



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

104+210

1. CRM-M-20985-2024
Date of decision: July 5th, 2024
State of HaryanaPetitioner

Versus
MaheshRespondent

2. CRM-26604-2024 in/and
CRM-M No.20986-2024
State of HaryanaPetitioner

Versus
Naresh KumarRespondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Trishanjali Sharma, Deputy Advocate General, Haryana,
for the petitioners/State.

Mr. Ankur Kaushik, Advocate
for the respondent (in CRM-M No.20985-2024).

Mr. Bijender Singh Dhankhar, Advocate
for the respondent (in CRM-M No.20986-2024).

MANJARI NEHRU KAUL, J.

CRM-26604-2024 in CRM-M No.20986-2024

Prayer in this application is for placing on record
Annexure R/2 and for exemption from filing certified copy of the same.

Application is allowed subject to just exceptions.

Annexure R/2 is taken on record.

Exemption, as prayed for, is granted.

Main case

This order shall dispose of the above-mentioned petitions filed

under Section 439 (2) of the Code of Criminal Procedure, 1973, for cancellation of bail, as they arise out of the same FIR i.e. FIR No.119 dated 16.04.2022 under Sections 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sadar Palwal.

2. The State of Haryana has challenged the orders dated 18.08.2022 and 06.08.2022 passed by learned Additional Sessions Judge, Palwal, vide which the accused-respondents were extended the concession of regular bail in FIR No.119 dated 16.04.2022 under Sections 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sadar Palwal.

3. For the sake of convenience, the facts are being taken from CRM-M-20985-2024.

4. THE VEHEMENT SUBMISSIONS OF THE LEARNED STATE COUNSEL ARE AS FOLLOWS:-

Firstly, it has been asserted that the impugned orders dated 18.08.2022 and 06.08.2022 (Annexure P-2) are patently illegal and perverse, as the observations made therein by the learned trial Court, contradict the material on record and even the fundamental case of the prosecution. Learned counsel submits that a perusal of paragraph 8 of the impugned order clearly reveals that the Court's observations are based on a gross misreading of the evidence. In support, learned counsel has drawn the attention of this Court to the relevant observations in paragraph 8 of the impugned order.

Learned counsel further submits that contrary to the observations and “findings” of the learned trial Court, the petitioners were not named pursuant to any disclosure statement; rather, their

names surfaced at the inception of the case in the First Information Report, based on a secret information received by the police. This information not only contained the details of the vehicle in which all the accused including the petitioners were travelling but as per the case of the prosecution, all the three accused including the petitioners were intercepted by the police while traveling in the said vehicle.

Secondly, the State counsel has contended that the trial Court had overlooked the gravity of the offences alleged against the petitioners while passing the impugned order. The petitioners were named as accused based on a secret information and were apprehended on the spot following due compliance with all the mandatory provisions of the NDPS Act. A huge recovery of 87 kilograms and 800 grams of *ganja*, nearly three times the quantity classified as commercial under the NDPS Act, was made from them.

Thirdly, learned State counsel has argued that the trial Court had completely disregarded the embargo imposed under Section 37 of the NDPS Act in cases involving commercial quantity of contraband, while passing the impugned order. It has been submitted that Section 37 of the NDPS Act mandates the Court to form a preliminary opinion regarding the guilt of the accused and provide reasons for this opinion while granting bail to him. Learned counsel has submitted that the Court had strangely observed that there were reasonable grounds to believe that the accused were not guilty, however, this opinion had been formed prematurely, as the investigation had not even been completed when the impugned order was passed. Therefore, the opinion of the learned trial Court regarding the innocence of the petitioners was neither based on the material on

record nor was it supported by any reasonable grounds as required under the NDPS Act.

Fourthly, learned State counsel has argued that the trial Court had erroneously and strangely accepted all the submissions made by the defence counsel and for reasons best known to it, chosen to turn a blind eye to the vehement submissions made by the learned Public Prosecutor, thus giving a different contour to the allegations levelled in the FIR in question against the accused including the petitioners. In support, learned State counsel has drawn the attention of this Court to the relevant observations made by the trial Court in the impugned order.

