IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 2394 of 2024
Reserved on: 20.12.2024
Date of Decision: 27.12.2024

Nived Lal ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] No

For the Petitioner : Mr. Yuyutsu Singh Thakur, Advocate.

For the Respondent : Mr. Lokender Kutlehria, Additional Advocate General with HC Ramchander No. 443, IO PS Kullu.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail. It has been asserted that the petitioner was arrested vide FIR No. 208/2023, dated 28.06.2023, registered for the commission of an offence punishable under Section 29 of the Narcotic Drugs and Psychotropic Substances Act (in short 'NDPS Act') at Police Station Kullu, District Kullu. The petitioner is in judicial custody in District Jail Mandi. The police have filed the

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Neutral Citation No. (2024:HHC:16414)

charge sheet before the learned Trial Court after the completion of the investigation. As per the prosecution, the recovery of the contraband was effected from the co-accused. The petitioner did not know that the co-accused had contraband in his bag. The police had not collected the call detail records or the banking transaction to connect the petitioner with the co-accused. The petitioner is the sole breadwinner of the family. He has been in custody for more than 15 months. The charge sheet has been filed before the Court, and no fruitful purpose would be served by detaining the petitioner in custody. The petitioner would abide by all the terms and conditions, which the Court may impose; hence, the petition.

2. The petition is opposed by filing a status report asserting that the police party was on patrolling duty on 28.06.2023 at Badogi Footpath. They found two persons sitting on the water tank at about 4:30 pm. One person had kept a carry bag on his lap, and the other person had kept his arm on the former. HC Ram Chander enquired about the names and addresses of those persons. They questioned the authority of HC Ram Chander to enquire about their names and addresses. HC Ram Chander showed his identification document and revealed

Neutral Citation No. (2024:HHC:16414)

that he was a police official. Both persons attempted to run away. The police apprehended both persons. One person revealed his name as Nived (the present petitioner), and the other person revealed his name as Cijo Pee Anjit. The police checked the carry bag in the presence of Tehal Singh and Constable Ajay Kumar and found 1.175 kgs of charas and 58 grams of ketamine in it. The police seized the charas and the ketamine and arrested the petitioner and the co-accused. Charas and ketamine were sent to FSL, and as per the result, the charas was confirmed to be an extract of cannabis and a sample of charas, whereas ketamine was found to be a sample of starch, which was not covered under the NDPS Act. The police filed the charge sheet on 31.10.2023. Out of 17 witnesses, Nine witnesses have been examined, and the matter is listed for prosecution evidence on 27.12.2024; hence, the status report.

3. I have heard Mr. Yuyutsu Singh Thakur, learned counsel for the petitioner and Mr. Lokender Kutlehria, learned Additional Advocate General, for the respondent/State.

4. Mr Yuyutsu Thakur, learned counsel for the petitioner, submitted that the petitioner is innocent and he was

falsely implicated. As per the prosecution case, the petitioner was only sitting with the co-accused from whom the charas was recovered. The petitioner could not know about the charas with the co-accused. The petitioner would abide by all the terms and conditions which the Court may impose; therefore, he prayed that the present petition be allowed and the petitioner be released on bail.

5. Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that the petitioner and the co-accused were found sitting together on the water tank. Both of them challenged the authority of HC Ram Chander to enquire about their names and addresses, and when HC Ram Chander revealed that he was a police official, both the accused started running away. This shows that the petitioner was aware of the fact that the co-accused had contraband in his possession; otherwise, he had no occasion to run away from the spot. The petitioner has also not given any explanation for his conduct. The quantity of charas recovered from the possession of the co-accused is commercial, and the rigours of Section 37 of the NDPS Act apply to the present case. There is no evidence to satisfy the

Neutral Citation No. (2024:HHC:16414)

twin conditions laid down under Section 37 of the NDPS Act; therefore, he prayed that the present petition be dismissed.

6. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

7. The parameters for granting bail were considered by the Hon'ble Supreme Court in ***Manik Madhukar Sarve v. Vitthal Damuji Meher, 2024 SCC OnLine SC 2271,*** wherein it was observed as under: -

> *"***19.** Courts, while granting bail, are required to consider relevant factors such as the nature of the accusation, the role ascribed to the accused concerned, possibilities/chances of tampering with the evidence and/or witnesses, antecedents, flight risk, *et al*. Speaking through Hima Kohli, J., the present *coram* in ***Ajwar v. Waseem, 2024 SCC OnLine SC 974***, apropos relevant parameters for granting bail, observed:
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> > "**26.** While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, *the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail. (Refer:* ***Chaman Lal v. State of U.P. (2004) 7 SCC 525; Kalyan Chandra Sarkar v. Rajesh***

Neutral Citation No. (2024:HHC:16414)

Ranjan alias Pappu Yadav (supra) (2004) 7 SCC 528; Masroor v. State of Uttar Pradesh (2009) 14 SCC 286; Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496; Neeru Yadav v. State of Uttar Pradesh (2014) 16 SCC 508; Anil Kumar Yadav v. State (NCT of Delhi) (2018) 12 SCC 129; Mahipal v. Rajesh Kumar @ Polia (supra) (2020) 2 SCC 118.

