NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MCRC No. 5609 of 2020

1. Ram Singh Bind S/o Shri Pyerelal Bind, Aged about 19 years, R/o Village Bindpur, P.S. Ahrora, District Mirzapur, Uttar Pradesh.
2. Lavkush S/o Parasnath, Aged about 23 years, R/o Village Barmuili, P.S. Adalhat, District Mirzapur, Uttar Pradesh.

---Applicants

Versus

State of Chhattisgarh, Through Police Station Kotwali, District Bastar-Jagdalpur, Chhattisgarh.

--- Non-applicant/State

For Applicants :- Mr. Ashok Kumar Komra, Advocate
For State :- Mr. Ayaz Naved, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

28/09/2020

1. Proceedings of this matter have been taken up for hearing through video conferencing.
2. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicants who have been arrested in connection with Crime No. 303/2020, registered at Police Station Kotwali, Distt. Bastar-Jagdalpur (CG) for the offence punishable under Section 20B (II) (C) of Narcotic Drugs and Psychotropic Substances Act, 1985.

3. Case of the prosecution, in brief, is that 24.810 kgs of ganja was seized from the possession of the present applicants and they thereby, committed the aforesaid offence.

4. Learned counsel for the applicants would submit that the applicants have not committed any offence and no such ganja has been recovered from the possession of the applicants and the applicants have falsely been implicated in the crime in question. He would further submit that the applicants are in jail since 04/07/2020.

5. On the other hand, learned counsel for the State would oppose the bail application and submit that it is not a false case and 24.810 kgs of ganja has been recovered from the possession of the applicants which has duly been deposited with the appropriate authority.

6. I have heard learned counsel appearing for the parties and perused the case diary.

7. In the present case rigour of Section 37(1)(b) of the NDPS Act would attract which states as under:-

> "**37. Offences to be cognizable and non-bailable. -**
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> (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),
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> (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
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> (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
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> (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.
>
> (2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of 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 another**[1], considering the issue held that several 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,
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> (i) there are reasonable grounds for believing that the accused is not guilty of such offence; and
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> (ii) that he is not likely to commit any offence while on bailare 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 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. Kajad**[2] held that negation of bail is the rule

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1**(1999) 9 SCC 429**
2**(2001) 7 SCC 673**

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 Bureau**[3] and **Union of India v. Rattan Mallik alias Habul**[4] 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)

3**(2008) 16 SCC 471**
4**(2009) 2 SCC 624**

> 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."

12. The Supreme Court in **Rattan Mallik's** case (supra) and further, in the matter of **Union of India and another v. Sanjeev V. Deshpande**[5], explained the true import of Section 37 of the NDPS Act. Paragraph 12 of the report of **Rattan Mallik'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 another**[6], their Lordships of the Supreme Court

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5 **(2014) 13 SCC 1**
6 **(2018) 13 SCC 738**

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 :
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> (1) In the case of a person accused of an offence punishable under Section 19,
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> (2) Under Section 24,
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> (3) Under Section 27-A and
>
> (4) Of offences involving commercial quantity.
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> 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.
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> 8. There is no such consideration with regard to the mandatory requirements, while releasing the respondents on bail."

14. Similarly, in the matter of **Satpal Singh v. State of Punjab**[7], it was held that in case the quantity of narcotic drug is commercial, the court granting bail under Section 438 or 439 of the CrPC must meet-out the statutory requirement contained in

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7**(2018) 13 SCC 813**

Section 37(1)(b) of the NDPS Act and observed as under: -

> "Leave granted. The appellant Satpal Singh (in Crl. Appeal. No. 462 of 2018) is before this Court, challenging the order dated 4-10-2017 passed by the High Court of Punjab and Haryana at Chandigarh in *Sat Pal Singh v. State of Punjab*[8] rejecting his application for anticipatory bail. The High Court took note of the fact that the appellant was an accused in FIR No. 0053 dated 11-6-2017 under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "the NDPS Act"), registered at Police Station Bhadson, District Patiala. Though it was argued that a coordinate Bench of the High Court had granted anticipatory bail to the co-accused, namely, Beant Singh and Gurwinder Singh, who are brothers of the appellant, as per order dated 21-9-2017[9], the learned Judge was not inclined to accept the contention since there was no question of parity as far as the bail is concerned and in view of the fact that the coordinate Bench had not taken note of the limitations under Section 37 of the NDPS Act. In our view, the learned Judge is perfectly right in his approach and in declining the protection under Section 438 of the Code of Criminal Procedure, 1973 (in short "CrPC").
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> 3. Under Section 37 of the NDPS Act, when a person is accused of an offence punishable under Section 19 or 24 or 27-A and also for offences involving commercial quantity, he shall not be released on bail unless the Public Prosecutor has been given an opportunity to oppose the application for such release, and in case a Public Prosecutor opposes the application, the court must be satisfied that there are reasonable grounds for believing that the

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8 **2017 SCC OnLine P&H 3802**

9 **Beant Singh v. State of Punjab, 2017 SCC OnLine P&H 3801**

person is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. Materials on record are to be seen and the antecedents of the accused is to be examined to enter such a satisfaction. These limitations are in addition to those prescribed under CrPC or any other law in force on the grant of bail. In view of the seriousness of the offence, the lawmakers have consciously put such stringent restrictions on the discretion available to the court while considering application for release of a person on bail. It is unfortunate that the provision has not been noticed by the High Court. And it is more unfortunate that the same has not been brought to the notice of the Court.

14. Be that as it may, the order dated 21-9-2017 passed by the High Court does not show that there is any reference to Section 37 of the NDPS Act. The quantity is reportedly commercial. In the facts and circumstances of the case, the High Court could not have and should not have passed the order under Section 438 or 439 CrPC without reference to Section 37 of the NDPS Act and without entering a finding on the required level of satisfaction in case the Court was otherwise inclined to grant the bail. Such a satisfaction having not being entered, the order dated 21-9-2017 is only to be set aside and we do so."

15. Very recently, in the case of **State of Kerala Etc. vs. Rajesh Etc.**[10], 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

10**AIR 2020 SC 721**

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.
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> 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."

16. Reverting to the facts of the case in the light of the aforesaid legal position, it is quite vivid that the applicants were found in possession of 24.810 kgs of ganja. Reportedly, as per the notification issued by the Central Government dated 16.07.1996 and applying the principles of law laid down by the Supreme Court in the matter of **Heera Singh v. Union of India**[11], accusation to the applicants herein would be more than commercial quantity i.e. 24.810 kgs as commercial quantity is 1 kg, the rigour of Section 37 of the NDPS Act is attracted. Taking into consideration the material available on record and submissions of learned counsel for the parties, it cannot be held that there is reasonable ground for believing that the applicants have not committed the offence, as they are found in possession of scheduled drug (24.810 kgs of ganja). Merely on the basis that charge-sheet has been filed against the applicants and the applicants are in custody since 04.07.2020, no bail can be granted to them in view of the provisions contained in Section 37(1)(b) of the NDPS Act, as statutory requirements are not satisfied. As such, I am not inclined to grant bail to the applicants and therefore, the bail application deserves to be and is accordingly rejected.

11(2020) SCC Online SC 382

17. Certified copy, as per rules.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet