

Inder Singh vs State Of Himachal Pradesh on 13 December, 2024

(2024:HHC:14450) IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA Cr.MP(M) No. 1837 of 2024 Reserved on: 29.11.2024 Date of Decision: 13.12.2024 Inder Singh ...Petitioner Versus State of Himachal Pradesh ...Respondent Coram Hon'ble Mr Justice Rakesh Kainthla, Judge. Whether approved for reporting?1 No For the Petitioner : Ms. Aishwarya Chauhan & Mr. Ajay Chauhan, Advocates.

For the Respondent : Mr Lokender Kutlehria, Additional Advocate General.

Rakesh Kainthla, Judge The petitioner has filed the present petition for seeking regular bail. It has been asserted that the petitioner was arrested vide FIR No. 17 of 2024, dated 07.03.2024, registered for the commission of offences punishable under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act (in short 'NDPS Act') at Police Station Renuka Ji, District Sirmaur, H.P. As per the prosecution, petitioner - Inder Singh and Arun Dhiman were riding a Scooty from Nahan towards Dadahu. They were stopped at Bayari, and capsules of SPASMO PROXIVON PLUS 6 strips and SPAS PARIVON PLUS 18 strips were found in their Whether reporters of Local Papers may be allowed to see the judgment? Yes.

(2024:HHC:14450) possession during the search. The police have completed the investigation and filed the charge sheet before the Court. No recovery is to be effected from the petitioner. He will abide by all the terms and conditions, which the Court may impose. Hence, the present petition.

2. The State has filed a status report asserting that the police party was on checking duty on 07.03.2024 at Bayari. They stopped a Scooty bearing registration No. HP18C-5005 coming from Nahan. The driver showed his driving license on his mobile phone. He revealed his name as Inder Singh (the present petitioner). The insurance of Scotty had expired. The police issued a traffic infringement report. The pillion rider revealed his name as Arun Dhiman. Police asked the driver to unlock the dickey of the Scooty, on which both the riders became frightened. The police checked the Scooty in the presence of two independent witnesses and found a plastic bag containing 144 capsules of SPASMO-PROXYVON PLUS and 432 Capsules of SPAS-PARVION PLUS. Both of these drugs contained TRAMADOL. This is a prohibited salt. A license/permit was demanded from the riders for possessing the drugs, but they could not produce any license/permit. Hence, the police seized (2024:HHC:14450) the drugs from Scooty after completing codal formalities. Inder Singh revealed on inquiry that he is a drug addict and used to purchase the capsules from Arun Dhiman. Arun Dhiman revealed that he had purchased the capsules from Bhupinder Sharma, owner of a Kirana Store. The shop of Bhupinder Sharma was searched, and the pieces of a cardboard box of TRAMADOL were found in the plastic box beneath the counter. Arun Dhiman and Bhupinder Sharma were in touch with each other. The location of Bhupinder Sharma and Arun Dhiman was found in Kala Amb (Haryana) between 1 pm and 1:30 pm. The capsules were sent to FSL, and as per the report of the analyst, they contained TRAMADOL weighing 337.392 gms. Challan was presented before the Court on 21.05.2024, and the matter was listed for the prosecution evidence on 22.11.2024. Hence, the status report.

3. I have heard Ms. Aishwarya Chauhan & Mr Ajay Chauhan, learned counsel for the petitioner and Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State.

4. Ms Aishwarya Chauhan, learned counsel for the petitioner, submitted that the petitioner is innocent and he was (2024:HHC:14450) falsely implicated in the present case. As per the status report, the co-accused, Arun Dhiman, was in touch with Bhupinder Sharma. He had purchased the capsules from Bhupinder Sharma, and their location was found in Kama Amb (Haryana).

There is no material to connect the petitioner with the commission of a crime. Therefore, she prayed that the present petition be allowed and the petitioner be released on bail.

5. Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that the petitioner is the owner of Scooty from which the recovery was effected. The statement made by Arun Dhiman is not admissible and was used by the prosecution to trace the person, who had sold the capsules. The quantity of the TRAMADOL is commercial, and the petitioner is unable to satisfy the twin conditions laid down under Section 37 of the ND&PS Act; therefore, he prayed that the present petition be dismissed.

6. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

7. The parameters for granting bail were considered by the Hon'ble Supreme Court in Manik Madhukar Sarve v. Vitthal (2024:HHC:14450) Damuji Meher, 2024 SCC OnLine SC 2271, wherein it was observed as under: -

"19. Courts, while granting bail, are required to consider relevant factors such as the nature of the accusation, the role ascribed to the accused concerned, possibilities/chances of tampering with the evidence and/or witnesses, antecedents, flight risk, et al. Speaking through Hima Kohli, J., the present coram in Ajwar v. Waseem, 2024 SCC OnLine SC 974, apropos relevant parameters for granting bail, observed:

"26. While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail. (Refer: Chaman Lal v. State of U.P. (2004) 7 SCC 525; Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav (supra) (2004) 7 SCC 528; Masroor v. State of Uttar Pradesh (2009) 14 SCC 286; Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496; Neeru Yadav v. State of Uttar Pradesh (2014) 16

SCC 508; Anil Kumar Yadav v. State (NCT of Delhi) (2018) 12 SCC 129; Mahipal v. Rajesh Kumar @ Polia (supra) (2020) 2 SCC

27. It is equally well settled that bail, once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the Superior Court. If there are serious (2024:HHC:14450) allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a Superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order. In P v. State of Madhya Pradesh (supra) (2022), 15 SCR 211 decided by a three-judge bench of this Court [authored by one of us (Hima Kohli, J)] has spelt out the considerations that must be weighed with the Court for interfering in an order granting bail to an accused under Section 439(1) of the CrPC in the following words:

"24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial [Dolat Ram v. State of Haryana, (1995) 1 SCC 349: 1995 SCC (Cri) 237]. To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail, but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court." (emphasis supplied)

20. In State of Haryana v. Dharamraj, 2023 SCC OnLine SC 1085, speaking through one of us (Ahsanuddin Amanullah, J.), the Court, while setting aside an order of the Punjab and Haryana High Court granting (anticipatory) bail, discussed and reasoned:

"7. A foray, albeit brief, into relevant precedents is warranted. This Court considered the factors to guide the grant of bail in Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598 and Kalyan Chandra Sarkar v. Rajesh Ranjan (2004) 7 SCC 528. In Prasanta (2024:HHC:14450) Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496, the relevant principles were restated thus:

'9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.'

8. In *Mahipal v. Rajesh Kumar alias Polia* (2020) 2 SCC 118, this Court opined as under:

'16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the (2024:HHC:14450) anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. ...'

9. In *Bhagwan Singh v. Dilip Kumar @ Deepu @ Depak*, 2023 INSC 761, this Court, in view of *Dolat Ram v. State of Haryana*, (1995) 1 SCC 349; *Kashmira Singh v. Duman Singh*, (1996) 4 SCC 693 and *X v. State of Telangana*, (2018) 16 SCC 511, held as follows:

'13. It is also required to be borne in mind that when a prayer is made for the cancellation of the grant of bail, cogent and overwhelming circumstances must be present, and bail, once granted, cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it in conducting to allow fair trial. This proposition draws support from the Judgment of this Court in *Daulat Ram v. State of Haryana* (1995) 1 SCC 349, *Kashmira Singh v. Duman Singh* (1996) 4 SCC 693 and *XXX v. State of Telangana* (2018) 16 SCC 511.'

10. In *XXX v. Union Territory of Andaman & Nicobar Islands*, 2023 INSC 767, this Court noted that the principles in *Prasanta Kumar Sarkar* (supra) stood reiterated in *Jagjeet Singh v. Ashish Mishra* (2022) 9 SCC

321.

11. The contours of anticipatory bail have been elaborately dealt with by 5-Judge Benches in *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565 and *Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1. *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694 is worthy of mention in this context, despite its partial overruling in *Sushila Aggarwal* (supra). We are cognizant that liberty is not to be interfered with easily. More so when an order of pre-arrest bail already stands granted by the High Court.

