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**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

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**CRM-M-27957-2020 (O&M)  
Date of Decision: 27.11.2020**

\*\*\*\*

Kala

..... Petitioner

Versus

Narcotic Control Bureau, Chandigarh Zonal Unit

..... Respondent

**CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present: Mr. Raj Kumar Gupta, Advocate,  
for the petitioner.

Mr. Rajiv Sharma, APP, U.T., Chandigarh.

**SUDIP AHLUWALIA, J.**

1. The instant Petition has been filed under Section 439 of the Code of Criminal Procedure seeking Regular Bail in Crime No.3/2019 dated 10.01.2019, registered under Sections 8/20/29 & 60 of the NDPS Act, 1985 at Police Station N.C.B., Chandigarh.

2. The complaint was lodged by Sh. Avdesh Kumar, Intelligence Officer, Narcotics Control Bureau ('NCB'), Chandigarh Zonal Unit in the Court of learned Special Judge (NDPS), Roopnagar on the allegation that a secret information was received that two persons, namely Yusuf Ali R/o Bajaura, Himachal Pradesh and Kala R/o Gharshankar, Punjab (who is the present Petitioner) are dealing in illegal Narcotic Drug '*Charas*' and it was also informed that those persons were bringing a substantial quantity of the contraband from Himachal Pradesh, in their four wheeler vehicles bearing Registration numbers PB-13-M-8288 & DL-3CAA-2145. A *Naka* was accordingly laid by the officers of the NCB on the Anandpur-Ropar road on

10.01.2019, who thereafter mounted surveillance of the concerned vehicles. At about 1115 hrs the vehicle bearing No. PB-13-M-8288 was seen coming, which was signalled to stop and its driver stopped the vehicle. At the same time, the other vehicle bearing Registration No. DL-3CAA-2145 following the first vehicle also came and was signalled to stop. Both the drivers were asked to park their vehicles on the side of the road and on asking about their identities, driver of the vehicle No. PB-13-M-8288 Maruti 800 introduced himself as Yusuf Ali, while driver of the vehicle No. DL-3CAA-2145 introduced himself as Kala (i.e. the Petitioner himself). The NCB Officers thereafter allegedly recovered 17 packets from the Maruti vehicle which were allegedly containing *Charas*, the total weight of which was 8 Kg. 300 Gms. Similarly, 7 packets were recovered from the vehicle being driven by the Petitioner, which were also found containing *Charas* weighing 3 Kg 350 Grm in all.

3. Contention of Ld. Counsel for the petitioner is that his client is innocent and the alleged recovery has been planted upon him. In addition, it is submitted that even according to the complaint the alleged recovery from the Petitioner is much less than the quantity recovered from co-accused Yusuf Ali, and it cannot be said that he is in close association with the said co-accused or that consequently a total amount of 11 Kg. 650 Grms of *Charas* was recovered from both of them, since admittedly, according to the complaint case itself, the recoveries were made from two different vehicles. Furthermore, it has been contended that the Petitioner has by now remained in detention for almost 01 year and 11 months since 10.01.2019 after having been allegedly apprehended from the spot. There is no record of the petitioner's involvement in any other case under the NDPS Act, and the trial

which the Petitioner is facing is likely to take a substantially long time due to the prevailing COVID-19 Pandemic. Therefore, according to Ld. Counsel for the Petitioner, the Petitioner should not be kept in further detention for an indefinite period at this stage.

4. The prayer for bail has been opposed on behalf of the Respondent-NCB who has basically relied upon a recent decision of the Hon'ble Supreme Court in the case of ***State of Kerala etc. vs. Rajesh etc. Criminal Appeal No(s) 154-157 of 2020*** decided on 24.01.2020, wherein it has been observed, *inter alia* :

*“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.”*

5. After having heard Ld. Counsel for both sides, this Court is of the opinion that this is not a fit case to consider release of the Petitioner on bail at this stage. As mentioned in the reply filed on behalf of the Respondent, the Call Detail Records (CDRs) of both the Petitioner and co-accused Yusuf Ali, go to indicate that they were in close contact with each other for a long time till shortly before recovery of contraband was made from their respective vehicles. It can, therefore, not be said that both of them together were not apprehended with contraband in the form of Charas weighing 11.650 Kgs. But even accepting academically that the Petitioner has no linkage with co-accused Yusuf Ali, still the recovery of the such contraband weighing 3.350 Kgs. from his individual vehicle itself is more than three times above the commercial quantity as specified under the NDPS Act. For this reason, the rigors of Section 37 of the Act are fully applicable to him. Besides, it transpires that the trial has reached a relatively mature stage. Out of the total 17 witnesses cited on behalf of the prosecution, 10 have already been examined and 3 given up. Now only 4 more remain to be examined and the next date fixed in the trial Court for that purpose happens to be

11.12.2020.

6. In the totality of the aforesaid circumstances, therefore, this Court is of the view that the Petitioner does not deserve to be released on bail at this stage, considering the huge quantity of contraband recovered from him and the fact that the trial in the present case has proceeded reasonably well notwithstanding outbreak of the COVID-19 pandemic in the earlier part of the year.

7. No merits. Dismissed.

**27.11.2020**

Satyawan

**(SUDIP AHLUWALIA)  
JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No