

**IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA**

Cr. MP(M) No. 405 of 2024

Reserved on : 22.4.2024

Decided on: 30.4.2024

Samta

...Applicant

Versus

State of H.P.

...Respondent

Coram

Hon'ble Mr. Justice Virender Singh, Judge

Whether approved for reporting?

**For the Applicant : Dr. Rajesh Kumar Parmar,
Advocate.**

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

Virender Singh, Judge

The applicant has filed the present application, under Section 438 of Code of Criminal Procedure (hereinafter referred to as 'the Cr.P.C.') in case FIR No. 125 of 2023, dated 15.9.2023, under Sections 22, 25, 29 of the Narcotics Drugs and Psychotropic Substances Act (hereinafter referred to as 'the NDPS

Act”) registered with Police Station, Gagret, District Una, H.P.

2. The applicant has sought the indulgence of this Court to direct the Investigating Officer/Police, to release her on bail, in the event of her arrest, in the above-mentioned case, as, she is apprehending her arrest, in the said case.

3. According to the applicant, she has been falsely implicated in the present case, as she is an innocent person and has nothing to do with the case.

4. It is the further case of the applicant that applicant has tried her luck by moving bail application, bearing Cr. MP(M) No. 147 of 2024, which was dismissed as withdrawn on 24.1.2024. After withdrawing the said bail application, she has approached the learned Special Judge-I, Una, District Una, vide Bail Application No. 37 of 2024, which was dismissed on 29.2.2024.

5. Apart from this, the applicant has given certain undertakings, for which, she is ready to abide by,

in case, directions are issued to the Police/I.O., under Section 438 of the Cr. P.C.

6. On all these submissions, Dr. Rajesh Kumar Parma, Advocate has prayed that the bail application may kindly be allowed.

7.1 When, put to notice, police has filed the status report, disclosing therein that on 15.9.2023, at about 7: 30 p.m., the I.O. was present on the gate of Shiv Bari temple. At that time, he received a secret information, with regard to indulgence of one Varinder Kumar @ Bindu, s/o Shri Vikram Chand, R/o ward No. 5, NAC Gagret, Tehsil Ghanari, District Una, in the business of selling the narcotic substance.

7.2 As per the information, a big haul of the medicines was being transported in pick-up No. HP-36B-8124 to his residential house from Army Ground, Gagret. The said information was found to be authentic and reliable. It has also been informed that in case, the said vehicle is checked, large quantity of the narcotic substances, could be recovered.

7.3 It is the further case of the I.O. that in case, the efforts to obtain the authorization letter/search warrant would have been made, in that eventuality, contraband could be removed. Thereafter, Drugs Inspector Rajat Sharma was informed and asked to come near the Army Ground. Thereafter, the I.O. alongwith the police officials had proceeded towards the Army Ground, Gagret. The information under Section, 42(2) of the NDPS Act, was prepared and submitted to SDPO, Amb, through LHC Aruna Kumari, ANTF, Kangra. When, the I.O., alongwith police officials reached outside the Army Ground, Gagret, at about 8:10 p.m, he noticed two persons, namely Avinash Bhardwaj and Kusum Lata, who is vice president of Nagar Panchayat, Gagret. Both of them were apprised about the secret information, as received by the I.O. and associated in the investigation of the case.

7.4 When, they entered the Army Ground, then, they noticed the aforesaid pick-up, being driven by its driver, coming towards Army Ground. The I.O., with the

help of other police officials, had stopped the said vehicle. In the meanwhile, Drugs Inspector Rajat Sharma also reached there, who was also associated in the investigation, in the presence of local witnesses. The I.O. has shown his identity card to both the persons, sitting in the vehicle. Thereafter, they were inquired about the white plastic sack. Both of them had disclosed that this box (builty) belongs to Varinder Kumar @ Bindu, S/o Shri Vikram Chand. In the presence of these witnesses, both the said persons were directed to come out. Thereafter, a white coloured sack was opened and a card board box, containing 60 card board boxes were found in it, and in the other box, 59 card board boxes, were found. Drugs Inspector Rajat Sharma checked the aforesaid boxes, in the presence of the witnesses, and on opening the boxes, Cap. Paracetamol, Dicyclomine, Hydrocholride and Tramadol Hydrochloride capsules Proxywel spas were found. Total 14,400 capsules were found in the box, which has been marked as mark-I. In the other box, which has been marked as mark-2, 14160

capsules were found. Thus, total 28560 capsules were found.

