

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.5509 of 2017

ORDER:

This petition is filed by the petitioner-accused No.1, under Sections 437 and 439 Cr.P.C., seeking bail in Crime No.118 of 2017 on the file of the Station House Officer, Kachiguda Police Station, registered for the offence punishable under Section 20(b)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the NDPS Act).

2. The case of the prosecution, in brief, is that on 20.4.2017 at about 08.00 hours, on receiving credible information that one lady was selling Ganja in House bearing No.3-3-142, Quthbiguda, Chappal Bazar, Kachiguda, Hyderabad, the Inspector of Police, Commissioner's Task Force, East Zone Team, Hyderabad (L.W.1), secured the presence of two mediators and a Woman Police Constable, and proceeded to the House. In the said House, he found a lady and when questioned she disclosed her name as Smt.Mali Shoba, the petitioner herein. L.W.1 seized three gunny bags containing Ganja weighing about 73 Kgs (25 Kgs, 24 Kgs and 24 Kgs respectively) and drew required samples. Basing on the statement given by the petitioner, L.W.1 visited House bearing No.14-10-119 and apprehended accused Nos.2 to 4. Basing on the complaint given by L.W.1, the Inspector of Police, Kachiguda Police Station, Hyderabad (L.W.11) registered a case in Crime No.118 of 2017 for the offence under Section 20(b)(c) of the NDPS Act. After completion of necessary formalities, the petitioner was produced before the Court of IV Additional Chief Metropolitan Magistrate, Hyderabad, and remanded to judicial custody.

3. The petitioner filed Criminal Petition No.3658 of 2017 under Sections 437 and 439 of Cr.P.C., and the same was dismissed by this Court on 05.6.2017.

4. There is no dispute with regard to the submission of learned counsel for the petitioner that the provisions of Cr.P.C., are applicable to the cases registered under the NDPS Act, unless they are inconsistent with the provisions of the NDPS Act. A fascicular reading of Sub-section (2) of Section 51 of Cr.P.C., and Sub-section (4) of Section 50 of the NDPS Act postulates that a female suspect shall be searched by a female officer with strict regard to her decency. Section 100 of Cr.P.C., prescribes the procedure to be followed at the time of search of a place and seizure.

5. Placing reliance on the above provisions, Sri Milind G. Gokhale, learned counsel for the petitioner submitted that even if the alleged search, as shown in this case, by the Investigating Agency is accepted, it was in gross violation of the above provisions. He further submitted that at the time of the alleged search and seizure, no Woman Police Constable was present; therefore, the alleged search conducted by the Inspector of Police is not sustainable in law. In support of his submission, he has drawn the attention of this court to the decision in **State of Punjab v. Baldev Singh**¹, wherein the Constitutional Bench of the Hon'ble apex Court held at paragraph No.13 as follows:

13. The empowered officer must, therefore, act in the manner provided by Section 50(4) of the NDPS Act read with Section 51(2) of the Code of Criminal Procedure, 1973 whenever it is found necessary to cause a female to be searched. The document prepared by the investigating officer at the spot must invariably disclose that the search was conducted in the aforesaid manner and the name of the

¹ (1999) 6 SCC 172

female official who carried out the personal search of the female concerned should also be disclosed. The personal search memo of the female concerned should indicate compliance with the aforesaid provisions. Failure to do so may not only affect the credibility of the prosecution case but may also be found as violative of the basic right of a female to be treated with decency and proper dignity.

A perusal of the record reveals that L.W.1—the Inspector of Police, before proceeding to the house of the petitioner along with staff, secured two independent mediators—K.Madhava Rao and Mohd. Sharia Ali, and Woman Police Constable No.4377 of Women Police Station, South Zone, Hyderabad, by name, N.Jyothi. Then they all proceeded to the house of the petitioner in order to verify the veracity of the information received about selling of Ganja by a lady. In view of the contents of the remand report, *prima facie* I am unable to accede to the contention of learned counsel for the petitioner that the alleged search was conducted in gross violation of the relevant provisions of law and the decision relied upon by him, on this aspect, is no way helpful to the petitioner.