12. Yet, much like bail, the grant of anticipatory bail is to be exercised with judicial discretion. The factors illustrated by this Court through its pronouncements are illustrative and not exhaustive. Undoubtedly, the fate of each case turns on its own facts and merits." (emphasis supplied) (2024:HHC:14450)

21. In *Ajwar* (supra), this Court also examined the considerations for setting aside bail orders in terms below:

"28. The considerations that weigh with the appellate Court for setting aside the bail order on an application being moved by the aggrieved party include any supervening circumstances that may have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner. We may add that this list is only illustrative and not exhaustive. However, the court must be cautious that at the stage of granting bail, only a prima facie case needs to be examined, and detailed reasons relating to the merits of the case that may cause prejudice to the accused ought to be avoided. Suffice it to state that the bail order should reveal the factors that have been considered by the Court for granting relief to the accused.

29. In *Jagjeet Singh* (supra) (2022) 9 SCC 321, a three-judge bench of this Court has observed that the power to grant bail under Section 439 Cr. P.C. is of wide amplitude and the High Court or a Sessions Court, as the case may be, is bestowed with considerable discretion while deciding an application for bail. But this discretion is not unfettered. The order passed must reflect the due application of the judicial mind following well-established principles of law. In the ordinary course, courts would be slow to interfere with the order where bail has been granted by the courts below. But if it is found that such an order is illegal or perverse or based upon utterly irrelevant material, the appellate Court would be well within its power to set aside and cancel the bail. (Also refer: *Puran v. Ram Bilas* (2001) 6 SCC 338; *Narendra K. Amin (Dr.) v. State of Gujarat* (2008) 13 SCC 584)"

(emphasis supplied) (2024:HHC:14450)

8. The present petition has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

9. Ms. Aishwarya Chauhan, learned counsel for the petitioner, relied upon the statement made by co-accused Arun Dhiman during the investigation and submitted that Arun Dhiman had contacted Bhupinder, he has purchased the capsules, and the petitioner is not involved in the commission of the offence. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in *Dipakbhai Jagdishchandra Patel v. State of Gujarat*, (2019) 16 SCC 547: (2020) 2 SCC (Cri) 361: 2019 SCC OnLine SC 588 that a statement made by co-accused during the investigation is hit by Section 162 of Cr.P.C. and cannot be used as a piece of evidence. Further, the confession made by the co-accused is inadmissible because of Section 25 of the Indian Evidence Act. It was observed at page 568: -

44. Such a person, viz., the person who is named in the FIR, and therefore, the accused in the eye of the law, can indeed be questioned, and the statement is taken by the police officer. A confession that is made to a police officer would be inadmissible having regard to Section 25 of the Evidence Act. A confession, which is vitiated under Section 24 of the Evidence Act, would also be inadmissible. A confession, unless it fulfils the test laid down in *Pakala Narayana Swami [Pakala Narayana Swami v. King Emperor]*, 1939 SCC OnLine PC 1 : (1938-39) 66 IA 66: AIR 1939 PC 47] and as accepted by this Court, (2024:HHC:14450) may still be used as an admission under Section 21 of the Evidence Act. This, however, is subject to the bar of admissibility of a statement under Section 161 CrPC.

Therefore, even if a statement contains admission, the statement being one under Section 161, it would immediately attract the bar under Section 162 CrPC."

10. Similarly, it was held in *Surinder Kumar Khanna vs Intelligence Officer Directorate of Revenue Intelligence* 2018 (8) SCC 271 that a confession made by a co-accused cannot be taken as a substantive piece of evidence against another co-accused and can only be utilised to lend assurance to the other evidence. The Hon'ble Supreme Court subsequently held in *Tofan Singh Versus State of Tamil Nadu* 2021 (4) SCC 1 that a confession made to the police officer during the investigation is hit by Section 25 of the Indian Evidence Act and is not saved by the provisions of Section 67 of the NDPS Act. Therefore, no advantage can be derived by the petitioner from the confessional statement made by the co-

accused.

