, he would be entitled to get bail on the ground of prolonged incarceration only as in case of such prolonged incarceration the right to life and personal liberty under Article 21 of the Constitution of India, would outweigh the fetters imposed by Section 37 of the NDPS Act, 1985. Hon'ble Supreme Court of India in "Shariful Islam @ Sarif -Vs- State of West Bengal" [order dated 04.08.2022 in SLP (Crl.) No. 4173/2022] had

granted bail to the accused on the ground of prolonged incarceration of 1 year 6 months. Similarly, in "Nitesh Adhikari –Vs- State of West Bengal" [order dated 04.05.2022 in SLP (Crl.) No. 5769/2022] Hon'ble Apex Court granted bail to the accused facing an accusation under Section 21(C) of the NDPS Act, 1985 on the ground of prolonged incarceration of 1 year 7 months. As such, in the instant case, when out of eight of the prosecution witnesses already examined, seven of them have become hostile, and the Investigating Officer has not turned up on last three consecutive dates in spite of issuance to summons to him and the present petitioner is languishing behind the bar since 720 days i.e. 1 year 11 months 21 days, he is entitled to get bail only because of the fact that trial has not yet completed in spite of his prolonged incarceration."

8) On a perusal of the case of *Mohd. Muslim @ Hussain (supra)*, it is seen that the recovery of contraband *ganja* was made on 28.09.2015 and the appellant was arrested on the same date. The appellant was arrested on the basis of the statement made by one of the co-accused. However, no recovery of any contraband was made from the appellant. Under those circumstances, the Supreme Court of India had arrived at a finding that the appellant had been in custody for over 7 years and 4 months and that the progress of the trial has been at a snail's pace with 30 witnesses having been examined, and 34 more were to be examined.

9) In the case of *Mohd. Muslim @ Hussain (supra)*, the Supreme Court of India had referred to the case of *Union of India v. Rattan Malik, (2009) 2 SCC 624: (2009) 0 Supreme(SC) 95*. Para 14, 15 and 16 as extracted from the citation of *(2009) 0 Supreme(SC) 95* is quoted below:-

14. *We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court is not called upon to record a finding of 'not guilty'. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the Court about the existence of the said twin*

conditions is for a limited purpose and is confined to the question of releasing the accused on bail.

15. *Bearing in mind the above broad principles, we may now consider the merits of the present appeal. It is evident from the afore-extracted paragraph that the circumstances which have weighed with the learned Judge to conclude that it was a fit case for grant of bail are: (i) that nothing has been found from the possession of the respondent; (ii) he is in jail for the last three years and (iii) that there is no chance of his appeal being heard within a period of seven years. In our opinion, the stated circumstances may be relevant for grant of bail in matters arising out of conviction under the Indian Penal Code, 1860 etc. but are not sufficient to satisfy the mandatory requirements as stipulated in sub-clause (b) of sub-section (1) of Section 37 of the NDPS Act. Merely because, according to the Ld. Judge, nothing was found from the possession of the respondent, it could not be said at this stage that the respondent was not guilty of the offences for which he had been charged and convicted. We find no substance in the argument of learned counsel for the respondent that the observation of the learned Judge to the effect that "nothing has been found from his possession" by itself shows application of mind by the Ld. Judge tantamounting to "satisfaction" within the meaning of the said provision. It seems that the provisions of the NDPS Act and more particularly Section 37 were not brought to the notice of the learned Judge.*

16. *Thus, in our opinion, the impugned order having been passed ignoring the mandatory requirements of Section 37 of the NDPS Act, it cannot be sustained. Accordingly, the appeal is allowed and the matter is remitted back to the High Court for fresh consideration of the application filed by the respondent for suspension of sentence and for granting of bail, keeping in view the parameters of Section 37 of the NDPS Act, enumerated above. We further direct that the bail application shall be taken up for consideration only after the respondent surrenders to custody. The respondent is directed to surrender to custody within two weeks of the date of this order, failing which the High Court will take appropriate steps for his arrest.*

10) In the case of *Asab Uddin (supra)*, the co-ordinate Bench of this Court had referred to the case of *Rabi Prakash (supra)*. In that case, the police party, while on patrolling duty on 02.10.2019 at about 12.30 p.m., had chased and detained twelve wheeler truck bearing No.EB-13-BD-5753 and found three persons in the said truck including the driver. Recovery of 247 kg. *ganja* was made from the truck and the petitioner of the said case was one of the occupants of the truck and was arrested at the spot. The finding of the Supreme

Court of India was to the effect that the petitioner has been in custody for more than three and a half years and that during trial only 1 out of the 19 witnesses has been examined and therefore, it was held that the conclusion of trial will take some more time. Under such circumstances, the Supreme Court of India had observed that as regard to the twin conditions contained in Section 37 of the NDPS Act, the first condition was complied with as the learned counsel for the State had been duly heard and in respect of the second condition regarding formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, it was held that the same may not be formed at this stage when he has already spent more than three and a half years in custody and it was observed that the prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.

11) It was submitted that in the case of *Shariful Islam @ Sarif (supra)* and *Nitish Adhikary @ Bapan (supra)*, which were decided by a 2-Judge Bench of the Supreme Court of India, the petitioners before the Supreme Court of India had respectively spent about 1 year 6 months and 1 year 7 months in custody and while granting bail, it had been observed that there was no likelihood of completion of trial in near future. It was submitted that the period of custody in the said two cases was close to the period the present petitioners had spent in custody.

12) From the cases cited by the learned senior counsel for the petitioner, it appears that the requirement of recording satisfaction as per the mandate of Section 37 of the NDPS Act, 1984 has not been diluted by any judgment cited by the learned senior counsel for the petitioner. Therefore, in the

considered opinion of the Court, this Court would be bound to consider the provision of section 37 of the NDPS Act, 1984 while considering the prayer for bail.

