

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
[CIRCUIT BENCH AT JALPAIGURI]

**Present: Hon'ble Justice Arijit Banerjee
And
Hon'ble Justice Biswaroop Chowdhury**

CRM (NDPS) 445 of 2024

Hero Sarkar

vs.

**Union of India through the Intelligence Officer
Narcotics Control Bureau Kolkata Zonal Unit**

For the petitioner: : Mr. (Dr.) Arjun Chowdhury, Adv.,
Ms. Pratusha Dutta Chowdhury, Adv.,
Ms. Riya Agarwal, Adv.,
Mr. Koushik Kr. Kanu, Adv.,
Ms. Tulip Saha, Adv.

For the NCB/IOI : Mr. Sudipto Kr. Mazumder, Ld. DSGI.,
Mr. Sudip Kumar Paul, Adv.,

Judgment on : 28.03.2025

Arijit Banerjee, J.:

1. On August 22, 2023, acting on source information, the Narcotics Control Bureau (NCB) team raided the petitioner's house and seized huge quantity of contraband items. The petitioner was arrested on August 26, 2023. He prays for bail.

2. **Arguments on behalf of the petitioner:-**

(A) The head of the raiding team namely Shri Pushkar, himself acted as a Gazetted Officer while conducting the search and seizure. This is in violation

of Section 50(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act'). It also violates the law laid down by the Hon'ble Supreme Court in ***State of Rajasthan v. Parmanand & Anr., (2014) 5 SCC 345***, paras 15, 19, 20.

The petitioner also relies on the decisions of a Coordinate Bench of this Court in ***Re. Md. Mohaimen Hossain @ Md. Mohaimenul Haque @ Mom etc., reported in 2014 SCC OnLine Cal 20405*** and in ***Re. Sahedul Mahaldar reported in 2014 SCC OnLine Cal 22788***.

(B) The seizure list does not contain the signature of the petitioner. This supports the plea of the petitioner that he was not present at the time of seizure. It appears from the seizure memo that the seizure took place on August 26, 2023 at 06:05 hours and was completed at 08:50 hours but the arrest was undertaken on August 26, 2023 at 08:50 hours at a place which was different from the place of seizure. Further, the Investigating Agency could not produce a scrap of paper showing that the petitioner is the owner of the house from which the contraband items were seized. In this connection reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***Sanjeet Kumar Singh @ Munna Kumar Singh v. State of Chhattisgarh, reported at (2022) 16 SCC 58 paras 13, 18, 31, 32*** and on the decision of a Coordinate Bench of this Court in the case of ***Babu Mondal & Ors. v. The State of West Bengal rendered in CRAN No. 1 of 2019 in CRA 6 of 2019 paras 21, 28-32***.

(C) The memo of arrest does not contain any 'Column x'. As such, no signature of any family member of the petitioner or a respectable person of

the locality was obtained. This is in breach of the provisions of Section 41B Cr.P.C. and the mandatory directions of the Hon'ble Supreme Court in the case of ***D.K. Basu v. The State of West Bengal reported at(1997)1 SCC 416***. When the accused raises doubts on the mode of arrest contending that the arrest was not made in the manner claimed by the prosecution, the requirement of complying with Section 41B Cr.P.C. assumes great importance and non-compliance therewith dilutes the restrictions in Section 37 of the NDPS Act. In this connection reliance was placed on the following decisions:-

(i) ***Joga Ram v. State of West Bengal reported in 2023 SCC OnLine Cal 2161 Paras 16-19.***

(ii) ***Chandra Bahadur Tamang v. The State of West Bengal reported in 2023 SCC OnLine Cal 2160 paras 4-7.***

(iii) In the matter of ***Abhiram Biwas @ Amar Biswas in CRM (NDPS) 698 of 2023 judgement dated September 13, 2023, rendered in CRM NDPS 698 of 2023.***

(D) The sole independent seizure witness being PW-3 namely Sujit Das has turned hostile and has negated the factum of seizure in his presence. He has deposed totally contrary to the prosecution case and his deposition raises serious doubts regarding the alleged search, seizure and arrest, totally demolishing the prosecution case. In this connection reliance was placed on the Supreme Court Decision in ***Sanjeet Kumar Singh,***

(Supra) and the decision of a Coordinate Bench of this Court in the case of **Abhiram Biswas, (Supra)**.

(E) The petitioner has been in custody for about one year and three months. Only 3 out of 10 witnesses have been examined. The right to speedy trial is a fundamental aspect of criminal justice system, enshrined in various legal frameworks to prevent undue and oppressive incarceration prior to conviction. On the ground of delay in progress of trial he should be enlarged on bail. In this connection reliance was placed on the decision of the Hon'ble Supreme Court in the case of **V. Senthil Balaji v. Deputy Director, Directorate of Enforcement reported in 2024 SCC Online SC 2626 Paras 24 to 29**.

3. Arguments of the respondent:-

(A) While considering a bail application under the NDPS Act, stringent conditions of Section 37 of that Act have to be satisfied. Otherwise, bail cannot be granted.

(B) Unlike in other cases, in an NDPS case, if contraband item is found in the possession of the accused, the presumption of innocence is not available to him. In this connection, learned Advocate referred to Section 54 of the NDPS Act. Learned Counsel also relied on the decision of the Hon'ble Supreme Court in the case of **Union of India and Anr v. Sanjeev V. Deshpande, reported at (2014) 13 SCC 1: AIR 2014 SC 3625**.

(C) Upon searching the premises of the petitioner, the respondent authorities recovered about 148.5 kgs of Ganja. The seizure was made in the

presence of an independent witness and two other witnesses being BSF personnel.

(D) In any event, the objection raised by the petitioner on the ground of absence of independent witness, is hit by the decision of the Hon'ble Supreme Court in the case of ***Jarnail Singh v. State of Punjab, reported at (2011) 3 SCC 521***, learned Counsel, relying on the said judgment, submitted that absence of an independent witness is not necessarily fatal to the prosecution case.

