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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 31st May, 2023

+ BAIL APPLN. 850/2022

DEEP CHAND KUMAR

..... Petitioner

Through: Ms. Malvika Trivedi, Senior Advocate with Mr. Nipun Katyal, Mr. Yogesh Saxena and Mr. Shailendra Slaria, Advocates.

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr. Subhash Bansal, Senior Standing Counsel for NCB with Mr. Raghav Bansal, Advocate.

**CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA**

JUDGMENT

AMIT SHARMA, J.

1. The present application under Section 439 of the Cr.P.C. seeks regular bail in case no. SC/213/2019, under Sections 22(c), 23(c) & 29 of the NDPS Act, titled 'NCB vs. Deep Chand & Anr.' pending in the Court of learned Special Judge, NDPS Act, Patiala House Court, New Delhi.
2. The case of the prosecution is as under:
"As per the case of prosecution, on the basis of information dated 01.11.2018, a parcel bearing AWB No. 8250438140 lying at DHL



Express Private Limited was searched and from the parcel, 990 tablets of Ativan 2 mg (Lorazepam) weighing 49.5 grams, 1980 tablets of Alpz 1 mg (Alprazolam) weighing 396 grams, 450 tablets of clox-2 (Clonazepam) weighing 90 grams and 600 tablets DIZY-10 (Diazepam) weighing 90 grams were recovered. During inquiries, it was found that the said parcel was booked from overseas courier and from Overseas courier it was found that the said parcel was book from Kavya International, and the said parcel was alleged to be booked by one Bobby. On inquiry from Bobby, he informed that it was booked by accused Deep Chand who will come tomorrow to give another parcel. Thereafter a raiding team was prepared under the directions of Superintendent which met Bobby @ Jitender Kumar thereafter at about 1520 hours, accused Deep Chand was apprehended and a notice u/s 50 NDPS Act was given and he was apprised of his legal rights to be searched in presence of magistrate or gazette officer however accused told that NCB officer can take his search. A key of car was found from his pocket and nothing incriminating was recovered from his pocket thereafter on search of his car, one cardboard box wrapped with brown colour adhesive tape was recovered from the rear seat of the car. Accused Deep Chand disclosed that the said box containing narcotix drugs was sent by accused Gaurav Mendiratta r/o Agra through Apex courier and he has to send the said parcel to USA. On opening the same, 4980 tablets of Zolpidem Tartrate Tablet (Inzofresh-10) weighing 747 grams, 980 tablets i.e. Lonazepam Tablet (Repam-2) weighing 147 grams, 1020 tablets of Lonazepam Tablet (Ativan-2) weighing 51 grams, 980 tablets DIZY-10 (Diazepam) weighing 147 grams and 1980 tablets of Alpz 1 mg (Alprazolam) weighing 396 grams were recovered from the parcel. Statement of accused Deep Chand u/s 67 was recorded. The samples were sent to CRCL for testing. In another case NCB vs. Birpal registered by NCP involvement of accused Gaurav Mendiratta was found. Notice u/s 67 NDPS Act was issued to Gaurav Mendiratta who appeared and made voluntary statement u/s 67 NDPS Act in his own handwriting and admitted that the parcel recovered from the car of accused Deep Chand was sent by him from Agra to Deep Chand and he deposited Rs. 15000/- in the account of 663705500498 with ICICI bank of Sai Courier and Cargo run by accused Deep Chand, thereafter accused was arrested. During search of house at Kamla Nagar, Agra of accused Gaurav Mendiratta, one photocopy of bank account passbook of Canara Bank and Axis Bank were recovered. During investigation, Satyapal disclosed that recovered parcel bearing AWB No. 8250438140 was sent



by accused Gaurav Mendiratta to Agra from Apex courier and he accompanied Gaurav Mendiratta.”

3. After completion of investigation, complaint was filed and cognizance was taken by the learned Special Judge.
4. *Vide* order dated 14.11.2019, charges were ordered to be framed and were formally framed on 23.11.2019. It was pointed out by the learned Senior Counsel appearing on behalf of the applicant that the same has been challenged by way of a criminal revision being CRL.REV.P. 1320/20149, pending before a coordinate bench of this Court.
5. Learned Senior Counsel appearing on behalf of the applicant submitted that the present applicant has been falsely implicated in the present case. It is the case of the applicant that he runs a courier service and is sole proprietor of M/s Shri Sai Courier and Cargo Services. It is further submitted that the applicant cannot be attributed with conscious possession of the contraband recovered from the DHL Express Pvt. Ltd. and his car. As per the case of the prosecution, he had booked the said parcel recovered from DHL Pvt. Ltd. through one, Bobby on the instructions of co-accused Gaurav Mendiratta and collected the carton recovered from his car from another courier company on the instructions of the same co-accused, Gaurav Mendiratta. It is pointed out that in the panchnama dated 02.11.2018, it has been recorded that the carton recovered from the applicant's car was sealed with adhesive tape. It is further argued that no evidence has been placed on record by the prosecuting agency with regard to any communication between the present applicant and the co-accused. It is pointed out that as per case of the prosecution; the co-accused had transferred a sum of Rs. 15,000/- to the applicant. It is argued that no large sum of money has been found in the possession of applicant either



physically or in his bank account, which signifies the fact that he is not involved in the illicit activities. It is submitted that the aforesaid transfer of money was simply towards availing applicant's courier services.