6. The learned counsel for the petitioner further submitted that the petitioner, who is a female person, was arrested at 11.10 pm, which is not permissible under law. It is not in dispute that a female, in general circumstances, cannot be arrested after sunset and before sunrise. The record reveals that in this case the search, seizure and detention of the petitioner were completed by 11.45 a.m. This clearly indicates that the petitioner was apprehended during the day-time by a Woman Police Constable; therefore, the arrest of the petitioner *prima facie* was in accordance with the provisions of law. The Inspector of Police, in this case, apprehended the other accused and all the necessary formalities were completed by 05.00 pm. The registration of the case, basing

on the complaint of the Inspector of Police, was made at 23.30 hours. Mere registration of case at 11.30 pm cannot be treated as apprehension of the accused. The factual matrix *prima facie* negates the contention of the learned counsel for the petitioner; therefore, the decision relied upon by the learned counsel for the petitioner is no way helpful to the petitioner.

7. The learned counsel for the petitioner strenuously submitted that the alleged search and seizure was conducted in contravention of the provisions of Section 50 of the NDPS Act, which is mandatory in nature; therefore, the judicial custody of the petitioner is *void ab initio*, which is sufficient to grant bail to the petitioner. To substantiate the argument, he has drawn the attention of this Court to the following decisions:

(I) In **State of Punjab v Baldev Singh**², a Constitutional Bench of the Hon'ble apex Court held at paragraph No.57 as follows:

57. On the basis of the reasoning and discussion above, the following conclusions arise:

- (1) That when an empowered officer or a duly authorised officer acting on prior information is about to search a person, it is imperative for him to inform the person concerned of his right under sub-section (1) of Section 50 of being taken to the nearest gazetted officer or the nearest Magistrate for making the search. However, **such information may not necessarily be in writing.**
- (2) That failure to inform the person concerned about the existence of his right to be searched before a gazetted officer or a Magistrate would cause prejudice to an accused.
- (3) That a search made by an empowered officer, on prior information, without informing the person of his right that if he so requires, he shall be taken before a gazetted officer or a Magistrate for search and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of Section 50 of the Act.

² (1999) 6 SCC 172

- (4) That there is indeed need to protect society from criminals. The societal intent in safety will suffer if persons who commit crimes are let off because the evidence against them is to be treated as if it does not exist. The answer, therefore, is that the investigating agency must follow the procedure as envisaged by the statute scrupulously and the failure to do so must be viewed by the higher authorities seriously inviting action against the official concerned so that the laxity on the part of the investigating authority is curbed. In every case the end result is important but the means to achieve it must remain above board. The remedy cannot be worse than the disease itself. The legitimacy of the judicial process may come under a cloud if the court is seen to condone acts of lawlessness conducted by the investigating agency during search operations and may also undermine respect for the law and may have the effect of unconscionably compromising the administration of justice. That cannot be permitted. An accused is entitled to a fair trial. A conviction resulting from an unfair trial is contrary to our concept of justice. The use of evidence collected in breach of the safeguards provided by Section 50 at the trial, would render the trial unfair.
- (5) That whether or not the safeguards provided in Section 50 have been duly observed would have to be determined by the court on the basis of the evidence led at the trial. Finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish, at the trial, that the provisions of Section 50 and, particularly, the safeguards provided therein were duly complied with, it would not be permissible to cut short a criminal trial.
- (6) That in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched, **we do not express any opinion whether the provisions of Section 50 are mandatory or directory**, but hold that failure to inform the person concerned of his right as emanating from sub-section (1) of Section 50, may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law.
- (7) That an illicit article seized from the person of an accused during search conducted in violation of the safeguards provided in Section 50 of the Act cannot be used as evidence of proof of unlawful possession of the contraband on the accused though any other material recovered during that search may be relied upon by the prosecution, in other proceedings, against an accused, notwithstanding the recovery of that material during an illegal search.
- (8) A presumption under Section 54 of the Act can only be raised after the prosecution has established that the accused was found to be in possession of the contraband in a search conducted in accordance with the mandate of Section 50. An illegal search cannot entitle the prosecution to raise a presumption under Section 54 of the Act.
- (9) That the judgment in *Pooran Mal v Director of Inspection*, (1974) 1 SCC 345, cannot be understood to have laid down that an illicit article seized during a search of a person, on prior information, conducted

in violation of the provisions of Section 50 of the Act, can by itself be used as evidence of unlawful possession of the illicit article on the person from whom the contraband has been seized during the illegal search.

