

Girish Bharti vs Narcotics Control Bureau on 23 September, 2024

Author: Subramonium Prasad

Bench: Subramonium Prasad

\$~91

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 23rd SEPT

IN THE MATTER OF:

+

BAIL APPLN. 3433/2024

GIRISH BHATI

Through: Mr. Rajan Kumar Choura
Ajeet Yadav, Advocates

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Through: Mr. Arun Khatri, Senior Standing
Counsel with Mr. Sahil Khurana, M
Shelley, Ms. Anoushka Bhalla,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

CRL.M.A. 28737/2024 (Exemption) Allowed, subject to all just exceptions.

1. The Petitioner has approached this Court for grant of regular bail in Crime No.VII/47/DZU/2023 dated 15.09.2023 registered at NCB, Delhi Zonal Unit for offences under Section 8(C), 22(C), 23(C) and 29 of the NDPS Act.

2. Material on record discloses that on 15.09.2023, a secret information was received that a parcel bearing AWB No. 1627783076 is lying at DHL Express Pvt. Ltd., 71/3 Rama Road, near Kirti Nagar, New Delhi. The said parcel was suspected to contain narcotic substances. The said information was reduced in writing and was placed before the Superintendent, NCB-

DZU who marked the same to Sh. Jameel Saifi, JIO/Sub Inspector for taking necessary action.

3. A team was constituted. The team collected the necessary kit required for search and seizure proceedings. The team left the office of the NCB, Delhi Zonal Unit, R K Puram and reached DHL Express Pvt. Ltd., 71/3, Rama Road, Najafgarh Industrial Area, near Kirti Nagar, New Delhi.

4. It is stated that the suspected parcel AWB No. 1627783076 was produced before the team. The independent witnesses were called. It is stated that one Sh. Virender Singh agreed voluntarily to join the team as independent witness during the seizure proceedings. Thereafter Sh. Jameel Sail offered his personal search and search of his team members to the independent witness but he declined the

offer politely. Thereafter the said parcel was checked in presence of independent witness.

5. It is stated that the parcel was in the form of an off-white colour plastic packet and some documents were annexed in transparent polythene with the parcel. It is stated that the transparent polythene was removed and some documents were found i.e Express worldwide WPX DHL receipt of AWB No.1627783076, Proforma Invoice AWB no. 1627783076, Photocopy of Aadhar Card bearing No. 347119775194 in the name of Mohit Sarda, Photocopy of Pan card bearing no. H7PILDZJ92 in the name of Mohit Sarda and authorization for export shipment proforma. As per Express worldwide WPX DHL receipt AWB no. 1627783076, the name of the sender was Mohit Sarda, Flat no. 1, A-37, Sundar Singh Bhandari Nagar, Swej farm, 302001 Jaipur, India and the name of the receiver was Bestsy Davis, 2521, Cropley way Arcata, California 95521 Arcata CA, USA.

6. It is stated that the said plastic packet/parcel was opened with the help of a cutter and found to be containing six cream colour ladies purse, which was inside a black colour plastic packet. It is stated that one ladies purse was checked and some suspicious substance was hidden inside the said purse.

7. It is stated that the said ladies purse was cut with the help of a cutter and three airtight plastic pouches were found containing white colour powdery substance. It is stated that one pouch was cut and its substance was put into a plastic zip-lock polythene and a small quantity of substance was taken and tested with the help of DD Kit and gave positive result for Amphetamine (As per CRCL report Ketamine) and on weighing it came to 43 grams and was given mark "A".

8. It is stated that the second airtight plastic pouch was cut and its substance was put into another plastic zip-lock polythene and a small amount of substance was taken and tested with the help of DD Kit and gave positive result for Amphetamine (as per CRCL report Ketamine) and on weighing it came to 41 grams and was given mark "B".

9. Thereafter, the substance of third airtight plastic pouch was put into another plastic zip-lock polythene and a small amount of substance was taken and tested with the help of DD Kit and gave positive result for Amphetamine (as per CRCL report Ketamine) and on weighing it came to 42 grams and was given mark "C".

10. It is stated that after that second ladies purse was cut with the help of cutter, it was found containing three airtight plastic pouches having white colour powdery substance. The substance of one airtight plastic pouch was put into a plastic zip-lock polythene and a small amount of substance was taken and tested with the help of DD Kit and gave positive result for Amphetamine (as per CRCL report Ketamine) and on weighing it came to 34 grams and was given mark "D". Thereafter, the substance of second airtight plastic pouch was put into another plastic zip-lock polythene and a small amount of substance was taken and tested with the help of DD Kit and gave positive result for Amphetamine (As per CACL report Ketamine) and on weighing it came to 33 grams and was given mark "E". Further, the substance of third airtight plastic pouch was put into another plastic zip-lock polythene and a small amount of substance was taken and tested with the help of DD Kit and gave positive result for Amphetamine (as per CRCL report Ketamine) and on weighing it came to 42 grams and was given mark "F".