6. Learned Senior counsel appearing on behalf of the applicant draws the attention of the court to the judgment in **Lorik Ram v. State of Assam (2022) SCC Online Gau 975**. She further relies upon Para 3,12, and 13 in the judgment of **Ikechukwu Chukwubeikem Stanley v. Narcotic Control Bureau (2018) SCC Online Del 10652** with respect to conscious possession. The same states as below:-

“3. Learned counsel for petitioner Anand Kumar Thakur states that the petitioner is running a courier agency and only to facilitate its customer, he provided the ID of his staff which cannot in any way be treated as conscious possession of the contraband. There is no previous involvement of the petitioner and he has been falsely implicated.

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12. As regards petitioner Anand Kumar Thakur is concerned, even as per the case of the prosecution, the petitioner is running a courier agency and petitioner's company received pre-packed goods purportedly shock absorbers. Both the cartons contained similar type of shock absorbers and on cutting open only concealed contraband therein was found. In order to increase the business, Anand Kumar Thakur also offered to lend the ID of a staff which he would not have done, if he had known that it contained contraband. Prima facie, thus from the manner of concealment it cannot be said that Anand Kumar Thakur had conscious possession of the contraband in terms of the law laid down by the Supreme Court in Mohan Lal (supra). Further the rate charged by Anand Kumar Thakur for sending the courier also does not show that he was conscious that a contraband was being sent and that he charged enhanced fee.

13. Consequently, this Court deems it fit to grant bail to Anand Kumar Thakur. It is, therefore, directed that Anand Kumar Thakur be released on bail on his furnishing a personal bond in the sum of Rs. 1 lakh with two surety bonds of the like amount to the satisfaction of the learned Trial Court, further subject to the condition that he will not leave the country without the prior permission of the Court concerned and in case



of change of residential address, he will intimate the same to the Court concerned by way of an affidavit.”

7. The second contention of the learned Senior Counsel appearing on behalf of the applicant is with respect to delay in trial and it is pointed out that applicant was arrested on 03.11.2018 and he remained in custody since then. It is submitted that out of 20 witnesses cited by the prosecution, only 3 witnesses have been examined so far. The learned Senior Counsel for the applicant relies upon the judgment of **Nagesh Sharma v. The State (NCT of Delhi) 2023 SCC OnLine Del 1830** in support of her submissions *qua* delay in trial.

8. The third contention of the learned Senior Counsel for the applicant is that on account of defective sampling, there is a violation of standing order/instructions No. 1 of 1989, clauses of which has been reproduced herein below:

“2.3. The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in the cases of opium, ganja and charas (hashish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages/containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.

2.4. In the case of seizure of a single package/container, one sample (in duplicate) shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container.

2.5 However, when the packages/containers seized together are of identical size and weight, bearing identical markings and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicating that the packages are identical in all respects the packages/container may be carefully bunched in lots of 10 package/container except in the case of ganja and hashish (charas), where it may be bunched in lots of 40 such packages/containers. For



each such lot of packages/containers, one sample (in duplicate) may be drawn.”

9. Reliance has been placed on the following judgments:
 - i. Gaunter Edwin Kircher v. State of Goa [1993 SCC (CrL.) 803]
 - ii. Edward Khimani Kamau v. NCB [CRL.A. 1113/2011]
 - iii. Gopal Das v. NCB [Bail APPLN. 3491/2020]
 - iv. Wali Hassan v. State of UP [CrL. Misc. Bail Appln. 18303/2020]
 - v. Baba Sow Chandekar and Anr. v. The State of Telangana [CrL.Pet. 4428/2022]
 - vi. Laxman Thakur v. State (Govt. of NCT Delhi) [2022 SCC Online Del 4427]
10. *Per Contra*, learned counsel for the respondent submits that the applicant is directly linked to the recovery in the present case from the office of DHL Experess Pvt Ltd and from his car and therefore, presumption under Section 54 of the NDPS Act would be attracted and it will be presumed that the applicant was in conscious possession of the contraband recovered. It was further submitted that the statements recorded under Section 67 of the NDPS Act with respect to the present applicant as well as the co-accused would be relevant at this stage, as laid down by the Hon’ble Supreme Court in **Narcotics Control Bureau v. Mohit Aggarwal 2022 SCC OnLine SC 891**. It is further submitted that in the statement made by the present applicant, he has admitted the fact that he was involved with the co-accused, Gaurav Mendiratta in the illegal business of banned medicines. It is further submitted that the quantity recovered from the present applicant’s car is commercial in nature and therefore rigors of Section 37 of the NDPS Act would be attracted.



11. So far as the case of sampling is concerned, learned counsel appearing on behalf of the respondent submits that the said procedure adopted in the present case is without any defect and there has been no violation of the Standing Order No. 1 of 1989. It is further submitted that the defect in sampling, if any, would be considered at the stage of evidence and not at the time of consideration of application for bail. Learned counsel for the respondent has relied on following judgments:

- i. Mushaque Ahammad @ Muthu & Anr. Vs. The Sub Inspector of Police & Anr., (Supreme Court order dated 09.12.2020 in Criminal Appeal No. 844 of 2020).
- ii. Arvind Yadav Vs. Govt. of NCT Delhi, (Delhi High Court Judgment dated 06.07.2021 in Bail Appln. No. 1416/2021).
- iii. Shanmughadas @ Appu Vs. State of Kerala, (Kerala High Court judgment dated 22.09.2022 in Bail Appl. No. 3410 of 2022).
- iv. Salim Naseen Khan Vs. Intelligence Officer, Narcotic Control Bureau & Anr. (Bombay High Court Judgment dated 13.09.2022 in Bail Appl. No. 278 of 2022 alongwith SLP (Crl.) 11462/2022 dismissal Order dated 10.02.2023 of Hon'ble Supreme Court.
- v. Sushil Kumar Tiwari Vs. Narcotics Control Bureau (Madhya Pradesh High Court Judgment dated 06.07.2021 in Bail Appl. 851/2021) alongwith SLP (Crl.) 5005/2020 dismissal order dated 02.11.2020.

12. Heard the learned counsel for the parties and perused the record.

13. So far as case of defective sampling is concerned, learned Senior Counsel submitted that the samples taken at the time of seizure in the present case cannot be considered as representative sample for the entire contraband recovered. It was contended that one tablet from each strip of the recovered



tablets was taken and no presumptive test was conducted. The said sample taken from only one strip from each of the batches of recovered tablets cannot be considered as a true representative samples of the remaining strips of batches of recovered tablets. It is pertinent to note that as per the complaint filed by NCB dated 01.05.2019, the sampling in the present case is as below:





S. No	Name	Total Recovery	Sample
Recovery from parcel bearing AWB No. 8250438140			
1.	Tablet Ativan 2 Mg. (Lorazepam) Batch No. w87860 Manufactured by Pfizer Ltd.	33 strips of 30 tablets each = 990 tablets	2 strips of 30 tablets each = 60 tablets
2.	Tablet Alpz 1 mg (Alprazolam) Batch No. DVNTD248 (Manufactured by Neuro Vision)	198 strips of 10 tablets each = 1980 tablets	2 strips of 10 tablets each = 20 tablets
3.	Tablet Clox-2 MD, 2 mg (Clonazepam) Batch No. MB/160479 (Manufactured by SBS Bio- Tech)	45 strips of 10 tablets each = 450 tablets	2 strips of 10 tablets each = 20 tablets
4.	60 strips of Dizzy-10 (Diazepam-10 mg) Batch No. JDT3407	60 strips of 10 tablets each = 600 tablets	2 strips of 10 tablets each = 20 tablets



	(Manufactured by JI Drugs)		
Recovery from the car belonging to the applicant - Chevrolet Brat LT car bearing registration No.DL8CAL5476			
6.	Zolpidem Tartrate Tablet (Inzofresh-10) Batch No. A6CMR004 (Manufactured by Pavenbhel Health Care (P) Ltd.)	498 strips of 10 tablets each = 4980 tablets	2 strips of 1-tablets each = 20 tablets
7.	Lonazepam Tablet (Rebam-2), Batch No. JDT-3374 (Manufactured by JPEE Drugs)	98 strips of 10 tablets each = 980 tablets	2 strips of 10 tablets each = 20 tablets
8.	Tablet Ativan 2 Mg. (Lorazepam), Batch No.W87860 (Manufactured by Pfizer Ltd.)	34 strips of 30 tablets each = 1020 tablets	2 strips of 30 tablets each = 60 tablets
9.	Dizy-10 (Diazepam-10 mg) Batch No.JGT3407 (Manufactured by JI Drugs)	98 strips of 10 tablets each = 980 tablets	2 strips of 10 tablets each = 20 tablets
10.	Tablet Alpz 1 mg (Alprazolam) Batch	198 strips of 10 tablets each =	2 strips of 10 tablets each = 20



No.DVNTD248	1980 tablets	tablets
(Manufactured by Digital 176, Vision		

14. The procedure which comes into effect after arrest and seizure is contained in Section 52 and 57 of the NDPS Act. The Hon'ble Supreme Court, in **State of Punjab v. Balbir Singh (1994) 3 SCC 299** has held as under:

“24. Sections 52 and 57 come into operation after the arrest and seizure under the Act. Somewhat similar provisions are also there in the CrPC. If there is any violation of these provisions, then the Court has to examine the effect of the same. In that context while determining whether the provisions of the Act to be followed after the arrest or search are directory or mandatory, it will have to be kept in mind that the provisions of a statute creating public duties are generally speaking directory. **The provisions of these two sections contain certain procedural instructions for strict compliance by the officers. But if there is no strict compliance of any of these instructions that by itself cannot render the acts done by these officers null and void and at the most it may affect the probative value of the evidence regarding arrest or search and in some cases it may invalidate such arrest or search. But such violation by itself does not invalidate the trial or the conviction if otherwise there is sufficient material. Therefore it has to be shown that such non-compliance has caused prejudice and resulted in failure of justice. The officers, however, cannot totally ignore these provisions and if there is no proper explanation for non-compliance or where the officers totally ignore the provisions then that will definitely have an adverse effect on the prosecution case and the courts have to appreciate the evidence and the merits of the case bearing these aspects in view. However, a mere non-compliance or failure to strictly comply by itself will not vitiate the prosecution.**

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25....(6) The provisions of Sections 52 and 57 which deal with the steps to be taken by the officers after making arrest or seizure under



Sections 41 to 44 are by themselves not mandatory. If there is non-compliance or if there are lapses like delay etc. then the same has to be examined to see whether any prejudice has been caused to the accused and such failure will have a bearing on the appreciation of evidence regarding arrest or seizure as well as on merits of the case.”

(emphasis supplied)

15. It is pertinent to note that Section 52A of the NDPS Act was added by 1989 Amending Act with effect from 29.05.1989. Section 52 A of the NDPS Act provides as under:

“52A. Disposal of seized narcotic drugs and psychotropic substances.—

(1) The Central Government may, **having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations,** by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances **which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may from time to time, determine after following the procedure hereinafter specified.**

(2) Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

- (a) certifying the correctness of the inventory so prepared; or
- (b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or



(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence].”