- (10) That the judgment in *Ali Mustaffa Abdul Rahman Moosa v State of Kerala*, (1994) 6 SCC 569, correctly interprets and distinguishes the judgment in *Pooran Mal* case and the broad observations made in *State of H.P. v Pirthi Chand*, (1996) 2 SCC 37 and *State of Punjab v Jasbir Singh*, (1996) 1 SCC 288, are not in tune with the correct exposition of law as laid down in *Pooran Mal* case.

(II) In **Vijaysinh Chandubha Jadeja v. State of Gujarat**³, another Constitutional Bench of the Hon'ble apex Court held at paragraph Nos.29 to 32, as follows:

29. In view of the foregoing discussion, we are of the firm opinion that the object with which the right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that insofar as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision.

30. As observed in *Presidential Poll, In re*, (1974) 2 SCC 33: (SCC p. 49, para 13)

"13. ... It is the duty of the courts to get at the real intention of the legislature by carefully attending [to] the whole scope of the provision to be construed. The key to the opening of every law is the reason and spirit of the law, it is the *animus imponentis*, the intention of the law maker expressed in the law itself, taken as a whole.'"

31. We are of the opinion that the concept of "substantial compliance" with the requirement of Section 50 of the NDPS Act introduced and read into the mandate of the said section in *Joseph Fernandez v State of Goa*, (2000) 1 SCC 707, and *Prabha Shankar Dubey v State of M.P.*, (2004) 2 SCC 56, is neither borne out from the language of sub-section (1) of Section 50 nor it is in consonance with the dictum laid down in *State of Punjab v Baldev Singh*, (1999) 6 SCC 172. Needless to add that the question whether or not the procedure prescribed has been followed and the requirement of Section 50 had been met, is a

³ (2011) 1 SCC 609 : AIR 2011 SC 77

matter of trial. It would neither be possible nor feasible to lay down any absolute formula in that behalf.

32. We also feel that though Section 50 gives an option to the empowered officer to take such person (suspect) either before the nearest gazetted officer or the Magistrate but in order to impart authenticity, transparency and creditworthiness to the entire proceedings, in the first instance, an endeavour should be to produce the suspect before the nearest Magistrate, who enjoys more confidence of the common man compared to any other officer. It would not only add legitimacy to the search proceedings, it may verily strengthen the prosecution as well.

As per the principle enunciated in **Baldev Singh**, the Hon'ble apex Court has not expressed any opinion whether Section 50 of the NDPS Act is mandatory or not. As per the principle enunciated in **Vijayasinh Chandubha Jadeja**, Section 50 of the NDPS Act mandates that the search and seizure of contraband in deviation of the procedure – even a fraction – makes the search and seizure as illegal.

8. The crucial question that falls for consideration is whether the facts of the case on hand will fall within the ambit of Section 50 of the NDPS Act or not?

9. It is the duty of the Investigating Officer to intimate the accused about his right to be searched in the presence of Gazetted Officer or a Magistrate. As per the principle enunciated in **Baldev Singh** and **Vijayasinh Chandubha Jadeja**, intimation of such information need not be in writing. In the remand report, it is mentioned that the Investigating Officer informed the petitioner about her right to be searched in the presence of a Gazetted Officer for which she requested the Investigating Officer to conduct the search in the presence of a Gazetted Officer. The record reveals that the Investigating Officer secured the presence of K.Madhusudhana Reddy, Inspector of Police, to act as a Gazetted

Officer. It is not in dispute that the Inspector of Police is a Gazetted Officer in rank. Whether a search conducted in the presence of another Police Officer, as a Gazetted Officer, is legally valid or not will be decided at the time of trial?