11. It is stated that after that third ladies purse was cut with the help of cutter and found similar three airtight plastic pouches containing white colour powdery substance. The substance of one airtight plastic pouch was put into a plastic zip-lock polythene and a small amount of substance was taken and tested with the help of DD Kit and gave positive result for Amphetamine (as per CRCL report Ketamine) and on weighing it came to 42 grams and was given mark "G". Thereafter, the substance of second airtight plastic pouch was put into another plastic zip-lock polythene and a small amount of substance was taken and tested with the help of DD Kit and gave positive result for Amphetamine (As per CRCL report Ketamine) and on weighing it came to 33 grams and was given mark "H". Thereafter, the substance of third airtight plastic pouch was put into another plastic zip-lock polythene and a small amount of substance was taken and tested with the help of DD Kit and gave positive result for Amphetamine (As per CRCL report Ketamine) and on weighing it came to 32 grams and was given mark "J".

12. After that, the fourth ladies purse was cut with the help of cutter and found similar three airtight plastic pouches containing white colour powdery substance. The substance of one airtight plastic pouch was put into a plastic zip-lock polythene and a small amount of substance was taken and tested with the help of DD Kit and gave positive result for Amphetamine (As per CRCL report Ketamine) and on weighing it came to 33 grams and was given mark "K". Thereafter, the substance of second airtight plastic pouch was put into another plastic zip-lock polythene and a small amount of substance was taken and tested with the help of DD Kit and gave positive result for Amphetamine (As per CRCL report Ketamine) and on weighing it came to 42 grams and was given mark "L". Thereafter, the substance of third airtight plastic pouch was put into another plastic zip-lock polythene and a small amount of substance was taken and tested with the help of DD Kit and gave positive result for Amphetamine (As per CRCL report Ketamine) and on weighing it came to 33 grams and was given mark "M".

13. Thereafter, the fifth ladies purse was cut with the help of cutter and found similar three airtight plastic pouches containing white colour powdery substance. The substance of one airtight plastic pouch was put into a plastic zip-lock polythene and a small amount of substance was taken and tested with the help of DD Kit and gave positive result for Amphetamine (As per CRCL report Ketamine) and on weighing it came to 32 grams and was given mark "N". Thereafter, the substance of second airtight plastic pouch was put into another plastic zip-lock polythene and a small amount of substance was taken and tested with the help of DD Kit and gave positive result for Amphetamine (As per CRCL report Ketamine) and on weighing it came to 34 grams and was given mark "P". Thereafter, the substance of third airtight plastic pouch was put into another plastic zip-lock polythene and a small amount of substance was taken and tested with the help of DD Kit and gave positive result for Amphetamine (As per CRCL report Ketamine) and on weighing it came to 33 grams and was given mark "Q".

14. Thereafter, the sixth ladies purse was cut with the help of cutter and found similar three airtight plastic pouches containing white colour powdery substance. The substance of one airtight plastic pouch was put into a plastic zip-lock polythene and a small amount of substance was taken and tested with the help of DD Kit and gave positive result for Amphetamine (As per CRCL report Ketamine) and on weighing it came to 41grams and was given mark "R". Thereafter, the substance

of second airtight plastic pouch was put into another plastic ziplock polythene and a small amount of substance was taken and tested with the help of DD Kit and gave positive result for Amphetamine (As per CRCL report Ketamine) and on weighing it came to 44 grams and was given mark "S". Thereafter, the substance of third airtight plastic pouch was put into another plastic ziplock polythene and a small amount of substance was taken and tested with the help of DD Kit and gave positive result for Amphetamine (As per CRCL report Ketamine) and on weighing it came to 43 grams and was given mark "T".

15. It is stated that the total weight of all the recovered substance came out to be 677 grams of Ketamine. The case property was thereafter sealed. The investigation revealed that the said parcel was booked by accused Pradeep Singh Rajpurohit S/o Girdhari Singh Rajpurohit R/o 84, Purohit Mohalla, Kolasar, Churu, Rajasthan-331507 using the identity documents in the name of Mohit Sarda.

16. A notice under Section 67 of the NDPS was served on the accused Pradeep Singh Rajpurohit who admitted his involvement in the offence and stated that the said parcel containing Ketamine was received to him by the Petitioner herein, i.e., Girish Bhati, who supplied the contraband. The team reached the address of Girish Bhati S/o Tulsiram Bhati R/o Bamdev Road, Nala Puskhar, Pushkar, Ajmer, Rajasthan and apprehended him.

17. During the search of the house, the packing materials of drugs (the same packing materials were recovered from the seized parcel which contained ladies purse) and photocopies of IDs (including the photocopy of Aadhaar Card in the name of Mohit Sharda) were found. It is stated that further a sum of Rs.5,84,000/- was also recovered. The Petitioner disclosed his complicity in the offence and stated that the drugs were supplied to him by Chena Ram Godara S/o Bhika Ram Godara.

