

HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION Nos.4481, 4482 & 4483 of 2022

COMMON ORDER:

1. Since the petitioners are A1, A2 and A5 in Crime No.373/2021 registered for the offences under Section 8(c) r/w 20(b) of Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act') and all the three petitions are filed by the State seeking cancellation of bail, they are being heard together and disposed off by way of this Common Order.
2. Facts of the case are that on 29.09.2021 at about 9.00 a.m, A1 to A4 were apprehended while transporting 80 packets of Dry Ganja, having purchased the same from A6 and A7 through the mediator A5. 65 packets of ganja loaded in Mahindra Bolero were seized. The total weight of the seized packets from A1 to A-4 was 170 Kg.190 grams.
3. On the basis of the recoveries, the Accused Nos.1 to 4 were remanded to judicial custody on 30.09.2021. Thereafter, during the course of investigation it was found that petitioner/A5 was involved, for which reason, A-5 was

remanded to judicial custody on 15.11.2021 on PT warrant, as he was in custody in another case.

4. Learned Special Sessions Judge for trial of cases under Narcotic Drugs and Psychotropic Substances Act-cum-I Additional Sessions Judge at Khammam granted bail to

(i) A1 on 19.04.2022 vide CrI.M.P.No.355 of 2022,

(ii) A3 on 10.05.2022 vide CrI.M.P.No.453 of 2022 and

(iii) A5 on 10.05.2022 vide CrI.M.P.No.454 of 2022.

Aggrieved by the granting of bail to the respondents/accused, the State filed the above petitions seeking cancellation of bail.

5. Learned Assistant Public Prosecutor would submit that the learned Sessions Judge has totally lost sight of the restrictions imposed under Section 37 of the NDPS Act and also no reasons are assigned as to why bail was granted in a case where the contraband seized was above the commercial quantity. That the respondents/accused are all habitual offenders involved in other cases, for which reason, their enlargement on bail has to be cancelled.

Further learned Assistant Public Prosecutor would submit that the bail was granted in a mechanical manner without even considering the gravity of the offence and also the previous criminal history of these petitioners.

6. The accused moved for bail and the police filed counters opposing the bail applications stating that the petitioners were habitual offenders and cannot be granted bail, however the facts stated in the counters were ignored.

7. Learned counsel appearing on behalf of the respondents/accused would submit that cancellation of bail cannot be made without there being any strong necessity for such cancellation. In support of his contention, he relied on the judgment reported in the case of **Dolat Ram and others vs.**

State of Haryana¹, wherein at para 4, it is held as follows:

“4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of Justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the

¹ (1995) 1 Supreme Court Cases 349

cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a nonbailable case in the first instance and the cancellation of bail already granted."

8. He also relied on the judgment in the case of **Bhagirathsinh S/o.Mahipat Singh Judeja v. State of Gujarat**², wherein at para 7, it is held as follows:

"7. In our opinion, the learned Judge appears to have misdirected himself while examining the question of directing cancellation of bail by interfering with a discretionary order made by the learned Sessions Judge. One could have appreciated the anxiety of the learned Judge of the High Court that in the circumstances found by him that the victim attacked was a social and political worker and therefore the accused should not be, granted bail but we fail to appreciate how that circumstance should be considered so overriding as to permit interference with a discretionary order of the learned Sessions Judge granting bail. The High Court completely overlooked the fact that it was not for it to decide whether the bail should be granted but the application before it was for cancellation of the bail. Very cogent and overwhelming circumstances all necessary for an order seeking cancellation of the bail. And the trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted ill his favour by tampering with evidence. The order made by the High Court is conspicuous by its silence on these two relevant considerations. It is for these reasons that we consider in the interest of justice a compelling necessity to interfere with the order made by the High Court."

² (1984) 1 Supreme Court Cases 284

9. Learned counsel for the respondents/accused argued that cogent and overwhelming circumstances are necessary to interfere with the order granting bail and bail cannot be mechanically cancelled. He further submits that the order of the learned Sessions Judge granting bail is made giving adequate reasons, as such there cannot be any interference with the discretion of the learned Sessions Judge in granting bail to the petitioners.

10. The Hon'ble Supreme Court in the judgment reported in the case of **Union of India through Narcotics Control Bureau, Lucknow v. Md.Nawaz Khan**³ has clearly stated the parameters under which bail can be cancelled when the twin requirements of Section 37 of NDPS Act are not considered by the Court below while granting bail, held as follows:

“17. The decision in *Prasanta Kumar* [*Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] was referred to in a judgment of this Court in *Mahipal v. Rajesh Kumar* [*Mahipal v. Rajesh Kumar*, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558], where the High Court had granted [*Rajesh Kumar v. State of Rajasthan*, 2019 SCC OnLine Raj 5197]

³ (2021) 10 Supreme Court Cases 100

bail to an accused who was charged with the commission of an offence punishable under Section 302 IPC. One of us (D.Y. Chandrachud, J.), speaking for the Court held and laid down the standard for adjudicating a plea for the cancellation of bail : (*Mahipal case* [*Mahipal v. Rajesh Kumar*, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558] , SCC pp. 125-26, paras 14 & 17)

“14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a *prima facie* view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a *prima facie* or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding.

