

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

CRM-M-3193-2022(O&M)

Date of Decision:-20.05.2022

Varinder Singh @ Bagga Singh.

.....Petitioner.

Versus

The State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. B.S. Kathuria, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.60 dated 11.07.2021 under Sections 18, 29, 61, 85 of NDPS Act, 1985 registered at Police Station City-2 Abohar, District Fazilka.

The brief facts of the case are that on 11.07.2021 when the police party headed by ASI Balkaran Singh while going for patrolling purposes and checking suspicious persons in a private vehicle, was present at Kandhwala road bye-pass, then an information was received that the accused persons are indulging in illegal activities of bringing opium from Rajasthan at cheaper rate and are selling the same at higher rates and that today, all the accused persons after taking opium from Rajasthan, were coming to Abohar from Hanumangarh side in Car I-20 PB-46Q-4929 and if

a picket is established at a suitable place, then all the accused persons could be nabbed along with a huge quantity of opium. The information being reliable and fulfilling the ingredients of Sections 18, 61, 85 NDPS Act, 1985, ASI Balkaran Singh got the FIR in question registered against the accused persons by sending a ruqa to the police station.

ASI Sajjan Singh in coordination with ASI Balkaran Singh, established a naka on Hanumangarh road, near the Petrol Pump and reached there in Govt. vehicle no.PB-05N-6933. After sometime a car I-20 No.PB-46Q-4929 white colour was seen coming from Hanumangarh side. ASI Sajjan Singh with the help of fellow officials, got stopped the said car and after introducing himself to the said persons, ASI Sajjan Singh asked the said persons their names and addresses. The person who was driving the car told his name as Gurjant Singh @ Janta, the person who was sitting on the conductor seat, told his name as Varinder Singh @ Bagga (present petitioner) and the persons who were sitting in the back seat told their names as Harshdeep Singh (since granted bail) and Prem Singh. ASI Sajjan Singh sent a message for calling some gazetted officer to the spot.

Sh. Rahul Bhardwaj, PPS, DSP Abohar reached the spot, after which a search was conducted and during the search, 3 Kgs of Opium was recovered from beneath the driver's seat of the car.

During the investigation based on an inquiry at the instance of the grandfather of a co-accused Harshdeep Singh, he was exonerated and an application to discharge him was moved before the trial Court which was dismissed. However, this Court granted him bail vide order dated 21.04.2022.

The Counsel for the petitioner has firstly contended that there

has been a violation of Section 42 of the NDPS Act. The secret information was not reduced into writing and sent to superior officials within 72 hours. He further contends that ASI Balkar Singh acted as the informant of the case and thereafter himself got conducted the search and seizure which was in violation of the law laid down by Hon'ble Supreme Court in **Mohan Lal Vs. State of Punjab (2018) 17 SCC 627**. He also contended that the recovery was of 3Kgs of Opium including the weight of the polythene bag and could be said to be marginally more than the non commercial quantity and the petitioner, therefore, deserves the concession of bail. It was lastly contended that the petitioner could not be said to be in conscious possession of the contraband as the recovery was from beneath the driver seat and the petitioner was neither the owner nor the driver of the i20 car and this fact also entitles the petitioner to the grant of bail.

The learned State Counsel on the other hand has filed a reply of the DSP, Sub Division Abohar, District Fazilka dated 18.04.2022. While referring to the reply the counsel for the State has submitted that the petitioner was in conscious possession of the contraband. It was further contended that there was substantial compliance of Section 42 of the NDPS Act as the ruqa was sent to the superior officials as is apparent from the bare reading of the FIR. On facts it was contended that as petitioner was in custody since 11.07.2021. The challan had been filed on 23.09.2021 and the charges came to be framed on 15.11.2021. The next date fixed for prosecution evidence was 10.05.2022 and none of the 10 PWs had been examined till date.

I have heard counsel for both the sides at length.

The Counsel for the petitioner has vehemently argued that the

provisions of Section 42 of the NDPS Act have been violated and this fact alone entitles the petitioner to the grant of bail. During the hearing of the bail application of the co-accused of the petitioner, Harshdeep (since granted bail) this Court had asked the State Counsel to verify as to whether Section 42 of the NDPS Act has been complied with or not. As per the reply there was no specific response to the contention raised by the counsel for the petitioner therein regarding the violation of Section 42 of the NDPS Act. Infact the learned State Counsel and the IO of the case ASI Raj Singh were asked to examine the report under Section 173 Cr.PC along with accompanying documents in Court and they factually conceded that there was no document in the entire challan showing that the provisions of Section 42 NDPS Act had been complied with. The same is the position today. A reading of the reply filed by the State dated 18.04.2022 would show that there is no specific response to the contention of the petitioner that Section 42 of the NDPS Act had not been complied with. Thus it is apparent that *prima facie* appears to be non compliance of Section 42 of the NDPS Act.

The question now arises is as to what would be the effect of such non compliance.