7.5 On inquiry, the driver of the pick-up disclosed his name as Maan Singh, S/o Munna Ram, VPO Gagret, Tehsil Ghanari, District Una.

7.6 Other codal formalities were completed. Thereafter, ruqua was prepared and submitted to Police Station, Gagret, for the registration of the FIR.

7.7 Initially, the investigation was conducted by Additional S.P. Rajender Kumar and thereafter, the same was handed over to I.O./Inspector/Incharge, Police Station, Gagret, Sh. Sunny Guleria. Spot map was prepared. Accused Maan Singh and Mahasu Ram were inquired. Thereafter, the matter was inquired from Bhupender Dutta, S/o Sukhdev Chand Dutta, who was running a chemist shop in Gagret. He was also associated in the investigation. During investigation, accused Mahasu Ram disclosed that the photo of goods receipt of the parcel was forwarded to him by Varinder Kumar @ Bindu, through whatsapp, and he was directed

to receive the said parcel from Kamal Transport, Gagret, and hand over the same to Varinder Kumar at his home.

7.8 On inquiry, Bhupender Dutta disclosed that the parcel containing contraband belong to Varinder Kumar @ Bindu. However, the bill of the same was issued in the name of Dutta Medical Agency, Gagret. In lieu of the issuance of bill, Varinder Kumar @ Bindu used to pay five boxes of Tramadol free of cost to him.

7.9 It is the further case of the Police that number of persons were found involved in the case. Accused Varinder Singh (Bindu) was arrested on 15.9.2023 at about 10:30 p.m. All the four persons have been medico-legally examined. On 16.9.2023, they were produced before the Court of learned Chief Judicial Magistrate, Una, who had remanded them to Police custody, for three days.

7.10 On 16.9.2023, one Vishal Jaswal informed the Police that one parcel in the name of Dutta Medical Agency has been received through Kamal Transport, upon which, Assistant Drugs Inspector Shashi Pal

reached at the spot, where owner of Kamal Goods, through Vishal Jaswal, has produced one parcel alongwith carbon copy of GR No. A59198, dated 14.9.2023, and one bill of Jan Priya Pharma 27/16, Chhoti Sabzi Mandi Janakpuri, New Delhi, to the police. Said bill was in the name of Dutta Medical Agency, Gagret. When, the said parcel was opened in the presence of witnesses, the same was found containing 25,000 tablets of Tramadol Hydrochloride tablets 100 mg Clovedol 100 SR, which is a prohibited drug. The above medicines were taken into possession.

7.11 Thereafter, on 16.9.2023, house of Varinder Singh @ Bindu was searched and during search, 210 boxes of liquor/beer were recovered. In this regard, FIR No. 127 of 2023, dated 16.9.2023, under Section 39-A of the HP Excise Act was registered.

7.12 During investigation, mobile phones of accused, bearing Nos. 9816042336, 8278733069, 8580581311, as well as, phone of accused Maan Singh, bearing No. 9816503646 and, of Bhupender Dutta,

bearing No. 9816956481, were taken into possession.

7.13 During investigation, it was found that according to GR No. A59051, dated 12.9.2023, and GR No. A 59198, dated 14.9.2023, parcel received through Kamal Goods Carrier Delhi, in the name of Dutta Medical Agency, Gagret, were forwarded by Jan Priya Pharma 27/16 Chhoti Sabzi Mandi, Janakpuri, New Delhi. However, when, the I.O. verified the said fact, it was found that the said bills, were not issued by the said firm.