Lastly, it has been argued that without as much as awaiting the presentation of the charge-sheet, the trial Court prematurely examined the police file and labeled the entire investigation as tainted and doubtful. Consequently, it is evident that the trial Court overstepped its powers while deciding a bail application, potentially prejudicing the case of the prosecution during trial. Learned counsel has thus, vehemently prayed that the impugned order, which had been passed by the trial Court in a tearing hurry without careful consideration of the material collected against the accused, including the petitioners, rendered the order not only perverse and illegal but also contrary to the established legal principles to be considered while extending the concession of bail to an accused.

SUBMISSIONS BY LEARNED COUNSEL FOR THE RESPONDENTS-ACCUSED

5. *Per contra*, learned counsel appearing for the respondents-accused have vehemently contended that once bail has been granted to

an accused, it cannot be revoked mechanically or arbitrarily. Revoking bail in such a manner would unjustly deprive the petitioners of their personal liberty. It has been asserted that this is particularly significant in the instant case, where the petitioners, after being granted the concession of bail, have not engaged in any conduct that could be considered a misuse of this concession. Thus, it has been underscored by the learned counsel for the respondents-accused that their continued liberty should not be curtailed capriciously.

6. Furthermore, it has been asserted that the trial Court had correctly recognized and appreciated the various lapses in the investigation conducted by the police subsequent to the arrest of the petitioners. The deficiencies in the police investigation are critical to understanding the context of the involvement of the petitioners in the crime in question. It has been asserted that the petitioners are in fact victims of false implication orchestrated by none other than the police themselves. It has still further been argued that that the petitioners were merely accompanying prime accused Virender, who was their acquaintance, and they had no knowledge of the contents of the articles which had been placed in the trunk of his car by him.

7. Therefore, the trial Court rightly appreciated that the petitioners could not be proven to have had conscious knowledge of the alleged contraband, under the circumstances presented. This understanding of the trial Court, as per the learned counsel, is crucial, as it recognizes the possibility that the petitioners were unwittingly caught up in the alleged criminal activity due to their acquaintance with the prime accused, rather than they being active participants with the knowledge of the contraband.

8. Though the learned counsel for the respondents-accused has not been able to dispute that on the date of passing of the impugned order, challan had not been presented, however, it has been vehemently submitted by him that impugned orders vide which they had been granted the concession of the bail was justified and based on a careful consideration of the flaws in the investigation and the petitioners' lack of conscious knowledge of the contraband. In conclusion, it has been urged that cancelling the bail would not only be unjust but also contrary to the principles of personal liberty and fair judicial process.

FINDINGS OF THE COURT

9. I have heard learned counsel for the parties and perused the relevant material on record.

10. It is a well established legal principle that once bail is granted, it should not be cancelled arbitrarily or without any cogent reason. However, an order granting bail which lacks sound reasoning or appears to be perverse can be set aside by a higher Court. Even if the accused has not misused the bail, the Court that initially granted it still retains the power to cancel it if there are serious allegations against the accused. Additionally, a Court can cancel bail if it is evident that the Court below has ignored critical evidence on record or failed to consider the severity of the offence.

11. In the case of *Ajwar Versus Waseem and Another 2024 INSC 438*, Hon'ble the Supreme Court, elucidated as follows:-

"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 and Another(supra) decided by a three judges bench of this Court [authored by one of us (Hima Kohli, J)] has spelt out the considerations that must weigh 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 and interference by the appellate court.”

12. In *Jagjeet Singh and others Versus Ashish Mishra @ Monu and another* 2022 (4) SCR 536, Hon’ble the Supreme Court emphasized that the power to grant bail under Section 439 of the Cr.P.C. is extensive, wherein the Courts have been granted considerable discretion in bail matters. However, this discretion is not without limits. The order must demonstrate the application of judicial mind and adherence to established legal principles. If a bail order is found to be illegal, perverse or based on completely irrelevant considerations, the higher Court is well within its right to cancel the bail.

13. While deciding a bail petition, the Court does not need to conduct a detailed analysis of the evidence to establish the guilt of an accused beyond a reasonable doubt much less to arrive at a conclusion with respect to his innocence, as that is a matter of trial. The essence of various judicial pronouncements of Hon'ble the Supreme Court underscores the importance of judicial prudence and adherence to legal principles in decisions pertaining to bail matters. The judicial system must balance these considerations carefully, particularly in cases involving serious allegations.

