

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Bibhas Ranjan De

C.R.M. 7277 OF 2021

Sudipa Biswas (Bose)

VS.

The State of West Bengal & Anr.

For the petitioner : Mr. Sanjay Banerjee
Mr. Joydeep Bhattacharjee

For the State : Mr. Sabir Ahmed
Mr. Ashok Das

For the opposite : Mr. Rabilal Maitra, Sr. Advocate
party no.2 Mr. Rajitlal Maitra

Heard on : February 28, 2022

Judgment on : February 28, 2022

DEBANGSU BASAK, J.:-

1. Petitioner seeks cancellation of bail granted by the jurisdictional Court on June 10, 2021. Affidavits filed by the parties in Court be taken on record.
2. Learned Advocate appearing for the petitioner submits that the police complaint against the private opposite party involved the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 with commercial quantity of narcotics being seized from the

possession of the private opposite party. The jurisdictional Court ought to have taken into consideration the provisions of Section 37 of the Act of 1985 while granting bail to the private opposite party. The jurisdictional Court did not allude to such aspect at all. Consequently, the order granting bail can be said to be a nullity. In support of such contentions, he relies upon **(2021) 5 SCC 430 (Union of India vs. Prateek Shukla)**.

3. State and the private opposite party are represented.
4. Learned Advocate appearing for the State submits that the State also filed an application for cancellation of bail granted in favour of the private opposite party. He refers to a report of the Sub-Inspector of police of the concerned police station. Referring to such report, he submits that, at least sixteen cases against the private opposite party are pending which includes cases under the Arms Act, and the provisions of Section 302 of the Indian Penal Code. He relies upon **(2009) 2 Supreme Court Cases 624 (Union of India vs. Rattan Mallik)** in support of his contentions.
5. Learned Senior Advocate appearing for the private opposite party submits that the private opposite party did not violate any conditions of the order granting bail. He submits that the present application was actuated by *mala fide*. The private opposite party lodged a police complaint against the husband of the petitioner on August 2, 2021 and, therefore, the present application.

6. The private opposite party was proceeded against, *inter alia*, under the provisions of the Act of 1985. Police seized commercial quantity of narcotics from the possession of the private opposite party. Consequently, in our view, provisions of Section 37 of the NDPS Act, 1985 stand attracted in the factual matrix.
7. In ***Rattan Mallik's case (supra)***, the Hon'ble Apex Court observed 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. The expression “reasonable grounds” has not been defined in the said Act but means something more than prima facie ground. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide Union of India v. Shiv Shanker Kesari (2007) 7 SCC 798). Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.”

8. In ***Prateek Shukla’s case (supra)***, the Hon’ble Apex Court observed as follows:

“11. Ex facie, there has been no application of mind by the High Court to the rival submissions and, particularly, to the seriousness of the allegations involving an offence punishable under the provisions of the NDPS Act. Merely recording the submissions of the parties does not amount to an indication of a judicial or, for that

matter, a judicious application of mind by the Single Judge of the High Court to the basic question as to whether bail should be granted. The provisions of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a case for grant of bail has been made out. There has been a serious infraction by the High Court of its duty to apply the law. The order granting bail is innocent of an awareness of the legal principles involved in determining whether bail should be granted to a person Accused of an offence under the NDPS Act. The contention of the Respondent that he had resigned from the Company, Altruist Chemicals Private Limited, must be assessed with reference to the allegations in the criminal complaint which has been filed in the Court of the District and Sessions Judge. Gautam Budh Nagar (Annexure P-6). The relevant part of the complaint reads as follows:

18. That during investigation of the case, letter dated 27.11.2018 was sent

to the Registrar of Companies for providing details of the Directors etc. of the company in question i.e. U/s. Altruist Chemicals Pvt. Ltd. and vide its report dated 03.12.2018 Registrar of Companies provided the said information and from the perusal of said information/documents, it reveals that Accused Prateek Shukla and Bismillah Khan are the Directors. Accused Himanshu Rana was also Director but he has resigned from the directorship. From the perusal of the documents, it also reveals that they had registered the company, i.e., Altruist Chemical Pvt. Ltd. At 001, Block Ab-Sector-45, Noida, which is a residential area and Accused persons also obtained Unique Registration No. from the NCB on the above said premises.”

9. The order of the jurisdictional Court dated June 10, 2021 does not allude to the provisions of Section 37 of the NDPS Act, 1985 at all.

It does not take into consideration the seizure of commercial quantity of narcotics from the possession of the private opposite party. It does not return a satisfaction on the twin conditions for grant of bail under Section 37 of the Act of 1985.

10. The order dated June 10, 2021 grants bail to the private opposite party on the ground that though the charge sheet was filed in 2019, the charges were yet to be framed. The trial is yet to commence. It appears from the records that the private opposite party was arrested on May 15, 2019. Charge sheet was filed on October 31, 2019. Supplementary charge sheet was filed on March 2, 2021. There is no material on record to suggest let alone establish that the prosecution was indolent in conducting the case. The reason as to why the charges could not be framed is not discussed in the order granting bail. The impact of the ongoing pandemic in the judicial sphere cannot be discounted.
11. In view of the ratio laid down in ***Rattan Mallik's case (supra)*** and ***Prateek Shukla's case (supra)***, we are of the view that since the jurisdictional Court did not allude to the provisions of Section 37 of the Act of 1985 while granting bail to the private opposite party, such order cannot be sustained. Consequently, we cancel the bail granted in favour of the private opposite party. Private opposite party will surrender before the jurisdictional Court within seven days from date. In default, the jurisdictional Court is at liberty to take appropriate steps.

12. The contention of the private opposite party that the present petition was *mala fide* given the fact that the private opposite party lodged a police complaint against the husband of the petitioner on August 2, 2021 is of no consequence. The police complaint is latter than the order granting bail while fundamentally the order granting bail cannot be sustained on the touchstone of Section 37 of the Act of 1985.
13. Accordingly, the prayer for cancellation of bail is allowed.
14. **C.R.M. 7277 of 2021** is allowed.

(Debangsu Basak,J.)

15. I Agree.

(Bibhas Ranjan De, J.)