(E) The contention of the petitioner that the mandatory provision of section 50 of the NDPS Act was not followed may be relevant at the hearing of the trial. The same is not relevant for the purpose of deciding an application for bail in connection with an offence under the NDPS Act where commercial quantity of narcotics is involved. Only Section 37 of the NDPS Act is relevant at this stage.

In any event, Section 50 of the NDPS Act applies only in case of search of the person of the accused. In this connection learned Advocate relied on the decision of the Hon'ble Apex Court in the case of ***Kallu Khan v. State of Rajasthan, reported at AIR 2022 SC 50***.

(F) Referring to the decision of the Hon'ble Supreme Court in the case of ***Narcotics Control Bureau v. Mohit Aggarwal, reported at AIR 2022 SC 3444 para 14***, learned Advocate submitted that the term "reasonable grounds" used in Section 37 (1) (b) (ii) of the NDPS Act would mean credible and plausible grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at such a conclusion, such facts and circumstances must exist that can persuade the Court to believe

that the accused person could not have committed such an offence. Along with the aforesaid satisfaction, there is an additional consideration that the accused person is unlikely to commit any offence while on bail.

(G) Mere non-recovery of Narcotics from an accused person is not a ground for granting bail without the Court recording a finding that the conditions of Section 37 of the NDPS Act are satisfied. In this connection reference was made in a decision of the Hon'ble Supreme Court in the case of ***Union of India v. Shiv Shanker Kesari, reported at (2007) 7 SCC 798 : (2007) 3 SCC (Cri) 505.***

(H) Learned Counsel submitted that a finding of absence of possession of contraband items on the person of the accused, does not absolve the Court considering the bail application, of the level of scrutiny required under Section 37(1) (b) (ii) of the NDPS Act. Further, whether or not there was compliance of the procedure laid down under Section 42 of the NDPS Act, is a question of fact, to be decided at the trial. In this connection reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***Union of India Through Narcotics Control Bureau, Lucknow v. Md. Nawaz Khan, reported at (2021) 10 SCC 100.***

(I) While considering bail applications under the NDPS Act, the Court will only consider Section 37 of the Act. Non-compliance of the other provisions of the NDPS Act may entitle the accused person to a verdict of acquittal at the trial but the same is not relevant for the purpose of deciding a bail application in connection with an offence under the NDPS Act.

(J) The *non-obstante* clause in Section 37 of the NDPS Act gives over-riding effect to it *vis-a-vis* or other statutes including the Code of Criminal Procedure, 1973. The restriction placed on the powers of the Court in Section 37 of the NDPS Act, are applicable to the High Court also in the matter of granting bail. If the Court grants bail without reference to Section 37 of the NDPS Act and without entering a finding on the required level of satisfaction of the conditions mentioned in that section, such order would be bad in law. The power of a Court 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, but is also subject to the restrictions placed by Section 37(1) (b) (ii) of the NDPS Act. The satisfaction contemplated in that clause 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 connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. In this connection learned Advocate referred to the following decisions:-

- (i) ***Narcotics Control Bureau v. Kishan Lal & Ors., reported at 1991 1 SCC 705.***
- (ii) ***Ratan Kumar Vishwas v. State of U.P. & Anr., reported at (2009) 1 SCC 482.***
- (iii) ***Satpal Singh v. State of Punjab, reported at (2018) 13 SC 813.***
- (iv) ***Union of India v. Niyazuddin SK. & Anr, reported at (2018) 13 SCC 738.***

(v) ***Union of India v. Rattan Mallik @ Habul reported at (2009) 2 SCC 624.***

(vi) ***Union of India v. Jitendra Giri, reported at (2022) SCC Online SC 1870.***

Court's View

4. Before proceeding further, let us discuss the decisions cited on behalf of the respective parties.

5. Decisions relied upon by the petitioner:-

(A) ***State of Rajasthan v. Parmanand & Anr., (Supra)***. This case was relied upon in support of the proposition that Section 50 of the NDPS Act requires the search of an arrestee to be done before a Gazetted Officer or a Magistrate being an independent person. Search cannot be done in front of a police officer who is a member of the raiding party.

(B) ***Re. Md. Mohaimen Hossain @ Md. Mohaimenul Haque @ Mom etc., (Supra) and Re. Sahedul Mahaldar, (Supra)***. These two decisions merely followed the decision in ***Parmanand's Case, (Supra)*** and bail was granted holding that there had been breach of Section 50 of the NDPS Act.

(C) ***Sanjeet Kumar Singh @ Munna Kumar Singh v. State of Chhattisgarh, (Supra)***. In this case it was held:

- (i) that it is not always necessary that the evidence of the police witnesses has to be corroborated by independent witnesses as held in ***Dharampal Singh v. State of Punjab reported at (2010) 9 SCC 608 and Mukesh Singh v. State (Narcotic Branch of Delhi) reported at (2020) 10 SCC 120;***

(ii) the independent witnesses turning hostile need not necessarily result in the acquittal of the accused, when the mandatory procedure is followed and the other police witnesses speak in one voice, as held in ***Rizwan Khan v. State of Chhattisgarh reported at (2020) 9 SCC 627***;

(iii) once it is established that the contraband was recovered from the possession of the accused, a presumption arises under section 54 of the NDPS Act;

(iv) if the court is to completely disregard the lack of corroboration of the testimony of police witnesses by independent witnesses and has to turn a Nelson's eye to the independent witnesses turning hostile, then the story of the prosecution should be very convincing and the testimony of the official witnesses notably trustworthy;

(v) once the prosecution comes up with a story that the search and seizure was conducted in the presence of independent witnesses and they also choose to examine them before Court, then the Court has to see whether the version of the independent witnesses who turned hostile is unbelievable and whether there is a possibility that they have become turncoats; and

(vi) although Section 54 of the NDPS Act raises a presumption and the burden shifts on the accused to explain as to how he came into possession of the contraband, yet, to raise such presumption, it must first be established that a recovery was made from the accused. The momenta doubt is cast upon the most fundamental aspect, namely, the search and seizure, the accused will be entitled to benefit of doubt.