27. It is equally well settled that bail, once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the Superior Court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a Superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order. In ***P v. State of Madhya Pradesh (supra) (2022), 15 SCR 211*** decided by a three-judge bench of this Court [authored by one of us (Hima Kohli, J)] has spelt out the considerations that must be weighed with the Court for interfering in an order granting bail to an accused under Section 439(1) of the CrPC in the following words:

> "24. As can be discerned from the above decisions, *for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial* [***Dolat Ram v. State of Haryana, (1995) 1 SCC 349: 1995 SCC (Cri) 237***]. To put it differently, *in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail, but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny*

Neutral Citation No. (2024:HHC:16414)

and interference by the appellate court." (emphasis supplied)

20. In ***State of Haryana v. Dharamraj, 2023 SCC OnLine SC 1085***, speaking through one of us (Ahsanuddin Amanullah, J.), the Court, while setting aside an order of the Punjab and Haryana High Court granting (anticipatory) bail, discussed and reasoned:

"**7.** A foray, albeit brief, into relevant precedents is warranted. *This Court considered the factors to guide the grant of bail in Ram* ***Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598*** *and* ***Kalyan Chandra Sarkar v. Rajesh Ranjan (2004) 7 SCC 528***. In ***Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496***, *the relevant principles were restated thus:*

'9. *... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:*

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.'

8. In ***Mahipal v. Rajesh Kumar alias Polia (2020) 2 SCC 118****, this Court opined as under:*

'16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. ...'

9. In ***Bhagwan Singh v. Dilip Kumar @ Deepu @ Depak, 2023 INSC 761****,* this Court, in view of ***Dolat Ram v. State of Haryana, (1995) 1 SCC 349; Kashmira Singh v. Duman Singh, (1996) 4 SCC 693*** *and* ***X v. State of Telangana, (2018) 16 SCC 511****, held as follows:*

'13. It is also required to be borne in mind that when a prayer is made for the cancellation of the grant of bail, cogent and overwhelming circumstances must be present, and bail, once granted, cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it in conducing to allow fair trial. This proposition draws support from the Judgment of this Court in ***Daulat Ram v. State of Haryana (1995) 1 SCC 349, Kashmira Singh v. Duman Singh (1996) 4 SCC 693 and XXX v. State of Telangana (2018) 16 SCC 511.'***

10. In ***XXX v. Union Territory of Andaman & Nicobar Islands, 2023 INSC 767****, this Court noted that the principles*

Neutral Citation No. (2024:HHC:16414)

> *in* ***Prasanta Kumar Sarkar*** *(supra) stood reiterated in* ***Jagjeet Singh v. Ashish Mishra (2022) 9 SCC 321.***
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> **11.** The contours of anticipatory bail have been elaborately dealt with by 5-Judge Benches in ***Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565*** and ***Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1. Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694*** is worthy of mention in this context, despite its partial overruling in ***Sushila Aggarwal (supra)***. *We are cognizant that liberty is not to be interfered with easily. More so when an order of pre-arrest bail already stands granted by the High Court.*
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> ***12.*** *Yet, much like bail, the grant of anticipatory bail is to be exercised with judicial discretion. The factors illustrated by this Court through its pronouncements are illustrative and not exhaustive. Undoubtedly, the fate of each case turns on its own facts and merits."* (emphasis supplied)

8. The present petition has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

9. The status report shows that the petitioner and co-accused were found sitting on the water tank. HC Ram Chander went near them and enquired about their names and addresses. Both of them questioned his authority to enquire about their names and addresses, and when HC Ram Chander showed his identification document and revealed that he was a police official, both of them attempted to run away, however, they were apprehended by the police. The conduct of the accused of running away after coming to know that the police official had approached

Neutral Citation No. (2024:HHC:16414)

them shows that both of them were aware of the fact that they had something to conceal from the police. *Prima facie*, this conduct shows the involvement of the petitioner in the commission of the crime. The result of the analysis shows that the substance recovered from the co-accused was 1.116 kgs of charas, which is a commercial quantity, and the rigours of Section 37 of NDPS will apply to the present case.