(emphasis supplied)

It is pertinent to note that the language of the aforesaid provision signifies applicability with regard to disposal of seized drugs i.e., at the stage after seizure.

16. Power of the Central Government to make rules under Section 52 and Section 52A are provided for in Section 76 of the NDPS Act which provides as under:

“76. Power of Central Government to make rules.—

(1) Subject to the other provisions of this Act, the Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—..”

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(de) the disposal of all articles or things confiscated under this Act.

(df) the drawing of samples and testing and analysis of such samples”

(emphasis supplied)

17. It is pertinent to point out that the Standing Order No. 1/88, dated 15.03.1988 was issued by the department under the provisions of Section 52 of the NDPS Act. In exercise of powers conferred by Section 52A(1) of the NDPS Act, Government of India, Ministry of Finance, Department of



Revenue issued a standing order No. 1/1989 dated 13.06.1989. Subsequently, in exercise of powers conferred by Section 76 read with Section 52A of the NDPS Act, Government of India, Ministry of Finance, Department of Revenue, has issued another notification dated 23.12.2022. So far as the notification dated 23.12.2022 is concerned, the same has been issued under the powers conferred by Section 76 read with Section 52A of the NDPS Act. The Rules dated 23.12.2022 would be applicable both in the case of sampling and thereafter disposal of the seized narcotic drugs. However, with regard to sampling of the contraband in the present case, the same was seized on 01.11.2018 & 02.11.2018 and therefore, the rules dated 23.12.2022 would not be applicable in the facts of this case.

18. The issue with regard to defect in sampling was for the first time was dealt with by the The Hon'ble Supreme Court, in **Gaunter Edwin Kircher Vs State of Goa, (1933) 3 SCC 145** was dealing with a case of conviction under Section 20(b) (ii) of the NDPS Act. The appellant in the said case was found in possession of 2 pieces of *charas* that were weighing 7 and 5 gms respectively. Out of the 2 pieces, one piece of 5 gms was sent for chemical analysis, however, the piece weighing 7 gms was neither sent nor a sample thereof was taken and sent for chemical analysis. In this factual background, the Hon'ble Supreme Court held that since there was no chemical analysis for the other piece weighing 7 gms, either wholly or a part of it as a sample, the appellant cannot be convicted for the other cylindrical piece, weighing 7 gms. It was further noted that since the quantity for which test was conducted, was less than 5 gms, the same came within the meaning of small quantity for the purpose of Section 27 of the NDPS Act and in that case, conviction was modified from Section 20(b)(i) to Section 27 of the NDPS Act.



19. The Hon'ble Supreme Court, in **Union of India vs. Bal Mukund & Ors., (2009) 12 SCC 161**, while considering an appeal against a judgment of acquittal observed as under:

“36. There is another aspect of the matter which cannot also be lost sight of. Standing Instruction 1/88, which had been issued under the Act, lays down the procedure for taking samples. The High Court has noticed that PW 7 had taken samples of 25 gm each from all the five bags and then mixed them and sent to the laboratory. There is nothing to show that adequate quantity from each bag had been taken. It was a requirement in law.

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38. Furthermore, we are dealing with a judgment of acquittal. The High Court, for good and sufficient reasons, had arrived at findings of fact both with regard to voluntariness of the purported confessions made by the respondents as also compliance with the mandatory statutory provisions vis-à-vis directions issued by the Central Government in making search, seizure as also taking of samples for the purpose of chemical examination having been doubted, we do not see any reason why we should take a contrary view as it is well known that the appellate court would not interfere with a judgment of acquittal only because another view is possible. On the other hand, if two views are possible, it is trite, the appellate court shall not interfere. (See *Animireddy Venkata Ramana v. Public Prosecutor, High Court of A.P.* [(2008) 5 SCC 368 : (2008) 2 SCC (Cri) 600])”

The aforesaid judgment does not alter or set aside the ratio in the judgment of **Balbair Singh (supra)**. It is pertinent to note that the judgment in **Bal Mukund (supra)** was rendered in an appeal against acquittal, i.e., after completion of trial and therefore, the effect of non-compliance of the statutory provisions was examined in favour of the accused.

20. A coordinate bench of this Court in **Santini Simone v. Department of Customs, 2020 SCC OnLine Del 2128**, in an appeal against conviction under Section 20(b)(ii)(c) and 23(c) of the NDPS Act, examined the aforesaid



issue. It was observed that the ratio laid down by the Hon'ble Supreme Court in **Bal Mukund (supra)** was binding. It was held as under:

“54. The next aspect to be examined relates to the testing conducted on the spot and drawing of samples from the *charas* allegedly recovered from the appellant's trunk. The question to be addressed is whether the samples drawn were representative of the substance recovered from the appellant's baggage. The controversy to be addressed is, essentially, three-fold. The first relates to whether the procedure for drawing samples allegedly followed by the complainant is permissible. Second, whether the substance in all the four pouches was tested prior to it being kept together. Third, whether the contents of the four packets were properly mixed to form a homogeneous mixture and the samples were drawn from the same.

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63. Concededly, in the present case the instructions contained in Standing Order No. 1/89, was not followed.

64. In *Khet Singh v. Union of India*, (2002) 4 SCC 380, the Supreme Court had, in the context of similar instructions issued (Standing Order 1/88) by the NCB, New Delhi, held that the same were to be followed by the Officer-in-charge of the investigation of crimes falling within the purview of the NDPS Act. The Court held that even though the said instructions did not have the force of law, they were intended to guide the officers to ensure that a fair procedure is adopted in the investigation.