The Hon'ble Supreme Court has dealt with the issue of Section 42 of the NDPS Act in a number of judgments and some of them have been enumerated hereinbelow:-

The Hon'ble Supreme Court in **Sarija Banu (A) Janarthani @ Janani & Anr. Vs. State through Inspector of Police 2004(12) SCC 266** held as under:-

“ 6. The fact that such a telegram was sent and received is not disputed. However, it is stated by the respondent that they could not

find whereabouts of Kandasamy. It is also pertinent to note that even though such a serious information was received by the police as per the complainant, no case was registered and no investigation started. From this facts, it appears that something happened on 9.7.2003 and these are relevant factors of granting bail. We are conscious of the stringent provisions contained in Section 37 of the NDPS Act and we are also conscious of the fact that a charge has now been framed against the appellants and they have to face the trial.

7. *It is pertinent to note that in the bail application the appellants, it was alleged, that there was serious violation of Section 42 of the NDPS Act. In the impugned order nothing is stated about the alleged violation of Section 42, and it is observed that it was not necessary to consider such violation at this stage. **The compliance of Section 42 is mandatory and that is a relevant fact which should have engaged attention of the Court while considering the bail application.** In the aforesaid circumstances having regard to the special facts of the case, we direct that the appellants 1 and 2 be released on bail on executing a bail bond for Rs. 50,000 each with two solvent sureties for the like amount to the satisfaction of the Special Judge, EC/NDPS, Madurai on the following conditions:*

- (1) The counsel for the appellants requested that the appellants may be allowed to stay outside the State of Tamil Nadu. We are not inclined to grant such a prayer as the respondents police authorities would not be able to ensure the timely presence of the appellants in Court;*
- (2) The appellants shall not leave jurisdiction of the District Court, Madurai and shall report before the Circle Inspector, Karuppayurani Police Station once in two weeks for 3 months, thereafter, once in a month.*
- (3) The appellants shall surrender their pass-port before the Court, if not already seized by the police.*

The Hon'ble Supreme Court of India in **Rajender Singh Vs.**

State of Haryana Criminal Appeal No.1051 of 2009 Decided on 08.08.2011 held as under:-

“ 1. At about 4 p.m. on the 30th January 1997, PW-6 Inspector Kuldeep Singh of the CIA Staff, Hisar sent Ruqa Ex. PG to Police Station Bhuna that while he was present at the Bus Adda of village Bhuna in connection with the investigation of a case, he had received

secret information that the appellant Rajinder Singh @ Chhinder, was an opium addict and also dealing in its sale, and that he had kept some opium in the shed used for storing fodder in his farm house, and if raid was organized, the opium could be recovered. On the basis of the aforesaid Ruqa, a formal First Information Report was drawn up for an offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the "Act"). A wireless message was also sent to the DSP, Fatehabad PW-5 Charanjit Singh to reach the spot.

2. Mr. Zafar Sadiqui, the learned counsel for the appellant, has made four submissions during the course of the hearing. He has first submitted that as the provisions of Section 42(2) of the Act had not been complied with, the conviction of the appellant could not be sustained in the light of the judgment of the Constitution Bench of this Court in **Karnail Singh vs. State of Haryana 2009 (5) RCR (Criminal) 515 : 2009(4) Recent Apex Judgments (R.A.J.) 638 : (2009)8 SCC 539 8 SCC 539**. He has further submitted that no serious effort had been made to associate an independent witness with the search and seizure and that the link evidence in the case was also missing as the Malkhana register pertaining to the recovered opium was deposited had not been produced as evidence. He has finally submitted that as the provisions of Sections 52, 55 and 57 of the Act had not been complied with was an additional reason as to **why the conviction could not be sustained. Mr. Manjit Dalal, the learned counsel for the State of Haryana, has however supported the judgments of the courts below and has pointed out that the Ruqa Exhibit PA had been sent to the Police Station for the registration of the FIR and the fact that information had been conveyed on the wireless to DSP Charanjit Singh was sufficient compliance with the provisions of Section 42(2) of the Act. He has also controverted the other submissions made by Mr. Sadiqui.**

3. We have heard the learned counsel for the parties and gone through the judgment impugned. To our mind, the entire controversy hinges on Section 42 which is reproduced below:

"42. Power of entry, search, seizure and arrest without warrant or authorization. -

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the Departments of Central Excise, Narcotics, Customs, Revenue Intelligence or any other department of the Central Government or of the Border Security Force as is empowered in this behalf by general or

special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the Revenue, Drugs Control, Excise, Police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing, that any narcotic drug, or psychotropic substance, in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,-

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under Chapter IV relating to such drug or substance; and

(d) detain and search, and if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under Chapter IV relating to such drug or substance. Provided that if such officer has reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediate official superior.

42(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a

copy thereof to his immediate official superior."

4. A reading of the above said provision pre-supposes that if an authorized officer has reason to believe from personal knowledge or information received by him that some person is dealing in a narcotic drug or a psychotropic substance, he should ordinarily take down the information in writing except in cases of urgency which are set out in the Section itself. Section 42(2), however, which calls for interpretation in the matter before us, is however categorical that the information if taken down in writing shall be sent to the superior officer forthwith. In Karnail Singh's case, this Court has held that the provisions of Section 42(2) are mandatory and the essence of the provisions has been set out in the following terms:

" In conclusion, what is to be noticed is that Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Sections 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:

(a) The Officer on receiving the information [of the nature referred to in sub-section (1) of Section 42] from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42 (1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information

in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001."