14. Before proceeding further, it would be apposite to reproduce the contents of the FIR, which has been annexed as Annexure P-1 and the same are as under:-

“To SHO Sahab Police Station Sadar Palwal. Jai Hind, Today I ASI along with ASI Sikandar 1250, HC Vijay Kumar 44 Palwal, HC Qutbudin 675, Ct. Amit Kumar 747, CT Kuldeep 807 in government vehicle driven by constable Shankar 890, was present at Toll Plaza Aurangabad Mitrol for Patrolling, that the Secret informer met us and told that a Honda City ZX car bearing number DL- 3C-BA-1794 of gray color of Virendra, s/o Moharpal, village of Aurangabad PS Mundkati and his accomplice Naresh son of Lal Chand, resident of Aurangabad, Mahesh S/o Ram Singh, resident of Bahin, District Palwal, together do the supply Ganja, if blockade is done near Surya Dhaba, Bamni Kheda, then Virendra Singh and his two accomplices can come under control alongwith the car and Ganja patti, on this notice under Section 42 NDPS Act was the and for registration the daily diary report to the Police station Sadar Palwal is being sent to hands of C. Amit 747 to get it done. After registration of the report, copy of report should be informed to the illaqua magistrate, who considered information as true and informed fellow

employees about information, a raiding party was prepared, Passers-by and neutral persons were requested to join raiding party, but all of went on expressing their legitimate compulsion, 1 ASI along with the fellow employees taking along the secret informer reached near Surya dhaba in government the car to stop then the car driver stopped his car at once when he and tried to run back, I ASI controlled the car and the people sitting in the car with the help of fellow officials on the basis of doubt and asked the name and address of the car driver, he gave his name as Virendra S/o Mohar Pal, caste, Jat, village Aurangabad police station Mundkati, District Palwal, the boy sitting on the conductor seat the vehicle told his name and address of as Mahesh s/o Ram Singh, resident of Baheen, PS Baheen and the boy sitting on the back seat of the car told his name as Naresh s/o Lal Chand, resident of Aurangabad, police station Mundkati, Separate notices under Section 50 NDPS Act was given to all the three young boys present in the vehicle and I ASI said that we have doubt that you have drugs in your vehicle, you have legal right presence of Gazetted Officer, on which I ASI called from my mobile number 9991846262 at 09:50:AM to Naresh Kumar B.D.P.O. Hodal mobile no. 9911315762, information was given and requested to come at Surya Dhaba, village Bamnikheda, After some time Mr. Naresh Kumar B.D.P.O. Hodal came to the spot, to whom the situation was explained, who asked to I ASI to search the Honda city car and the three boys present in the car, which found 4 plastic bags inside the trunk of the car, opened the plastic bags and checked them, according to my experience, I checked by smelling and found ganja leaf. The arrested persons were asked for license/permit regarding marijuana but they could not produce any license/permit, the recovered plastic bags hemp leaves were weighed, the total weight of serial number bag number 1 was 22 kg 100 grams, the Weight of all four bags was 87 Kg 800 Grams, which was B.D.P.O. Under the supervision of Hodal, a Palanda of all four plastic

bags was prepared which was stamped by I ASI with M.N./1 after stamping everything, it was handed over to HC Vijay Kumar and B.D.P.O. Hodal stamped all with his stamp M.S/1 and verified packets. The recovered intoxicant ganja leaf Palanda and Honda City ZX car bearing number DL-3C-BA-1794 color gray as evidence was seized by the police, On which the accused and the witness put their signatures, Birendra Singh, Naresh and Mahesh aforesaid have committed the offense under section 20.61.85 of NDPS ACT by keeping intoxicant marijuana in their possession. Therefore intimation is being sent to police station through Ct Kuldeep 807 for registration of case, after registration case number should investigation, officer should be sent on the spot.”