18. Material on record discloses that the mobile phones of accused Pradeep Singh Rajpurohit, Girish Bhati (Petitioner herein) and Chena Ram Goadara were sent to the forensic science laboratory.

19. The phone data was extracted. The phone data extracted from mobile phone of Pradeep Singh Rajpurohit revealed the tracking photo parcel in question and many photos of other parcels and photos of the drugs were extracted. The data extracted from the mobile phone of the Petitioner herein revealed the contact number of accused Chena Ram Godara, the calling history of the Petitioner with accused Chena Ram Godara and Pradeep Singh Rajpurohit, parcel tracking details, screenshot of auto fixed timer of disappearing messages were also extracted.

20. After the said investigation, a complaint bearing Crime No.VII/47/DZU/2023 has been filed under Section 8(C), 22(C), 23(C) and 29 of the NDPS Act.

21. The Petitioner had approached the Trial Court for grant of bail which was rejected vide Order dated 18.07.2024 passed by the learned Additional Sessions Judge/Special Judge/NDPS, Patiala House Courts, New Delhi.

22. The Petitioner has now approached this Court for grant of regular bail in Crime No.VII/47/DZU/2023 dated 15.09.2023 registered at NCB, Delhi Zonal Unit for offences under Section 8(C), 22(C), 23(C) and 29 of the NDPS Act.

23. Learned Counsel for the Petitioner contends that the Petitioner is in custody since 19.09.2023. He states that the prosecution cannot rely only on the disclosure statements of the co-accused Pradeep Singh Rajpurohit. He states that the so-called packaging material which has been recovered is only a ladies purse that can be found anywhere and only that cannot lead to complicity of the Petitioner. He states that the Petitioner is not found to be involved in the said offence and therefore the Petitioner should be released on bail. He also states that co-accused Chena Ram Godara has been granted bail by the Trial Court and the Petitioner should also be granted bail on the ground of parity.

24. Per contra, learned Counsel for the Respondent/NCB opposes grant of bail contending that apart from the disclosure statements, there are several other materials to connect the Petitioner to the offence. He states that the very same material, i.e., ladies purse, in which the drugs were sealed, has been found. Photocopies of the Aadhaar cards of Mohit Sarda, the person in whose name the parcel was booked has been found. The mobile phone data also disclosed that the Petitioner was in touch with the co-accused and that there are reasonable grounds to believe that the Petitioner is guilty of such offences.

25. Heard learned Counsel for the parties and perused the material on record.

26. It is undisputed that 677 grams of Ketamine, which has been recovered, is a commercial quantity. The parameters for grant of bail for offences punishable under the NDPS Act, is governed by Section 37 of the NDPS Act. Section 37 of the NDPS Act reads as under:-

"37. Offences to be cognizable and non-bailable.-

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

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

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

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

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

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]"

27. A perusal of Section 37 of the NDPS Act indicates that bail can be granted only when there are reasonable grounds for believing that the accused is not guilty of an offence and he is not likely to commit any offence when released on bail. The parameters for grant of bail to an accused under Section 37 of the NDPS Act have been laid down by the Apex Court in a number of judgments.

28. In *Collector of Customs v. Ahmadaliev Nodira*, (2004) 3 SCC 549, the Apex Court has observed as under:

"6. As observed by this Court in *Union of India v. Thamisharasi* [(1995) 4 SCC 190 : 1995 SCC (Cri) 665 :

JT (1995) 4 SC 253] clause (b) of sub-section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are: (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are:

the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence....." (emphasis supplied)

29. In *Union of India v. Rattan Mallik*, (2009) 2 SCC 624, the Apex Court has observed as under :

"12. It is plain from a bare reading of the non obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is

also subject to the restrictions placed by clause (b) of sub- section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

13. The expression "reasonable grounds" has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide *Union of India v. Shiv Shanker Kesari* [(2007) 7 SCC 798 : (2007) 3 SCC (Cri) 505]).

Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the court is not called upon to record a finding of "not guilty". At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail." (emphasis supplied)

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

"19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 CrPC, but is also subject to the limitation placed by Section 37 which commences with non obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

20. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on 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."

31. Applying the law laid down by the Apex Court to the facts of the present case, the material on record discloses that on the disclosure of the co-accused when the raiding party reached the premises of the Petitioner, the same packing material was found in which the drugs were found sealed. The ID card of Mohit Sarada has been found with the Petitioner. The CDR shows that the Petitioner was in touch with the other co-accused. Applying the parameters of Section 37 of the NDPS Act, it can be easily inferred that there are reasonable grounds to believe that the Petitioner is guilty of the offence.

32. Material on record discloses that the Petitioner is part of a well-knit organisation which is dealing in drugs and narcotic substances and therefore the possibility of the Petitioner repeating the same offence cannot be ruled out. The likelihood of the Petitioner fleeing from justice also cannot be ruled out. This Court is therefore not inclined to accede to the prayer of the Petitioner for grant of regular bail at this juncture.

33. The bail application is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J SEPTEMBER 23, 2024 hsk