

HIGH COURT OF CHHATTISGARH, BILASPURMisc. Criminal Case No.3689 of 2020Order reserved on: 9-7-2020Order delivered on: 14-7-2020

Sachin Suryavanshi, S/o Narayan Suryavanshi, aged about 28 years, R/o Village Talegaon, P.S. Sikrapur, District Pune (Wrongly mentioned as Mune in bail rejection order of court below) Maharashtra.

(In Jail)
---- Applicant

Versus

State of Chhattisgarh, through the Police Station Arang, District Raipur (C.G.)
---- Non-applicant

For Applicant: Mr. Harshwardhan Jaiswal, Advocate.
For Non-applicant / State: -
Mr. Vimlesh Bajpai, Government Advocate.

Hon'ble Shri Justice Sanjay K. AgrawalC.A.V. Order

1. Proceedings of this matter have been taken-up for final hearing through video conferencing.
2. The accused/applicant has moved this bail application under Section 439 of the Code of Criminal Procedure, 1973 for releasing him on regular bail during trial in connection with Crime No.606/2019, registered at Police Station Arang, Distt. Raipur for the offence punishable under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985.
3. Case of the prosecution, in brief, is that 60 Kgs. of Ganja was recovered from the possession of the present applicant and another co-accused Prakash Hadge.

4. Mr. Harshwardhan Jaiswal, learned counsel appearing for the applicant, would submit that the applicant has not committed any offence, he has been falsely implicated in the case and he has been arrested on 27-9-2019. He would further submit that Ganja was recovered from the possession of another co-accused Prakash Hadge, but the present applicant has been falsely implicated and therefore it is a prima facie case for grant of bail to the present applicant.
5. On the other hand, Mr. H.S. Ahluwalia, learned Deputy Advocate General appearing for the State, would oppose the application.
6. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also went through the records with utmost circumspection.
7. Section 37(1)(b) of the NDPS Act states as under:-

“37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is 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.”
8. A careful perusal of the aforesaid provision would show that power and jurisdiction of the court considering the application for grant of bail

under the provisions of the NDPS Act is circumscribed by the provision of Section 37 of the NDPS Act, in the case of a person accused of an offence punishable under Section 19(2), under Section 24(3), under Section 27-A(4) and also of offences involving commercial quantity. These limitations are in addition to those prescribed under the CrPC or any other law in force on the grant of bail. It can be considered and granted only in a case where there are reasonable grounds for believing by the court concerned that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. The above-stated statutory requirements are mandatory to be complied with while releasing the accused on bail.

9. The Supreme Court in the matter of Union of India v. Ram Samujh and another¹, considering the issue held that conditions imposed under Section 37(1)(b) of the NDPS Act are mandatory and observed as under: -

“8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail

are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the

1 (1999) 9 SCC 429

court should implement the law in the spirit with which Parliament, after due deliberation, has amended.”

10. The Supreme Court in the matter of State of M.P. v. Kajad² held that negation of bail is the rule and its grant an exception under sub-clause (ii) of clause (b) of Section 37(1) of the NDPS Act and 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.

11. The aforesaid legal position stands reiterated in the matter of Sami Ullaha v. Superintendent, Narcotic Central Bureau³ and Union of India v. Rattan Mallik alias Habul⁴ in which it has been clearly held by their Lordships of the Supreme Court that when a prosecution / conviction is for offence(s) under a special statute and that statute contains specific provisions for dealing with matters arising thereunder, including an application for grant of bail, such provisions cannot be ignored while dealing with such an application. It has been observed in paragraph 9 of Rattan Mallik’s case (supra) as under: -

“9. The broad principles which should weigh with the court in granting bail in a non-bailable offence have been enumerated in a catena of decisions of this Court and, therefore, for the sake of brevity, we do not propose to reiterate the same. However, when a prosecution/conviction is for offence(s) under a special statute and that statute contains specific provisions for dealing with matters arising thereunder, including an application for grant of bail, these provisions cannot be ignored while dealing with such an application.”

2 (2001) 7 SCC 673

3 (2008) 16 SCC 471

4 (2009) 2 SCC 624

12. The Supreme Court in Rattan Malik's case (supra) and further, in the matter of Union of India and another v. Sanjeev V. Deshpande⁵, explained the true import of Section 37 of the NDPS Act. Paragraph 12 of the report of Rattan Malik's case (supra) is as follows: -

“12. It is plain from a bare reading of the non obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".”

13. In the matter of Union of India v. Niyazuddin SK. and another⁶, their Lordships of the Supreme Court reiterating the requirement of Section 37(1)(b) of the NDPS Act to be mandatory, held as under: -

“6. Section 37 of the NDPS Act contains special provisions with regard to grant of bail in respect of certain offences enumerated under the said section. They are :

- (1) In the case of a person accused of an offence punishable under Section 19,
- (2) Under Section 24,
- (3) Under Section 27-A and
- (4) Of offences involving commercial quantity.

⁵ (2014) 13 SCC 1

⁶ (2018) 13 SCC 738

7. The accusation in the present case is with regard to the fourth factor, namely, commercial quantity. Be that as it may, once the Public Prosecutor opposes the application for bail to a person accused of the enumerated offences under Section 37 of the NDPS Act, in case, the court proposes to grant bail to such a person, two conditions are to be mandatorily satisfied in addition to the normal requirements under the provisions of CrPC or any other enactment. (1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence; (2) That person is not likely to commit any offence while on bail.

8. There is no such consideration with regard to the mandatory requirements, while releasing the respondents on bail.”

14. Very recently, in Rajesh’s case (supra), their Lordships followed the principles of law laid down in Ram Samujh’s case (supra) and clearly held that Section 37 of the NDPS Act commences with non-obstante clause and the conditions enumerated in Section 37(1)(b) have to be complied before admitting the accused on bail of the aforesaid offence under the Act in case of commercial quantity. Their Lordships explained the meaning of “reasonable grounds” in paragraph 21 of the report by holding as under in paragraphs 20 and 21 of the said report: -

“20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

21. 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.”

15. Reverting to the facts of the case, it is quite vivid that in the present case 60 Kgs. of Ganja was recovered from the possession of the applicant herein and co-accused which is undisputedly of more than commercial quantity (10 Kgs.). After going through the record, having heard learned counsel for the parties, considering the material available on record and considering the recovery of huge commercial quantity of Ganja from the present accused / applicant, it cannot be held that there are reasonable grounds for believing that the applicant has not committed the said offence and he is not likely to commit any offence, if released on bail. Consequently, I do not find any merit in the bail application. The application is accordingly rejected.

Sd/-
(Sanjay K. Agrawal)
Judge