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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29th AUGUST, 2024IN THE MATTER OF:

+ **BAIL APPLN. 3045/2024 & CRL.M.A. 25548/2024**

GUDDU KHAN

.....Petitioner

Through: Mr. J.P. Singh, Mr. Hemant Sharma,
Advocates.

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP for the State
with Ms. Amanpreet Juneja, Ms.
Shruti Sharma, Mr. Gaurav Sharma,
Mr. Aditya Singh, Mr. Ankit Tripathi,
Mr. Gaurav Dua, Mr. Gaurav Gupta,
Ms. Sapna, Ms. Monika Tyagi, Ms.
Priyanka Tyagi, Ms. Garima Khetal,
Mr. Abhinav Sharma, Mr. Vijay
Kumar, Mr. Nikhil Tyagi, Advocates.
SI Jagseer Singh**CORAM:****HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****JUDGMENT (ORAL)**

1. Petitioner has approached this Court seeking regular bail in F.I.R. No. 121/2020 dated 21.08.2020 registered at Police Station Crime Branch for offences under Section 21 of the NDPS Act.
2. Facts, in brief, leading to the present Petition are that on 20.08.2020, a secret information was received that the Petitioner herein, Guddu Khan, a resident of Nand Nagri, Delhi, deals in illegal heroin and would come near SDM office, Nand Nagri to deliver the same. The information suggested that



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the Petitioner would be delivering the drugs near the SDM office in Nand Nagri. Acting on the information, the police established a surveillance operation in the early morning hours of 21.08.2020 near the area opposite Bus Stand No. 212 in Nand Nagri. At approximately 12:20 AM, the police witnessed the Petitioner in the act of transferring a package of heroin to his accomplice, Aafaq Khan. Upon receiving a signal from the informant, both the accused were apprehended. The seized contraband was weighed using an electronic scale and was found to be 300 grams of heroin. The present FIR was registered and the Petitioner herein and AAfaq Khan were arrested

3. During the course of the investigation, the Petitioner revealed that he had obtained the recovered heroin from one Raju. Petitioner revealed that Raju would regularly provide the heroin to the Petitioner, who, in turn, would entrust it to his brother, Aafaq. After completion of the investigation, a chargesheet has been filed against the petitioner and Aafaq Khan.

4. Learned Counsel for the Petitioner submits that the Petitioner is an auto driver and has clean antecedents. He states that the Petitioner has been falsely implicated in the present case and the allegations made against the Petitioner are false. Learned Counsel for the Petitioner also contends that Section 50 of the NDPS Act has not been followed by the Police and that there are no independent witnesses to corroborate the alleged recovery of the contraband or the arrest of the Petitioner at the scene of the crime and all the witnesses are police officials. He further contends that the Petitioner is in custody since 21.08.2020 and charges have been framed in 2021 and trial is yet to conclude and, therefore, bail be granted to the Petitioner.

5. *Per contra*, learned APP for the State vehemently opposes the present bail application. He states that the Petitioner has been caught red-handed



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while handing over the packet of contraband to the co-accused – Aafaq Khan. He further states that the contraband recovered from the Petitioner is of commercial quantity and, therefore, Section 37 of the NDPS Act is attracted to the present case. He further 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.

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

7. It is well settled that the scope of a court to grant bail under the 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.]"*

8. 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 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***



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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)

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

10. 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



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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 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.”

11. The Petitioner has been unable to substantiate his contention that the procedure under Section 50 of the NDPS Act has not been carried out by the Police. The Petitioner was caught red-handed while transferring the contraband to Afaaq Khan. The recovery of a commercial quantity of heroin is a clear violation of the NDPS Act and attracts the stringent provisions of Section 37 NDPS Act. Moreover, if convicted, the Petitioner can be sentenced to undergo a minimum sentence of ten years may extend to twenty years. 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



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been in custody for about four years now, the same is not a ground for grant of bail to the Petitioner at this juncture, and therefore, this Court is not inclined to grant bail to the Petitioner.

12. Keeping in view the fact that the Petitioner is in incarceration for four years, the Trial Court is requested to complete the trial within one year from today.

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

SUBRAMONIUM PRASAD, J

AUGUST 29, 2024

Rahul