65. In a subsequent decision, in the case of *State of Punjab v. Makhan Chand*, (2004) 3 SCC 453, the Supreme Court held that Section 52A(1) of the NDPS Act did not empower the Central Government to lay down the procedure for search of an accused. But, a subsequent decision rendered by the Supreme Court on 31.03.2009, in *Union of India v. Bal Mukund (supra)*, the Supreme Court observed that Standing Instructions No. 1/88, which required samples of adequate quantity be drawn, had not been followed and the same was referred to as “a requirement in law”.

66. The decision in the case of *Bal Mukund (supra)* which was rendered by a Bench of three Judges, is binding. It also cannot be disputed that even if the said instructions are not considered as binding, they lay down a procedure which the Investigation Officers are required to follow in the interest of ensuring that the samples drawn truly represent the composition of the substance recovered.”



Thereafter, in **Santini Simone** (*supra*), the Court proceeded to examine the evidence that was recorded in the said case and after a detailed and thorough examination of the evidence, and especially the testimony of the seizing officer discussed in paragraphs 69, 70, 71, 72 and 73, finally came to the conclusion which is as under:

“**74.** In view of the above, this Court is unable to accept that the prosecution has established that the contents of each of the four packets that were allegedly recovered, were tested and found to be *charas* prior to the contents of the said packets being placed together.”

21. At this stage, it is pertinent to note that the aforesaid judgments, i.e., **Bal Mukund** (*supra*) and **Santini Simone** (*supra*), as also the other judgments relied upon by learned counsel for the applicant, i.e, **Basant Rai v. State, 2012 (13) DRJ 471; Edward Khimani Kamau v. The Narcotics Control Bureau, 2015 SCC OnLine Del 3860; Charlse Howell @ Abel Kon v. NCB, 2018 SCC OnLine Del 10564 and Amani Fidel Chris v. Narcotics Control Bureau, 2020 SCC OnLine Del 2080** have all been rendered in appeals, after completion of trial.

22. In **Ahmed Hassan Muhammed v. The Customs, 2021 SCC OnLine Del 486**, a coordinate bench of this Court granted bail to the applicant therein, *inter-alia*, on the ground that proper procedure for sampling was not followed. It was held as under:

“**17.** In *Basant Rai case* [*Basant Rai v. State* 2012 SCC OnLine Del 3319] , while dealing with a case where accused was found carrying a polythene bag containing 8 similar polythene bags having brown colour substance and investigating officer took small pieces of charas from each packet, mixed the same and drew two sample parcels which were sent to FSL for analysis, I had allowed the appeal while holding as under:



“25. After hearing both the learned counsel for parties and going through the trial court record, I find force in the submission of learned counsel for appellant. Admittedly, the samples were drawn after breaking small pieces from 8 of the polythene bags which were allegedly kept in a green coloured bag by the appellant in his right hand. The 10 prepared two samples of 25 gm each after taking a small quantity from each of the slabs.

26. Though the settled law is that if it is not practicable to send the entire quantity then sufficient quantity by way of samples from each of the packets of pieces recovered should be sent for chemical examination. Otherwise, result thereon, may be doubted.

27. For example, if the 8 packets were allegedly recovered from the appellant and only two packets were having contraband substance and rest 6 packets did not have any contraband; though all may be of the same colour, when we mix the substances of all 8 packets into one or two; then definitely, the result would be of the total quantity and not of the two pieces. Therefore, the process adopted by the prosecution creates suspicion. In such a situation, as per settled law, the benefit thereof should go in favour of the accused. It does not matter the quantity. Proper procedure has to be followed, without that the results would be negative.”

18. The fact of the present case is that prosecution has mixed all the packets and thereafter, sent to FSL for examination, which is contrary to the procedure prescribed under the law.

19. This Court is informed that the petitioner is a Somalian National Resident and his Refugee Certificate issued by UNHCR (UNITED NATION HIGH COMMISSIONER FOR REFUGEES) WAS VALID TILL 20-12-2019. Hence, he has a valid document to stay in India at the time of his arrest. He is in judicial custody since 4-2-2019. No doubt the recovered substance in the present case is of commercial quantity, however, the procedure prescribed is contrary to the dictum of this Court. This Court is informed by learned counsel for the petitioner that petitioner is not a habitual offender and is not likely to get involved in any other case during bail. Thus, petitioner has qualified twin conditions of Section 37 of NDPS Act.

20. Keeping in view the aforesaid fact, I am of the view that petitioner deserves bail. Accordingly, petitioner is directed to be released on bail forthwith on his furnishing personal bond in the sum of Rs 25,000 with one surety in the like amount, to the satisfaction of the trial court.”



23. Further, *vide* order dated 05.08.2022 passed in BAIL APPLN. 1623/2022 titled **Ram Bharose v. State (Govt. of NCT of Delhi)**, another coordinate bench of this Court, in a case where all the contents of the recovered contraband were mixed together before samples were drawn, while relying on **Amani Fidel Chris** (*supra*) observed that the procedure adopted was not in consonance with standing order 1/88. It was held as under:

“Prima facie, the said drawing of the samples as per the contents of the FIR does not appear to be in consonance with the Standing Operating Procedure in Standing Order 1/88 dated 15.3.1988 issued by the NCB.....In the facts and circumstances of the instant case, the applicant is allowed to be released on bail...”

24. Similarly, in **Laxman Thakur v. State (Govt. of NCT of Delhi), 2022 SCC OnLine Del 4427**, a coordinate bench of this Court has held as under:

“11. The standing order 1/88 mandates that the transferring of content of all packets into one and then drawing a sample from the mixture is not permitted.