5. *It is therefore clear that the total non-compliance with the provisions sub-section (1) and (2) of Section 42 is impermissible but delayed compliance with a satisfactory explanation for the delay can, however, be countenanced.. We have gone through the evidence of PW-6 Kuldeep Singh. He clearly admitted in his cross-examination that he had not prepared any record about the secret information received by him in writing and had not sent any such information to the higher authorities. Likewise, PW-5 DSP Charanjit Singh did not utter a single word about the receipt of any written information from his junior officer Inspector Kuldeep Singh. It is, therefore, clear that there has been complete non-compliance with the provisions of Section 42(2) of the Act which vitiates the conviction.*

6. *Mr. Dalal, the learned counsel for the respondent-State has, however, referred to paragraph 34 of the judgment of the*

*Constitution Bench in which general observations have been made with regard to the provisions of Section 41 (1) and 42(2) with respect to the latest electronic technology and the possibility that the said provisions may not be entirely applicable in such a situation. Concededly the present case does not fall in this category. In any case the principles settled by the Constitution Bench are in paragraph 35 and have already been re-produced by us hereinabove. Likewise, the dispatch of a wireless message to PW-6 does not amount to compliance with Section 42(2) of the Act as held by this Court in **State of Karnataka vs. Dondusa Namasa Baddi 2010(4) RCR (Criminal) 367: 2010(5) Recent Apex Judgments (R.A.J.) 333 : (2010) 12 SCC 495.***

The Hon'ble Supreme Court in **Sukhdev Singh Vs. State of Haryana 2013(2) R.C.R. (Criminal) 232** held as under:-

“ 21. As per the statement of PW1, no effort was made by him to reduce the information into writing and inform his higher authorities instantaneously or even after a reasonable delay which has to be explained with reasons in writing. On the contrary, in the present case, the Investigating Officer PW 1 had more than sufficient time at his disposal to comply with the provisions of [Section 42](#). Admittedly, he had received the secret information at 11.30 a.m., but he reached the house of the accused at 2 p.m. even when the distance was only 6 kilometers away and he was in a jeep. There is not an iota of evidence, either in the statement of PW 1 or in any other documentary form, to show what the Investigating Officer was doing for these two hours and what prevented him from complying with the provisions of [Section 42](#) of NDPS Act.

22. There is patent illegality in the case of the prosecution and such illegality is incurable. This is a case of total non-compliance, thus the question of substantial compliance would not even arise for consideration of the Court in the present case. The twin purpose of the provisions of [Section 42](#) which can broadly be stated are that : (a) it is a mandatory provision which ought to be construed and complied strictly; and (b) compliance of furnishing information to the superior officer should be forthwith or within a very short time thereafter and preferably post- recovery.

23. Once the contraband is recovered, then there are other provisions like [Section 57](#) which the empowered officer is mandatorily required to comply with. That itself to some extent

would minimize the purpose and effectiveness of [Section 42](#) of the NDPS Act. It is to provide fairness in the process of recovery and investigation which is one of the basic features of our criminal jurisprudence. It is a kind of prevention of false implication of innocent persons. The legislature in its wisdom had made the provisions of [Section 42](#) of NDPS Act mandatory and not optional as stated by this Court in the case of *Karnail Singh (supra)*.

24. Thus, the present appeal merits grant of relief to the accused. We accordingly set aside the judgment of the High Court as well as the Trial Court and acquit the accused of an offence under [Section 15](#) of NDPS Act. We direct the accused to be set at liberty forthwith, if not required in any other case.

25. Before we part with this file, we consider it the duty of the Court to direct the Director General of Police concerned of all the States to issue appropriate instructions directing the investigating officers to duly comply with the provisions of [Section 42](#) of NDPS Act at the appropriate stage to avoid such acquittals. Compliance to the provisions of [Section 42](#) being mandatory, it is the incumbent duty of every investigating officer to comply with the same in true substance and spirit in consonance with the law stated by this Court in the case of *Karnail Singh (supra)*.

The Hon'ble Supreme Court in **Darshan Singh Vs. State of Haryana 2016(1) R.C.R. (Criminal) 333** held as under:-

“ 5. At the beginning of hearing the instant appeals, learned senior counsel for the appellant informed the Bench, that he would be raising various grounds in his challenge to the order passed by the Additional Sessions Judge, Panipat, as also, the impugned judgment and order passed by the High Court. Having heard the first submission, advanced at the hands of learned senior counsel, premised on section 42 of the NDPS Act, we are satisfied, that it would not be necessary for us to deal with the remaining submissions, and accordingly, we did not hear learned senior counsel for the appellant, on the remaining submissions.

6. Insofar as the contention of learned senior counsel for the appellant under section 42 of the NDPS Act is concerned, he relied on the interpretation placed by a Constitution Bench judgment of this Court on the above provisions in ***Karnail Singh v. State of Haryana, 2009(5) RCR (Criminal) 515 : 2009(4) Recent Apex Judgments (R.A.J.) 638 : (2009) 8 SCC 539***, wherein, this Court recorded its

conclusions in Paragraph 35, which is being extracted hereunder :

"In conclusion, what is to be noticed is that Abdul Rashid did not require literal compliance with the requirements of sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Sections 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows :

(a) The officer on receiving the information (of the nature referred to in Sub-section (1) of section (42) from any person had to record it in writing in the Register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of sub-sections (1) and (2) of section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior

forthwith, may not be treated as violation of section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of section 42 of the Act. Whether there is adequate or substantial compliance with section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to section 42 by Act 9 of 2001."