(D) **D. K. Basu v. State of West Bengal, (Supra)**. Learned Counsel relied on the directions issued by the Hon'ble Supreme Court in paragraph 35 of the reported judgment, to be followed in all cases of arrest or detention.

Paragraph 35 reads as follows:-

“35. We, therefore, consider it appropriate to issue the following *requirements* to be followed in all cases of arrest or detention till legal provisions are made in that behalf as *preventive measures* :

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by atleast one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the

memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union

Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.”

(E) Joga Ram v. State of West Bengal, (Supra) and Chanra Bahadur Tamang v. The State of West Bengal, (Supra). Both these Division Bench decisions followed the decision of the Hon’ble Supreme Court in the case of **D.K. Basu, (Supra)**. It was held that there was contravention of the provisions of Section 41B of the Code of Criminal Procedure since there was no available Column ‘x’ at all in the memo of arrest which is an essential and integral part of such document. This was also held in the case of **Abhiram Biwas @ Amar Biswas, (Supra)**.

(F) V. Senthil Balaji v. Deputy Director, Directorate of Enforcement, (Supra). This case was relied upon in support of the proposition that stringent provisions for grant of bail do not take away the power of Constitutional Courts to grant bail on the ground of violation of the

fundamental right of an under trial under Article 21 of the Constitution of India. Rigours of provisions like Section 37 of the NDPS Act will melt down where there is no likelihood of the trial being completed within a reasonable time and the period of incarceration already suffered by the accused has exceeded a substantial part of the prescribed sentence. This is because, if incarceration of an undertrial accused is continued for an unreasonably long time, the provisions of law restricting grant of bail may be exposed to the vice of being violative of Article 21 of the Constitution of India.

6. Decisions relied upon by the respondent:-

(A) ***Union of India and Anr v. Sanjeev V. Deshpande (Supra)***. This case was relied upon in support of the proposition that twin conditions have to be satisfied in an NDPS case involving commercial quantity of contraband, before bail is granted to the accused. They are 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.

(B) ***Jarnail Singh v. State of Punjab, (Supra)***. This case was relied upon for the following propositions:-

- (i) Merely because the prosecution has not examined any independent witness, would not necessarily lead to the conclusion that the appellant has been falsely implicated.

(ii) Section 50 of the NDPS Act applies only in case of personal search of a person. It does not extend to a search of a vehicle or container or a bag or premises.

(iii) Delay in sending the sample of the seized Narcotic for chemical examination would by itself not be sufficient to conclude that the sample has been tampered with. If there is cogent evidence that contraband was seized from the accused person and the seals put on the sample were intact till it was handed over to the chemical examiner, delay itself will not be fatal to the prosecution case.

(C) **Kallu Khan v. State of Rajasthan, (Supra)**. This case reaffirms that mere non-examination of an independent witness in an NDPS Act in so far as search and seizure is concerned, would not be fatal to the prosecution case. It further reiterates that Section 50 of the NDPS Act applies only in the case of search of the person of the accused.

(D) **Narcotics Control Bureau v. Mohit Aggarwal, (Supra)**. This case was cited in support of the contention that the expression 'reasonable grounds' used in Section 37(1)(b) of the NDPS Act would mean credible and plausible grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail. Further, mere non-recovery of narcotics from the possession of an accused person cannot per se be a ground for holding that he is not guilty of the offence for

which he has been charged. Such an assumption would be premature at the stage of consideration of pre-conviction bail prayer. Still further, the length of the period of the accused person's custody or the fact that the charge sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to such person under Section 37 of the NDPS Act.

(E) ***Union of India v. Shiv Shanker Kesari, (Supra)***. This case was cited in support of the submission that the Court while considering an application for bail with reference to Section 37 of the NDPS Act, is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and recording its satisfaction about the existence of such grounds.

(F) ***Union of India Through Narcotics Control Bureau, Lucknow v. Md. Nawaz Khan, (Supra)***. The court observed that given the seriousness of offence punishable under the NDPS Act and in order to curb the menace of drug- trafficking in the country, stringent parameters for grant of bail under the NDPS Act have been prescribed. Merely making a finding on the possession of the contraband did not fulfil the parameters of Section 37(1) (b) of the NDPS Act. Further, whether or not there was compliance of the procedure laid down under Section 42 of the NDPS Act, is a question of fact, to be raised at the trial.

(G) ***Narcotics Control Bureau v. Kishan Lal & Ors, (Supra)***. The NDPS Act is a special enactment with the object of making stringent provisions for

the control and regulation of operations relating to Narcotic Drugs and Psychotropic Substances. The High Court's power to grant bail under Section 439 Cr.P.C. are subject to the limitation mentioned under Section 37 of the NDPS Act.

(H) ***Ratan Kumar Vishwas v. State of U.P. & Anr, (Supra) and Satpal Singh v. State of Punjab, (Supra)***. These cases generally highlight the stringent conditions which have to be satisfied before an accused is granted bail in NDPS case.

(I) ***Union of India v. Rattan Mallik @ Habul, (Supra)***. In paragraph 11 of the Judgment, it was observed as follows:-

“11. The broad principles which should weigh with the Court in granting bail in a non-bailable offence have been enumerated in a catena of decisions of this Court and, therefore, for the sake of brevity, we do not propose to reiterate the same. However, when a prosecution/conviction is for offence(s) under a special statute and that statute contains specific provisions for dealing with matters arising thereunder, including an application for grant of bail, these provisions cannot be ignored while dealing with such an application. As already noted, in the present case, the respondent has been convicted and sentenced for offences under the NDPS Act and therefore, while dealing with his application for grant of bail, in addition to the broad principles to be applied in prosecution for offences under the Indian Penal Code, 1860 the relevant provision in the said special statute in this regard had to be kept in view.”