10. Section 37 of the ND&PS Act provides that in an offence involving commercial quantity, the Court should be satisfied that the accused is not guilty of the commission of an offence and is not likely to commit any offence while on bail. Section 37 of the NDPS Act reads as follows:

> "37. Offences to be cognisable and non-bailable. – (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—
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> (a) every offence punishable under this Act shall be cognisable;
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> (b) no person accused of an offence punishable for offences under section 19, section 24, or section 27A and also for offences involving commercial quantity shall be released on bail or his own bond unless–
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> (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
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> (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 an 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."

11. This Section was interpreted by the Hon'ble Supreme Court in ***Union of India Versus Niyazuddin & Another (2018) 13 SCC 738,*** and it was held that in the absence of the satisfaction that the accused is not guilty of an offence and he is not likely to commit an offence while on bail, he cannot be released on bail. It was observed:

> "7. Section 37 of the NDPS Act contains special provisions with regard to the grant of bail in respect of certain offences enumerated under the said Section. They are:
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> (1) In the case of a person accused of an offence punishable under Section 19,
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> (2) Under Section 24,
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> (3) Under Section 27A and
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> (4) offences involving commercial quantity.
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> 8. The accusation in the present case is with regard to the fourth factor, namely, commercial quantity. Be that as it may, once the Public Prosecutor opposes the application for bail to a person accused of the enumerated offences under Section 37 of the NDPS Act, in case the court proposes to grant bail to such a person, two conditions are to be mandatorily satisfied in addition to the normal requirements under the provisions of the Cr.P.C. or any other enactment.

Neutral Citation No. (2024:HHC:16414)

(1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence;

(2) that person is not likely to commit any offence while on bail."

12. This position was reiterated in ***State of Kerala Versus Rajesh AIR 2020 SC 721,*** wherein it was held:

"19. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under the NDPS Act. In ***Union of India vs Ram Samujh and Ors., (1999) 9 SCC 429***, it has been elaborated as under: -

"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 the 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. The reason may be the 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 vs Chief Secy., Union Territory of Goa, (1990) 1 SCC 95)*** as under:

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 Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

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

> (i) there are reasonable grounds for believing that the accused is not guilty of such offence; and
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> (ii) that he is not likely to commit any offence while on bail 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 dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended."

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 the 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 an 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 the 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."

13. A similar view was taken in ***Union of India v. Mohd. Nawaz Khan, (2021) 10 SCC 100: (2021) 3 SCC (Cri) 721: 2021 SCC OnLine SC 1237*** wherein it was observed at page 110:

"**21.** Under Section 37(1)(*b*)(*ii*), the limitations on the grant of bail for offences punishable under Sections 19, 24 or 27-A and also for offences involving a commercial quantity are:

(*i*) The Prosecutor must be given an opportunity to oppose the application for bail; and

Neutral Citation No. (2024:HHC:16414)

(ii) There must exist "reasonable grounds to believe" that (*a*) the person is not guilty of such an offence, and (*b*) he is not likely to commit any offence while on bail.

22. The standard prescribed for the grant of bail is "reasonable ground to believe" that the person is *not* guilty of the offence. Interpreting the standard of "reasonable grounds to believe", a two-judge Bench of this Court in ***Shiv Shanker Kesari*** [***Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798: (2007) 3 SCC (Cri) 505***], held that : (SCC pp. 801-02, paras 7-8 & 10-11)

"*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 the existence of such facts and circumstances as are sufficient in themselves to justify the recording of satisfaction that the accused is not guilty of the offence charged.*

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

'7. ... *Stroud's Judicial Dictionary*, 4th Edn., p. 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 ***MCD v. Jagan Nath Ashok Kumar [MCD v. Jagan Nath Ashok Kumar, (1987) 4 SCC 497], SCC p. 504, para 7 and Gujarat Water Supply & Sewerage***

Neutral Citation No. (2024:HHC:16414)

> ***Board v. Unique Erectors (Gujarat) (P) Ltd. [Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd., (1989) 1 SCC 532***]]
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> *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 Corpn. of Greater Mumbai v. Kamla Mills Ltd. [Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd. (2003) 6 SCC 315***]
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> *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."
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> (emphasis supplied)
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> **23.** 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."

14. It was held in ***Union of India v. Ajay Kumar Singh, 2023 SCC OnLine SC 346*** that the bail cannot be granted without

Neutral Citation No. (2024:HHC:16414)

complying with the requirement of Section 37 of the NDPS Act. It was observed:

> **4.** This apart, it is noticed that the High Court, in passing the impugned order of bail, had lost sight of Section 37 of the NDPS Act, which, *inter alia*, provides that no person accused of an offence involving commercial quantity shall be released on bail unless the twin conditions laid down therein are satisfied, namely, (i) the public prosecutor has been given an opportunity to oppose the bail application; and (ii) the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any such offence while on bail.
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> **15.** For the sake of convenience Section 37(1) is reproduced hereinbelow:—
>
> "37. Offences to be cognisable and nonbailable.-
>
> (1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974)-
>
> (a) every offence punishable under this Act shall be cognisable;
>
> (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."