12. I am of the view that in the present case, the instructions in 1/88 has not been followed and the sample has been drawn after mixing the contents of various packets into one container. The same has caused serious prejudice to the case of the applicant. Since the collection of sample itself is faulty, the rigours of Section 37 of the NDPS Act will not be applicable.”

25. On the other hand, a coordinate bench of this Court in **Bipin Bihari Lenka v. Narcotics Control Bureau, 2022 SCC OnLine Del 1160** rejected the bail application and observed that alleged prejudice caused to the applicant on account of non-compliance of sampling procedure would have to be established during the course of trial. It was held as under:

“23. Similarly, in *Basant Rai v. State* [*Basant Rai v. State*, 2012 SCC OnLine Del 3319] , under somewhat similar circumstances accused was found carrying polythene bag containing eight smaller polythene bags having brown colour substance and IO took small pieces



of charas from each packet, mixed the same and drew two sample parcels which were sent to FSL for analysis.

24. Further, it may be observed that in *Ahmed Hassan Muhammed v. Customs [Supdt. and Remembrancer of Legal Affairs v. Anil Kumar Bhunja]*, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038 : AIR 1980 SC 52], the case related to import of certain consignment in which the contraband was recovered and as such apart from the benefit on account of sampling, the contentions had been made that the involvement was alleged on the basis of conspiracy and no incriminating material was recovered from the person of the petitioner-accused therein.

25. Observations of the learned trial court in order dated 6-8-2021 while dismissing the application on the point of sampling may be noticed:

“As the recovery was from the truck which he was driving therefore, there is definite presumption under Sections 35 and 54 of the NDPS Act against this accused at this stage, which could be rebutted during trial (*Madan Lal v. State of H.P.* [*Madan Lal v. State of H.P.*, (2003) 7 SCC 465 : 2003 SCC (Cri) 1664] and *Mohan Lal v. State of Rajasthan* [*Mohan Lal v. State of Rajasthan*, (2015) 6 SCC 222 : (2015) 3 SCC (Cri) 881]). The substance from each packet was tested individually and was found positive for ganja thereafter, all the 106 packets were divided into 13 lots and total 26 samples were drawn after mixing of the substance homogeneously and this procedure was found as due compliance as per mandate of judgment *Sumit Tomar v. State of Punjab* [*Sumit Tomar v. State of Punjab*, (2013) 1 SCC 395 : (2013) 1 SCC (Cri) 514]. Furthermore, Delhi High Court in a recent judgment titled *Santinu Simone v. Deptt. of Customs* [*Santinu Simone v. Deptt. of Customs*, 2020 SCC OnLine Del 2128] in para 83 held that the prosecution had failed to establish that the content of each packet was separately tested however in present case prima facie the each packet were separately tested. Furthermore, any infirmity in the procedure which do not go into the root of the matter cannot be appreciated at this stage.”

26. The procedure followed in the present case appears to be distinguishable as referred in the typed copy of the complaint annexed with the application. In the present case, total 58 big packets were divided in 11 lots and 48 small packets were divided in 2 lots. Two samples of 25 g each were drawn from each lot (after taking small substance from each packet). Thus, total 26 samples were drawn. I am of the view that at this stage, it may be premature to hold that the



procedure adopted for sampling vitiates the entire proceedings since the sampling was done after each of the packets tested positive for ganja. The prejudice, if any, on account of alleged improper sampling as contended by counsel for the petitioner, can only be appropriately considered after the examination of the witnesses during the course of trial.

27. In the facts and circumstances and considering the connecting evidence on record, wherein the contraband has been recovered from private vehicle driven by the petitioner, I am of the considered opinion that no grounds for grant of bail are made out in the light of twin conditions laid down in Section 37 of the NDPS Act.”

26. Similarly, *vide* order dated 03.08.2022 passed in BAIL APPLN. 3508/2021 titled **Shailender v. State NCT of Delhi**, a coordinate bench denied bail to the applicant therein by holding that the procedural lapse has to be determined during the course of the trial and not in a proceeding for grant of bail. In **Shailender (supra)**, after discussing various judgments passed by coordinate benches of this Court on the issue of sampling procedure, it was held as under:

“8. It may be observed that the proposition of sending entire quantity seized for chemical analysis may not be practicable in several cases. The drug peddlers and suppliers appear to be adopting the unique and novel methodology to escape law, by carrying large number of smaller packets which later on, is challenged on the ground of improper sampling during investigation. In *Gaunter Edwin Kircher vs. State of Goa*, it was prima facie established by the accused that the recovered substance consisted two separate forms but only a part of the same which was a flat substance and not in the form of cigars was forwarded. As such, benefit was extended at the stage of appeal since no finding could be given that other part of the alleged recovered substance, which was not forwarded for examination could be presumed to be a narcotic substance. However, the factual position in the present case is distinct.

Though the burden always remains on the prosecution to prove that the quantity possessed by accused was heroin, beyond reasonable doubt but it cannot be ignored that the petitioner is yet to come up with any explanation during trial as to what was allegedly contained in the



similarly packed smaller packets which on preliminary testing by the Investigating Agency tested positive for heroin. Prima facie the substance recovered in BAIL APPLN No.3508/2021 Page 21 of 22 different packets was of similar texture, colour and tested positive on field testing. The circumstances under which the sampling procedure could not be followed as per the mandate, needs to be duly considered after the evidence has been led on record and the FSL expert is examined. Considering the limitations for grant of bail referred in Section 37(1)(b)(ii) for offences punishable under Sections 19, 24 or 27A and also for offences involving a commercial quantity, there must exist 'reasonable grounds to believe' at this stage that the person is not guilty of such an offence. In my considered opinion, there does not exist reasonable grounds at this stage to give a finding that the entire proceedings stand vitiated because of the alleged sampling procedure adopted by the Investigating Agency. The procedural deficiency in sampling, as contended by learned counsel for the petitioner, can be considered only after the evidence is led on record. The observations of learned Trial Court in order dated 07.09.2021 are also relevant in this regard.

