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IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.27 OF 2023

STATE (P.I. ANTI-NARCOTIC CELL,
PANAJI POLICE STATION)

... PETITIONER

Versus

CHHATRA SINGH

... RESPONDENT

Mr Pravin Faldessai, Addl. Public Prosecutor for the Petitioner.

Mr Vibhav Amonkar, Advocate for the Respondent.

CORAM:- VALMIKI MENEZES, J.

DATED :- 7th January, 2025

ORAL ORDER:

1. This is a petition invoking this Court's supervisory jurisdiction under Article 227 of the Constitution of India seeking cancellation of bail granted vide order dated 13/04/2022 passed by the Additional Sessions Court at Panaji in NDPS Case No.12/2021. By the impugned order, the Sessions Court has granted bail to the Accused /Respondent therein who was charged for offences under Section 22(b)(ii)(C) of the NDPS Act; the Accused has been released on bail after the trial commenced on executing a Personal Bond of Rs.75,000/- with one local surety, and on other condition, that he shall not leave the State without permission of the Court and shall report at the Police Station as and when required by the Investigating Officer.

2. The main ground for challenge of the impugned order is that the Sessions Court has not considered the rigours imposed by Section 37(i) (b) and sub Section 2 of Section 37 of the NDPS Act whilst granting bail; there is no ground of challenge raised in the petition as to the conditions on which bail was granted.

3. Heard Mr. Pravin Faldessai, learned Additional Public Prosecutor for the State and Mr. Vibhav Amonkar, learned Counsel for the Respondent.

4. It is submission of the learned Additional Public Prosecutor that after the trial commenced, a witness named Bernard, was examined as Pw3, claims to be the landlord of the premises in which the narcotic substance was found, and which room was alleged to be in possession of the Accused/Respondent. An earlier bail application rejected by the Sessions Court on 06/10/2021, prior to the charge being framed. The order rejecting the first bail application was passed after considering the embargo under Section 37 of the Act and after considering the statement under Section 161 CrPC of the landlord Bernard, who was later examined as Pw3. It is the submission of learned Additional Public Prosecutor that the Sessions Court has transgressed the powers vested in it, by considering the evidence given by Bernard after the trial commenced and by arriving at a finding that the evidence of

Bernard/Pw3 cannot be believed. It is submitted that such findings given in a bail order would displace entire case of the prosecution. Further, that the evidence of the witness could be considered only at the stage of final hearing of the case, after all evidence has been led by the prosecution. It is further submitted that the finding, which is given at paragraph 9 of the order, records that the evidence of the star witness Bernard cannot be believed since the said witness has contradicted himself with his statement under Section 161 on the aspect of submitting a tenant verification form, which is rendered without considering the rigours imposed by the provision of Section 37 of the NDPS Act.

5. Shri Amonkar appearing for the Respondent submits that the said Bernard is a key witness for the statement, who had deposed that the room in question where the contraband was seized did not belong to him but belonged to his sister and he was looking after it on behalf of his sister. It is also submitted that in the evidence recorded, there was no tenant verification form submitted to the local police station to substantiate that the accused was in fact in conscious possession of the premises under Section 22(b)(ii) of the Act. He further submits that even though the judgment does not refer to the provisions of Section 37 of the Act, the reading of the judgment as a whole would clearly indicate that the Sessions Court was fully aware of the rigour of Section 37 of the Act and has granted bail to the Accused only after considering evidence

of the witness.

6. I have perused the impugned order and the record before me. Whilst it is true that specific reference to provisions of Section 37 of the Act is not made in this order, a reading of the order as a whole clearly indicates that the Sessions Court was testing the application on behalf of the Accused for grant of the bail on the basis of evidence which was led. The order clearly sets out that such evidence allowed for the benefit of the exception to the Section 37 of the Act. In terms of Section 37 of the Act a person could be released on bail only if the Court is satisfied that there are reasonable grounds to believe that he is not guilty of the offence of which he is charged under the Act. In the present case, the Court has considered the evidence of main witness i.e. Bernard, on the basis of whose statement the prosecution claimed that the Accused was put in possession of the room where the contraband was found. The evidence of Bernard, according to the opinion of the trial Court raises serious doubt as to whether the room was in fact in the possession of the Accused. This doubt was expressed mainly in paragraph 9 of the judgment. The finding in paragraph 9 of the trial Court are obviously prima facie findings on the basis of the evidence recorded till that stage and only for the purpose of considering whether the embargo of Section 37 of the Act should be applied for the benefit to be given to the Accused whilst granting bail. The findings at paragraph 9 of the order in no

manner comes in the way of the trial Court to pass its final judgment, which shall be based upon the reading of entire evidence led in the case. In that view of the matter, no infirmity can be found with the view taken by the trial Court whilst granting bail. This was a prima facie view for the limited purpose of considering the bail application and shall not weigh in the mind of the Court passing the judgment after the trial is complete.

7. With the above observations, the petition stands rejected.

VALMIKI MENEZES, J