



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous Bail Application No. 13814/2023

Shakti Gurjar S/o Mohan Lal, R/o Plot No. 4, Aanand Society, Pal Balaji, P.s. Chopasni Housing Board, Jodhpur (Raj.) (Present Address -A-807, Svapan Nilay, Bilwa, P.s. Shivdaspura, Jaipur (Raj.) (At Present In Judicial Custody At Central Jail, Jaipur)

-----Petitioner

Versus

1. State Of Rajasthan, Through PP
2. Ghanshyam S/o Ramu Ram, R/o Shivdaspura, Chaksu, Shivdaspura, Jaipur City (South), Rajasthan, India.

-----Respondents

For Petitioner(s) : Mr. Swadeep Singh Hora
Mr. Sahajveer Baweja
For Respondent(s) : Mr. Chandra Gupt Chopra, PP

HON'BLE MR. JUSTICE GANESH RAM MEENA

Order

Date of Reserve ::: **July 15, 2024**
Date of Pronouncement ::: **July 30, 2024**

1. This bail application has been filed by the accused petitioner under section 439 CrPC in connection with FIR No. 0707/2023 registered at Police Station Shivdaspura, District Jaipur City (South) for the offence punishable under Section 8/22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act of 1985').

2. The FIR No.0707/2023 at Police Station Shivdaspura, District Jaipur City (South) was registered after search of vehicle Honda Amaze Car and during the course of



search, contraband- Methylene Dioxy Methamphetamine (for short 'MDMA') weighing 25.41 gms. was found.

3. Counsel appearing for the accused petitioner submitted that the Narcotic Drug which was seized from the possession of the petitioner was for self consumption. He further submitted that there is violation of Section 42 of the Act of 1985 because the vehicle from which the contraband has been seized is a private vehicle and the Officer who seized the contraband is of range of Sub Inspector, who is not authorized. He further submitted that there is violation of Section 43 of the Act of 1985 also.

4. Counsel appearing for the accused petitioner further submitted that the search of the vehicle of the petitioner was made at about 7:10 PM i.e. after sunset as the date of seizure is 16.10.2023 and on the relevant date the sun sets before 06:30 PM.

The search and seizure was made by the unauthorized Officer without taking the petitioner to the nearest Gazette Officer of any of the Department or to the nearest Magistrate.

5. Counsel appearing for the petitioner has also argued that there is clear non-compliance of provision of Section 52A of the Act of 1985. He submitted that the seizure of the alleged contraband was made on 06.10.2023 and the application was sent to the concerned Magistrate on



16.10.2023 and the samples were sent to the FSL on 09.11.2023 and no explanation is there on record for such an inordinate delay. In support of his contentions, counsel appearing for the accused petitioner has placed reliance upon various judgments.

6. Mr. Chandragupt Chopra, learned Public Prosecutor appearing for the State has submitted that there is a recovery of contraband from the vehicle which was in possession of the petitioner and the petitioner was arrested on the very same day i.e. on 06.10.2023. He further submitted that the Sub Inspector is authorized to conduct the search and seizure. It is further submitted by him that 5 other criminal cases are pending against the petitioner which shows his conduct and the custody of the accused petitioner is also not of a lengthy period.

7. The learned Public Prosecutor has also referred the provision of section 37 of the Act of 1985 which clearly speaks that no person accused of an offence punishable for the offences under sections 19 or section 24 or section 27A and also for the offences involving commercial quantity shall be released on bail subject to the conditions given under sub-clause (b) thereof. He also stated that the quantity of contraband recovered from the possession of the petitioner is more than the quantity notified by the Government as commercial quantity.



8. Considered the submissions made by the learned counsel appearing for the accused petitioner as well as learned Public Prosecutor and also gone through the judgments cited from both the sides.

9. It is not in dispute that after making search of the vehicle of the petitioner 25.41 gms. drug was seized which was detected as MDMA and the accused petitioner was arrested at the very same time.