7.14 On 20.9.2023, shop of Bhupender Dutta was searched. During search, documents, pertaining to GR No. 58021, dated 23.8.2023 and invoice No. 00325, dated 23.3.2023, were found to be issued by Jan Priya Pharma Company. However, as per these invoices, these medicines were not found in the medical store.

7.15 As per letter of the Director General of Police, Himachal Pradesh, dated 26.9.2023, investigation of the case was transferred to CID. Consequently, a Special Investigating Team, under the leadership of Praveen

Dhiman, HPS, Additional S.P., Cyber Crime, was constituted. On 30.9.2023, the Special Investigation Team had taken over the investigation.

7.16 During investigation, it was found that recovered parcels, containing prohibited drugs were received at Jaswal Goods Carrier, Gagret, through Kamal Goods Carrier. It was also found that in the name of Dutta Medical Agency, other transports have also received consignment/parcels.

7.17. It was also found that Varinder Kumar was earlier running Chemist shop, under the name and style of 'Siddhi Vinayak', and now, he is running the same, under the name and style of 'M.B. Pharma'. In this regard, delivery register and challan forms were also obtained. On the perusal of the same, it was found that through these transports, consignment/parcels, worth crores of rupees, were found, in the name of Sidhi Vinayak, M.B. Medicine and Dutta Medical Agency.

7.18 The contraband, so recovered, was sent to SFSL, Junga. Weight of the parcel was found to be

15.681 kg. The said drug was found to be sample of Tramadol capsules. In addition to this, the weight of the parcels, which has been marked as mark-B, containing Clovedol 100 SR, was found to be 8.450 kg. Manufacturer of the same was found to be the Akums Drugs and Pharmaceuticals IIE SIDKUL Haridwar. Consequently, company officials of Pure & Cure Healthcare Pvt. Ltd., Plot No. 26A, 27-30 Sector 8A, IIE SIDKUL, Haridwar were associated in the investigation. On inquiry, it was found that their company is the subsidiary of Akums Drugs & Pharmaceuticals Ltd. Company. The factory of batch No. P06CA09 was not found to have manufactured Proxywel Spas medicine.

7.19 As per the further stand of the Police, from the recovered strips, eight digit number is found to be marked, which was 20130552. As per officials of the company, number 20130552 was the unique number of their company, being packing material Artwork Code number. The company used to get printed lay out from UTS Foils and Packaging and Perfect Print Pack.

Similarly, police has also got haul of Clovedol tablets. However, batch number was found to be erased. The other 8 digit number 20161349 was found to be printed on it. About this number, the company officials disclosed that this number is packing material Artwork Code number. The company used to get the said design Artwork from Shree Ji Enterprises.

7.20 During investigation, the I.O. also found that the accused Sahil Goswami has smuggled the psychotropic substance from Jan Priya Pharma through Kamal Goods Transport. These parcels were not sent by Jan Priya Pharma, Delhi, nor, any invoice was found in their shop.

7.21 During investigation, it was found that on 14.9.2022, when, the Police recovered the substance from vehicle No. HP 36B-8124, Varinder Kumar has forwarded GR No. 59051, dated 12.9.2023 and GR No. A 59198, dated 14.9.2023 to Mahasu Ram, on his phone, through whatsapp. Accused Sahil Goswami directed Mahasu Ram to receive parcel bearing GR No. 59051,

dated 12.9.2023, and GR No. 59198, dated 14.9.2023. In the mobile handset, which was taken into possession from Mahasu Ram, photos of aforesaid GR Nos were found, whereas, in the mobile phone, of the applicant, photographs of aforesaid GR Nos. were not found. Both these handsets and GR Nos. have been sent to RFSL, Dharamshala, for analysis.

7.22 During investigation, it was found that the handset, on which, Varinder Singh @ Bindu on 14.9.2023, had forwarded the photographs of aforesaid GR Nos. were having two sim cards, bearing No. 9816042336 and 8278733069. The IMEI number of these two slots were found to be 864372062985240 and 864372062985250, whereas, Varinder Singh @ Bindu on 15.9.2023, produced the phone mark Oppo, bearing IMEI No. 866114046756195 and 866114046756187.