11. Even otherwise, the statement made by Arun Dhiman shows that the petitioner had asked him for the capsules, and he had gone to Haryana at the instance of the petitioner. Therefore, this statement, even if admissible, does not absolve the petitioner of the commission of the crime, and the petitioner (2024:HHC:14450) cannot derive any advantage from the statement of Arun Dhiman.

12. The status report shows that the petitioner is the owner of the Scooty from which the capsules were recovered. He was driving the Scooty when it was intercepted by the police.

Hon'ble Supreme Court held in *Madan Lal v. State of H.P.*, (2003) 7 SCC 465: 2003 SCC (Cri) 1664: 2003 SCC OnLine SC 874, that the persons travelling in a vehicle knowing each other would be presumed to be in conscious possession and the burden shifts upon them that their possession was not conscious. It was observed at page 471:

"18. The other plea which was emphasised was the alleged statement of accused Goyal Nath that he alone was in possession of the contraband bags. The plea centres around a statement of search witness PW 1, who stated that Goyal Nath told him that the contraband articles belonged to him. The statement was made totally out of context, and no credence can at all be attached to the statement. The accused, Goyal Nath, in his examination under Section 313 of the Code of Criminal Procedure, 1973 (in short, "the Code"), did not state that he alone was in possession of the contraband articles. On the contrary, he stated that he did not know anything about the alleged seizure.

19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling (2024:HHC:14450) in a vehicle, and as noted by the trial court, they were known to each other, and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.

20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act, which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.

21. It is highlighted that unless the possession was coupled with the requisite mental element, i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

22. The expression "possession" is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in *Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja* [(1979) 4 SCC 274:

1979 SCC (Cri) 1038: AIR 1980 SC 52] to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the context of all statutes.

23. The word "conscious" means awareness about a particular fact. It is a state of mind which is deliberate or intended.

24. As noted in *Gunwantlal v. State of M.P.* [(1972) 2 SCC 194: 1972 SCC (Cri) 678: AIR 1972 SC 1756], possession in a given case need not be physical possession but can be constructive, having power and control over the article in the case in question, while the person to whom physical possession is given holds it subject to that power or control.

25. The word "possession" means the legal right to possession (see *Heath v. Drown* [(1972) 2 All ER 561:

(2024:HHC:14450) 1973 AC 498 : (1972) 2 WLR 1306 (HL)]). In an interesting case, it was observed that where a person keeps his firearm in his mother's flat, which is safer than his own home, he must be considered to be in possession of the same. (See *Sullivan v. Earl of Caithness* [(1976) 1 All ER 844: 1976 QB 966 : (1976) 2 WLR 361 (QBD)] .)

26. Once possession is established, the person who claims that it was not a conscious possession has to establish it because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54, where also presumption is available to be drawn from possession of illicit articles.

27. In the factual scenario of the present case, not only possession but conscious possession has been established. It has not been shown by the accused-

appellants that the possession was not conscious in the logical background of Sections 35 and 54 of the Act.

28. In fact, the evidence clearly establishes that they knew about the transportation of charas, and each had a role in the transportation and possession with conscious knowledge of what they were doing. The accused-appellant, Manjit Singh, does not stand on a different footing merely because he was the driver of the vehicle. The logic applicable to other accused- appellants also applies to Manjit Singh."

13. In the present case, the status report shows that the petitioner was the owner of the Scooty, he had the key of the dicky, and he would be in possession of all the articles found in it; hence, his plea that he was not found in possession of the capsules cannot be accepted.

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14. The police had recovered the commercial quantity of TRAMADOL capsules, and the rigours of Section 37 of the ND&PS Act apply to the present case. Section 37 of the NDPS Act provides that in an offence involving commercial quantity, the Court should be satisfied that the accused is not guilty of the commission of an offence and is not likely to commit any offence while on bail. Section 37 of the NDPS Act reads as follows:

"37. Offences are to be cognisable 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 cognisable;

(b) no person accused of an offence punishable for offences under section 19, section 24, or section 27A and also for offences involving commercial quantity shall be released on bail or his own bond unless-

(i) the Public Prosecutor has been given a Section 37 of the NDPS Act provides that in an offence involving commercial quantity, the court should be satisfied that the accused is not guilty of the commission of an offence and is not likely to commit any offence while on bail. Section 37 of the NDPS Act reads as follows:

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(b) no person accused of an offence punishable for offences under section 19, section 24, or section 27A and also for offences involving commercial quantity shall be released on bail or 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 an 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."