10. In order to appreciate the contention of the learned counsel for the petitioner, this Court is placing reliance on the following decisions:

I. In **State of H.P. v Pawan Kumar**⁴, the Hon'ble Apex Court held at paras 11 to 14 as follows:

11. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a *thaila*, a *jhola*, a *gathri*, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act.

12. An incriminating article can be kept concealed in the body or clothings or coverings in different manner or in the footwear. While making a search of such type of articles, which have been kept so concealed, it will certainly come within the ambit of the words "search of person". One of the tests, which can be applied is, where in the process of search the human body comes into contact or shall have to be touched by the person carrying out the search, it will be search of a person. Some indication of this is provided by sub-section (4) of Section 50 of the Act, which provides that no female shall be searched by anyone excepting a female. The legislature has consciously made this provision as while conducting search of a female, her body may come in contact or may need to be touched and, therefore, it should be done only by a female. In the case of a bag, briefcase or any such article or container, etc., they would not normally move along with the body of the human being unless some extra or special effort is made. Either they have to be carried in hand or hung on the shoulder or back or placed on the head. They can be easily and in no time placed away

⁴ (2005) 4 SCC 350

from the body of the carrier. In order to make a search of such type of objects, the body of the carrier will not come in contact of the person conducting the search. Such objects cannot be said to be inextricably connected with the person, namely, the body of the human being. Inextricable means incapable of being disentangled or untied or forming a maze or tangle from which it is impossible to get free.

13. The scope and ambit of Section 50 of the Act was examined in considerable detail by a Constitution Bench in *State of Punjab v. Baldev Singh*, (1999) 6 SCC 172, and para 12 of the Report is being reproduced below: (SCC p. 190)

“12. On its plain reading, Section 50 would come into play only in the case of a search of a person as distinguished from search of any premises etc. However, if the empowered officer, without any prior information as contemplated by Section 42 of the Act makes a search or causes arrest of a person during the normal course of investigation into an offence or suspected offence and on completion of that search, a contraband under the NDPS Act is also recovered, the requirements of Section 50 of the Act are not attracted.”

The Bench recorded its conclusion in para 57 of the Report and sub-paras (1), (2), (3) and (6) are being reproduced below: (SCC pp. 208-10)

“57. On the basis of the reasoning and discussion above, the following conclusions arise:

(1) That when an empowered officer or a duly authorised officer acting on prior information is about to *search a person*, it is *imperative* for him to *inform* the person concerned of his right under sub-section (1) of Section 50 of being taken to the nearest gazetted officer or the nearest Magistrate for making the search. However, such information may not necessarily be in writing.

(2) That failure to *inform* the person concerned about the existence of his right to be searched before a gazetted officer or a Magistrate *would* cause prejudice to an accused.

(3) That a search made by an empowered officer, on prior information, without informing the person of his right that if he so requires, he shall be taken before a gazetted officer or a Magistrate for search and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded *only* on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of Section 50 of the Act.

* * *

(6) That in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched, we do not express any opinion whether the provisions of Section 50 are mandatory or directory, but hold that failure to inform the person concerned of his right as emanating from sub-section (1) of Section 50, may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law.”

(emphasis in original)

14. The above quoted dictum of the Constitution Bench shows that the provisions of Section 50 will come into play only in the case of personal search of the accused and not of some baggage like a bag, article or container, etc. which he may be carrying.

II. In **Ajmer Singh v. State of Haryana**⁵, the Hon'ble apex Court held at Paragraph No.15 as follows:

15. The learned counsel for the appellant contended that the provision of Section 50 of the Act would also apply, while searching the bag, briefcase, etc. carried by the person and its non-compliance would be fatal to the proceedings initiated under the Act. We find no merit in the contention of the learned counsel. It requires to be noticed that the question of compliance or non-compliance with Section 50 of the NDPS Act is relevant only where search of a person is involved and the said section is not applicable nor attracted where no search of a person is involved. Search and recovery from a bag, briefcase, container, etc. does not come within the ambit of Section 50 of the NDPS Act, because firstly, Section 50 expressly speaks of search of person only. Secondly, the section speaks of taking of the person to be searched by the gazetted officer or a Magistrate for the purpose of search. Thirdly, this issue in our considered opinion is no more res integra in view of the observations made by this Court in *Madan Lal v. State of H.P.*, (2003) 7 SCC 465. The Court has observed: (SCC p. 471, para 16)

“16. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises (see *Kalema Tumba v. State of Maharashtra*, (1999) 8 SCC 357, *State of Punjab v. Baldev Singh*, (1999) 6 SCC 172, and *Gurbax Singh v. State of Haryana*, (2001) 3 SCC 28). The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in *Baldev Singh case*, (1999) 6 SCC 172. Above being the position, the contention regarding non-compliance with Section 50 of the Act is also without any substance.”