Neutral Citation No. (2024:HHC:16414)

> **16.** In view of the above provisions, it is implicit that no person accused of an offence involving trade in a commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.

15. It was held in ***State of Meghalaya v. Lalrintluanga Sailo, 2024 SCC OnLine SC 1751*** that the grant of bail without considering Section 37 of the NDPS Act is impermissible. It was observed:

> "**5.** There cannot be any doubt with respect to the position that in cases involving the commercial quantity of narcotic drugs or psychotropic substances while considering the application of bail; the Court is bound to ensure the satisfaction of conditions under Section 37(1)(b)(ii) of the NDPS Act. The said provision reads thus:—
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> > *"37(1)(b)(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."*
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> **6.** While considering the cases under the NDPS Act, one cannot be oblivious of the objects and reasons for bringing the said enactment after repealing the then existing laws relating to Narcotic drugs. The object and reasons given in the acts itself reads thus:—
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> > *"An act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Convention on Narcotic*

Neutral Citation No. (2024:HHC:16414)

Drugs and Psychotropic Substances and for matters connected therewith."

In the decision in ***Collector of Customs, New Delhi v. Ahmadalieva Nodira (2004) 3 SCC 549***, the three-judge bench of this Court considered the provisions under Section 37(1)(b) as also 37(1)(b)(ii) of the NDPS Act, with regard to the expression "reasonable grounds" used therein. This Court held that it means something more than the *prima facie* grounds and that it contemplates substantial and probable causes for believing that the accused is not guilty of the alleged offence. Furthermore, it was held that the reasonable belief contemplated in the provision would require the existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

As relates to the twin conditions under Section 37(1)(b)(ii) of the NDPS Act, viz., that, firstly, there are reasonable grounds for believing that the accused is not guilty of such offence and, secondly, he is not likely to commit any offence while on bail it was held therein that they are cumulative and not alternative. Satisfaction of the existence of those twin conditions had to be based on the 'reasonable grounds', as referred to above.

7. In the decision in ***State of Kerala v. Rajesh (2020) 12 SCC 122***, after reiterating the broad parameters laid down by this Court to be followed while considering an application for bail moved by an accused involved in offences under the NDPS Act, in paragraph 18 thereof this Court held that the scheme of Section 37 of the NDPS Act would reveal that the exercise of power to grant bail in such cases is not only subject to the limitations contained under Section 439 of the Code of Criminal Procedure, but also subject to the limitation placed by Section 37(1)(b)(ii), NDPS Act. Further, it was held that in case one of the two conditions thereunder is not satisfied, the ban for granting bail would operate.

Neutral Citation No. (2024:HHC:16414)

> **8.** Thus, the provisions under Section 37(1)(b)(ii) of the NDPS Act and the decisions referred supra reveal the consistent view of this Court that while considering the application for bail made by an accused involved in an offence under NDPS Act a liberal approach ignoring the mandate under Section 37 of the NDPS Act is impermissible. Recording a finding mandated under Section 37 of the NDPS Act, which is a *sine qua non* for granting bail to an accused under the NDPS Act, cannot be avoided while passing orders on such applications."

16. In the present case, the prosecution has collected sufficient material to show the involvement of the petitioner with the commission of the crime, and it cannot be said that there is no reasonable ground to connect him with the commission of crime. Further, there is nothing on record to show that the petitioner is not likely to commit the same offence in case of release on bail. Therefore, he has failed to satisfy the twin conditions laid down under Section 37 of the NDPS Act and is not entitled to bail.

17. It was submitted that there is a variation in the quantity of the charas. The seizure memo (Annexure A3) shows that 1.175 kgs of charas was recovered. The order of the learned Magistrate shows that the quantity of charas was found to be 1.142 kilograms, whereas the result of analysis shows the quantity of charas was 1.116 kilograms. Therefore, the integrity

Neutral Citation No. (2024:HHC:16414)

of the case property is not established. This submission cannot be accepted at this stage. Learned Trial Court has to evaluate the evidence to determine the integrity of the case property. The report of analysis shows that the seals were intact, and this *prima facie* shows the integrity of the case property. Section 52A of the NDPS Act provides that the certificate issued by the Magistrate under Section 52A has to be considered primary evidence of the Narcotics; therefore, the Court has to consider the quantity certified by the Magistrate as the quantity in the present case. Hence, the prosecution case cannot be doubted due to the variation in the quantity. It will be open to the prosecution to explain the variation while leading the evidence.

18. In view of the above, the present petition fails, and the same is dismissed.

19. The observations made hereinabove are regarding the disposal of this petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

27th December, 2024
(saurav pathania)