(emphasis is ours)

7. *Based on conclusion (d) recorded herein above, it was the vehement contention of the learned senior counsel for the appellant, that the mandate contained in section 42 of the NDPS Act was not at all complied with, by the Station House Officer, Police Station, Shahar, Panipat, who had received the secret information and conducted a raid on the premises of the accused-appellant Darshan Singh. Based on the non-compliance of the provisions of section 42 of the NDPS Act, requiring the officer concerned to record in writing the details in respect of secret information received by him under section 42(1) of the NDPS Act, and further, to communicate the aforesaid details to the officer superior to him forthwith [under section 42(2) of the NDPS Act], learned senior counsel seeks setting aside of the conviction of the accused-appellant Darshan Singh, at the hands of the Additional Sessions Judge, Panipat, and affirmed at the hands of the High Court.*

8. *Whilst it was the case of the learned senior counsel for the appellant that the provisions of section 42(1) of the NDPS Act had not been complied with at all, learned counsel for the respondent State vehemently contested the aforesaid assertion. For contesting the submission advanced at the hands of the learned senior counsel for the appellant, reliance was placed on the factual position narrated in Paragraph 26 of the order dated 06.02.2001, passed by the trial court. Paragraph 26 is being extracted hereunder :*

"26. In the present case, no doubt the report of the

arrest of the accused and the seize has not been sent to the Police Station, but in the present case immediately after effecting the recovery, the ruqa was sent to the Police Station and on the basis of the same formal FIR Ex.PB/1 was recorded at 5.15 p.m. and Ex.PB1 further proves that the copy of the said FIR was sent through special messenger, which was received by the then Chief Judicial Magistrate, Panipat at 8.45 p.m. on the same day and the copy was also sent to the S.P., Panipat. Thus, it stands proved that about the arrest and seizure of the accused, the information was received by the superior officer, as such there is compliance of Section 57 of the Act."

9. A perusal of Paragraph 26 extracted above reveals that immediately after conducting the raid, the concerned Station House Officer, Police Station Shahar, Panipat, registered a first information report, which was subsequently dispatched to the Superintendent of Police, Panipat on the same day, i.e. to the officer superior to the officer, who had conducted the raid (on receipt of secret information). According to the learned counsel for the respondent-State since first information report was sent to the superior officer, non-compliance of Section 42 had not caused any prejudice to the appellant, and therefore, he could claim no benefit under Section 42.

10. The solitary question that arises for our consideration in the instant appeal, is whether the registration of the first information report, narrating the factual position as has already been described at the beginning of this order, as also, the communication of the first information report to the Superintendent of Police, Panipat would constitute an effective compliance of the provisions contained in section 42 of the NDPS Act.

11. Having given our thoughtful consideration to the submission advanced at the hands of learned counsel for the respondent, we are of the view that the mandate contained in section 42(1) of the NDPS Act, requiring the recording in writing, the details pertaining to the receipt of secret information, as also, the communication of the same to the superior officer are separate and distinct from the procedure stipulated under the provisions of the Criminal Procedure Code. Subsection 1 of section 41 of the NDPS Act provides that a Metropolitan Magistrate or a Magistrate of the First Class or any Magistrate of Second Class specially empowered by the

State Government may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under Chapter IV. Sub-section (2) of Section 41 refers to issue of authorisation for similar purposes by the officers of the Departments of Central Excise, Narcotics, Customs, Revenue Intelligence, etc. Sub-section (1) of section 42 of the NDPS Act lays down, that the empowered officer, if he has a prior information given by any person, should necessarily take it down in writing, and where he has reason to believe from his personal knowledge, that offences under Chapter IV have been committed or that materials which may furnish evidence of commission of such offences are concealed in any building, etc. he may carry out the arrest or search, without warrant between sunrise and sunset and he may do so without recording his reasons of belief. The two separate procedures noticed above are exclusive of one another. Compliance of one, would not infer the compliance of the other. In the circumstances contemplated under section 42 of the NDPS Act the mandate of the procedure contemplated therein will have to be followed separately, in the manner interpreted by this Court in Karnail Singh's case (supra) and the same will not be assumed, merely because the Station House Officer concerned had registered a first information report, which was also dispatched to the Superintendent of Police, in compliance with the provisions of the Criminal Procedure Code.

12. In the above view of the matter, it is not possible for us to accept the submission of the learned counsel for the respondent-State, that the registration of the first information report at the hands of the Station House Officer, Police Station Shahar, Panipat and its communication to the Superintendent of Police, Panipat would constitute sufficient compliance of the mandate of section 42 of the NDPS Act.

13. In aforesaid view of the matter, we are satisfied that section 42 of the NDPS Act was not complied with at all, insofar as the present controversy is concerned. Thus viewed, conclusion (d) recorded in Paragraph 35 of the judgment rendered in Karnail Singh's case (supra), would fully apply to the facts and circumstances of the present case, and we are left with no other option, but to set aside the conviction and the sentence of imprisonment of the accused-appellant Darshan Singh. Ordered accordingly. The appeal stands allowed.