15. It would also be most pertinent to extract the observations of the trial Court while passing the impugned order, which are as follows:-

“7. The allegation against the applicant-accused is that he alongwith co-accused was going to Noida to sell the Ganja Patti which was found in the Honda City Car. It is pertinent to mention that the police file was perused. A perusal of the police file shows that the accused Virender had gone to Orissa to procure Ganja Patti in the above-said Honda City Car along with his accomplices Sehdev, Chintu and Lokesh. As per the second disclosure statement of accused Virender, the above-said 4 persons stayed at RSN Palace Hotel, Konta, Chattisgarh from 08.04.2022 to 14.04.2022 in room no. RO3 and received Ganja Patti from one Mohd. Abbas Ali. Police (Prashant Rana) ASJ, Palwal. 18.08.2022(Prashant Rana) ASJ, Palwal. 17.05.2022 Mahesh vs State of Haryana 6 party went to the said Hotel in Chattisgarh, along with the co-accused Virender and received the relevant records of CCTV footage. The Manager of the Hotel, namely Ms. Kalawati provided the CCTV footage and photographs of all accused. The accused Chintu, Lokesh and Sehdev were identified by the co-accused Virender in the

photographs. Also he disclosed that Ganja Patti was purchased for an amount of Rs.1.5 lacs out of which Rs. 1 lac were paid by co-accused Sehdev and Chintu and Rs.50,000 were paid by accused Virender. He also disclosed that above-said Honda City Car was purchased by him, and his accomplices Sehdev and Chintu for a price of Rs.1.25 lacs. Despite the above-said CCTV footage and photographs, which corroborates the disclosure statement, the Investigating Officer has exonerated the coaccused Chintu, Sehdev and Lokesh, as per the reply filed on 09.08.2022. In the entire police file, there is no zimni order for exonerating the above-said 3 accused, along-with any reasoning of their exoneration. The same shows that the investigation proceedings are tainted and doubtful.

8. In regard to applicant-accused Mahesh, there is no allegation that he went with co-accused Virender to Orissa to procure the Ganja Patti or paid any amount, to purchase the same. Even as per the case of the prosecution on 14.04.2022 the accused Virender started from Orissa. As reflected in the CCTV footage, the applicant along-with accused Virender and Naresh started from the grocery shop of accused Naresh at 10:30 pm on 15.04.2022. The accused got missing after that. The family members of co-accused Naresh called police helpline number and moved complaint with the same version that he had gone to have dinner with main accused Virender. The mobile phones of all the 3 persons were switched off during the night. From the aforesaid chain of events, it transpires that accused Virender came to the grocery shop of co-accused Naresh at 10:30 pm with Ganja Patti loaded in the Diggy of the Car and went with accused Mahesh for dinner. When they reached Surya Dhaba which is at a distance of 1-2 kilometers, they were apprehended and there was no occasion for the applicant to know that his relative, main accused Virender had kept Ganja Patti in the Diggy of the vehicle. The only evidence against the applicant is his own disclosure statement and the disclosure statement of

the other 2 co-accused, in which they allegedly disclosed, that they were going to sell the Ganja Patti at Noida. There is no mention of any person with address of the customer or price for which the Ganja Patti would have been sold. The disclosure statement is vague and does not amount to discovery with any fact, which could be verified.

11. Prima-facie, the investigation is unreliable and tainted. The main accused Lokesh, Chintu and Sehdev who paid money to purchase Ganja Patti and physically procured the same from Orissa, have been exonerated. The accused who owned the Honda City Car in which the Ganja Patti was procured by them, have been exonerated despite evidence received from the Hotel at Chattisgarh. Prima-facie, the applicant was arrested from Surya Dhaba on the night of 15.04.2022 and his mobile phone was switched off along with the phones of other accused. The next proceedings were done at 9:50 am in the next morning when the BDPO was called by the Investigating Officer. No time of any prior proceeding i.e. receiving of information, apprehending the accused, time of serving the notices under section 42 & 50 of The Act, and the time of search and seizure have been mentioned in any document. It is well settled law that graver the offence, stricter the proof. Prima-facie, the applicant-accused was having no knowledge of the Ganja Patti hidden in the Car of the main accused and he went to have dinner at a Dhaba and was apprehended, within a span of 10-20 minutes, after sitting in the Car of main accused. In such a case, conscious possession of the applicant is not made out. As held in Tirupati's case (supra), possession implies custody or control over the goods. In the present case the applicant had no custody or control of the goods hidden in the Diggy of his brother-inlaw's Car who took him for dinner and they were immediately apprehended. Apart from above-said travel in the car for a period of 10-20 minutes, from the village Aurangabad to Surya Dhaba, to have dinner, the applicant had no connection with the co-accused or the

Ganja Patti. Even as per the Investigating Officer present in the Court, there is no call record etc. any other evidence, connecting the applicant with the alleged offence, of purchase and transportation of ganja patti.