13) In this case the petitioners were arrested on 07.05.2022 and produced on 08.05.2022. The prosecution case is that from their conscious possession, 262 gram suspected brown sugar, kept concealed in 19 soap boxes in their custody in the house owned by the petitioner in B.A. No. 2999/2023 was recovered. Accordingly, three accused including the two petitioners herein were apprehended from the house of the petitioner in B.A. No. 2999/2023. Thus, it appears that the prosecution case is that the petitioners were in conscious possession of the contraband narcotic/ psychotropic substance.

14) Under such backdrop, it would be relevant to refer to the observations made by a 3- Judge Bench of the Supreme Court of India in the case of *Narcotics Control Bureau v. Mohit Aggarwal*, AIR 2022 SC 3444: (2022) 0 Supreme(SC) 619. Para 11 to 15 and 17, as extracted from the citation of (2022) 0 Supreme(SC) 61 is quoted below:-

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.

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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.*

15) In the case of *Satender Kumar Antil v. Central Bureau of Investigation*, AIR 2022 SC 3386: (2022) 10 SCC 51, a 2- Judge Bench of the Supreme Court of India had referred to the provision of Section 436A Cr.P.C., and was held that where the under-trial accused is charged with an offence under the Act punishable with minimum punishment of 10 (ten) years and a maximum fine of Rs.1,00,000/- (Rupees one lakh only), such an under-trial shall be released on bail if he has been in jail for not less than 5 (five) years provided he furnishes bail in the sum of Rs.1,00,000/- (Rupees one lakh only) with two sureties for like sum.

16) The learned senior counsel for the petitioner has not been able to show that the ratio of the case of *Satender Kumar Antil (supra)* has been diluted in any manner by any subsequent decision of the Supreme Court of India.

17) In the said context, we would like to extract herein below paragraph 16 of the case of *Mohd. Muslim (supra)*, which is as follows:-

16. In the most recent decision, Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51 prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A provides as follows:

“Where a person has, during the period of investigation, inquiry or trial

under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties; Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties;

Provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.” (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply:

“We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.”

18) The Supreme Court of India, in the case of *Shaikh Uzma Feroz Hussain Vs. The State of Maharashtra, Writ Petition(s) (Criminal) No. 587/2023*, decided on 10.11.2023, has expressed its opinion as follows:-

“In every High Court and especially the bigger High Courts, there are large number of Bail Petitions filed and therefore, some delay in disposal of the Bail Petitions is inevitable. If there is an extra ordinary urgency, the petitioner can always move the concerned Bench. We are sure that if the request is genuine, the concerned Bench will entertain it.

Subject to what is observed above, we are not inclined to entertain this petition. The Writ Petition is accordingly dismissed.

The learned counsel appearing for the petitioner insists on passing a direction to decide the case in a time-bound manner.

We are of the view that since every High Court and every Court in the country has a huge pendency, the Constitutional Court should avoid temptation of fixing a time-bound schedule for disposal of any case before any Court unless the situation is extra ordinary."

19) In connection with the principles of *stare decisis*, we would most respectfully referred to the Constitution Bench (5-Judge Bench) judgment of the Supreme Court of India in the case of *National Insurance Company Limited V. Pranay Sethi*, (2017) 16 SCC 680: (2017) 0 Supreme(SC) 1050, had observed as follows:-

29. We are compelled to state here that in *Munna Lal Jain (supra)*, the three-Judge Bench should have been guided by the principle stated in *Reshma Kumari* which has concurred with the view expressed in *Sarla Devi* or in case of disagreement, it should have been well advised to refer the case to a larger Bench. We say so, as we have already expressed the opinion that the dicta laid down in *Reshma Kumari* being earlier in point of time would be a binding precedent and not the decision in *Rajesh*.

30. In this context, we may also refer to *Sundeeep Kumar Bafna v. State of Maharashtra and another*, (2014) 16 SCC 623 which correctly lays down the principle that discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the *per incuriam* rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be *per incuriam* any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be *per incuriam* if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a coequal or larger Bench. There can be no scintilla of doubt that an earlier decision of co-equal Bench binds the Bench of same strength. Though the judgment in *Rajesh's* case was delivered on a later date, it had not apprised itself of the law stated in *Reshma Kumari (supra)* but had been guided by *Santosh Devi (supra)*. We have no hesitation that it is not a binding precedent on the co-equal Bench.

20) Therefore, in view of the observations made by the Supreme Court of India in the case of *Pranay Sethi (supra)*, with utmost respect to the cases cited by the learned senior counsel for the petitioner, the Court is of the considered opinion that the Court is bound by the ratio of the case of *Satender*

Kumar Antil (supra), and because as an under-trial, the petitioners have not been in custody for 5 years or half of the maximum sentence that may be passed in this case, the Court is of the considered opinion that the petitioners have not become entitled to be released on bail at this stage.

21) When commercial quantity of 262 grams of contraband brown sugar has been seized from the conscious possession of the petitioners, the Court is unable to arrive at a conclusion that the petitioners are not guilty of the commission of the offence and that he would not commit such an offence if released on bail, which is the mandate of Section 37(1)(b)(ii) of the NDPS Act, 1984.

22) In light of the discussions above, and having regard to the observations made in the case of *Shaikh Uzma Feroz Hussain (supra)*, the case of *Mohd. Muslim @ Hussain (supra)*, and *Asab Uddin (supra)* is not found to help the petitioners.

23) Thus, the prayer of both the petitioners for bail is rejected at this stage.

24) None of the observations made herein shall prejudice the petitioners during trial.

JUDGE

Comparing Assistant