7. Having discussed the decisions relied upon by the respective parties, we must also advert to the very recent decision of the Hon'ble Supreme Court in the case of ***Narcotics Control Bureau v. Kashif reported at 2024 SCC OnLine SC 3848***. That case involved alleged non-compliance of Section 52A of the NDPS Act, 1985. The High Court had granted bail to the accused person being the respondent before the Supreme Court, on the ground of belated compliance of Section 52A of the NDPS Act, without recording the findings as mandated in Section 37 of the said Act. The Supreme Court set aside the order of the High Court and remanded the matter to the High Court for fresh consideration. In the process, the Hon'ble court made certain observations which, in our opinion, would be very relevant for deciding the present application.

"We, therefore, note such observations:-

(i) At paragraphs 6 of the judgment, it was noted that the NDPS Act was enacted in 1985 mainly to consolidate and amend the laws relating to Narcotics Drugs and to make stringent provisions for the control and regulation of operations relating to Narcotic Drugs and Psychotropic Substances. Various provisions of the Act have been amended from time to time considering the need to do so by the Parliament.

(ii) At paragraph 7 of the judgment it was noted that a three Judge Bench in the case of ***Hira Singh and Anr. V. Union of India & Anr reported at (2020) 20 SCC 272*** expressing serious concern about the problem of drug addicts and mafia at the national and

international level had observed that the provisions of NDPS Act are required to be interpreted keeping in mind the object and purpose of the said act and the impact on the society as a whole. It was also observed that the Act is required to be interpreted literally and not liberally which may ultimately frustrate the object, purpose and Preamble of the Act.

(iii) At paragraph 8 of the Judgment it was observed that it has been the consistent and persistent view of the Supreme Court that in NDPS cases, where the offence is punishable with minimum sentence of 10 years, the accused shall generally be not released on bail. **Negation of bail is the rule and its grant is an exception.** While considering the application for bail, the Court has to bear in mind the provisions of Section 37 of the NDPS Act, which are mandatory in nature. The recording of finding as mandated in Section 37 is a *sine qua non* for granting bail to the accused involved in the offences under the said Act. Apart from granting opportunity of hearing to the Public Prosecutor, the other two conditions to be satisfied. i.e., firstly, the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and secondly, that he is not likely to commit any offence while on bail, are cumulative and not alternative conditions. In this connection reference was made to the decision of the Hon'ble Supreme Court in the case of ***State of M.P. v. Kajad, (2001) 7 SCC 673***. In that case apart from

what we have noted above, it was further held that liberal approach in the matter of bail under the NDPS Act is uncalled for.

(iv) At paragraph 10 of the Judgment, the Hon'ble Court noted that a 3 Judge Bench in the case of ***NCB v. Mohit Aggarwal, (2022) 18 SCC 374***, considering the earlier judgments on the parameters of bail available under Section 37 of the NDPS Act, held that 'the length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act'.

(v) At paragraph 25 of the judgment, the Hon'ble Apex Court observed that it is significant to note that as per Section 54 of the NDPS Act, the Courts are entitled to presume, unless and until the contrary is proved, that the accused had committed an offence under the Act in respect of any Narcotics Drug or Psychotropic Substances etc. for the possession of which he failed to account satisfactorily. Therefore, unless such statutory presumption is rebutted by the accused during the course of trial, there would be a prima facie presumption that the accused had committed the offence under the Act, if he is found to have possessed the contraband drug and substance, and if he fails to account satisfactorily as contemplated in Section 54.

(vi) At paragraph 26 of the judgment, it was observed that as per the settled legal position even evidence collected by an illegal

search or seizure could not be excluded or discarded. Whether the evidence collected by an illegal search or seizure is admissible or not has been considered by the Apex Court in a series of decisions and one of the earliest decisions is that of the Constitution Bench of the Supreme Court in the case of ***Pooran Mal v. Director of Inspection (Investigation) New Delhi &Ors reported at (1974) 1 SCC 345***. In that case it was observed that so far as India is concerned, its law of evidence is modelled on the rules of evidence which prevailed in English law and Courts in India and in England have consistently refused to exclude relevant evidence merely on the ground that it is obtained by illegal search or seizure.

(vii) At paragraph 27 of the judgment the Hon'ble Court noted the subsequent Constitution Bench decision of the Supreme Court in the case of ***State of Punjab v. Baldev Singh reported at (1999) 6 SCC 172***, wherein it was explained that the judgment in ***Pooran Mal v. Director of Inspection (Investigation) New Delhi &Ors reported at (1974) 1 SCC 345*** case cannot be understood to have laid down the law that an illicit article seized during a search of a person on a prior information, conducted in violation of the provisions of Section 50 of the Act, can by itself be used as evidence of unlawful possession of the illicit article on the person from whom the contraband has been seized during the illicit search. The Constitution Bench further held that the question of admissibility of evidence, which may be relevant to the question in

issue, has to be decided in the context and the manner in which the evidence was collected and was sought to be used.

(viii) At paragraph 31 of the Judgment, the Hon'ble Court observed that from the above decisions, the position that emerges is that the Hon'ble Supreme Court in a catena of decisions, has approved the procedure of spot searches and seizures in compliance with the Standing Orders and the Notifications issued by the NCB and the Central Government and upheld the convictions on being satisfied about the search and seizure made by the officers as per the provisions of the Act and being satisfied about the scientific evidence of FSL reports etc. Even otherwise, in view of the law laid down by the Constitution Benches in the case of ***Pooran Mal v. Director of Inspection (Investigation) New Delhi and Ors reported at (1974) 1 SCC 345*** and in the case of ***State of Punjab v. Baldev Singh reported at (1999) 6 SCC 172***, any procedural illegality in conducting the search and seizure by itself would not make the entire evidence collected thereby inadmissible. The court would have to decide the admissibility of evidence in the context and the manner in which the evidence was collected and was sought to be used during the course of trial. The evidence collected during the course of investigation in legal and proper manner and sought to be used in the course of trial with regard to the seized contraband substance could not be simply brushed aside on the ground of procedural irregularity if any.