“.....Even if for the sake of arguments, it is presumed that accused/applicant is liable for possession of one packet only, even then accused/applicant is not entitled to bail as a matter of right. 200 grams of heroin is more than small quantity but less than commercial quantity. The facts and circumstances of the present case are very different from the facts and circumstances of the cases upon which reliance has been placed by Ld. Counsel for accused/applicant. The other contentions raised by Ld. Counsel for accused/applicant are a matter of trial.....”

For the foregoing reasons, no grounds for bail are made out, at this stage.

The application is accordingly dismissed.”

27. Another coordinate bench of this Court, in **Arvind Yadav v. Govt. of NCT of Delhi Through Standing Counsel, 2021 SCC OnLine Del 3619**, while dismissing an application for bail, held as under:

“13. By this petition, petitioner seeks bail on the ground of non-compliance of Section 52A of the NDPS Act, however, in view of the



fact that the trial does not stand vitiated by drawing the samples at the spot in the absence of a Magistrate for being sent to FSL analysis for filing a appropriate charge-sheet before the Special Court for ascertaining the nature of contraband and whether the sanctity of drawing the samples was vitiated for the non-presence of the Magistrate would be an issue to be seen during the course of trial, hence this Court finds no ground to grant bail to the petitioner on this ground.”

28. Further, *vide* order dated 15.03.2023 passed in BAIL APPLN. 3054/2022 titled **Sunny v. State (Govt. of NCT of Delhi)**, a coordinate bench of this Court, while relying upon **Arvind Yadav (supra)** denied bail to the applicant therein and held as under:

“8. Thus, admittedly there was confusion in the procedure of drawing samples and per Arvind Yadav (supra) even if samples were drawn at the spot would not vitiate the trial, hence any violation thereof could never be the sole basis for grant of bail. Such discrepancy in rules was even noted by the Hon’ble Supreme Court in Mohan lal (supra) and accordingly fresh Rules were notified vide gazette notification dated 23.12.2022, thus the compliance of Standing Order 01/1989 prior to the notification (supra) perse would not be a ground to grant bail. Hence purely on this ground, I am not inclined to grant bail to the petitioner.”

29. The Hon’ble Supreme Court in in **Supdt., Narcotics Control Bureau, Chennai v. R. Paulsamy, (2000) 9 SCC 549** held as under:-

“6. In the light of Section 37 of the Act no accused can be released on bail when the application is opposed by the Public Prosecutor unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offences and that he is not likely to commit any offence while on bail. It is unfortunate that matters which could be established only in offence regarding compliance with Sections 52 and 57 have been pre-judged by the learned Single Judge at the stage of consideration for bail. The minimum which learned Single Judge should have taken into account was the factual presumption in law position that official acts have been regularly performed. Such presumption can be rebutted only during evidence and not merely saying that no document has been produced before the learned Single Judge during bail stage



regarding the compliance with the formalities mentioned in those two sections.

7. We may also observe that learned Single Judge has not recorded a finding in terms of Section 37 of the Act which is sine qua non for granting bail to an accused involved in the offence under the Act.”

30. As noted above, the Hon’ble Supreme Court, in **Balbir Singh (supra)** observed that the provision of Section 52 of the NDPS Act is directory in nature. It was further held that non-compliance of the said provision, in itself, cannot render the actions of the investigating officers as null and void. It would have to be demonstrated that in the facts and circumstances of a particular case, whether such non-compliance caused prejudice to the accused and resulted in failure of justice. It was further held that if there is no proper explanation for non-compliance, then the same will have an effect on the case of the prosecution and the Courts will have to appreciate the evidence and material placed on record in the case in order to determine the issue. Whether non-compliance of Standing Orders 1/88 and 1/89, as the case may be, could be a ground for grant of bail, especially in cases involving a commercial quantity, where the twin conditions of Section 37 of the NDPS Act would required to be satisfied , will have to be examined considering the nature of violation of such standing procedure and consequences thereof.

31. It has been pointed out on behalf of the prosecution that the aforesaid standings order are more in the nature of guidelines with respect to drawl of samples and non-compliance thereof, without showing prejudice, cannot be a ground for bail, especially in cases involving commercial quantity. It has also been submitted that prejudice caused, if any, would have to be established at trial during recording of evidence and examining necessary witnesses. By way of illustration, it was submitted that the standing order do not lay down



the specific manner in which samples are to be drawn from strips of tablets, containing psychotropic substance, like in the present case.

32. This Court is of the opinion that in the present case, drawing of two strips of tablets from each of the batches of strips of tablets recovered as samples cannot said to be defective at this stage. The answer to the issue whether the sample drawn is true representative sample or not, is a matter of trial which the learned Special Judge will decide after examination of the relevant witnesses including the chemical analyst. It is also pertinent to note that the standing order cited by the learned Senior Counsel for the applicant does not contemplate the sampling of seizure of this kind, i.e., tablets. It is pertinent to note that, the said standing orders cannot be exhaustive enough to cover all factual scenarios at the time of seizure of the contraband. Various factors like nature of contraband seized, the volume/quantity of the seizure, place of seizure, time of seizure, etc. will be relevant to determine any non-compliance thereof and effect of such non-compliance.