III. In **Jarnail Singh v State of Punjab**⁶, the Hon'ble apex Court held at Paragraph Nos.15 to 19 as follows:

15. The next submission made by Mr Ujjal Singh is that there has been non-compliance with Section 50 of the NDPS Act, in that requisite option was not given to the appellant, as to, whether he wanted to be searched in the presence of a gazetted officer or a Magistrate. We are unable to accept the aforesaid submission. Inspector Ram Pal (PW 4) has clearly stated that the option was duly given to the appellant. The appellant had, in fact, signed on the consent statement expressing his confidence to be searched in

⁵ (2010) 3 SCC 746

⁶ (2011) 3 SCC 521

presence of the aforesaid witness. Similarly, Satpal Singh, PW 5 has also stated that before effecting the search, the appellant-accused was given the necessary option as to whether he wanted to be searched before a gazetted officer or a Magistrate. This witness also stated that the appellant reposed his confidence in Inspector Rampal. In such circumstances, it cannot be held that there was non-compliance with Section 50 of the NDPS Act.

16. This apart, it is accepted that the narcotic/opium i.e. 1 kg and 750 gm was recovered from the bag (thaili) which was being carried by the appellant. In such circumstances, Section 50 would not be applicable. The aforesaid section can be invoked only in cases where the drug/narcotic/NDPS substance is recovered as a consequence of the body search of the accused. In case, the recovery of the narcotic is made from a container being carried by the individual, the provisions of Section 50 would not be attracted.

17. This Court in *Kalema Tumba v. State of Maharashtra*, (1999) 8 SCC 257, discussed the provisions pertaining to “personal search” under Section 50 of the NDPS Act and held as follows: (SCC p. 260, para 4)

“4. ... If a person is carrying a bag or some other article with him and a narcotic drug or a psychotropic substance is found from it, it cannot be said that it was found from his ‘person’.”

18. Similarly, in *Megh Singh v. State of Punjab*, (2003) 8 SCC 666, this Court observed that: (SCC p. 670, para 16)

“16. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to a search of a vehicle or a container or a bag, or premises.”

19. The scope and ambit of Section 50 was also examined by this Court in *State of H.P. v. Pawan Kumar*, (2005) 4 SCC 350. In SCC paras 10 and 11, this Court observed as follows: (SCC pp. 359-60)

“10. We are not concerned here with the wide definition of the word ‘person’, which in the legal world includes corporations, associations or body of individuals as factually in these type of cases search of their premises can be done and not of their person. Having regard to the scheme of the Act and the context in which it has been used in the section it naturally means a human being or a living individual unit and not an artificial person. The word has to be understood in a broad common sense manner and, therefore, not a naked or nude body of a human being but the manner in which a normal human being will move about in a civilised society. Therefore, the most appropriate meaning of the word ‘person’ appears to be—‘the body of a human being as presented to public view usually with its appropriate coverings and clothing’. In a civilised society appropriate coverings and clothings are considered absolutely essential and no sane human being comes in the gaze of others without appropriate coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one’s home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human body without any appreciable or extra effort. Once worn, they would not normally get detached from the body of the human being unless some

specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the word 'person' would mean a human being with appropriate coverings and clothings and also footwear.

11. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word 'person' occurring in Section 50 of the Act."