15. This Section was interpreted by the Hon'ble Supreme Court in Union of India Versus Niyazuddin & Another (2018) 13 SCC 738, and it was held that in the absence of the satisfaction that the accused

is not guilty of an offence and he is not likely to commit an offence while on bail, he cannot be released on bail.

It was observed:

"7. Section 37 of the NDPS Act contains special provisions with regard to the grant of bail in respect of certain offences enumerated under the said Section. They are:

(1) In the case of a person accused of an offence punishable under Section 19, (2) Under Section 24, (3) Under Section 27A and (4) offences involving commercial quantity.

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8. The accusation in the present case is with regard to the fourth factor, namely, commercial quantity. Be that as it may, once the Public Prosecutor opposes the application for bail to a person accused of the enumerated offences under Section 37 of the NDPS Act, in case the court proposes to grant bail to such a person, two conditions are to be mandatorily satisfied in addition to the normal requirements under the provisions of the Cr.P.C. or any other enactment.

(1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence;

(2) that person is not likely to commit any offence while on bail."

16. This position was reiterated in State of Kerala Versus Rajesh AIR 2020 SC 721, wherein it was held:

"19. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under the NDPS Act. In Union of India vs. Ram Samujh and Ors., (1999) 9 SCC 429, it has been elaborated as under: -

"7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits the murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. The reason may be the large stake and illegal profit involved. This Court, (2024:HHC:14450) dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in

Durand Didier vs Chief Secy., Union Territory of Goa, (1990) 1 SCC 95) as under:

24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament, in its wisdom, has made effective provisions by introducing Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent accused on bail. Instead of attempting to take a holistic view of the harmful socio-

(2024:HHC:14450) economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended."

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

21. 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 the 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."

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17. A similar view was taken in Union of India v. Mohd.

Nawaz Khan, (2021) 10 SCC 100: (2021) 3 SCC (Cri) 721: 2021 SCC OnLine SC 1237 wherein it was observed at page 110:

"21. Under Section 37(1)(b)(ii), the limitations on the grant of bail for offences punishable under Sections 19, 24 or 27-A and also for offences involving a commercial quantity are:

(i) The Prosecutor must be given an opportunity to oppose the application for bail; and

(ii) There must exist "reasonable grounds to believe" that (a) the person is not guilty of such an offence, and (b) he is not likely to commit any offence while on bail.

22. The standard prescribed for the grant of bail is "reasonable ground to believe" that the person is not guilty of the offence. Interpreting the standard of "reasonable grounds to believe", a two-judge Bench of this Court in Shiv Shanker Kesari [Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798: (2007) 3 SCC (Cri) 505], held that : (SCC pp. 801-02, paras 7-8 & 10-11) "7. The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged, and this reasonable belief contemplated, in turn, points to the existence of such facts and circumstances as are sufficient in themselves to justify the recording of satisfaction that the accused is not guilty of the offence charged.

8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word "reasonable".

(2024:HHC:14450) '7. ... Stroud's Judicial Dictionary, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasy of the individual and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy.' [See MCD v. Jagan Nath Ashok Kumar [MCD v. Jagan Nath Ashok Kumar, (1987) 4 SCC 497], SCC p. 504, para 7 and Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd. [Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd., (1989) 1 SCC 532]]

10. The word "reasonable" signifies "in accordance with reason". In the ultimate analysis, it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd. [Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd. (2003) 6 SCC 315]

11. The court, while considering the application for bail with reference to Section 37 of the 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 records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty."

(emphasis supplied)

23. Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail.

(2024:HHC:14450) Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed."