(ix) At paragraph 39 of the judgment the Hon'ble Court summarised the upshot of the discussion in that judgment as follows:-

(a) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the act.

(b) While considering an application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is *sine-qua-non* for granting bail to the accused involved in the offences under the NDPS Act.

(c) The purpose of insertion of Section 52A laying down the procedure for disposal of Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to International Conventions on Narcotics Drugs and Psychotropic Substances.

(d) Section 52A (2) lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

(e) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

(f) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The court will have to consider other circumstances and other primary evidence collected during the course of investigation as also the statutory presumption permissible under Section 54 of the NDPS Act.”

8. Now I propose to take up for consideration the grounds urged by learned Advocate for the petitioner in support of the bail prayer.

9. The first ground urged was violation of Section 50 (1) of the NDPS Act. Before proceeding further, let us note the contents of Section 50:-

“50. Conditions under which search of persons shall be conducted.— (1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall if such person so requires, take such person without unnecessary delay to the nearest Gazette Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazette Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazette Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior. ”

10. The argument advanced was that the head of the raiding team namely Shri Pushkar himself acted as the Gazetted Officer while conducting the

search and seizure. He could not be said to be an independent person. Therefore the search and seizure was vitiated.

11. Reliance was placed on the case of **Parmanand** and two decisions of Coordinate Benches of this Court rendered following the decision in **Parmanand**.

12. In my considered opinion, the reliance on **Parmanand** is misplaced. In that case a third option was given to the accused persons that either they could be searched in front of a Gazetted Officer or a Magistrate or P.W. 5 who was a part of the raiding party. It was the prosecution case that the accused persons had informed the officers of the raiding party that they would like to be searched before PW 5. In that context the Hon'ble Supreme court observed:-

“This, in our opinion, is again a breach of Section 50(1) of the NDPS Act. The idea behind taking an accused to the nearest Magistrate or the nearest Gazetted officer, if he so requires, is to give him a chance of being searched in the presence of an independent officer. Therefore, it was improper for P.W. 10 SI Qureshi to tell the respondents that a 3rd alternative was available and that they could be searched before P.W. 5 J.S. Negi the superintendent who was part of the raiding party. P.W. 5 J.S.Negi cannot be called an independent officer. We are not expressing any opinion on the question whether if the respondents had voluntarily expressed that they wanted to be searched before PW 5 J.S.Negi, the search would have been vitiated or not but P.W. 10 SI Qureshi could not have given a 3rd option to the respondents when Section

50(1) of the NDPS Act does not provide for it and when such option would frustrate the provisions of Section 50(1) of the NDPS Act. On this ground also, in our opinion, the search conducted by P.W. 10 S. I. Qureshi is vitiated.”

13. The other ground on which the conviction was set aside by the Hon’ble Supreme Court was that a joint communication had been made by the concerned officer to the two accused persons about their right under section 50(1) of the NDPS Act. This was found to be in contravention of the statute and on this ground also the Hon’ble Supreme Court set aside the conviction.

Firstly, Section 50 nowhere uses the word ‘independent’, moreover, the section itself contemplates that under certain circumstances an officer of the raiding team may conduct the search and seizure. Moreover, the conviction in **Parmanand** was set aside more because of giving a third option to the accused persons of being searched in front of a member of the raiding team than the fact that the accused persons were in fact searched in front of the member of the raiding party upon their agreeing to do so. The very observation that what would have happened had the accused persons volunteered to be searched before a member of the raiding party, is not discussed. This indicates that under all circumstances, being searched before a member of the raiding may not be violative of Section 50(1) of the NDPS Act.

Most importantly, the decision in **Parmanand** was rendered in an appeal from conviction. The same may not be relevant at the stage of consideration of the present bail application which has to be decided

keeping in mind the restrictions in Section 37 of the NDPS Act. Section 37 is set out hereunder:-

“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 subsection (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.”

14. The twin conditions that must be satisfied before bail is granted to the petitioner are paramount and must prevail over other considerations. The petitioner may well be entitled to a verdict of acquittal at the trial by arguing violation of Section 50(1) of the NDPS Act. However, at this stage, given the

prima facie incriminating material against the petitioner, I am unable to record an opinion that there are reasons to believe that the petitioner has not committed the offence that he has been charged with or that if released on bail, he is not likely to commit an offence again. In an NDPS case, a prayer for bail has to be decided within the parameters of Section 37 of the Act, notwithstanding anything contained in the Code of Criminal Procedure. The observations in the case of ***Narcotics Control Bureau v. Kashif reported at 2024 SCC OnLine SC 3848*** extracted above amply make that clear. Hence, the first argument advanced on behalf of the petitioner is rejected.

15. The next contention raised by learned Advocate for the petitioner is that the seizure list does not contain the petitioner's signature. Further, the investigating agency could not produce any material showing that the petitioner is the owner of the house from which the contraband items were seized. In this connection learned Advocate relied on the decision of the Hon'ble Supreme Court in the case of ***Sanjeet Kumar Singh @ Munna Kumar Singh v. State of Chhattisgarh reported at (2022) 16 SCC 58*** and in particular on paragraphs 13, 18, 31 and 32 of the decision. I do not see how this decision supports the contentions of the petitioner. In paragraph 13, the argument of the appellant/accused person was noted. One of such arguments was that the property seizure memo was not signed by the accused and witnesses and there was no stamping. In the other paragraphs, the decision of the Hon'ble Court is noted which I have noted hereinabove.

