

**IN THE COURT OF SANJEEV KUMAR-II,
SPECIAL JUDGE (NDPS)-02, CENTRAL DISTRICT,
TIS HAZARI COURTS, NEW DELHI**

**Bail Application No.309/2023
Session Case No. 324/2023
State v. Bilal**

28.08.2023

Present: Dr. Sarita Rani, Additional Public Prosecutor for
State.

Mohd. Yasir, proxy counsel for accused-applicant.

This is an application under section 439 of the Code of Criminal Procedure, 1973 ('CrPC' in short) moved on behalf of **accused-applicant Bilal** for grant of bail in case **FIR No. 376/2022** registered at **Police Station Timarpur** under sections **18 & 29** of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' in short) which is fixed today for order.

2. Mr. Aditya Aggarwal, learned counsel appearing for the accused-applicant has contended that accused has been implicated falsely. He is in custody since 06.12.2022. He was apprehended with 500 grams of opium which is an intermediate quantity and quantity of the contraband recovered from the co-accused Shabana cannot be added in toto in order to extend the ambit of section 37 of the NDPS Act. Learned counsel has relied upon decisions passed in cases of **Anita v. State (NCT of Delhi)**, Bail App. No.1538/2022 decided by Hon'ble High Court of Delhi on 20.07.2022; **Sunil v. State**, Bail Appl. No. 495/2022 decided

on 28.07.2022 decided by Hon'ble High Court; **Rehmatullah @ Arman v. State**, Bail Application No. 2866/2022 decided by Hon'ble High Court on 24.22.2022; **Ragini Diwedi @ Gini @ Rags v. State of Karnataka**, Criminal Appeal No. 62 of 2021 decided by Hon'ble Apex Court.

3. Mr. Aggarwal further contended that rigors of section 37 of the NDPS Act are not attracted in the respect of alleged recovery from the applicant as the same falls under intermediate quantity. Learned counsel has relied upon decisions rendered in cases of **Narsimman v. State (Govt. of NCT of Delhi)**, Bail Appln 3863/2022 decided by Hon'ble High Court on 09.02.2023 and **Gajender Bahadur v. The State Govt. of NCT of Delhi**, Bail Appln. 3655/2022 decided by Hon'ble High Court on 31.01.2023.

4. On the other hand, learned Additional Public Prosecutor for the State opposed the application contending that case pertains to the recovery of total 3.870 kilograms of opium, out of which 3.1 kilograms was recovered from co-accused Sabana Khatoon; 500 grams of opium was recovered from accused-applicant Bilal and during their police custody remand, co-accused Tahir was arrested at the instance of co-accused Shabana Khatoon and from the possession of co-accused Tahir, 270 grams of heroin was recovered.

5. In the present case, on 06.12.2022, secret information was received that one lady, namely, co-accused Shabana would come to old Wazirabad Bridge near Wazirabad Flyover to supply big consignment of opium to accused-applicant Bilal. Thereupon

raiding team was constituted on the directions of senior police officer, who reached the spot at about 02.30 pm. At about 03.15 pm, accused-applicant Bilal came in an auto and deboarded ahead of old wazirabad bridge and starting waiting for someone. After some time, co-accused Shabana came and stood near accused-applicant Bilal. After sometime, the co-accused Shabana, took out one box from a bag, which she was holding in her hand, and handed over to co-accused Bilal, at this point police party apprehended both of them and from possession co-accused Shabana opium weighing 3.1 kilograms was recovered and from the possession of accused-applicant Bilal 500 grams of opium was recovered. During investigation, at their instance, co-accused Mohd. Tahir @ Beeru was apprehended and from his possession 270 grams of opium was also recovered from the polythene held in his hand.

6. Section 37 of the NDPS Act regulates the grant of bail in cases involving offences under sections 19 or section 24 or section 27A and also for offences involving commercial quantity. The twin conditions specified in clause (b) of sub-section (1) of section 37 of the NDPS Act are required to be satisfied for granting bail. Further, the limitations on granting of bail specified in said clause are in addition to the limitations under the CrPC and therefore, the conditions are cumulative and not alternative. Section 37 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."

7. In State of Madhya Pradesh v. Kajad, (2001) 7 SCC 673 Hon'ble Supreme Court observed that negation of bail is the rule and its grant an exception under sub clause (ii) of clause (b) of Section 37(1) of the NDPS Act. It was observed :

"Negation of bail is the rule and its grant and exception under sub clause (ii) of clause (b) of Section 37(1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail."

8. At the stage of bail, 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. 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. In Union of India v. Rattan

Mallik @ Habul, (2009) 2 SCC 624, Hon'ble Supreme Court held:

“14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the Narcotic Drugs and Psychotropic Substances 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 Narcotic Drugs And Psychotropic Substances 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 added]

9. The expression "reasonable grounds" mentioned in section 37 (1) (b) (ii) of the NDPS Act, has been defined to be something more than *prima facie* grounds by the three-Judge Bench of Hon'ble Supreme Court in cases of **Narcotics Control Bureau v. Mohit Aggarwal**, 2022 LiveLaw (SC) 613 rendered on 19.07.2022 and **Collector of Customs, New Delhi v. Ahmadalieva Nodira**, [(2004) 3 SCC 549]. The decisions rendered by the two-Judge Bench of Hon'ble Supreme Court on the same point are **Union of India through Narcotics Control Bureau, v. Md. Nawaz Khan**, Criminal Appeal No. 1043 of 2021, decided on 22.09.2021; **State of Kerala and others v. Rajesh and others**, (2020) 12 SCC 122 and **Union of India v. Shiv Shanker Kesari**, (2007) 7 SCC 798.