33. As held by the Hon'ble Supreme Court in **Balbir Singh (supra)**, the Investigating Officer is bound by the procedural instructions and has to follow the same, and in case of non-compliance thereof, and if no proper explanation is forthcoming, then the same would have adverse impact on the prosecution's case. It was further noted in the said judgment that the Courts would appreciate the evidence and merits of the case keeping these aspects in view. In the opinion of this Court, whether the samples drawn would be a true representative sample of the contraband recovered, can be answered by the chemical analyst, who analyses the sample and gives his/her opinion. Learned Special Judge during the course of the trial will have the advantage of the testimony of the chemical analyst as well as the production of contraband



seized in the Court. It is pertinent to note that the case property is still there for any further analysis if so required. Therefore, it is premature at this stage to say that the samples drawn are not true representative samples of the contraband seized. In the present case, at the time of examination of case property, the learned Special Judge can satisfy himself with regard to the correctness of the procedure followed.

34. So far as the contention of learned Senior Counsel for the applicant with respect to issue of conscious possession, it is relevant to note that it is the case of the prosecution that the present applicant runs a courier agency and as per the statement of the present applicant, a sum of Rs. 15,000/- was transferred to his account by co-accused Gaurav Mendiratta for his commission of supplying the carton recovered to a courier company for onward shipment abroad. It is pertinent to note that the case of the prosecution is that on a secret information, a parcel lying at DHL Pvt. Ltd. was searched and the said tablets were recovered. On further investigation, it was revealed that the said parcel was booked from 'Overseas Courier and from Overseas Courier', it was revealed that the said parcel was booked from Kavya International and on further investigation, it was revealed that one named Bobby had booked the parcel from 'Kavya International'. It is the case of prosecution that Bobby informed the NCB that the said parcel was booked by the present applicant, who would come again to give another parcel and thereafter the present applicant was apprehended. Admittedly, Bobby @ Jitender has not been made an accused. In his statement under Section 67 of the NDPS Act, the present applicant has stated that he had informed co-accused Gaurav Mendiratta that medicines cannot be shipped without prescription. From the aforesaid statement, it is reflected that the aforesaid



Bobby @ Jitender Kumar had agreed to courier the medicines without prescription. It is further noted that in the said statement, the applicant although admits receiving the medicines for further shipping, but the rate of transaction, i.e., 15,000/- as shown by the prosecution does not indicate that he was conscious of the fact that these medicines contained psychotropic substances which are banned under the NDPS Act. It is common knowledge that the tablets recovered in the present case are otherwise available in the open market on prescription. It is not the case of the respondent that the applicant is involved in any other case under the NDPS Act. It is also not the case of the prosecution that he had been shipping these medicines on any previous occasion. The applicant is not a licensed chemist or a person who deals in medicines to know the real nature of the alleged contraband.

35. In Mohd. Muslim alias Hussain v. State (NCT of Delh), 2023 SCC Online SC 352, the Hon'ble Supreme Court observed as under:

“19. The conditions which courts have to be cognizant of are 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. What is meant by “not guilty” when all the evidence is not before the court? It can only be a *prima facie* determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted *reasonably*. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused



co-operating with the investigation, not fleeing from justice : even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws - be balanced against the public interest.

20. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. **Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a *prima facie* look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.**

21. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only *prima facie*, based on a *reasonable reading*, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India v. Rattan Malik*). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. *Satender Kumar Antil* supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.”

(emphasis supplied)

Thus, for the purpose of Section 37 of the NDPS Act, In the present case, taking a *prima facie* view of the material placed on record by the



respondent, it can be reasonably inferred at this stage that the present applicant did not have requisite knowledge with regard to the real nature of the content of medicine being psychotropic substances banned under the NDPS Act. As noted hereinabove, the present applicant is not involved in any other case under the NDPS Act.

36. In the present case, the charges were framed on 23.11.2019 and the present applicant was arrested on 03.11.2018. It is pointed out that out of 20 witnesses, only 3 witnesses were examined so far.

37. The Hon'ble Supreme Court, in **Union of India v. K.A. Najeeb, (2021) 3 SCC 713** took note of the law laid down in Supreme Court **Legal Aid Committee (Representing Undertrial Prisoners) (supra)** and observed that if a timely trial is not possible, courts are ordinarily obligated to release the undertrial on bail and statutory restrictions do not exclude the discretion of constitutional courts to grant bail on grounds of violation of fundamental rights enshrined in Part III of the Constitution. It was held as under:

“15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India* [*Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India*, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39], it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused



has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

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17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the Constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected."

38. In view of the facts and circumstances of the present case, the application is allowed and the applicant is admitted to bail upon his furnishing a personal bond in the sum of Rs. 1,00,000/- alongwith two sureties of like amount to the satisfaction of the learned trial Court/Duty Magistrate, further subject to the following conditions:



- i. The memo of parties shows that the applicant is residing at CB-102/284, Indra Market, Ring Road, Naraina, New Delhi-110028. In case of any change of address, the applicant is directed to inform the same to the Investigating Officer.
 - ii. The applicant shall not leave India without the prior permission of the Trial Court.
 - iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
 - iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
 - v. In case it is established that the applicant has indulged in similar kind of offences or tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled *forthwith*.
- 40.** Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case pending before the learned Trial Court.
- 41.** The application stands disposed of along with all the pending application(s), if any.
- 42.** Let a copy of this judgment be communicated to the concerned Jail Superintendent.
- 43.** Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

MAY 31, 2023/sn/bsr