



Crl.O.P.No.1543 of 2024

C.V.KARTHIKEYAN, J.

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The petitioner/A2 seeks bail in Crime No.50 of 2023 registered by the respondent police for the offences punishable under Sections 8(c), 20(b)(ii) (c) and 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The petitioner/A2 was arrested and remanded to judicial custody on 24.10.2023. It is stated that the respondent had arrested A1 and A3 on the same day i.e on 24.10.2023 in the same place. At the time of arrest the petitioner was found in possession of 10 kgs of ganja and A1 was found in possession of 8 kgs of ganja and A3 was in possession of 14 kgs of ganja. Further when A4 had been arrested she had stated that she had given Rs.60,000/- to A2 for purchasing ganja. All three of them were found in the same place and the contraband was seized individually from them.

3. The learned counsel for the petitioner stated that the seized products should be viewed independently and if viewed independently, the quantity of ganja seized from this petitioner would be 10 kgs and that could be termed as intermediate quantity and if it is termed as intermediate quantity the rigour of Section 37 of NDPS Act would not apply. Section 37 of the NDPS Act makes it mandatory for the Court to examine an application seeking bail on the touch stone of three principles namely that the prosecution should be informed and be heard, that reasonable grounds



should be recorded by the Court, that the petitioner has a possibility of being acquitted after trial and there should also be not be any possibility for the petitioner to commit the same offence once again.

4. It is urged by the learned counsel for the petitioner that since the quantity of contraband seized from the petitioner is 9 kgs which is an intermediate quantity, the above stipulations need not be followed by the Court and the petitioner can be granted bail. It is stated that the charge sheet has been filed and yet to be numbered. The learned counsel for the petitioner also placed reliance on the order of a learned single judge of this Court in Crl.O.P.No.22704 of 2022 dated 29.09.2023, wherein the learned single Judge of this Court had granted bail. The total quantity involved in the case is 132 grams of Methamphetamine. However, in the order it has been specifically stated by the learned Government Advocate that they found three different persons and there is no material as to show that the petitioner had connection with other accused. In the order there is no discussion of conscious possession.

5. In this case physical possession of the petitioner is 10 kgs. But possession could be also constructive possession and also conscious possession. Conscious possession would be when all the accused are found in possession of total quantity of contraband which is commercial in nature and each one of them knew about the



possession of other. Then the total quantity will be taken into account. Therefore, this order of the learned single judge will not come to the assistance of the petitioner herein.

6. In the instant case all the 3 persons were found in the same place. The total quantity of ganja seized was 32 kgs. Each one of knew about the possession of other accused.

7.The Hon'ble Supreme Court had examined the expression '*reasonable grounds*' as found in Section 37(1)(b)(ii) of NDPS, Act.

8. In *Union of India Vs. Rattan Mallik @ Habul, 2009 (1) SCC (Crl) 831*, the Hon'ble Supreme Court has settled the expression “reasonable grounds”. The relevant paragraphs Nos.12, 13 and 14 are extracted below:

"12. It is plain from a bare reading of the nonobstante clause in the Section and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by sub-clause (b) of sub- section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other



twin conditions viz; (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

13. The expression 'reasonable grounds' has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [Vide Union of India Vs. Shiv Shanker Kesari, 2007(7) SCC 798] Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court is not called upon to record a finding of 'not guilty'. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is



charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail."

(Emphasis Supplied)

9. The Hon'ble Supreme Court while dealing with the question of possession and application of Section 50 in the case of **Megh Singh Vs. State of Punjab, 2003 CRI. L.J. 4329**, held that word '*possession*' includes *conscious possession*. Relevant paragraph nos. 9 to 13 are extracted below:

*"9. The expression '**possession**' is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in **Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and Ors. (AIR 1980 SC 52)**, to work out a completely logical and precise definition of "**possession**" uniformly applicable to all situations in the context of all statutes.*

*10. The word '**conscious**' means awareness about a particular fact. It is a state of mind which is deliberate or intended.*

*11. As noted in **Gunwantlal v. The State of M.P. (AIR 1972 SC 1756)** possession in a given case need not be physical possession but can be constructive, having power and control*



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over the article in case in question, while the person whom physical possession is given holds it subject to that power or control.

12. The word '**possession**' means the legal right to possession (See **Health v. Drown (1972) (2) All ER 561 (HL)**). In an interesting case it was observed that where a person keeps his fire arm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See **Sullivan v. Earl of Caithness (1976 (1) All ER 844 (QBD)**).

13. Once possession is established **the person who claims that it was not a conscious possession has to establish it**, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles. This position was highlighted in **Madan Lal and Anr. v. State of Himachal Pradesh (2003 (6) SCALE 483)**. ”

10. The Hon'ble Supreme Court in the case of **Dehal Singh vs. State of Himanchal Pradesh, 2011 (72) ACC 661**, has again considered the concept of "conscious possession". In the said case, two accused persons were travelling in a car and they knew each other. From the windows/door of the said car, recovery of 27 Kgs. 800 gms. of charas was made, which were found concealed between the shields and doors of the car. The Hon'ble Supreme Court in the said case,



taking into consideration the provisions of Sections 35 and 54 of the N.D.P.S. Act, had held that the accused was not only in possession, but was in conscious possession of the recovered contraband also.

11. It is thus seen that the Hon'ble Supreme Court had expanded the term possession to also include not just physical possession and constructive possession but also conscious possession.

12. In view of the above fact, this Court is not inclined to grant bail to the petitioner. Hence, this Criminal Original petition stands dismissed.

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