12. It is well settled law that where there are reasonable grounds to believe that the accused is not guilty for commission of offences under The Act, involving commercial quantity, and where the Court is satisfied that he is not likely to commit any offence while on bail, the embargo created by Section 37 of The Act, would not apply.

13. In the present case the entire investigation proceedings conducted by the concerned police officers are unreliable, as discussed above. The accused has no criminal antecedents. He sat in the Car of his relative for a period of around 10-15 minutes. The vehicle was apprehended in the night of 15.04.2022, as per the complaints made to the police officers by the family members of applicant, in the intervening night of 15/16.04.2022. Post-timed and post-dated date proceedings were conducted by the concerned police officers, in the next morning, for the reasons best known to them. The main accused who invested and purchased the Ganja were exonerated without any speaking order and without any Zimni order to this effect. Apparently there was enmity of the brother of the co-accused, with a police officer, in the same Police Station and he had made several complaints, against the said police officer. The version of the co-accused Naresh that he was falsely implicated on account of enmity and he had no knowledge of the contraband contained in the Diggy of the Car of main accused Virender, is much more reliable than the version of the investigating agency, who have acted in a very dubious manner. Co-accused Naresh is on similar footing as applicant Mahesh. Both sat in the Car of main accused for a period of 10-20 minutes, and were apprehended at Surya Dhaba. The version of the applicant is supported by calls to the police helpline number in the intervening night of 15/16.04.2022 and the

complaint made in the same night, by his family members. On the other hand, there is no reliable evidence, which would corroborate the version of the investigating agency, in regard to the applicant Mahesh.”

16. A perusal of the contents of the FIR makes it abundantly clear that the police had received specific secret information regarding the involvement of all the accused, including the petitioners. Acting on this information, the police apprehended the accused including the petitioners, leading to the recovery of a huge quantity of *ganja* (87 kilograms and 800 grams) classified as commercial quantity under the NDPS Act. From the impugned order, it is evident that the trial Court thus grossly misread the material on record including the contents of the FIR, and erroneously based the impugned orders granting bail to the respondents-accused, on the premise that the only evidence against them was their own disclosure statement and the disclosure statement of the co-accused about their intent to sell the recovered contraband in Noida.

17. Furthermore, upon a thorough perusal of the impugned order dated 18.08.2022 (Annexure P-2) and in particular, the extracts reproduced above, it becomes unequivocally clear that the learned trial Court, while adjudicating the bail application of the respondents-accused, has virtually delivered a final verdict of acquittal at the preliminary stage itself, even before the proceedings before the trial Court could have commenced. Such an act starkly contravenes the fundamental tenets of law and judicial propriety.

18. This Court is deeply appalled by the observations made by the trial Court in its impugned orders, wherein it described the investigation as “tainted and doubtful”. Such conclusions are utterly

unfounded, as the challan had not even been presented at that time. It is incomprehensible how the trial Court could reach these conclusions without any supportive evidence/material on record, relying solely on the unsubstantiated assertions made by the defence counsel.

19. It is well established that, during the course of hearing a bail application, a Court is permitted to peruse the evidence and other material on record. However, the role of the Court at this juncture is strictly limited to assessing whether the accused is entitled to bail; it does not extend to conducting a detailed investigation/examination of the facts or rendering comments on the merits of the case. Engaging in such an analysis, especially before the presentation of the challan, is beyond the purview of hearing in a bail application and can seriously prejudice the case of both, the accused and the prosecution, as the case may be.

20. In the instant case, the trial Court has undoubtedly overstepped its jurisdiction by venturing into an evaluation of the substantive issues of the case prematurely. This not only undermines the judicial process, but also jeopardizes the integrity of the trial. The actions of the Court, as reflected in the impugned orders, are not only procedurally inappropriate, but also legally untenable, setting a dangerous precedent that could erode the foundational principles of judicial fairness and impartiality.

