



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Date of Order: 7th March, 2022**

+ **BAIL APPLN. 3987/2021**

SAROJ SUBUDHI

..... Petitioner

Through: Mr. Ashok K Singh, Advocate

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Kusum Dhalla, APP

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant bail application under Section 439(1) read with Section 482 of the Code of Criminal Procedure, 1973 has been filed on behalf of the petitioner seeking regular bail in FIR bearing No. 155/2017 registered at Police Station Crime Branch, for an offence punishable under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter "NDPS Act").

2. The brief facts of the case are that on 6th September 2017, a secret information was received that the petitioner is involved in the supply of "Ganja" to drug dealers in Delhi NCR and would be receiving *Ganja* from Train no. 22823 - Bhuvneshwar Rajdhani through parcel and if raid was conducted between 10-11 AM, the police may catch hold of the accused with the alleged contraband. On



reaching near the parcel coach, the informant recognized a person (petitioner herein), who was wearing a blue colored T-shirt. The petitioner opened the parcel van, unloaded the parcels and stood there while keeping his one hand on the parcels. At around 12:30 PM with the help of the raiding team ASI Mahesh Kumar nabbed Saroj and took him under his control.

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner has been falsely implicated in the instant case. He is an educated person and a law-abiding citizen of India. The Petitioner is a resident of Orissa, but at the time of arrest he was temporarily residing at: 8878, Gali No.2, Multani Dhanda, Paharganj, New Delhi, for the purposes of his business. It is submitted that the petitioner runs a small "parcel delivery business" in the name of "M/s. Saroj Parcel", a partnership firm, whose principal place of business/operation was at New Delhi Railway Station, from where he used to pick parcels from "Parcel Car" attached to train and to deliver the same to the local area/market of Delhi/NCR as per the instructions of person who booked the said parcel from Bhubaneswar, Calcutta, Guwahati and other different cities of North/North-East India.

4. It is argued on behalf of the petitioner that on the day of his arrest i.e. 6th September 2017, the petitioner was waiting for the train on the platform of New Delhi Railway Station for his day to day business like any other normal day. It is vehemently argued that the petitioner was not in conscious possession of alleged contraband and prosecution does not have even single witness to implicate the petitioner with the alleged offence.



5. It is submitted on behalf of the petitioner that he has been in judicial custody for more than four years since the day of his arrest, i.e. 6th September 2017. It is prayed that the petitioner may be released on bail who is the sole breadwinner of his family having old-aged sick mother. On instructions, learned counsel undertakes that the petitioner shall abide by any condition imposed by this Court while granting bail.

6. *Per contra*, Ms. Kusum Dhalla, learned APP for state vehemently opposed the instant petition and submitted that on the aforesaid date of raid, a trap was laid at platform No-11, New Delhi Railway Station. At about 12.30 PM, one person namely Saroj Subudhi S/o Sh. Nageshwar Subudhi R/o 8878, Gali No-2, Multani Dhanda Pharganj, New Delhi age 29 years was apprehended. The notice under Section 50 of the NDPS Act was served upon him and his legal rights were explained. After, his refusal, he was cursorily searched, wherein 6 plastic Katta parcels were recovered from his possession. On opening, one another plastic Katta was found in each parcel Katta, in which one corrugated box was kept. A total of six corrugated boxes, each having 18 packets of *ganja* were recovered. Every packet was weighed on electronic scale and it was found that each packet weighed 2.250 kg each and a total of 243 Kg *ganja* was recovered.

7. It is further submitted that on 18th December 2017, accused /appellant was also arrested in Case FIR No - 153/2017 under Sections 20/29 of the NDPS Act P.S Crime Branch, as seized contraband of this case was also transported/supplied by accused. Total 305 Kgs of *ganja*



was recovered which was also transported through train on 05.09.2017 and received by applicant Saroj Subudhi. This case is also pending trial at the stage of prosecution evidence. Chargesheet has already been filed and charges have been framed against the applicant. In light of the same, it is submitted that the instant application be outrightly rejected.

8. Heard learned counsels for the parties and perused the record, specifically the averments made in the petition, the contents of the FIR, and the Status Report filed by the State.

9. In light of the aforesaid, it is pertinent to refer and analyse the provisions and objective of the NDPS Act. Section 37 of the Act 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 for¹[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.

10. In view of the gravity of the consequences of drug trafficking, the offenses under the Act have been made cognizable and non-bailable. The Section does not allow granting bail for offenses punishable under Section 19 or Section 24 or Section 27A and also for offences involving commercial quantity unless the two-fold conditions prescribed under the Section have been met. The conditions include:

- a) hearing the Public Prosecutor; and
- b) Satisfaction of the court based on reasonable grounds that the accused is not guilty of the offense and that he is likely to not commit an offense of a similar nature.

11. The fetters on the power to grant bail do not end here, they are over and above the consideration of relevant factors that must be done while considering the question of granting bail. The court also needs to be satisfied before grant of bail about the scheme of Section 439 of the Cr.P.C. Thus, it is evident that the present section limits the discretion of the court in matters of bail by placing certain additional factors over and above, what has been prescribed under the Cr.P.C.

