

NDPS-29/25

2.6.2025

Accd persons namely Aamir Hossain, Rajjak Miya, Subhan Miya, Asidul Miya and Md. Ibrar are produced before this Court along with relevant medical documents from P.C.

A part record is received from the Court of Ld. ACJM, Alipore. Let the part record be kept with the record.

At this stage bail moved on behalf of aforesaid five accd persons.

Hd both sides. Perused.

It is submitted by ld. Counsel representing Md. Ibrar that this accd is a driver and he is absolutely innocent and he has been falsely entangled in this case.

With regard to the prayer for bail in respect of the remaining four accd persons it is submitted by ld. Defence counsel that notices U/S 50 NDPS Act were issued not in conformity with Section 50 of NDPS Act and in this facts & circumstances he prays for bail.

Ld. P.P in charge strongly opposes the prayer for bail submitting inter-alia that the instant case involves commercial quantity of narcotic substance.

Having regard the submission of ld. Defence counsel as well as ld. P.P in-charge , this court finds that this case involves commercial quantity of narcotic substance and thus the rigor as provided in Section 37 NDPS Act will attract in this particular case.

Thus in view of above the prayer for bail stands rejected.

Fix 13.6.2025 for production and I.O's report.

Issue intermediate custody.

D/corr by me,

4<sup>th</sup> ASJ, Alipore.

**(J.O.Code-WB00705).**

## **POWER OF ATTORNEY FOR PROPERTY**

**BEFORE NOTARY PUBLIC, GOVERNMENT OF INDIA**

**I, Srinjoy Das of 605 W Madison Street, Apartment-3904,Chicago, I.L-60661, U.S.A and today residing at 2C/9/1,Thakurpukur Housing Estate, Kolkata-700104, West Bengal, India hereby revoke all prior Powers of Attorney for property executed by me and appoint Kamalika Mitra of 605 W Madison Street, Apartment-3904,Chicago, I.L-60661, U.S.A as my Attorney in fact to act for me and in my name with respect to the following powers.**



**NDPS-93/18**

**4**

**22.11.18**

Accd persons namely Ganesh Pun, Sunil Agarwal and Clement Philips have been produced from J.C.

Both sides present. Separate applications filed by the accd persons praying for bail.

Hd both sides. Perused the materials on record. C.D is not produced today.

As per allegation from the possession of accd Ganesh Pun contraband substance Nitrazepam, Clonazepam, Lorazepam, Alprazolam, Zolpidem of huge quantity have been recorded. Regarding allegation against accd Sunil Agarwal from his possession Alprazolam, Dicyclomine and Nitrazepam have been recovered. Further as per allegation from the possession of Clement Philips drugs like some documents and articles like bank cheque, PAN card, Aadhar card, Voter I.D, some agreements and others have been recovered from his possession. The contention of the Id. Advocate appearing on behalf of the accd Ganesh Pun is that in total if the quantity is taken into consideration it is not only

small quantity but far from the medium quantity. It is submitted by the Id. Advocate for the accd that all the accd persons have been mixed up and entangled in a single case to make it a commercial quantity but even so the prosecution has failed to bring the case of commercial quantity. The Ld. Advocate thereafter read out Section 8(1) of the NDPS Act and compared the same with Section 24 of the said Act and submitted that his client has been falsely implicated. The Id. Advocate at this stage referred the decision of Michael Raj vs Intelligence Officer Narcotic delivered on 11.3.2008 and reading out Para-4 of the Judgement it is contended that crude material in question only should be taken into consideration to ascertain the case for commercial quantity. The other two Ld. Advocates appeared for other two accd persons adopted the said submission of the Ld. Advocate appeared on behalf of the accd Ganesh Pun. In excess to that the Id. Advocate appeared on behalf of the accd Sunil Agarwal submitted that the accd persons are in custody for last 60 days and the wife of the said accd is severely ill. Reading out the Judgement passed in Crl. Appeal-273/2007 of Hon'ble Supreme Court it is submitted that the mandatory provision of Section 50 has not been followed and the prosecuting agency did not bother to call a Magistrate as per that Section and therefore the plinth of the case has already shaken. According to him the ultimate result of this case would be discharged or acquittal.

I have gathered from the submission of the Ld. Advocate for the accd Ganesh Pun while he referred the decision reported in 2008 Cr. L.J-2250 and submitted that total seized substance should not be taken into consideration and only the alleged contraband substance should be the yardstick to consider the case of the prosecution.

However, latest position is reflected in the decision reported in 2017(3) Crimes 66 ( S.C) and on basis of which the earlier decision ( Michael Raj) has been relied upon by the Supreme Court and therefore the decision of Hira Singh is latest one . I have carefully gone through the aforesaid two decisions referred by the Id. Advocate and I find that the

decision of Hira Singh has not given any ratio but the matter has been referred to a larger bench. In the facts & circumstances, I also find that since 2009 the Government has not taken any effective steps to formulate the aforesaid questions by an Act or Rules or by any amendment.

The objection raised by the Id. P.P in charge. It is his submission that Section-24 of the Act is there and bail cannot be granted at this stage.

[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.”

[Section 37](#) of the NDPS Act contains special provisions with regard to 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) Of offences involving commercial quantity.

The accusation in the present case is with regard to the second & fourth factor . 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.

There is no such materials to satisfy the Court that there are reasonable grounds for

believing that the persons are not guilty of such offence or the said persons are not likely to commit any offence while releasing the accd persons on bail. The prayer is thus rejected.

To 7.12.18 for production and I.O's report . C.D returned.

D/corr by me,

4<sup>th</sup> ASJ, Alipore.