Learned Advocate for the petitioner also relied on the decision of a Coordinate Bench of this court in the case of ***Babu Mondal & Ors v. The State of West Bengal in CRAN No. 1 of 2019 in CRA 6 of 2019*** . Again, with great respect, I do not see how that case helps the petitioner. That was a decision on an application made in an appeal against an order of conviction for suspension of sentence under Section 389 (1) of the Code of Criminal Procedure, 1973. Various points were advanced on behalf of the appellant/applicant. One such point was that the seizure memo was not signed by the appellant/accused. Upon going through the evidence recorded before the learned Trial Court, the Coordinate Bench came to a binding that it was a fit case for suspension of the sentence. However, Section 37 of the NDPS Act was not discussed. In this connection, it may be noted that in the case of ***Union of India v. Rattan Mallik @ Habul reported at (2009) 2 SCC 624***, the High Court had suspended the sentence on the ground that the appellant was 3 years in prison and there was no chance of the appeal being heard within the next 7 years. The punishment imposed on the appellant was 10 years imprisonment. Hence the High Court suspended the sentence but without reference to Section 37 of the NDPS Act. Reversing the order of the High Court, the Hon'ble Supreme Court held as follows:-

“15. Bearing in mind the above broad principles, we may now consider the merits of the present appeal. It is evident from the afore-extracted paragraph that the circumstances which have weighed with the learned Judge to conclude that it was a fit case for grant of bail are: (i) that nothing has been found from the

possession of the respondent; (ii) he is in jail for the last three years and (iii) that there is no chance of his appeal being heard within a period of seven years. In our opinion, the stated circumstances may be relevant for grant of bail in matters arising out of conviction under the Indian Penal Code, 1860 etc. but are not sufficient to satisfy the mandatory requirements as stipulated in sub-clause (b) of sub-section (1) of Section 37 of the NDPS Act. Merely because, according to the learned Judge, nothing was found from the possession of the respondent, it could not be said at this stage that the respondent was not guilty of the offences for which he had been charged and convicted. We find no substance in the argument of learned Counsel for the respondent that the observation of the learned Judge to the effect that 'nothing has been found from his possession' by itself shows application of mind by the learned Judge tantamounting to 'satisfaction' within the meaning of the said provision. It seems that the provisions of the NDPS Act and more particularly Section 37 were not brought to the notice of the learned Judge."

16. Further, whether or not the house from which the contraband items were seized, belongs to the petitioner, is a question of fact which needs to be addressed and dealt with in the trial before the learned Trial Court.

17. The third point urged on behalf of the petitioner is that Section 41B Cr.P.C was violated at the time of arresting the petitioner. This is because the memo of arrest does not contain any 'Column x'. Therefore, no signature

of any family member of the petitioner or a respectable person of the locality was obtained on the memo of arrest. This is also in breach of mandatory directions of the Hon'ble Supreme Court in the case of ***D.K. Basuv. State of West Bengal reported at (1997) 1 SCC 416***. It was submitted that non-compliance with the requirements of Section 41B Cr.P.C dilutes the restrictions in Section 37 of the NDPS Act. In this connection, reliance was also placed on 3 decisions of Coordinate Benches of this court in the cases of ***Joga Ram v. State of West Bengal reported at (2023) SCC OnLine Cal 2161***, ***Chandra Bahadur Tamang v. State of West Bengal reported at (2023) SCC OnLine Cal 2160*** and ***Abhiram Biwas @ Amar Biswas in CRM (NDPS) 698 of 2023***.

18. It is true that Section 41B of Cr.P.C. which prescribes the procedure of arrest and duties of the officer making arrest, says that while making an arrest, the concerned officer shall prepare a memorandum of arrest which shall be attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made and will be counter signed by the person arrested. This was reiterated in the case of ***D.K. Basuv. State of West Bengal reported at (1997) 1 SCC 416***. However, Section 37 of the NDPS Act was not in issue before the Hon'ble Supreme Court. The *non-obstante* clause in Section 37 gives that section overriding effect *vis-a-vis* all provisions of the Criminal Procedure Code. In my considered opinion, even when an arrest is made without complying with the requirements mentioned in Section 41B Cr.P.C, still, bail cannot be granted in an NDPS case without satisfying the two

conditions mentioned in that section. An arrest made without complying the provisions of Section 41B Cr.P.C would not *per se* indicate that there are reasonable grounds to believe that the accused is not guilty of the offence he is charged with and that he is not likely to commit any offence while on bail. As held by the Hon'ble Supreme Court in the case of ***Narcotics Control Bureau v. Kashif, supra***, the provisions of NDPS Act including Section 37 thereof, must be given a literal construction rather than a liberal construction keeping in view the object of the NDPS Act. Further, the NDPS Act being a special Act, its provisions including Section 37, must be held to prevail over the provisions of the Code of Criminal Procedure, which is a general piece of legislation. The maxim *generaliaspecialibus non derogant* meaning that when there is a conflict between general and special laws, the latter would prevail, is well established in law.

19. In so far as the decisions in ***Joga Ram v. State of West Bengal reported at (2023) SCC OnLine Cal 2161***, ***Chandra Bahadur Tamang v. State of West Bengal reported at (2023) SCC OnLine Cal 2160*** are concerned, they were rendered following the decision in ***D.K. Basu v. State of West Bengal reported at (1997) 1 SCC 416***. The *non-obstante* clause in Section 37 of the NDPS Act was not noted in those two decisions nor in the decision in the case of ***Abhiram Biwas @ Amar Biswas in CRM (NDPS) 698 of 2023***. It may be noted that I was a member of the Bench which rendered decisions in ***Joga Ram v. State of West Bengal reported at (2023) SCC OnLine Cal 2161***, ***Chandra Bahadur Tamang v. State of West Bengal reported at (2023) SCC OnLine Cal 2160***. However, since a

mandatory statutory provision was not noted or adverted to in the 3 decisions of the Coordinate Bench, I am constrained to hold that those decisions are '*per incuriam*'.