12. The contours of Section 37 of the Act have been analysed by the Hon'ble Supreme Court in the case of ***Union of India v. Ram Samujh (1999) 9 SCC 429***. In this case, the Apex Court was required to adjudge the validity of the order on bail granted by the High Court in a case registered under the Act. The Hon'ble Court extracted the Statement of Objects and Reasons for the introduction of amended



Section 37 of the Act through Bill No. 125 of 1988. It is relevant to extract those for the present analysis, which reads as:

“6. The aforesaid section is incorporated to achieve the object as mentioned in the Statement of Objects and Reasons for introducing Bill No. 125 of 1988 thus:

“Even though the major offences are non-bailable by virtue of the level of punishments, on technical grounds, drug offenders were being released on bail. In the light of certain difficulties faced in the enforcement of the Narcotic Drugs and Psychotropic Substances Act, 1985, the need to amend the law to further strengthen it, has been felt.”(emphasis supplied)

*7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a 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 the NDPS Act, has succinctly observed about the adverse effect of such activities in *Durand Didier v. Chief Secy., Union Territory of Goa* [(1990) 1 SCC 95 : 1990 SCC (Cri) 65] as under: (SCC p. 104, para 24)*

“24. 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 proportions 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, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.”

13. Thus, what is evident from the above is that the offences prescribed under the Act are not only a menace to a particular individual but to the entire society especially, the youth of the country. Such offences have a cascading effect and are in vogue these days, thus destroying the capabilities and lives of a big chunk of the population and trend has been growing over the years. Thus, in order to prevent the devastating impact on the people of the nation, Parliament in its wisdom deemed it fit to introduce stringent conditions for grant of bail under the Act. The Court has to stay mindful of the legislative intent and mandate of the Act while granting bail in such matters.

14. As far as condition under Section 37(b)(i) is concerned, there is no ambiguity in its interpretation. It gives effect to the doctrine of *audi alteram partem*. Since the crime is an act against the society, the legislature has contemplated that the Public Prosecutor must be given an opportunity to oppose a bail application under the Act. Additionally, under Section 37(b)(ii) of the NDPS Act, the court is not required to be merely satisfied about the dual conditions i.e., *prima*



facie opinion of the innocence of the accused and that the accused will not commit a similar offense while on bail, but the court must have ‘reasonable grounds’ for such satisfaction.

15. The term ‘reasonable grounds’ under Section 37(b)(ii) has been interpreted by the Hon’ble Supreme Court in the case of ***Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798***. It was a case where an appeal was preferred against the order granting bail under the NDPS Act by the High Court. The prosecution alleged that the raiding party seized nearly 400 kgs of poppy straw from the possession of the accused therein. The special court rejected the bail while the High Court granted the bail on the ground that the recovery was not from the exclusive possession of the accused but other family members were also involved. The Supreme Court set aside the order granting bail. In this context, it interpreted ‘reasonable grounds’ under Section 37 of the Act, 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. 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”.

16. Thus, the term ‘reasonable grounds’ is not capable of any rigid



definition, but its meaning and scope will be determined based on the surrounding facts and circumstances of each case. Thus, what may be reasonable in one set of facts may not be reasonable in another set of facts. However, the standard of satisfaction in such cases is more than mere satisfaction on a *prima facie* opinion. Thus, the court before exercising its discretion for granting the bail must record the reasonable grounds before granting bail to the accused.

17. The Supreme Court recently in the case of ***Union of India v. Md. Nawaz Khan (2021) 10 SCC 100*** has reiterated the position of law with respect to Section 37 of the Act. After analysing the previous decisions of the Hon'ble Supreme Court, the court prescribed the following test for granting bail under Section 37 of the Act:

“20. Based on the above precedent, the test which the High Court and this Court are required to apply 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 any offence while on bail. Given the seriousness of offences 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.”

18. Thus, the Court has to be conscious about the mischief that is sought to be curbed by the Act and the consequences that might ensue if the person accused of the offense under the Act is released on bail. The court has to be satisfied on the basis of *reasonable grounds* discernible from the facts and circumstances that the Petitioner is not *prima facie* guilty of offenses that the accused is charged with. Additionally, the court also needs to be satisfied that the person so



released will not commit the offense while being on bail. Both the conditions are interlinked because the legislature intends that in cases where there is a possibility of commission of this grave offence under the Act, the person need not be released. It is so because if the person is released, he is most likely to repeat the offense, thus impacting the society at large. Thus, to not give any leeway to the accused, the court has to be satisfied about the dual conditions on reasonable grounds.

19. In light of the backdrop of the facts of the case, as well as the large commercial quantity of contraband recovered at two occasions in two separate cases wherein the applicant is alleged to be the supplier/transporter, the gravity of accusations leveled against the applicant as well as the serious objections raised by the learned counsel for state, I do not find any merit in the instant application. Therefore, in light of the aforesaid analysis of the provisions of the law, the jurisprudence pertaining thereto and the relevant rulings of the Hon'ble Supreme Court referred above, this Court is not inclined to allow the instant petition.

20. The petition is accordingly dismissed.

CHANDRA DHARI SINGH, J

MARCH 7, 2022

Aj/@k