

petitioner and petitioner was named by co accused in his disclosure statement.

5. *That the petitioner is a aged person of 36 years and belongs to poor family and for save the main accused the police has falsely implicated the petitioner.*
6. *That the present accused petitioner arrested on the basis of disclosure statement of co-accused namely Rajneesh @ Laddi which is not admissible in the eyes of law. As per the Section 27 of Indian Evidence Act, 1872 the Confession made before the police official has no value in the law. It is pertinent to mention here that co-accused Rajneesh @ Laddi suffered disclosure statements, and he disclosed that he purchased this contraband from the petitioner.*
7. *That conscious possession of the contraband shall be a moot question since the contraband was not recovered from personal search of petitioner and 400 gram Heroin/smack was recovered from co accused.*
8. *That it is further relevant to mention here that petitioner was falsely implicated by Police that co accused has made disclosure statement in which statement co accused has named petitioner. That clearly shows that petitioner was falsely implicated by the police in this case. That as per the reply file by the police petitioner has given this contraband to main accused."*

5. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

6. The State's counsel opposes bail and refers to the reply.

7. The quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act apply in the present case. The petitioner must satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

8. Section 37¹ of the NDPS Act mandates under sub-section (1) (b) of section 37 that no person accused of an offense punishable for offenses involving commercial quantity shall be released on bail unless- (i) the Public Prosecutor has been given an opportunity to oppose the application of release, and (ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for

¹ **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 for 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.

believing that accused is not guilty of such offense and is not likely to commit any offense while on bail. Thus, the rigors of S. 37 of the NDPS Act apply in the present case, and the burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act. Given the legislative mandate of S. 37 of the NDPS Act, the Court can release a person accused of an offense punishable under the NDPS Act for possessing a commercial quantity of contraband only after recording reasonable satisfaction of its rigors.

9. The State's Counsel argues that a plain reading of Section 37 reveals that the legislature intends to make the law stringent to curb the drug menace. It is further to be noticed that the provisions are couched in negative language, meaning that to grant bail, the Court needs to record a finding that there are reasonable grounds for believing that the petitioner is not guilty of the offense. The burden of proof is also on the petitioner to satisfy the Court about his non-involvement in the case. While interpreting the provisions of Section 37 of the NDPS Act, the Court must be guided by the objective sought to be achieved by putting these stringent conditions.

10. Satisfying the fetters of S. 37 of the NDPS Act is candling the infertile eggs. The stringent conditions of section 37 placed in the statute by the legislature do not create a bar for bail for specified categories, including the commercial quantity; however, it creates hurdles by placing a reverse burden on the accused, and once crossed, the rigors no more exist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC. Thus, both the twin conditions need to be satisfied before a person accused of possessing a commercial quantity of drugs or psychotropic substance is to be released on bail. The first condition is to provide an opportunity to the Public Prosecutor, enabling them to take a stand on the bail application. The second stipulation is that the Court must be satisfied that reasonable grounds exist for believing that the accused is not guilty of such an offense and is not likely to commit any offense while on bail. If either of these conditions is not met, the ban on granting bail operates. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing the accused is not guilty of the alleged offense. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offense, the Court still cannot give a finding on the assurance that the accused is not likely to commit any such crime again.

11. It shall be relevant to refer to the following portions of the reply filed by the concerned DySP, which read as follows:

"3. That as a matter of fact, the present case bearing FIR No. 152 dt. 13.04.2024 u/s 21/29/61-85 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Mahesh Nagar, District Ambala, on receipt of

rukka from SI Menpal No. 215/A CIA Staff Ambala. The contents of FIR are as under:-

"Sir, the copy of Complaint is that, To, SHO, Police Station Mahesh Nagar, Jai Hind Sir, it is requested that today on 12.04.2024, Sub- Inspector along with Constable Ranjeet Singh No. 230, Constable Virendra Singh No. 1383, E.M.S. Shankar No. 1601, E.M.S. Pradeep Kumar No. 1035 in a passenger vehicle government HRO-1GV- 1700 whose driver is E.S.S. Dharamveer Singh No. 1292, while on patrol or investigation during crime, at about 09.15 PM, CIA. Staff 1 started from Ambala city with Laptop, printer and investigation kit and via Sec 10 Sec 1, Inco Chowk Ambala City, reached near Industrial Area Jagadhari Road Ambala Cantt at about 09.45 PM where a special informer informed the Sub Inspector at about 09.50 PM that Rajneesh alias Ladi son of Raj Kumar resident of village Babyal Police Station Mahesh Nagar District Ambala who deals in selling the narcotic substance smack/heroin is even today carrying a huge quantity of smack/heroin for selling in his vehicle no. HR85G-5759, brand PUNCH, grey in colour, is parked on the way from Jagadhari Road to Sai Mandir, Mahesh Nagar, Ambala Cantt. If a quick raid is conducted on Rajneesh alias Ladi, a large quantity of smack/heroin can be recovered from him. The information is strong and reliable, on which an application is being written and for information, EMU Shankar No. 1601 is being sent to you and at around 10:00 PM, a notice U/S 42 NDPS Act was separately prepared. The witnesses put their two signatures on the notice and the notice was sent through EMU Pradeep Kumar No. 1035, personal Shri. Rajat Gulia, HPS, Deputy Superintendent of Police, Ambala Cantt. The Sub Inspector requested the people coming and going on the way and the place of getting the information to become witnesses by informing them about the situation, but all the people, fearing good and bad, expressed their legitimate compulsion and left the spot. At around 10.10 PM, the Sub Inspector along with fellow police officials took the special informant of the government in a passenger car from Jagadhari Road to Sai Mandir Road Mahesh Nagar Ambala Cantt. Where, on seeing the government car, a car number HR85G- 5795 brand PUNCH and grey colour was parked at a distance of about 80 steps on the road going towards Sai Mandir from Jagadhari Road in which a person was sitting, who on seeing the police party, immediately started driving the car towards Sai Mandir. On this, the Sub Inspector, with the help of fellow officials, stopped the car driver and asked his name and address. The car driver told his name as Rajneesh alias Ladi son of Raj Kumar, house number 626 Babyal, police station Mahesh Nagar, district Ambala. The sub- inspector told Rajneesh above that I suspect that you have narcotic substance smack/heroin, you have the legal right to get yourself searched by a magistrate or a gazzetted officer and he can be called on the spot. On which notice U/S 50 NDPS Act was prepared separately. Rajneesh above expressed his written consent on the notice that I want my search to be done by a gazzetted officer. On which the sub-inspector at around 10.45 PM, from his mobile phone 94161XXXXX, called Shri Rajat Gulia HPS DSP Amla Cantt his mobile number 97299XXXXX and informed him about the situation VT. OF INDIAS requested him to reach the

spot, who accepted the request of the sub-inspector and agreed to reach the spot and at about 11.10 PM Shri Rajat Gulia HPS DSP Ambala Cantt reached the spot along with his staff, who, after reaching the spot, carried out the search related to the information of the employee included in the police party, and on not finding any narcotic substance related to the information from the employee, a report of search and recovery was prepared. The FIR was signed by witnesses and Rajneesh alias Ladi and the notice under section 50 of the NDPS Act were presented before Shri Rajat Gulia, HPS DSP Ambala cantt, who after seeing the notice, identified Rajneesh alias Ladi and instructed the Sub-Inspector to search Rajneesh alias Ladi. On searching Rajneesh alias Ladi, the Sub-Inspector found a light blue colored narcotic substance smack/heroin from a cotton envelope in the right pocket of the pant jeans worn by Rajneesh alias Ladi, based on experience. Apart from the clothes worn on the body of Rajneesh alias Ladi, items of daily use were also recovered from him, which were taken into police custody through a separate FIR for body search. The FIR for body search was prepared separately. A separate bundle of the items found during the body search was prepared and stamped MP/5. Rajneesh alias Ladi could not produce any license or permit regarding the above mentioned drug smack/heroin. On weighing the drug scale, Rajneesh alias Ladi was found to be carrying narcotic Substance. The total weight of smack/heroin recovered from Ladi along with its waxy envelope was 400 grams. Rajnish alias Ladi above The recovered smack/heroin along with the same waxy envelope was put in a plastic box and a parcel was prepared. On the parcel the sub-inspector put three of his MP seals and a sample seal was prepared. And on s the car number HR85G-5795, Currency notes worth Rs. 2,90,000 recovered from a black colored bag kept on the seat next to the driver's seat in the car, all of which were of Rs. 500 denomination. The recovered notes were put in the same bag and a parcel was made with the all-seat MP/5 and a sample seal was prepared separately. Parcel of Smack/Heroin recovered from Rajneesh alias Ladi, 400 gram Smack/Heroin with sample seal MP/3, RK/1 along with sample seal MP/1, RK/I and car number HR85G-5795, brand PUNCH, grey colour and Parcel of currency notes of Rs 2 lakh 90 thousand were seized by police as evidence by preparing the recovery memo. The accused and witnesses put their signatures on the recovery memo. The recovery memo was attested by Shri Rajat Gulia, HPS DSP, Ambala Cantt. The Sub Inspector handed over the sample seal to Constable Ranjeet Singh No. 230 for using and keeping his seal after that and Shri Rajat Gulia, HPS DSP, Ambala Cantt also stamped the parcel by affixing his RK's 1/1 seal on it. Sample seal was prepared separately and seal was kept with himself. E.H.C. Shankar No. 1601 for giving notice letter and E.H.C. Pradeep Kumar No. 1035 for giving notice 42 NDPS ACT appeared on the Spot Rajneesh alias Ladi above mentioned has committed the crime of 21-61-1985 NDPS Act by keeping in his possession 400 gram smack/heroin along with waxy envelope without license and permit, on which the present case was registered." Thereafter, the second investigation officer i.e. Ashish Kumar ASI CIA Staff-1 Ambala reached at the spot and further Investigation was carried out by him and the case property was taken in possession by preparing recovery memo. The ID

inspected the place of occurrence and prepared rough site plan and after serving notice u/s 52 of NDPS Act, the co-accused Rajneesh Ladi was arrested in this case. Thereafter, the compliance of mandatory provisions under Section 55/57 of the NDPS Act has been complied with by the IO.”

12. A perusal of the bail petition does not state anything about the financial transactions.

13. The petitioner’s arguments did not point toward any material contradictions. It was a case of chance recovery. As such, S. 42 would not apply initially, and recovery was not from the person. As such, S. 50 would also not attract. Non-examination of independent witnesses is not illegal, and its outcome depends upon the nature of evidence tendered in the examination in chief and its cross-examination.

14. The submissions made above, and the grounds in the bail petition do not shift the burden the legislature places on the accused under S. 37 of the NDPS Act. The petitioner has not stated anything in the bail petition to discharge the burden put by the stringent conditions placed in the statute by the legislature under section 37 of the NDPS Act. The investigation reveals sufficient prima facie evidence to connect the petitioner with the crime; thus, the petitioner fails to make out a case for bail. Any detailed discussions about the evidence may prejudice the case of the petitioner, the State, or the other accused.

15. The petitioner's custody is around seven months, which cannot be considered prolonged.

16. In Union of India (NCB) v. Khalil Uddin, decided on 21 Oct 2022, 2022 SCC OnLine SC 2109, Hon’ble Supreme Court holds,

[4]. According to the prosecution, contraband material weighing about 13 kgs. of morphine was found in a motor vehicle which was driven by co-accused named Md. Jakir Hussain. During the course of investigation, it was found that the motor vehicle was recorded in the name of Md. Nizam Uddin who had executed a sale letter and handed over the custody of the vehicle to accused Md. Abdul Hai and that accused Md. Jakir Hussain was the driver employed by accused Md. Abdul Hai and that contraband material in question was to be handed over to accused-Khalil Uddin, an owner of a tea shop.

[5]. The High Court by its order which is presently under challenge, directed release of both the accused as stated above on bail after they had undergone custody to the tune of about a year. Questioning grant of relief to said accused, the instant appeals have been preferred.

[7]. What emerges from the record is that large quantity of contraband weighing about 13 kgs of morphine was found in a car

which was driven by Md. Jakir Hussain. Whether the role played by said Md. Jakir Hussain could get connected with both the accused is a question.

[8]. The answer to said question could be the statement recorded of Md. Nizam Uddin. The statement of Md. Jakir Hussain recorded under Section 67 of the Act has also named his owner accused Abdul Hai. We are conscious of the fact that the validity and scope of such statements under Section 67 has been pronounced upon by this Court in *Tofan Singh v. State of Tamil Nadu*. In *State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta*, the rigour of law lay down by this Court in *Tofan Singh* was held to be applicable even at the stage of grant of bail.

[9]. However, going by the circumstances on record, at this stage, on the strength of the statement of Md. Nizam Uddin, though allegedly retracted later, the matter stands on a different footing. In our considered view, in the face of the mandate of Section 37 of the Act, the High Court could not and ought not to have released the accused on bail. We, therefore, allow these appeals, set aside the view taken by the High Court and direct that both the appellants be taken in custody forthwith.

[10]. We have been given to understand that the charge-sheet has been filed. In the circumstances, we direct the Trial Court to take up the matter and conclude the proceedings as early as possible and preferably within six months from the receipt of this order.

17. In *Narayan Takri v. State of Odisha*, decided on 10 Sep 2024, SLP (Crl.) 8198-2024, Hon'ble Supreme Court holds,

The petitioners are in custody since 28th May, 2022 for alleged commission of alleged offence under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985. As per the FIR allegation, 125.3 kg. of "Ganja" was recovered from the petitioners.

[3]. It is not in dispute that the trial has commenced and that three prosecution witnesses have been examined till date.

[4]. Learned counsel for the petitioners submits that the third prosecution witness was examined as far back as on 28th January, 2024 and since then, no other prosecution witness has been examined. There is, however, no such averment in the petition.

[5]. Learned counsel appearing for the respondent submits that every endeavor shall be made on behalf of the prosecution to have all the witnesses examined by the end of this year.

[6]. The trial court is encouraged to expedite the trial and give its decision as early as possible, in accordance with law.

[7]. We, however, do not see any reason to interfere the impugned judgment and order at this stage; however, it is clarified that in the event the trial is not completed by the end of this year, the petitioners shall be at liberty to renew their prayer for bail before the trial court.

18. A perusal of the bail petition and the documents attached prima facie points towards the petitioner’s involvement and does not make out a case for bail. The impact of crime would also not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

19. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

20. Petition dismissed. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

20.11.2024
Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.