20. It was then argued by learned Counsel for the petitioner that the sole independent witness being PW-3 has turned hostile. This demolishes the prosecution case. Reliance was placed on the decisions in the case of ***Sanjeet Kumar Singh @ Munna Kumar Singh v. State of Chhattisgarh reported at (2022) 16 SCC 58 and Abhiram Biwas @ Amar Biswas in CRM (NDPS) 698 of 2023.***

We are unable to accept this argument advanced on behalf of the petitioner. The reliance on ***Sanjeet Kumar Singh***'s case is misplaced. Infact, it has been held in that case that it is not always necessary that the evidence of the police witnesses has to be corroborated by independent witnesses. The independent witnesses turning hostile need not necessarily result in the acquittal of the accused. This was also held in the case of ***Jarnail Singh v. State of Punjab reported at (2011) 3 SCC 521.***

21. The final argument advanced on behalf of petitioner was that the petitioner is in custody for about 1 year and 3 months. Only 3 out of 10 witnesses have been examined. The petitioner's fundamental right to personal liberty and speedy trial is being infringed. Hence bail should be granted.

22. We are conscious of a citizen's fundamental right to personal liberty and speedy trial as enshrined in Article 21 of the Constitution of India. The same

has been emphasised in several decisions rendered by the Hon'ble Apex Court and also in the case relied upon by the petitioner i.e., namely, **V. Senthil Balaji v. Deputy Director, Directorate of Enforcement, Supra.** However, such fundamental right must be balanced against other factors like the gravity of the offence and the punishment that the accused person is likely to suffer if he is convicted. Private interest must be juxtaposed against societal interest.

23. In the present case, 148.5Kgs of Cannabis was seized from the house of the petitioner. Therefore, from the conscious possession of the petitioner much more than commercial quantity of contraband items were seized. Prima facie there is sufficient incriminating material against the petitioner. He is in custody for 1 year 3 months. 3 witnesses have already been examined. It cannot be said that the trial is stagnant. I would have understood if there was no progress in the trial and the petitioner was languishing in judicial custody. That does not appear to be the case here. If convicted, the petitioner faces a jail term of at least 10 years which may extend to 20 years.

24. On an overall assessment of the facts and circumstances of the case, I am of the view that this is not a case where there is inordinate delay in progress of the trial whilst keeping the petitioner incarcerated. I am conscious that a Constitutional Court has the power to grant bail to an accused under-trial person notwithstanding restrictions in statutes like Section 37 of the NDPS Act. However, in my view, the stage has not reached where it can be said that the petitioner's rights under Article 21 are being

negated and therefore notwithstanding the conditions in Section 37 of the NDPS Act, this Court should grant bail to the petitioner on the touchstone of Article 21 of the Constitution of India.

25. In the result, this application fails and is dismissed.

26. However, considering the period of detention of the petitioner, I direct the learned Special Court to expedite the trial to the extent possible and conclude the same on an early date without granting unnecessary adjournments to either of the parties and if necessary, by fixing frequent schedules of 2/3 days each, for examination of witnesses.

I Agree

(Arijit Banerjee, J.)

Biswaroop Chowdhury, J.:

1. I have perused the Judgment delivered by my Learned brother and have agreed to the conclusion arrived at and the grounds cited. However with due respect, I add the following grounds.

2. It is argued as well as decided in different judicial pronouncements that while considering a bail application under the NDPS Act stringent conditions of Section 37 of the Act have to be satisfied before granting bail. It is further argued that non compliance of the mandatory provision of Section 50 of the NDPS Act which was not followed may be relevant at the hearing of trial, and not bail application. The question which thus comes for consideration is the remedy of the accused where trial is delayed and the accused cannot take necessary defence under law.

3. In the case of Arvind Kejriwal VS Central Bureau of Investigation reported in 2024 SCC Online SC 2550 the Hon'ble Supreme Court observed as follows:

“38. The evolution of bail jurisprudence in India underscores that the ‘issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process’. The principle has further been expanded to establish that the prolonged incarceration of an accused person, pending trial, amounts to an unjust deprivation of personal liberty. This Court in Union of India v. K.A. Najeeb has expanded this principle even in a case under the provisions of the Unlawful Activities (Prevention) Act, 1967 (hereinafter ‘UAPA’) notwithstanding the statutory embargo contained in Section 43-D(5) of that Act, laying down that the legislative policy against the grant of bail will melt down where there is no likelihood of trial being completed within a reasonable time. The courts would invariably bend towards ‘liberty’ with a flexible approach towards an undertrial, save and except when the release of such person is likely to shatter societal aspirations, derail the trial or deface the very criminal justice system which is integral to rule of law.”

4. In the case of Mohd Tahir Hussain VS State of NCT of Delhi reported in 2025 SCC Online SC 135 the Hon'ble Supreme Court observed as follows:-

“27. I have examined the allegations and the evidence against the Petitioner. No doubt, they are grave and reprehensible but as of this moment they are exactly that – allegations. It is settled law that magnitude and gravity of the

offence alleged are not grounds, in and by themselves, to deny bail [Para 18 12 of K ANajeeb (supra) and Jalaluddin Khan v Union of India, (2024) 10 SCC 574], moreso when trial is prolonged. The Petitioner's rights under 14 and 21 of the Constitution of India cannot be lost sight of. As on date, no court of law has convicted the petitioner. The following passage from *JavedGulamNabi Shaikh* (supra) is attracted squarely:

‘18. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.’”