IV. In **State of Rajasthan v. Tara Singh**⁷, the Hon'ble apex Court held at Paragraph No.4 as follows:

4. At the very outset, it must be understood that the provisions of Section 50 would no longer be applicable to a search such as the one made in the present case as the opium had been carried on the head in a gunny bag. A Bench of this Court in *State of H.P. v. Pawan Kumar*, (2005) 4 SCC 350, after examining the discrepant views rendered in various judgments of this Court has found that Section 50 of the Act would not apply to any search or seizure where the article was not being carried on the person of the accused. Admittedly, in the present case, the opium was being carried on the head in a bag. Mr Abhishek Gupta, the learned counsel for the appellant State, therefore, appears to be right when he contends that the observations of the High Court that the provisions of Section 50 of the Act would not (*sic*) be applicable was no longer correct in view of the judgment in *Pawan Kumar case*, (2005) 4 SCC 350.

11. As per the principle enunciated in the cases cited supra, Section 50 of the NDPS Act can be pressed into service if any contraband is recovered in consequence of body search of the accused. If the contraband is seized from a bag, gunny bag, brief case, being transported in a vehicle, or carried on by the accused

⁷ (2011) 11 SCC 559

on his shoulder or head, the provisions of Section 50 of the NDPS Act will not be applicable.

12. Section 42 of the NDPS Act deals with the search and seizure in any building, public place, vehicles, etc., whereas Section 50 of the Act deals with the search of the body of a person. The Legislature, in its wisdom, made a clear distinction of search of body of the person and search of places etc.

13. Let me consider the facts of the case on hand in the light of the above legal principles to appreciate the contention of learned counsel for the petitioner. A perusal of the remand report reveals that the Investigating Officer visited house bearing No.3-3-822/3, Chappal Bazar, Kacheguda, Hyderabad, and found three gunny bags containing Ganja, weighing about 73 Kgs. At the time of seizure, three gunny bags were found in the house of the petitioner. By no stretch of imagination, it can be presumed that the contraband was seized in consequence of body search of the petitioner. Even if the contraband was seized in violation of the provisions of the NDPS Act, conviction is not sustainable but, it would not vitiate the trial. In such circumstances, the argument advanced by the learned counsel for the petitioner that the alleged seizure of the contraband, in contravention of the provisions of Section 50 of the NDPS Act, *prima facie* is not sustainable either on facts or in law.

14. The learned counsel for the petitioner further submitted that the trial Court erroneously dismissed the petition placing reliance on Section 37 of the Act. On this aspect, this Court is placing reliance on the following decisions:

(I) In **State of M.P. v. Kajad**⁸, the Hon'ble apex Court held at paragraph No.5 as follows:

5. ... The purpose for which the Act was enacted and the menace of drug trafficking which it intends to curtail is evident from its scheme. A perusal of Section 37 of the Act leaves no doubt in the mind of the court that a person accused of an offence, punishable for a term of imprisonment of five years or more, shall generally be not released on bail. Negation of bail is the rule and its grant an exception under sub-clause (i) of clause (b) of Section 37(1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for.

(II) In **Collector of Customs v. Ahmadalieva Nodira**⁹, the Hon'ble apex Court at paragraph No.7 as follows:

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. ...

(III) The Hon'ble apex Court reiterated the same principle in **Union of India v Sanjeev v. Deshpande**¹⁰.

⁸ (2001) 7 SCC 673

⁹ (2004) 3 SCC 549

¹⁰ (2014) 13 SCC 1

As per the principle enunciated in the cases cited supra, the court can grant bail to the persons involved in the cases registered under the NDPS Act, though the contraband seized is a commercial quantity, if the court satisfies that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and even if he is released on bail, he will not involve in similar type of offences.

15. In the instant case, Ganja seized was 73 Kgs, which is a commercial quantity. The record *prima facie* reveals the involvement of the petitioner in the commission of the offence. As rightly pointed out by the learned Additional Public Prosecutor, if the petitioner is released on bail, the possibility of involving in similar type of cases cannot be ruled out.

16. Taking into consideration the seriousness of the offences alleged to have been committed by the petitioner and Ganja seized is a commercial quantity, this Court is of considered view that it is not a fit case to grant bail to the petitioner.

17. In the result, the criminal petition is dismissed.

T.SUNIL CHOWDARY, J

Date: 31.08.2017

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