18. It was held in Union of India v. Ajay Kumar Singh, 2023 SCC OnLine SC 346 that the bail cannot be granted without complying with the requirement of Section 37 of the NDPS Act. It was observed:

4. This apart, it is noticed that the High Court, in passing the impugned order of bail, had lost sight of Section 37 of the NDPS Act, which, inter alia, provides that no person accused of an offence involving commercial quantity shall be released on bail unless the twin conditions laid down therein are satisfied, namely, (i) the public prosecutor has been given an opportunity to oppose the bail application;

and (ii) the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any such offence while on bail.

15. For the sake of convenience Section 37(1) is reproduced hereinbelow:--

"37. Offences to be cognisable and nonbailable.-

(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognisable;

(b) no person accused of an offence punishable for 2[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (2024:HHC:14450)

(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."

16. In view of the above provisions, it is implicit that no person accused of an offence involving trade in a commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.

19. It was held in *State of Meghalaya v. Lalrintluanga Sailo*, 2024 SCC OnLine SC 1751 that the grant of bail without considering Section 37 of the NDPS Act is impermissible. It was observed:

"5. There cannot be any doubt with respect to the position that in cases involving the commercial quantity of narcotic drugs or psychotropic substances while considering the application of bail, the Court is bound to ensure the satisfaction of conditions under Section 37(1)

(b)(ii) of the NDPS Act. The said provision reads thus:--

"37(1)(b)(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."

6. While considering the cases under the NDPS Act, one cannot be oblivious of the objects and reasons for bringing the said enactment after repealing the then existing laws relating to Narcotic drugs. The object and reasons given in the acts itself reads thus:--

"An act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic (2024:HHC:14450) drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances and for matters connected therewith."

In the decision in *Collector of Customs, New Delhi v. Ahmadaliev Nodira* (2004) 3 SCC 549, the three- judge bench of this Court considered the provisions under Section 37(1)(b) as also 37(1)(b)(ii) of the NDPS Act, with regard to the expression "reasonable grounds" used therein. This Court held

that it means something more than the prima facie grounds and that it contemplates substantial and probable causes for believing that the accused is not guilty of the alleged offence. Furthermore, it was held that the reasonable belief contemplated in the provision would require the existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

As relates to the twin conditions under Section 37(1)(b)

(ii) of the NDPS Act, viz., that, firstly, there are reasonable grounds for believing that the accused is not guilty of such offence and, secondly, he is not likely to commit any offence while on bail it was held therein that they are cumulative and not alternative. Satisfaction of the existence of those twin conditions had to be based on the 'reasonable grounds', as referred to above.

7. In the decision in *State of Kerala v. Rajesh* (2020) 12 SCC 122, after reiterating the broad parameters laid down by this Court to be followed while considering an application for bail moved by an accused involved in offences under the NDPS Act, in paragraph 18 thereof this Court held that the scheme of Section 37 of the NDPS Act would reveal that the exercise of power to grant bail in such cases is not only subject to the limitations contained under Section 439 of the Code of Criminal Procedure, but also subject to the limitation placed by Section 37(1)(b)

(ii), NDPS Act. Further, it was held that in case one of the (2024:HHC:14450) two conditions thereunder is not satisfied, the ban for granting bail would operate.

8. Thus, the provisions under Section 37(1)(b)

(ii) of the NDPS Act and the decisions referred supra reveal the consistent view of this Court that while considering the application for bail made by an accused involved in an offence under NDPS Act a liberal approach ignoring the mandate under Section 37 of the NDPS Act is impermissible. Recording a finding mandated under Section 37 of the NDPS Act, which is a sine qua non for granting bail to an accused under the NDPS Act, cannot be avoided while passing orders on such applications." 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 an 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."

20. In the present case, the commercial quantity of TRAMADOL capsules was recovered from the dicky of his Scooty being driven by him, and it cannot be said that there are no reasonable grounds to connect him with the commission of the offence. Further, there is no material on record to show that the petitioner is not likely to commit a similar offence if he is (2024:HHC:14450) released on

bail. Hence, he has failed to satisfy the rigours of Section 37 of the NDPS Act.

21. No other point was urged.

22. In view of the above, the present petition fails, and the same is dismissed. The observations made hereinabove are regarding the disposal of this petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla) Judge 13th December, 2024 (Shamsh Tabrez)