7.23 According to the police, variation in these numbers was due to the fact that he used to conceal mobile handset, used for transporting of drugs through Mahasu Ram and produce some other mobile phones to

the Police. These facts have been highlighted to show that accused is very clever person and he may destroy the evidence. It was also found during investigation that mobile handset, with the help of which, the Varinder Singh @ Bindu has forwarded the whatsapp messages to Mahasu Ram, in that mobile handset, w.e.f. 15.9.2023 to 6.10.2023, mobile phone numbers 8627872324 and 7807786506 were found to be operating, whereas, according to customer application form, aforesaid mobile numbers were issued in the name of one Abhishek, s/o Ambika Prasad. Mobile Number 7807786506 was found in the name of Nisha Devi wife of Tilak Raj.

7.24 On 15.10.2023, search warrant of house and shop of Varinder Singh, husband of the applicant was obtained. During search, some objectionable documents were found and Indian currency of Rs. 4,42,700/- and foreign currency of Rs. 1,40,000/- was found. On inquiry, applicant-Meenakshi Sharma could not give satisfactory reply. However, she has produced empty box of Oppo, on which EMEI No. 864372062985252 and

864372062985245 were found to be printed. It has also been found that Varinder Singh @ Bindu, in the name of Dutta Medical Agency had transported the consignment worth crores of Rupees from Jan Priya Pharma, between 2020 to 2023. These facts have been highlighted just to show that these are forged documents.

7.25 During investigation, Police also found that accused Varinder Singh @ Bindu used to transport the drugs worth crores of rupees, through 42 consignments, under the name of Dutta Medical Agency, Gagret through Jan Priya Pharma 27/16, Chhoti Sabzi Mandi, Janakpuri, New Delhi. The invoice No. of all the 42 consignment was found to be 000325. This fact has been highlighted to show that the said bill was forged one.

7.26 The SIT agency, which has been constituted to investigate the case has also perused the CCTV footage of 'Kamal Goods Carrier', Delhi on 10.11.2023. On invoice, which was found on 14.9.2023, one person was found to have visited the office of Kamal Goods Carrier, Lahori Gate, Delhi. At the instance of one Onkar

Upadhyay, he had booked one parcel, in the name of Dutta Medical Agency, Gagret, District Una. When, he was associated in the investigation, his statement, under Section 161 Cr. P.C. was recorded. He has disclosed in his statement that owner of JP International, Rishabh Jain has handed over one parcel, alongwith two invoices of Jan Priya Pharma, upon which, address of Dutta Medical Agency was given. All these articles, alongwith invoices, were handed over to Kaptaan Singh, who has booked the same for transportation with Kamal Goods Carrier, Lahori Gate, Delhi.

7.27 Thereafter, Rishabh Jain was also arrested. In his mobile phone, a picture of GR No. A 59198, dated 14.9.2023 and one invoice in the name of Jan Priya Pharma was found. Consequently, said Rishabh Jain was also arrested.

7.28 On 15.11.2023, his mobile phone and laptop were taken into possession. During investigation, said Rishabh Jain has disclosed that he used to send the consignment of drugs to Varinder Singh @ Bindu, at the

instance of applicant Vishal Sharma. The Modus Operandi was to sent the consignment and to forward the same to Jan Priya Pharma, in the name of of Dutta Medical Agency, Gagret.

7.29 At the instance of Vishal Sharma, his friend Sahil Goswami has also forwarded the consignment of narcotic drugs on 12.9.2023 to Varinder Singh @ Bindu, on the address of Dutta Medical Agency, Gagret, District Una. Search for Sahil Goswami was made on 25.11.2023.

7.30 Accused Rishabh Jain has purchased 50 boxes of Tramadol, for a sum of Rs. 1,23,000/-. The said payment was made by Rishabh Jain, from his account, maintained in HDFC Bank.

7.31 It is the further case of the Police that Vishal Sharma used to call through whatsapp calls to accused Rishabh Jain, accused Varinder Singh @ Bindu. Not only this, he has supplied the Narcotic Drugs through transport to accused Varinder Singh @ Bindu. Not only this, he has deleted the record of his whatsapp calls and

chats.