Ors. Vs. The State of Maharashtra 2021 ALL MR (Cri) 4651 held as under:-

“ 3. Heard Shri Bhosale h/f. Shri Sonar learned counsel for the applicant. Shri Bhosale submits that there is total non-compliance of Section 42 of the NDPS Act. He submits that FIR shows that no information was recorded as required by Section 42(1) of the NDPS Act. He further submits that taking entry in station diary entry is no compliance of Section 42(1). There is no compliance of Section 42(2) of the NDPS Act either. He submits that total non-compliance of Section 42(1) and (2) is impermissible. For this purpose he placed reliance on the case of **Karnail Singh v. State of Haryana; (2009) 8 SCC 539** (Constitution Bench Judgment). He submits that CA report is not filed. Therefore, charge-sheet is incomplete.

4. Learned APP Shri Ghayal submits that station diary entry was recorded. Therefore, there is compliance of Section 42(1) of the NDPS Act. He further submits that on 28.01.2020 itself letter was written to the Dy. S.P. in which there is reference of intimation received. This letter bearing outward no.145/2021 is total compliance of Section 42 (1) of the NDPS Act. He, therefore, submits that there is total compliance of Section 42(1) and (2) of the NDPS Act. He further submits that admittedly CA report was not annexed with the charge-sheet. However, raiding party had carried field test kit with it and the substance which was found with the applicant was tested and it was tested as Marijuana i.e. Ganja.

5. Section 42 (1) of NDPS Act requires the person receiving the information to record it into writing. Section 42(2) of NDPS Act mandates that such information received by the police station has to be forwarded to the immediate superior of the officer receiving the information within 72 hours.

6. In the case at hand, the Police Inspector is the officer who had received the information. Therefore, it was obligatory on his part to record the information as mandated by Section 42(1) of the NDPS Act and send it to his immediate official superior within a period of 72 hours from the date of its receipt.

7. So far as recording of information as required under Section 42(1) of the NDPS Act is concerned, admittedly the said information was not recorded. It was tried to be argued that the entry was taken in station diary and the same is sought to be treated as the information recorded under Section 42(1) of the NDPS Act. Learned counsel Shri

*Bhosale placed reliance on the case of **Rajaram Kadu v. The State of Maharashtra (Bail Application No.2108/2016)** decided by this Court. In the case of Rajaram Kadu cited (supra), this very question had fallen for consideration before this Court. It has been held thus:*

"9. ...As far as non compliance with Section 42 of the Act is concerned, it can be seen that the information was received by Police Naik Bhagwat Saudane. The FIR does not indicate that he had reduced the information into writing or provided any copy of the information to his superior officer. The statement of API Divekar also does not indicate that he had reduced the information into writing or forwarded the same to his superior officer. However, the prosecution is relying upon the entries made by Senior P.I. Sable of Ulhasnagar in the station diary to show the compliance of Section 42. That cannot be considered to be the compliance of Section 42 of NDPS Act. The point which is canvassed by learned counsel for Applicant is that the person who had received the information had not forwarded it to the superior officer and there is nothing on record to indicate that any such information was forwarded in writing. It is, therefore, rightly contended that there is non compliance of Section 42(2) of NDPS Act."

8. *These observations of this Court clearly indicate that entry in station diary is not a compliance under Section 42 of the NDPS Act. Therefore, there is non-compliance of Section 42 (1).*

9. *Learned counsel Shri Bhosale submits that delayed compliance is permissible but total noncompliance of Section 42 is impermissible. For this purpose he placed reliance on the case of **Boota Singh and Others v. State of Haryana (Criminal Appeal No.42 of 2021)**. In this case it has been observed in para 11 as under:*

"11. In Jagraj Singh alias Hansa, the facts were more or less identical. In that case, the vehicle (as observed in para 5.3 of the decision) was not a public transport vehicle. After considering the relevant provisions and some of the decisions of this Court including the decision in Karnail Singh, it was observed:

"14. What Section 42(2) requires is that where an officer takes down an information in writing under sub-section (1) he shall send a copy thereof to his immediate officer senior. The communication Ext. P-15 which was sent to the Circle Officer, Nohar was not as per the information recorded in Ext. P- 14 and Ext. P-21. Thus, no error was committed by the High Court

in coming to the conclusion that there was breach of Section 42 (2)."

10. *In the case of Boota Singh cited (supra), it has been clearly held that information has to be recorded in writing and copy of it has to be sent to the immediate superior officer. In the case at hand information was not recorded in writing. Therefore, question of sending it to immediate official superior does not arise. Vide outward no.145/21, what is done by the Investigating Officer is intimation of information was given to the immediate official superior. Section 42 (2) of NDPS Act requires copy of the information to be furnished to the immediate official superior. Admittedly, since information was not recorded, there is no question of forwarding copy of the said information. Therefore, there is total non-compliance of Section 42.*

11. *In the case of Karnail Singh cited (supra), it is held that delayed compliance is permissible but total non-compliance is not permissible:*

"35. In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirements of Section 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Section 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows :

(a) The officer on receiving the information [of the nature referred to in Sub-section (1) of section 42] from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior

officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance of requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of section 42 of the Act. Whether there is adequate or substantial compliance with section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to section 42 by Act 9 of 2001."

12. In the case at hand there is not even a delayed compliance. Simply a letter is forwarded to the official superior about the information received. In this view of the matter, since there is no compliance of Section 42(1) and (2), there is no possibility of conviction of the accused. As held in the case of Sarija Banu (A) Janarthani alias Janani and Another v. State through Inspector of Police; 2004 AIR (SCW) 7488, the question of compliance can be considered at the stage of consideration of application for bail. In this view of the matter, the applicants are entitled to be released on bail. Hence the following order is passed:

ORDER

- I) Application is allowed.**
- II) Applicants be released on PR bond of Rs.50,000/- each with one solvent surety in the like amount each, in connection**

with Crime No.57 of 2021 under Section 8, 20 and 22 of the N.D.P.S. Act registered with Amalner Police Station, District Jalgaon.

III) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

The reading of the aforementioned judgments would show that where there is a total non compliance of Section 42 as appears to be the case herein, the accused ought to be granted the concession of regular bail as the possibility of his conviction is extremely unlikely.

With regard to the bar under Section 37 of the NDPS Act the Hon'ble Supreme Court as well as this Court have, on the basis of arguable points in the bail application as well as by considering the period of custody and the merits of the case, granted bail/suspension of sentence.

Before proceeding further it is necessary to examine Section 37 of the NDPS Act, 1985. The same is reproduced hereinbelow:-

“ 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.

(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.]

Some of the relevant judgments in this regard are being discussed hereinbelow.

In Criminal Appeal No.965 of 2021 titled as ***Dheeren Kumar Jaina v. Union of India***, the Hon'ble Supreme Court in a case where allegation in the charge sheet was with respect to 120 kg of contraband i.e. “ganja”, thus, being of commercial quantity, was pleased to grant bail after setting aside the order of the High Court where the said application for grant of regular bail had been rejected.

After noticing the bar under Section 37 of the Act, Hon'ble Supreme Court in ***Union of India Vs. K.A. Najeeb 2021(2) RCR (Criminal) 145*** has held that once timely trial is not possible, the Court is obligated to release the accused, who is in custody for extended period of time, on bail. In ***Criminal Appeal No.245 of 2020 (SLP Criminal No.8823 of 2019) titled as Chitta Biswas @ Subhas Versus The State of West Bengal***, the apex Court ordered the release of the accused on bail in a case involving commercial quantity of contraband, after he had undergone more than two years of custody taking into account the stage of the trial.

A co-ordinate Bench of this Court in a detailed judgment titled as ***Ankush Kumar @ Sonu v. State of Punjab*** reported as ***2018 (4) RCR (Criminal) 84***, had considered the provision of Section 37 of the NDPS Act in extenso and had granted bail in a case which involved commercial quantity. The relevant portion of the said judgment is reproduced as under:

“ xxx--xxx--xxx

But, so far as second part of Section 37 (1) (b) (ii), i.e. regarding the satisfaction of the Court based on reasons to believe that the accused

would not commit 'any offence' after coming out of the custody, is concerned, this Court finds that this is the requirement which is being insisted by the State, despite the same being irrational and being incomprehensible from any material on record. As held above, this Court cannot go into the future mental state of the mind of the petitioner as to what he would be, likely, doing after getting released on bail. Therefore, if this Court cannot record a reasonable satisfaction that the petitioner is not likely to commit 'any offence' or 'offence under NDPS Act' after being released on bail, then this court, also, does not have any reasonable ground to be satisfied that the petitioner is likely to commit any offence after he is released on bail. Hence, this satisfaction of the Court in this regard is neutral qua future possible conduct of the petitioner.”

The Special Leave Petition (Criminal) Diary No.42609 of 2018 filed against the aforesaid judgment of the Co-ordinate Bench of this Court, was dismissed by the Hon'ble Supreme Court.

Further, vide order dated 25.02.2021 in **CRM-M-20177-2020**, titled as **Vipan Sood Vs. State of Punjab & Anr.** a Co-ordinate Bench of this Court granted regular bail to an accused who was involved in a case wherein recovery was of 3.8 kgs of “charas” (commercial quantity) after being in custody for 1 year and 7 months. The said order was upheld by the Hon'ble Supreme Court vide order dated 24.08.2021 in a Petition for Special Leave to Appeal (Crl.) No.5852/2021 titled as “**Narcotic Control Bureau v. Vipan Sood and another**”.

The Hon'ble Supreme Court of India vide order dated 12.10.2020 passed in Criminal Appeal No.668 of 2020 titled as “**Amit Singh @ Moni v. Himachal Pradesh**” was pleased to grant regular bail in a case involving 3 kg and 800 grams of “charas” primarily on the ground of substantial custody and also, the fact that the trial would likely take time to conclude. In Criminal Appeal No.827 of 2021 titled as **Mukarram Hussain v. State of Rajasthan and another**, the Hon'ble Apex Court vide judgment

dated 16.8.2021 was also pleased to grant bail wherein the quantity of the contraband was commercial in nature.

A Co-ordinate Bench of this Court in CRM-M 10343 of 2021 titled as ***Ajay Kumar @ Nannu v. State of Punjab*** and other connected matters, vide Order dated 31.03.2021, after taking into consideration the stipulations of Section 37 of the NDPS Act, was pleased to grant regular bail in a case involving commercial quantity and a condition was imposed on the petitioner therein while granting the said bail and the said condition was incorporated in para 21 of the said judgment, which reads as under:

“ 21. However, the petitioners are granted regular bail subject to the condition that they shall not commit any offence under the NDPS Act after their release on bail and in case of commission of any such offence by them after their release on bail, their bail in the present case shall also be liable to be cancelled on application to be filed by the prosecution in this regard.”

This Court in ***Hari Yadav @ Hariya Vs. State of Punjab CRM-M-37645-2021*** Decided on **11.02.2022** granted bail to the petitioner in a case involving commercial quantity where the affidavit of the State revealed that there was non compliance of Section 42. The relevant extract of the said judgment is reproduced hereinbelow:-

“ A perusal of the affidavit filed by the State as well as the FIR itself would show that when Sub-Inspector who was in Police Station received information from Head Constable regarding a person having bag in his hand, he alongwith police party proceeded towards the spot. However, there is nothing to show that such an information was taken in writing in the Register in compliance with Section 42 of NDPS Act. The State counsel was also not able to show whether it was done or not. The non-compliance of mandatory provisions of Section 42 raises suspicion. Law with regard to the same has been laid down by the Hon'ble Supreme Court in Karnail Singh Vs. State of Haryana, 2009(5) RCR (Criminal) 515.

In view of the above, the bar under Section 37 NDPS Act will

not apply at this stage as there are reasons to believe that petitioner is not guilty. Further-more, petitioner is not involved in any other case as per both the learned counsels.

In *Rupinder Sharma Vs. State of Punjab CRM-M-5348-2021*

Decided on 28.01.2022 in a case of possible non compliance of Section 50 of NDPS Act this Court held that the provisions of Section 37 of NDPS Act can be relaxed.

Similarly in the case of ***Avtar Singh Vs. State of Punjab CRM-M-12683-2021(O&M)*** *Decided on 02.04.2022* this Court has held as under:-

“ 13. The mandate of Section 37 on which reliance have placed by learned State Counsel prescribes following twin conditions after grant of hearing to the State counsel:

- i) The satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty;*
 - ii) That he is not likely to commit any offence while on bail.*
- Both the conditions have to be satisfied. If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail.*

14. The first condition would require a discussion as to what would constitute 'reasonable grounds for the Court to be satisfied to believe that the accused not guilty and the second condition is that he is not likely to commit any offence while on bail.

15. The language of the statue uses three expressions viz. i) Court is satisfied; ii) reasonable grounds, and iii) for believing that accused is not guilty. Hence, the statue does not prohibit a Court from exercising its jurisdiction, but only prescribes certain guidelines to be taken into consideration while exercising such jurisdiction. The parameters prescribe “reasonable grounds to the satisfaction of the Court to relieve. It does not prescribes the requirement of regarding reasons in writing to establish that an accused is innocent”. Hence it is the subjective satisfaction of the Court based on an objective assessment of the material brought before it for giving a reasonable ground to sustain a belief. The requirement prescribed by statue can not be assigned a meaning and interpretation that is prohibits grand of bail or that the Court must record reasons displaying satisfaction

about an accused being innocent. Section 37(1)(b) is a provision empowering a Court to grant bail and is not a disabling provision to prohibit a Court of Law. The interpretation to be thus assigned to a statutory provision must be in conformity with the statutory object and not run contrary to it. It must also be kept in mind that if the legislature intended to deny bail to an accused, it could have expressly prescribed so.

16. It would now be essential to advert to certain precedent dealing with the said aspect. The Hon'ble Supreme Court held in the matter of "Collector of Customs, New Delhi versus Ahmadalieva Nodira" in Criminal Appeal No. 312 of 2004 decided on 11.03.2004 reported as (2004) 3 Supreme Court cases 549 observed as under:-

“ As observed by this Court in Union of India v. Thamisharasi & Ors. (JT 1995 (4) SC 253) clause (b) of sub-section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are (1) an opportunity to the public prosecutor to oppose the bail application and (2) satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the public prosecutor, the other twin conditions which really have relevance so far the present accused-respondent is concerned, are **(1) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative.** The satisfaction contemplated regarding the accused being not guilty has to be based for reasonable grounds. 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.”

17. The Hon'ble Supreme Court held in the matter of "Union of India versus Shiv Shanker Kesari" in Criminal Appeal No. 1223 of 2007 decided on 14.09.2007 reported as (2007) 7 Supreme Court cases

798 observed as under:-

“ 7. The expression used in Section 37 (1)(b) (ii) is "reasonable grounds". The expression means something more than *prima facie* grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. The word "reasonable" has in law the *prima facie* meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word 'reasonable'.

“7.....Stroud's Judicial Dictionary, Fourth Edition, page 2258 states that it would be unreasonable to expect an exact definition of the word 'reasonable'. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy.

(See: *Municipal Corporation of Delhi v. M/s Jagan Nath Ashok Kumar and another* (1987) 4 SCC 497. and *Gujarat Water Supplies and Sewerage Board v. Unique Erectors (Gujarat) Pvt. Ltd. and another* [(1989) 1 SCC 532].

9. “9.....It is often said "an attempt to give a specific meaning to the word 'reasonable' is trying to count what is not number and measure what is not space". The author of 'Words and Phrases' (Permanent Edition) has quoted from *re Nice & Schreiber* 123 F. 987, 988 to give a plausible meaning for the said word. He says,

"the expression 'reasonable' is a relative term, and the facts of the particular controversy must be considered before the question as to what constitutes reasonable can be determined".

It is not meant to be expedient or convenient but certainly something more than that.

10. The word 'reasonable' signifies "in accordance with reason". In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See: *Municipal Corporation of Greater Mumbai and another v. Kamla Mills Ltd.* (2003) 6 SCC 315).

11. The Court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

12. Additionally, the Court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion.

18. The Hon'ble Supreme Court held in the matter of "Union of India versus Rattan Mallik alias Habul" in Criminal Appeal No. 137 of 2009 decided on 23.01.2009 reported as (2009) 2 Supreme Court cases 624 observed as under:-

" 13. The expression 'reasonable grounds' has not been defined in the said Act but means something more than prima facie grounds. 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 Vs. Shiv Shanker Kesari²] Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court is not called upon to record a finding of 'not guilty'. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail."

19. The guidelines prescribed in the judgment of "Union of India versus Shiv Shanker Kesari" (Supra) have been followed in the matter

of “Union of India through Narcotics Control Bureau versus Md. Nawaz Khan” reported as (2021) 10 SCC 100.

A perusal of the Section 37 of the NDPS Act reveals that two conditions are to be satisfied cumulatively before an accused is granted bail/suspension of sentence (i) that the accused is not guilty of the offence & (ii) that he was not likely to commit any offence while on bail.

With respect to the first condition, a reasonable ground for belief of the court could be recorded that the accused had not committed an offence if there are violations of the mandatory provisions of the Act. Similarly where the evidence against the accused is scant or inadmissible once again a *prima facie* satisfaction of the court could be recorded that the accused had not committed an offence.

The difficulty arises with respect to the second condition wherein the Court is to record a finding that the accused was not likely to commit an offence while on bail. Recording of such a finding becomes onerous on the court because the future conduct of any person is not easy to predict. Obviously, where no other case is pending against the accused it would be easier to record a finding that the accused is not likely to commit such an offence in future. However, in a case where there are other pending cases/convictions under the NDPS Act against the accused, recording of this finding becomes challenging. The conduct of an accused in the past would be some indicator of his possible future conduct but mere past conduct cannot lead to assumption that his future conduct would be similar. Therefore, mere pendency of earlier FIR/convictions cannot lead to an assumption that the accused will and is likely to commit an offence in future thereby denying the accused the benefit of bail. There is another aspect of the matter. There could be a situation when in the case in which the accused

seeks bail there is either a violation of a mandatory provision of the Act or there is scant evidence against him. However, there may be other pending FIRs/convictions against the said accused. In such a scenario, the satisfaction of the court that the accused has not committed an offence could be recorded but the satisfaction of the Court that the accused was not likely to commit an offence in future would be difficult for the court to record. This would lead to an anomalous situation because there would be hardly any prospects of conviction in the case in which bail is sought, but it would be denied due to pendency of the other FIRs/convictions. Therefore, undoubtedly the twin conditions are to be satisfied cumulatively and not alternatively but primacy ought to be accorded to the first of the twin conditions because whatever may be criminal antecedents of the accused a judgment of conviction or acquittal can be recorded only on the basis of the evidence lead in the case in hand and the criminal antecedents of an accused have no role to play in the ultimate judgment of acquittal or conviction except to the extent of imposition of enhanced sentence in the case of a subsequent conviction. Having said that there could be cases where the antecedents are such that second of the twin conditions may assume greater importance. Therefore, in each case it would depend on the subjective satisfaction of the Court as to which of the twin conditions ought to be given precedence.

Also , where there is a substantial delay in the conclusion of the trial or in the final adjudication of an appeal against conviction, the satisfaction of Section 37 of the conditions under NDPS Act would not stand as a bar to grant bail/suspend sentence on account of the right to speedy trial envisaged under Article 21 of the Constitution of India.

Coming back to the facts of the present case, *prima facie* there has been violation of Section 42 of the NDPS Act. Once the mandatory provisions of the Act has been found to be *prima facie* violated, the rigors of Section 37 of the NDPS Act could be relaxed. Even otherwise, while dealing with Section 37, the Court is not called upon to record a finding of 'not guilty' and it is only required to say that there are reasonable grounds to believe that the accused is not guilty of the offence. In the present case, this belief could be gathered from the *prima facie* violation of Section 42 of the NDPS Act, itself. Further, so far as the second condition of forming an opinion that the accused was not likely to commit an offence while on bail is concerned, apparently, the petitioner is an accused only in the present FIR and since he does not have any criminal antecedents, an opinion can be expressed at this stage by the Court that he was not likely to commit an offence while on bail.

Keeping in view the aforementioned discussion and the relevant law cited, the petitioner would be entitled to the concession of regular bail.

Hence without commenting on the merits of the case, the present petition is allowed and the petitioner **Varinder @ Bagga** son of Sh. Sukhdev Singh is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, concerned.

The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the present case.

If the petitioner commits a similar offence for which he is

currently charged while on bail, the State would be at liberty to move an application for cancellation of bail.

Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

May 20, 2022
Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No