10. Section 29 of NDPS Act provides punishment for abetment and criminal conspiracy. If a person abets or is a party to the criminal conspiracy to commit an offence punishable under the

NDPS Act, is said to have committed offence of criminal conspiracy and abetment under section 29 of the NDPS Act. Hence, if criminal conspiracy to commit the offence under the NDPS Act is committed then section 29 of NDPS Act attracts.

11. It is correct that in the present case recovery of opium from the possession of the accused-applicant Bilal is 500 grams which is intermediate quantity and in respect of said possession rigors of Section 37 of NDPS Act is not applicable. But this Court has to see as to whether the applicant-accused Bilal and co-accused Shabana had committed offence of conspiracy punishable under section 29 of NDPS Act in respect of total recovery from these two accused persons which is 3.60 kgs of Opium. From the facts, it can safely be said that accused-applicant Bilal was having knowledge regarding the contraband being brought by co-accused Shabana as he reached there to take delivery of the same and before their apprehension, co-accused Shabana brought total 3.60 kgs of opium, out of which 500 grams of opium was handed over by her to the accused-applicant. From these facts, it can also be said that there was prior meeting of minds between the co-accused Shabana and accused-applicant Bilal in respect of bringing huge contraband by the co-accused Shabana and supplying the same to the accused-applicant and therefore, this Court of the prima facie view at this stage, that accused-applicant and co-accused Shabana have committed offence of criminal conspiracy punishable under section 29 of NDPS Act in respect of possessing the opium of commercial quantity of 3.60 kgs by the co-accused Shabana and selling 500 grams of opium by her to accused-applicant Bilal.

12. The judgments relied upon by the Learned counsel for the accused-applicant i.e. **Anita** (supra), **Sunil** (supra) and **Rehmatulla @ Arman** (supra) are not applicable to my mind in the present facts and circumstances of the case because in those cases two/three persons came with different quantity of contraband but in the present case, co-accused Shabana brought 3.60 kgs of Opium and out of which she handed over 500 grams of opium to accused-applicant Bilal and this handing over was seen by the police party. In so far as, **Ragini Dewivedi** (supra) is concerned, same pertains to offence under Section 27 of NDPS Act being the offence of consuming drugs at parties, for which the maximum sentence for consumption of certain drugs under section 27(a) is one year and, under section 27(b) is six months and in that case section 37 was wrongly invoked as observed by the Hon'ble Supreme Court.

13. In **Amar singh Rajibhai Barot v. State of Gujarat**, Appeal (Crl.) 1218 of 2005, decided by Hon'ble Supreme Court of India on 19.09.2005, facts of the case were that after receiving secret information raiding party was constituted and reached at the spot and maintained a watch and after sometime a jeep came and halted near the spot and two persons alighted from the said jeep and while they were going towards a hotel, they were intercepted by the police and appellant Amar Singh Rajibhai Barot was found to be carrying a plastic bag which was found to contain 920 kgs of opium and other co-accused was found to contain 4.250 kgs of opium. The Trial Court held that both the accused were guilty of individually and jointly possessing 920 grams of opium and 4.250 kgs of opium without any pass or

permit and were convicted for the offences punishable under Sections 17 and 18 read with Section 29 of NDPS Act. In appeal, Hon'ble High Court was of the view that the conviction of appellant under Sections 17 and 18 read with Section 29 of NDPS Act was not correct but appellant was held to be liable under Section 21 (c) and also 21 (c) read with Section 29 of the NDPS Act, for individually being in possession of 920 grams and for being jointly, in conspiracy with deceased (other accused), in possession 4.250 kgs of the prohibited substance recovered. Hon'ble Supreme Court held that the High Court proceeded on the footing that there was a criminal conspiracy between the appellant and the deceased but there was no warrant for this conclusion at all as there is no evidence to suggest that there was any abetment and / or criminal conspiracy within the meaning of Section 29 of NDPS Act. It was further held that the appellant and deceased were found together but individually carrying the recovered substances and therefore, it was not possible for the High Court to take the view that section 29 was attracted but conviction of the appellant was upheld under Section 21(c) of NDPS Act.

14. In **Amar Singh Rajibhai Barot** (supra) it was held by Hon'ble Supreme Court that if there are material to suggest that there was any abetment and / or of criminal conspiracy then section 29 of NDPS Act attracts. In the present case there is material for attracting section 29 of NDPS Act against accused-applicant and co-accused Shabana in respect of bringing the commercial quantity of opium by the co-accused Shabana.

15. In view of above discussion, I am not inclined to grant bail to the accused-applicant Bilal and therefore, application is rejected.

16. It made clear that the observations made hereinabove are only for deciding the present bail application and shall have no bearing on the merits of the case.

17. Copy of order be given dasti to learned counsel for accused-applicant and be communicated to accused-applicant in Jail also through Jail Superintendent.

Dated: 28.08.2023

(Sanjeev Kumar-II)
Special Judge (NDPS)-02
Central District, Tis Hazari Courts,
Delhi