17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. *An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record.* It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a *prima facie* or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment.”

11. The Hon'ble Supreme Court in the case of **Satpal Singh v. State of Punjab** in Criminal Appeal No.462 of 2018, dated 27.03.2018, held as follows:

"4. Under [Section 37](#) of the NDPS Act, when a person is accused of an offence punishable under [Section 19](#) or 24 or 27A 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 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 the [Cr.P.C](#) or any other law in force on the grant of bail. In view of the seriousness of the offence, the law makers 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."

12. Laws are enacted denying rights under procedural laws with a specific purpose, such as denial of an application for anticipatory bail under SCs & STs (POA) Act and Unlawful Activities (Prevention) Act, 1967. The proviso to Section 389 of Cr.P.C was inserted by Act No.25 of 2005 with effect from 23.06.2006 restricting the suspension or release on bail an appellant who is convicted for 10 years or above unless an opportunity is given to the Public Prosecutor to show cause in writing

against such release of the appellant by the appellate Court.

13. It is apparent that immense thought and consultations regarding several factors including social order, necessity to make stringent drug laws, drug menace etc has been considered before general discretion of the courts was restricted under Section 37 of the NDPS Act. The reason behind such enactment appears to be deterrent factor. Section 37 of the NDPS Act reads as follows:

“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 2[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.

[\(2\)](#) 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.”

14. Learned Sessions Judge without giving any reasons as required under Section 37 of the NDPS Act before granting bail, granted bail to the respondents/accused. Though the requirement of finding that the appellant is 'not guilty' is not of a degree as required under Section 239 or 227 of Cr.P.C, but on the facts and circumstances, reasonable ground should be shown to exist, for releasing an accused on bail, since personal liberty is involved.

15. Learned Sessions Judge has given the reasoning in the impugned orders i.e., in i) CrI.M.P.No.355 of 2022 in CrI.P.No.4481 of 2002 as follows:

"7. The petitioner/Accused No.1 is in judicial custody from 30.09.2021. The allegations leveled against the petitioner/accused No.1 and other accused is for the offence under Section 8(c) r/w 20(b) of NDPS Act. Having regard to the facts and circumstances of the case and considering the period of remand, this court is inclined to grant bail to the petitioner/accused No.1."

ii) CrI.M.P.No.453 of 2022 in CrI.P.No.4482 of 2022 it is held as follows:

"7. The petitioner/Accused No.3 is in judicial custody from 30.09.2021. The allegations leveled against the

petitioner/accused No.3 is for the offence under Section 8(c) r/w 20(b) of NDPS Act. The contraband i.e., ganja said to have been seized totally from accused is Kgs.170.190 grams which is more than commercial quantity. Having regard to the facts and circumstances of the case that the accused Nos.1 and 2 were already released on bail and also considering the quantity of ganja involved and the period of remand, this court is inclined to grant bail to the petitioner/accused No.3 by imposing certain conditions.”

iii) CrI.M.P.No.454 of 2022 in CrI.P.No.4483 of 2022 it is held as follows:

“7. The petitioner/Accused No.5 is in judicial custody from 15.11.2021. The allegations leveled against the petitioner/accused No.5 and other accused is for the offence under Section 8(c) r/w 20(b) of NDPS Act. Having regard to the facts and circumstances of the case that the accused Nos.1 and 2 were already released on bail and also considering the quantity of ganja involved and the period of remand, this court is inclined to grant bail to the petitioner/accused No.5 by imposing certain conditions.”

16. As seen from the orders, the only factor that fell for consideration for grant of bail by the learned Sessions Judge is regarding the detention and no reasons suggesting any satisfaction of the twin requirements under section 37 NDPS Act are made out by the learned Sessions Judge. The Hon’ble Supreme Court in **Union of India through Narcotics Control Bureau, Lucknow v. Md.Nawaz Khan**, held that where bail is granted without application of mind, the same has to be set aside by the appellate Court. Further the accused are involved in

other cases under NDPS Act. For the said reasons the impugned orders have to be set aside.

17. The Criminal M.P.Nos.355. 453 and 454 of 2022 were suspended for a period of four weeks on 13.06.2022. For the aforementioned reasons, the impugned orders are set aside. If the respondents/accused are in jail they shall continue to be in jail. However, for any reason, if any of the respondents/accused are released on bail, they shall surrender before the concerned Court in view of the cancellation of their bail.

Accordingly the criminal petitions filed by the State seeking cancellation of bail are allowed.

K.SURENDER, J

Date: 12.07.2022
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