5. In the case of A.N. Patel VS State of Gujrat reported in AIR-2003. S.C. 2172 the Hon'ble Supreme Court observed as follows:

“3. It has been pointed out that BipinShantilal Panchal, petitioner in SLP (CrI.) No, 3451 of 2001 has filed 5th bail application before the High Court as well as before this Court. Other accused also filed two bail applications before the High Court and this Court. Considering the lengthy orders passed by the High Court, it appears that all sorts of dilatory tactics are adopted and that neither the High Court is taking up appropriate action nor the Sessions Court in complying with the directions issued by this Court repeatedly for expeditious trial. It appears that much of the time is wasted in disposing of bail matters and interim applications by hearing arguments at length as if there is no constraint of time and staying further proceedings at interlocutory stages. This Court while disposing of SLP (CrI.) No. 223 of 2000 filed by the petitioner BipinShantilal Panchal, on 31-3-2000 observed as under :-

"As the Special Judge who is trying the case has reported to us that he reasonably expects to close the trial within six months we dispose of this special leave petition permitting the petitioner to move for bail again in case the trial is not closed within six months."

6. For modification of the aforesaid order and for extension of time. Criminal Misc. Petition No. 862 of 2001 was filed, which was disposed of by this Court on 22nd February, 2001 by making various observations including the following one :-

"This is yet another opportunity to inform the trial Courts that despite the procedural trammels and vocational constraints we have reached a stage when no effort shall be spared to speed up trials in the criminal Courts. It causes anguish to us that in spite of the exhortations made by this Court and a few High Courts, time and again, some of the trial Courts exhibit stark in-sensitivity to the need for swift action, even in cases where the accused are languishing in prisons for long years as under-trials only on account of the slackness, if not inertia, in accelerating the process during trial stage."

7. Apart from the directions in this very case, it has been repeatedly stressed that NDPS cases should be tried as early as possible because in such cases normally accused are not released on bail.

8. However, despite the delay, in our view, this would not be a fit case for granting bail to the accused. Trial Court shall comply with the directions issued by this Court for expeditious disposal of the matter. If there is non-compliance, the High Court is directed to take appropriate action. The High Court is also requested not to interfere and grant stay order with regard to

further proceedings at the interim stage and if any such revision/application is pending, the High Court to decide the matter at the earliest.

9. Thus when there is Prima facie case regarding involvement of accused person under Section 37 NDPS there is no scope for granting bail except when there is delay in Trial. However as the object of refusal of bail under NDPS Act is to prevent further commission of offence by an accused person the Court may grant interim bail for some period instead of regular bail. Although interim bail are granted due to exigency or humanitarian or compassionate ground but in NDPS cases Courts may exercise that discretion in the event the Court is of the view that trial cannot be completed within a short period. The interim bail may be granted during trial more than once after certain period if there is inordinate delay in completion of trial. An accused may be convicted or acquitted on the completion of trial and in the event of being convicted he must have the mental strength to undergo reformation process as the object of punishment is to reform a guilty person. Similarly an accused after being acquitted should also have mental strength and motivation to resume normal life. Incarceration for a long period makes a person depressed and frustrated and may not help him to undergo reformation process in case of conviction or resume normal life after acquittal. It is only when a person's detention is relaxed for some period and he is allowed to meet family members or near relation who can motivate him or visit any religious institution or undergo counselling process he can get strength to face trial or undergo reformation process or resume normal life as the case may be. Granting interim bail with

condition will prevent the accused from committing offence, during his release and reasonable apprehension of repeating offence may not be there.

10. In the case of Manoranjan Mondal VS State reported in 2024(3) CHN P-425 where one of us was a member it was observed as follows:-

“8. In this matter the petitioner is in custody for 2 years 10 months. As in this case examination of all the witness are over this case cannot be equated with other cases. Now the point for consideration is whether it is unreasonable on the part of the petitioner who is about 23 years of age and is in custody for about 2 years 10 months to pray for bail at this stage.

9. The answer is obviously no. An undertrial who is presumed to be innocent till proved guilty may reasonably expect that his right to personal liberty be kept intact during trial and he be permitted to stand trial by imposing some restriction of his right instead of detention. A person in custodial detention specially when of young age suffers mental agony, and trauma which may be avoided during pre-trial stage, unless it is a very exceptional case and release of the accused will be threat to public safety and prejudicial to trial. A person being incarcerated for a long during stage of trial loses his contact with his family members and relation which has every possibility to create stress and depression and is not desirable during pre-trial detention. In the event it is not possible to enlarge the accused on confirmed bail the accused may be granted interim bail for a short period few times so that he may meet his family members and relations and exercise his right guaranteed under the Constitution for a short period during his trial when he is presumed to be innocent. When there is a provision of release on parole for a short period of a convict undergoing

sentence of imprisonment there may not be any sufficient reason as to why an undertrial cannot be granted interim bail for a short period. Thus even if there is possibility to conclude trial within a short period an undertrial may be granted interim bail if there is difficulty to grant regular bail during trial unless there are very serious exceptional circumstances. All persons have some obligations towards the society and some basic rights. When the said person is implicated in a Criminal Cases he has to face trial. During trial he may be kept in custody or he may be on bail with condition to appear on all dates fixed. In the event it is thought fit to keep a person in custody till conclusion of trial he should be granted interim bail to meet his family. All persons have basic rights to be with their family and in case of trial in custody for some short interim period. A person has some obligations to see the welfare of his family as family is also a part of the society, so scope should be given to discharge the said obligation. When such scope is available to convicts undergoing imprisonment to meet family there is no reason why the same should not be granted to undertrial prisoners who are presumed to be innocent till proved guilty unless it is a very exceptional case.”

10. As the present case is that under NDPS Act unless conditions under Section 37 of the Act are complied bail cannot be granted. The petitioner is in custody for 1 year 7 months and there are materials against the petitioner thus the prayer for bail is rejected at this stage with a further liberty to pray for regular bail or interim bail before Trial Court in the event trial cannot be completed within six months.

11. In the event Trial Court is of the view that interim bail may be granted before 6 months and there is no chance of completion of trial within 6 months interim bail with stringent conditions may be granted which shall not be more than 4 weeks.

12. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree

(Biswaroop Chowdhury, J.)

(Arijit Banerjee, J)