7.32 After perusing the status report, interim protection was granted to the applicant, on 26.2.2024 with a direction to the Police to release her on bail, in the event of her arrest.

7.33 As per further case of the Police accused Vishal Sharma was in constant touch with Varinder Kumar @ Bindu on 28 occasions w.e.f. 1.9.2022 to 15.9.2023. Similarly, he was in touch with accused Mahasu Ram, and as per the analysis of the CDRs, they had talked to each other on 13 occasions, w.e.f. 8.12.2022 to 7.5.2023.

7.34 Accused Vishal Sharma remained in touch with accused Sahil Goswami, w.e.f. 1.10.2022 to 16.11.2022. According to the CDRs, they had contacted with each other on 43 occasions between 1.10.2022 to 16.11.2023.

7.35 A specific stand has been taken by the Police that she is not cooperating with the investigation of the case.

7.36 On checking the IMEI number of the said Samsung mobile phone, the IMEI number of the phone, allegedly used by him, on 12.9.2023, was found to be different. On 18.12.2023, he has produced two mobile phones, but, both the mobile phones were not found to be working. As such, according to the Police, IMEI of the said mobile phones could not be checked.

7.37 On 8.1.2024, accused Sahil Goswami has purchased two mobile phones. On checking, the Police found PDF file in mobile No.9996667601. On opening, the same was found to be containing copy of invoice bearing No. 33325 and due date was mentioned as 13.4.2023. The details of items which were mentioned in invoice, are reproduced as under:-

Sr. No.	Qty.	Unit	Product	Rate	HSN	Batch	Exp	SGST	IGST	Total
1	80	PCS	Lifebuoy Alcohol Based Hand Sanitizer	120	3808	EHS109875	Jul-25	0%	5%	9600
2	100	PCS	N-95 Surgical Face Mask	80	9018	20112020		0%	0%	800
3	100	PCS	Dettol Hand Sanitizer (200 ML)	120	3808	DC/904	Nov-25	0%	5%	12000
4	100	PCS	Arcatron 3 PLY Disposable Face Mask	60	9018	578		0%	6000	
5	100	PCS	Knee Cap Tynor (S,M,L,XL)	120	9021	Tynor		0%	0.05	12000

7.38 According to the Police, accused Sahil Goswami has also disclosed that at the instance of Vishal Sharma, he had forwarded the parcels to Sunny Medical Stone, Main Bazar, Gagret Road, between the period from 2022 to December, 2023. It has also been found that the drugs, which were being smuggled through invoices, all the parcels were being marketed with the popular items, such as sanitizers, masks and gloves etc. The forged invoices were also found to be less than Rs. 50,000/-, as invoice of more than Rs. 50,000/- were having requirement to make E-Way bill.

7.39 In order to highlight the role allegedly played by the applicant in the commission of crime, it has been mentioned in the status report that on inquiry, Sahil Goswami has disclosed that on 12.9.2023, two boxes of Proxywel Spas Capsules, which also contained 119 small boxes, were sent to Varinder Kumar @ Bindu, through his servant Aman Kumar, at the behest of Vishal

Sharma. Sahil Goswami has disclosed, on inquiry, that he had purchased the above said capsules from applicant Samta Aggarwal, w/o Mahesh Aggarwal.

7.40 During investigation, the CDRs of mobile phone of Samta Aggarwal, bearing No. 7827199578 and mobile phone of Sahil Goswami, bearing Nos. 9871267009 and 9996667601 were analyzed. During investigation, it was also found that applicant Samta Aggarwal and Sahil Goswami used to remain in touch through normal calls also, from which it is clear that both of them (applicant Samta Aggarwal and Sahil Aggarwal) are very well known to each other. Applicant Samta Aggarwal and Sahil Goswami are found to have talked to each other on call on eight occasions, w.e.f. 1.9.2023 to 15.11.2023.

7.41 According to the CDR of mobile phone of applicant Samta Aggarwal, she was found to have talked to Naresh Sharma on seven occasions. Their whatsapp calls data is being retrieved from the IPDR of their mobile numbers. According to the IDPR analysis till

today, Sahil Goswami and Vishal Sharma are found to have talked to each other on 12.9.2023 on whatsapp call.

7.42 During investigation, servant of Sahil Goswami, Aman Kumar, was associated in the investigation, who, in his statement recorded under Section 161 Cr. P.C., before Police and under Section 164 Cr. P.C., recorded before the Judicial Magistrate, Amb, District Una, has disclosed that on 12.9.2023, he received two packed boxes of tablets from applicant Samta Aggarwal through her servant Naresh Kumar, in Bhagirah Palace, which he had booked for Dutta Medical Agency, Gagret from Kamal Goods Carrier. These two boxes were taken into possession on 14.9.2023.

7.43 During investigation, Naresh Kumar, servant of Mahesh Aggarwal and Samta Aggarwal (applicant) was also associated in the investigation.

7.44 Applicant Samta Aggarwal has not been found on her residence. Her husband Mahesh Aggarwal is found to have been lodged in some jail in Punjab, in

connection with narcotic substance.

7.45 During investigation, it was found that Sahil Goswami and Rishabh Jain have sent the haul of narcotic substance with the help of their friend Vishal Sharma. Samta Aggarwal (applicant), from whom, Vishal Sharma, has purchased the narcotic substance, has gone underground. She is being searched in nearby places.

7.46 It has also been found in investigation that Virender Kumar @ Bindu used to purchase the haul of narcotic substance from Vishal Sharma. Vishal Sharma used to obtain the same from Sahil Goswami and Rishabh Jain. On 14.9.2023, the haul of narcotic substance, has been sent by Rishabh Jain, at the behest of Vishal Sharma, from Delhi to Gagret. Rishabh Jain had obtained the same from Mohammad Shiraj. During investigation, Mohammad Shiraj and Rishabh Jain were arrested. Similarly, the haul of narcotic substance, which has been sent from Delhi to Gagret on 12.9.2023, that was sent by Sahil Goswami at the behest of Vishal

Sharma. Sahil Goswami had obtained the same from applicant Samta Aggarwal.

7.47 It is the further case of the Police that the applicant is not cooperating with the investigation of the case.

7.48 Another apprehension, which has been expressed in the status report, is that the quantity of contraband recovered in the present case, is commercial quantity, and in case, the bail application is allowed, it will give a wrong signal to the society, and acceptance of the bail application will also encourage other persons to indulge in such type of activities.

7.49 Apart from this, it has also been apprehended that in case, the bail application is allowed, the applicant may coerce the witnesses and may leave the country.

8. On the basis of above facts, a prayer has been made to dismiss the application.

9. Applicant Samta Aggarwal has been named as accused in a case, which has been registered, under

Sections 22 and 29 of the NDPS Act. Although, the contraband has not been recovered from the possession of the applicant, but, as per the case set up by the prosecution, the applicant was one of the persons, who helped the main accused. Not only this, she has also not co-operated with the investigation of the case, despite providing interim protection to her, under Section 438 Cr. P.C. Merely, the Challan has been filed, does not mean that the rigors of Section 37 of the NDPS Act, are not applicable.

10. The accused has been named as accused under Section 29 of the NDPS Act. The provisions of Sections 22 and 29 of the NDPS Act are reproduced as under:

“22. Punishment for contravention in relation to psychotropic substances.—

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees or with both;

(b)where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;(c)where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

29. Punishment for abetment and criminal conspiracy.—

(1)Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2)A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which—

(a)would constitute an offence if committed within India; or

(b)under the laws of such place, is an offence relating to narcotic drugs or psychotropic

substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.”

11. So far as the arguments of learned Counsel appearing for the applicant qua the fact that nothing has been recovered from her are concerned, the term ‘conscious possession of contraband’ has elaborately been discussed by the Hon’ble Supreme Court in **Union of India versus MD Nawaz Khan**, reported in (2021) 10 Supreme Court Cases 100. Relevant paragraphs 25 and 26 of the judgment are reproduced as under:

25. We shall deal with each of these circumstances in turn. The respondent has been accused of an offence under Section 8 of the NDPS Act, which is punishable under Sections 21, 27A, 29, 60(3) of the said Act. Section 8 of the Act prohibits a person from possessing any narcotic drug or psychotropic substance. The concept of possession recurs in Sections 20 to 22, which provide for punishment for offences under the Act. In Madan Lal and Another v. State of Himachal Pradesh (2003) 7 SCC 465 this Court held that

“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 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" uniform[ly] 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.

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."

*26. What amounts to "conscious possession" was also considered in *Dharampal Singh v. State of Punjab* (2010) 9 SCC 608 , where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be*

different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In Mohan Lal v. State of Rajasthan (2015) 6 SCC 222 , this Court also observed that the term “possession” could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this knowledge.”

12. From the stand taken by the prosecution in this case, this Court is of the view that the applicant is not an unknown person, but, the person, who, as per the prosecution case, was closely in contact with the other accused persons, who have been named, as accused in this case.

13. The contraband, allegedly recovered, in the present case, is commercial quantity. In this background, another question, which arises for determination before this Court, is with regard to the fact whether the relief, as claimed in the application, can be granted to the applicant without satisfying the twin conditions, as enumerated in Section 37 of

the NDPS Act. Answer to this questions is in negative.

14. At this stage, it is difficult for this Court to hold that the accused has not committed the offence, as well as, the fact that she will not commit any offence, if released on bail. In the absence of above twin conditions, the relief under Section 438 of Cr. P.C. cannot be granted to the applicant.

15. Considering the question of granting relief, under Section 438 Cr. P.C. is concerned, this Court cannot ignore the provisions of Section 37 of the NDPS Act, as held by the Hon'ble Supreme Court in **Satpal Singh versus State of Punjab**, reported in (2018) 13 Supreme Court Cases 813. Relevant paragraph 14 of the judgment is reproduced as under:

"14. Be that as it may, the order dated 21.09.2017 passed by the High Court does not show that there is any reference to [Section 37](#) of the NDPS Act. The quantity is reportedly commercial. In the facts and circumstances of the case, the High Court could not have and should not have passed the order

under Sections 438 or 439 Cr.P.C. without reference to Section 37 of the NDPS Act and without entering a finding on the required level of satisfaction in case the Court was otherwise inclined to grant the bail. Such a satisfaction having not being entered, the order dated 21.09.2017 is only to be set aside and we do so.”

16. In a recent decision, in case titled as **Narcotics Control Bureau versus Mohit Aggarwal**, reported in **AIR 2022 SC 3444**, the Hon'ble Supreme Court has reiterated the earlier view regarding compliance of the conditions, as enumerated in Section 37 of the NDPS Act. The relevant paras 10 to 15 of the judgment are reproduced, as under:

“10. The provisions of Section 37 of the NDPS Act read as follows:

*“[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.

11. *It is evident from a plain reading of the non-obstante clause inserted in sub-section (1) and the conditions imposed in subsection (2) of Section 37 that there are certain restrictions placed on the power of the Court when granting bail to a person accused of having committed an offence under the NDPS Act. Not only are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be factored in. The conditions imposed in sub-section (1) of Section 37 is that (i) the Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offence while on bail.*

12. *The expression “reasonable grounds” has come up for discussion in several rulings of this Court. In “Collector of Customs, New Delhi v. Ahmadaliev Nodira”, (2004) 3 SCC 549, a decision rendered by a Three Judges Bench of this Court, it has been held thus:-*

*“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 added]

13. The expression “reasonable ground” came up for discussion in “State of Kerala and others Vs. Rajesh and others” (2020) 12 SCC 122 and this Court has observed as below:

“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.” [emphasis added]

14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also

not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.”

17. Considering all these facts, the present bail application is dismissed.

18. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits of the case, as these observations, are confined, only, to the disposal of the present bail application.

(Virender Singh)
Judge

April 30th, 2024
(Kalpana)