21. Therefore, it is imperative that the sanctity of the judicial process be preserved by ensuring that such premature adjudications are eschewed, and that the evaluation of the merits of the case be reserved after the trial commences, post the presentation of the challan, where a comprehensive examination of evidence and arguments can be

undertaken.

Furthermore and most pertinently, the NDPS Act is a special legislation designed to combat drug trafficking and its abuse. It is critical to understand the stringent provisions laid down in Section 54 and Section 37 of the NDPS Act, which establish a presumption of guilt and impose strict conditions for granting bail.

Section 54 of the NDPS Act reads as under:-

“54. Presumption from possession of illicit articles.-- In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of--

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily.]”

22. A bare reading of the aforementioned provisions leaves no manner of doubt that it creates a legal presumption of guilt against the accused. This means that if an individual is found in possession of narcotic drugs or psychotropic substances, it is presumed that they are guilty of the offence unless proven otherwise. This presumption places a significant burden on the accused to demonstrate his innocence,

distinguishing the NDPS Act from general criminal laws, which

typically operates on the presumption of innocence.

23. It would also be relevant to reproduce the provisions of Section 37 of the NDPS Act, which are as under:-

“37. Offences to be cognizable and non-bailable.--

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for1[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless--

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.].”

Section 37 of the NDPS Act outlines stringent conditions that must be satisfied before an accused can be granted bail. This section overrides the general provisions of the Cr.P.C. and also mandates the following additional requirements:

(i) Cognizable offences: All offences under the NDPS Act are cognizable, meaning that the police has the power to arrest without a warrant;

(ii) Conditions for bail: The Public Prosecutor must be given an opportunity to oppose the bail application;

(iii) Reasonable grounds qua the accused not being guilty: If the public prosecutor opposes the bail application, the Court must be satisfied that there are reasonable grounds to believe that the accused is not guilty of the offence and he is not likely to commit any offence while on bail.

24. The aforementioned conditions are in addition to any other limitations on granting bail under the Cr.P.C. or any other law in force. A plain reading of Section 37 of the NDPS Act reveals that the Court must form a preliminary opinion about the guilt of the accused before granting bail. The Court is not required to assess the probative value of the evidence collected by the investigating agency at this stage. However, the satisfaction of the Court must be based on reasonable grounds derived from the material on record that is relevant to the case, and not on irrelevant considerations.

25. In the present case, the respondents were named in the secret information received by the police, apprehended on the spot, and a huge commercial quantity of *ganja* was recovered from them. Despite these facts, the trial Court recorded its preliminary satisfaction that the respondents were not guilty of the offence under the NDPS Act. This conclusion is perplexing because, at the time when the impugned orders were passed, the investigation was still incomplete, and the challan had not been presented.

26. Without a thorough consideration of the material collected by the police, the trial Court could not have reasonably recorded its satisfaction as required under Section 37 of the NDPS Act. In the context of the present social environment, where drug abuse is a pervasive issue affecting the youth of the nation, the stringent

provisions of Section 37 of the NPDS Act cannot be disregarded in a casual manner. The approach of the trial Court in the present case while passing the impugned orders demonstrates concerning lack of rigor, which clearly undermines the intent and purpose of the NDPS Act in curbing the drug menace effectively.

27. As a sequel to the above, this Court has no hesitation in holding that the Court below has committed a patent error while passing the impugned orders, extending the concession of bail to the respondents-accused. Consequently, the impugned orders are unsustainable and deserve to be set aside.

28. Accordingly, the impugned orders are set aside. The concession of bail granted to both the respondents-accused by the learned trial Court is hereby cancelled and respondents accused Mahesh and Naresh Kumar are directed to surrender within a period of seven days from the date of the order. Should they fail to do so, the trial Court is directed to take them into custody by issuing warrants of arrest.

29. It is, however, clarified that the observations made herein are solely for the purpose of deciding the issue of bail granted to the respondents-accused and would not in any manner influence the trial of the case. The trial Court is directed to adjudicate the case based on its own merits, in accordance with law.

30. As a sequel to the above, the instant petitions are allowed to the aforementioned extent.

July 5th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes