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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 02nd AUGUST, 2024IN THE MATTER OF:+ **BAIL APPLN. 1907/2024****TALIM @ TALIB**

.....Petitioner

Through: Mr. Tahir Ali and Mohd. Aalim,
Advocates.Mr. Zeeshan Diwan (DHCLSC), Mr.
Devender Kumar and Mr. Ahmed
Faraz, Advocates.

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Tarang Srivastava, APP for the
State.SI Shailendra Tiwari, Crime Branch,
Krishna Nagar.**CORAM:****HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****JUDGMENT (ORAL)**

1. Petitioner has approached this Court seeking bail in FIR No.207/2022, dated 13.09.2022, registered at Police Station Crime Branch, for offences under Sections 20/25/29 NDPS Act.
2. The facts, in brief, leading to the present Petition are that on 13.09.2022, at about 01:30 AM information was received by ASI Satish that one person namely, Salman, resident of Shamli, Uttar Pradesh, along with his associates is running an organized syndicate of supplying illegal *Ganja* in Delhi and Meerut, UP. The Secret informer further revealed that on the same date at about 03:00 AM – 04:00 AM, Salman along with his other



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accomplice will come from Seelampur side to supply *Ganja*. Acting on the information, a raiding party comprising of the staff present in the office was formed and they left for the spot along with the secret informer in two private cars. It is stated that upon reaching the spot, the raiding party requested 03-04 people to join them but they all refused citing their compulsions. It is stated that at about 04:05 AM a gold coloured Honda City car bearing registration No. UP16W3663 came from the DTC Bus Depot, Seelampur side. It is stated that the car was identified by the secret informer. It is further stated that the said car was stopped by the Police and three persons, including the Petitioner herein and Salman, were apprehended. It is stated that notice under Section 50 of the NDPS Act was given to the petitioner and the co-accused and they were informed about their rights to be examined before a Gazetted Officer or Magistrate and the same was denied by the accused. It is stated that upon searching the accused three gunny bags filled with *Ganja* each weighing 17 Kgs totalling 51 Kgs were found from their possession. The material was measured and sealed in separate packets, the present FIR was registered and the accused persons, including the Petitioner herein, were arrested. Petitioner has approached this Court seeking bail.

3. Notice in the present Petition was issued on 28.05.2024. Status Report has been filed.

4. In the Status Report it is stated that 51 Kgs of *Ganja* has been recovered from the possession of the Petitioner herein. In the Status Report it is further stated that during investigation it has been found that the Petitioner is the head of a national level drug syndicate operating in Andhra Pradesh and other parts of the country.



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5. Learned counsel for the petitioner states that the Petitioner has been falsely implicated in the case. He further submits that the notice under Section 50 of the NDPS Act, which was served on the Petitioner, is defective as the word “nearest Magistrate” was not mentioned. He also states that the charge-sheet has been filed and investigation is complete and, therefore, no purpose would be served in keeping the Petitioner in prolonged custody.

6. *Per contra*, learned APP appearing for the State contends that the petitioner was apprehended from the spot by the Police officers and a huge quantity of 51 Kg of *ganja* has been found from the car. He states that the Petitioner is a part of an organized national level drug syndicate originating from Andhra Pradesh and spreading to other States and cities of India. He states that Bail ought not to be granted to the Petitioner as there are high chances that the Petitioner will continue to commit the offence if released on bail.

7. Heard the learned counsel appearing for the Petitioner and the learned APP for the State and perused the material on record.

8. A perusal of the chargesheet shows that the Petitioner was made aware of his rights under Section 50 of the NDPS Act. The status report indicates that both the Petitioner and co-accused Salman were read and explained the notice under Section 50 NDPS Act and an original copy of the same has been handed over to them which has been signed by them. The status report also indicates that both the accused persons denied their search in presence of Gazetted Officer or the Magistrate and also refused to search the vehicle of the police.

9. It is well settled that the scope of a court to grant bail under the



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provisions of NDPS Act is circumscribed by Section 37 of the Act. Section 37 of the NDPS Act reads 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 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.]"

10. A perusal of Section 37 of the NDPS Act indicates that bail can be granted only when there are reasonable grounds for believing that the accused is not guilty of an offence and he is not likely to commit any offence when released on bail. The parameters for grant of bail to an



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accused under Section 37 of the NDPS Act have been laid down in a number of judgments. In Collector of Customs v. Ahmadalieva Nodira reported as (2004) 3 SCC 549 has observed as under:

"6. As observed by this Court in Union of India v. Thamisharasi [(1995) 4 SCC 190 : 1995 SCC (Cri) 665 : JT (1995) 4 SC 253] clause (b) of sub-section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are: (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. 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 existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence....." (emphasis supplied)

11. In Union of India v. Rattan Malik reported as (2009) 2 SCC 624, the



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Supreme Court has observed as under :

"12. It is plain from a bare reading of the non obstante clause in Section 37 of the NDPS Act 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 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 v. Shiv Shanker Kesari [(2007) 7 SCC 798 : (2007) 3 SCC (Cri) 505]). 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



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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)

12. In State of Kerala & Ors. v. Rajesh & Ors. reported as (2020) 12 SCC 122, the Supreme Court has observed as under :-

"19. 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 CrPC, but is also subject to the limitation placed by Section 37 which commences with 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 offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

20. 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 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



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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. The petitioner has been arrested with 51 Kg ganja from his possession. Material on record indicates that the Petitioner is a part of a well organized cartel which deals with the supply of narcotic substances. If released on bail, the chances of the Petitioner to commit the same offence again cannot be ruled out. It cannot be said that the Petitioner has not committed the offence of which he is alleged. Material on record does indicate the complicity of the Petitioner. Even though the Petitioner has been in custody for about one-and-a-half years now, the same is not a ground for grant of bail to the Petitioner at this juncture. This Court is, therefore, not inclined to grant bail to the Petitioner.

14. With these observations, the bail application is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 02, 2024

Rahul