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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 17.08.2022

Pronounced on: 18.08.2022

+ **BAIL APPLN. 1541/2022**

DIPTI PURTTI @ SUMITA

..... Petitioner

Through: Mr Sudhir Kumar Santoshi,
Advocate

versus

THE STATE (NCT OF DELHI)

..... Respondents

Through: Mr Satish Kumar, APP for
State with SI Dharmender,
Special Cell, Rohini(NR).

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present bail application has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No. 44/2015 under Sections 18/22/29/61/85 of NDPS Act registered at P.S. Special Cell Delhi.

2. The Brief facts of the case, perused from the FIR are as follows: -



a. That during monitoring of the mobile numbers i.e. 9582461280, 9654123551, 7351687855 of international narcotic syndicate later on identified as Babloo, Raheesh, Amir and Chandan, it was revealed that these persons were indulging in large scale supply of drugs including heroin and opium in Delhi, UP by bringing the same from North Eastern states including Assam, Manipur, Nagaland etc. Sources were deployed to develop said information and discreet surveillance was kept upon movements of members of this gang as they used to frequently visit Delhi in connection with their drug trafficking activities.

b. SI Jeetendra Tiwari was deputed to monitor the interception of above mobile numbers and he used to brief Insp. Attar Singh about the outcome of said interception. Insp. Attar Singh, himself also used to monitor the interception and he had lodged DD No. 34 dated 27/06/2015 in Special Cell/NR and said DD entry was put up before ACP/Special Cell. SI Jeetendra Tiwari had deputed his sources to collect intelligence about members of above syndicate.

c. On 28/06/2015, at about 05:00 PM, SI Jeetendra Tiwari had received secret information in office of Special Cell/NR through one of sources already deployed by him that Musfique Alam, a resident of Bihar and one lady, a resident of Assam, who used to supply opium from Assam and thereafter they further used to hand over the same to one of their contact in Delhi, would come at about 06:00 PM to 07:00 PM, near ISBT, Kashmiri Gate, Foot-over bridge, towards Yamuna side.



d. On receipt of the information a trap was laid and a raid was conducted near ISBT, Kashmiri Gate, Delhi where two members of this gang namely Musfique Alam @ Babloo and Dipti Purtti were apprehended at about 06:30 P.m. and 10 kgs opium i.e. 05 kgs opium from each was recovered at their instance. Above case was got registered by SI Jeetendra Tiwari and investigation was taken up by the SI Jeetendra Tiwari.

e. During investigation, both the above accused persons were formally arrested. Both were subjected to sustained interrogation upon which they disclosed that they used to indulge in drug trafficking in Delhi and UP from North Eastern states for last many years. Both disclosed that they used to bring opium from one Chandan of Deemapur. Dipti Purtti is carrier of Chandan and Babloo is carrier of Rahees and Amir. Both disclosed about their network in detail. In pursuant of disclosure of Musfique Alam, Rahees was apprehended at about 11 :00 PM on 28/06/2015 near GPO, Kashmiri Gate, Delhi and 05 kgs opium was recovered from his possession. Rahees is the main kingpin of above drug cartel. He used to receive opium through his carriers and further supply it to various persons in Delhi.

f. The petitioner had moved Bail Application No. 3208/2020 for her release on bail before this Court which was dismissed *vide* order dated 23.11.2020. The observations of the Court are reproduced herein :-

“ 21. Based on the above, the test which is required to be applied while granting bail is whether there are



reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit an offence while on bail. Looking into the seriousness of the offence punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed.

22. In the instant case, the petitioner was found carrying a red & green bag and when it was searched it was found to contain 5.200 Kg. of opium which is a commercial quantity, so rigors of Section 37 are applicable in this case. So keeping in view the entire facts and circumstances, the petitioner is not entitled to bail. The present bail application is accordingly dismissed”

g. The Petitioner further moved an application for regular bail before the Ld. Trial Court. By virtue of order dated 05.05.2022 the bail was rejected.

3. The learned Counsel for the Petitioner submits that the present accused has been in Judicial Custody since 28.06.2015, continuously for last about 7 years and that as such embargo of section 37 of the NDPS Act shall not come in the way of her release on bail.

4. The learned APP for state submits that the quantity recovered is of commercial nature, hence, bail should not be granted to the accused. Further the bar under Section 37 will still apply irrespective of period of custody.

5. I have heard arguments and perused the record. The present case attracts bar under Section 37 of the NDPS act, as the recovered quantity was 15 kg of Opium and 5 kg was recovered from the present accused, being commercial quantity. Hence, the purview



within which the bail must be decided will have to be within the mandate of Section 37 of NDPS Act.

6. At this point, it is vital to reproduce Section 37 reads as under:-

“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.]”

7. From the abovementioned provision, it is clear that Section 37 lays down the negation of bail as the rule and the exceptions to the rule have been laid down under Section 37(1)(b)(i) and Section 37(1)(b)(ii). The same was reiterated in **Madhya Pradesh v. Kajad, (2001) 7 SCC 673**, wherein the Hon’ble Supreme Court observed as follows :-

“The purpose for which the Act was enacted and the menace of drug trafficking which intends to curtail is evident from its



scheme. A perusal of Section 37 of the Act leaves no doubt in the mind of the court that a person accused of an offence, punishable for a term of imprisonment of five years or more, shall generally be not released on bail. Negation of bail is the rule and its grant and exception under sub clause (ii) of clause (b) of Section 37(1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for.

8. Further in ***Union of India vs. Ram Samujh and Ors. 1999(9) SCC 429***, the Hon'ble Supreme Court laid down a broad criterion explain within which bail under Section 37 needs to be examined. The observations read as under:-

"The aforesaid Section is incorporated to achieve the object as mentioned in the Statements of Objects and Reasons for introducing the Bill No. 125/ 1988 thus:

"Even though the major offences are non-bailable by virtue of the level of punishment, on technical grounds, drug offenders were being released on bail. In the light of certain difficulties faced in the enforcement of NDPS Act, 1985 the need to amend the law to further strengthen it has been felt."

It is to be borne in mind that the aforesaid legislative mandate is required to be adhered and followed. It should be borne in mind that in murder case, accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death



or in inflicting death blow to number of innocent young victims, who are vulnerable: it causes deleterious effects and deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under NDPS Act, has succinctly observed about the adverse effect of such activities in Durand Didien v. Chief Secretary. Union Territory of Gua. [1990] 1 SCC 95 as under:

"With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportion in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, the Parliament in the wisdom has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine,"

To check the menace of dangerous drugs flooding the market, the Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless mandatory conditions provided in Section 37, namely,



(i) there are reasonable grounds for believing that accused is not guilty of such offence; and

(ii) that he is not likely to commit while on are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in the dangerous drugs, the Court should implement the law in the spirit with which the Parliament, after due deliberation, has amended."

9. The Hon'ble Supreme Court in ***Union of India vs. Shiv Shanker Kesari (2007) 7 SCC 798***, explained the meaning of term "reasonable grounds" within Section 37 of the NDPS Act. The observations read as follows :-

"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'. 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. 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 in 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.”

10. Similarly in a recent judgement of the Hon’ble Supreme Court in ***State of Kerala Vs. Rajesh in Crl. Appeal No. 154157/2020*** dated 24.01.2020, it was observed as follows:-

“ 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.”



11. Thus it is clear that, denial of bail is the rule and grant of bail under the provision is an exception. In the present case, there is a recovery of 5 kg of opium from the accused herein, which is of commercial nature. The accused was apprehended on receipt of secret information and upon investigation was found in collusion with co-accused Musfique Alam, part of a drug trafficking syndicate. The numbers of the syndicate were also on interception based on which, accused persons were apprehended. At this stage, it cannot be concluded that no *prima facie* case exists against the accused. The facts and circumstances do not suggest that reasonable grounds exist to believe that accused is not guilty or will not indulge in such activities once released on bail, thus entitling her to grant of bail.

12. The Learned Counsel of the Petitioner has argued that the accused has been in custody for long & there has been delay in conducting trial, which entitles her to bail

13. However, the Apex Court, while adjudicating the matter of ***Sheru versus Narcotics Control Bureau*** in **Criminal Appeal Nos. 585-586/2020** arising out of **SLP (Criminal) Nos. 2249-2250/2020**, opined as below:

“We have given a thought to the matter and there is no doubt that the rigors of Section 37 would have to be met before the sentence of a convict is suspended and bail granted and mere passage of time cannot be a reason for the same. However, we are faced with unusual times where the Covid situation permeates. We are also conscious that this Court has passed orders for release of persons on bail to de-congest the jail but that is applicable to cases of upto seven years sentence.



In the given aforesaid facts and circumstances of the case, we consider it appropriate to enlarge the appellant on bail on terms and conditions to the satisfaction of the Trial Court.

At the instance of the learned Additional Solicitor General, we clarify that the order has been passed in the given facts of the case and not to be treated as a precedent.”

14. Therefore, I am of the opinion that the judgment of State of Kerala Vs. Rajesh (supra) has to be followed by Courts while deciding bail under NDPS Act. Apex Court in Sheru Vs. NCB had released the accused on bail considering the period of custody of around 8 years. However, in that case, Apex court has clearly observed that rigors of section 37 NDPS Act have to be met before grant of bail and mere passage of time or period of judicial custody cannot be reason for grant of bail. The Apex Court had granted bail in this case in peculiar situation of pandemic and it had also been clarified in this order that the said order is being passed in the given facts of the case and should not to be treated as a precedent. There is recovery of commercial quantity of opium in present case, thus there is definite embargo u/s 37 NDPS Act. As I have observed above also, court must be satisfied that there are reasonable grounds for believing that accused is not guilty of the offences charged with and further that she is not likely to commit any offence while on bail. It cannot be inferred at this stage that there are reasonable ground to believe that accused is not guilty of the offence and is not likely to commit any offence while on bail. Mere incarceration in jail for long period is no ground to release the accused on bail in view of judgments of the



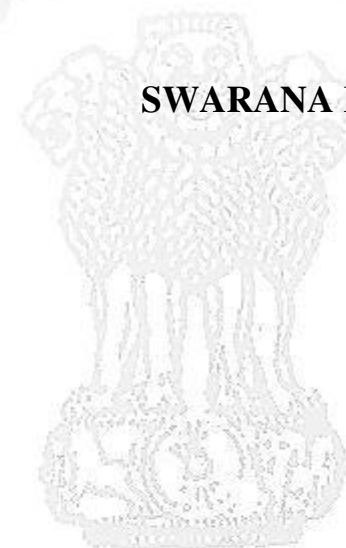
Hon'ble Apex Court. In present facts and circumstances, I do not find any ground to release the applicant/accused Dipti Purtti @ Sumita on bail. Hence, the present application is dismissed.

15. However, taking into account that the accused has been in the custody for more than seven years it is directed that the learned Trial Court shall make every endeavour to expedite the trial and try to conclude it within a period of six months.

16. The application stands disposed of in above terms.

SWARANA KANTA SHARMA, J.

AUGUST 18, 2022/zp



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