10. Now the issues for consideration before this Court is:-

"(i) *Whether a person accused of possessing the Narcotic Drug or Psychotropic Substances more than the commercial quantity can be released on bail without there being satisfaction of the Court 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 as required under Section 37 of the Act of 1985?; and*

(ii) Whether the issue regarding non-compliance of sections 42, 43, 52A of the Act of 1985 can be considered at the stage of bail without examination of the witnesses relating to the proceedings related to compliance of aforesaid provisions?"

11. For consideration of the above issues, this Court would like to quote the provision of Section 37 of the Act of 1985, which is as under:-



"Section 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."

12. In the present case, the search of the vehicle which was in possession of the petitioner was made and contraband





MDMA weighing 25.41 gm which is more than the commercial quantity was found and seized.

13. The provision of section 37 of the Act of 1985 clearly speaks that prima facie from whose possession contraband more than commercial quantity is found, is guilty of committing offence under the provisions of the Act of 1985.

14. Bare reading of provision of section 37 of the Act of 1985 speaks that it is for the accused to show that he is not guilty of such offence. Normally, a person from whose possession some contraband more than the commercial quantity is found, cannot say that he is not guilty of an offence, but in exceptional circumstances when he could show that either he has been falsely implicated or he could show that he was authorized to possess the same, then it can be believed that he is not guilty of such an offence. In the present case, the counsel appearing for the petitioner has not raised any such argument which could convince the Court that there are reasonable grounds for believing that he is not guilty of such an offence. The only submission made by the counsel for the accused petitioner is in regard to non-compliance of provisions of sections 42, 43, 50 and 52A of the Act of 1985.

15. In this context, the counsel appearing for the accused petitioner has relied upon the judgment delivered by



the Hon'ble Apex Court in the case of **Ranjitsingh Brahmajeetsing Sharma Vs. State of Maharashtra & Anr., reported in (2005) 5 SCC 294**. It was submitted by the counsel for the accused petitioner that as like the provisions of section 37 of the Act of 1985, similar provisions were there in Section 21(4) in the Maharaja Control of Organized Crime Act, 1999 and the Hon'ble Apex Court has observed in paras 21, 34, 44 and 46 as under:-

"21. MCOCA was enacted to make special provisions for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang, and for matters connected therewith or incidental thereto.

The Statement of Objects and Reasons for enacting the said Act are as under:

"Organised crime has been for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fueled by illegal wealth generated by contract, killing, extortion, smuggling in contrabands, illegal trade in narcotics kidnappings for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the organized crime being very huge, it has had serious adverse effect on our economy. It was seen that the organized criminal syndicates made a common cause with terrorist gangs and





foster terrorism which extend beyond the national boundaries. There was reason to believe that organized criminal gangs have been operating in the State and, thus, there was immediate need to curb their activities.

It was also noticed that the organized criminals have been making extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission would be an indispensable aid to law enforcement and the administration of justice.

2. The existing legal frame work i.e. the penal and procedural laws and the adjudicatory system were found to be rather inadequate to curb or control the menace of organized crime. Government, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organized crime.

It is the purpose of this act to achieve these objects."

Section 2 is the interpretation clause. Section 2(1)(a), (d), (e) and (f) whereof read thus:

"2(1) In this act, unless the context otherwise requires,-





(a) "abet", with its grammatical variations and cognate expressions, includes,-

(i) the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in any manner, an organised crime syndicate;

(ii) the passing on or publication of, without any lawful authority, any information likely to assist the organised crime syndicate and the passing on or publication of or distribution of any document or matter obtained from the organised crime syndicate; and

(iii) the rendering of any assistance, whether financial or otherwise, to the organised crime syndicate;

(d) "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one chargesheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;





(e) "organised crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;

(f) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime;"

Sub-section (2) of Section 3 provides for punishment for organized crime in the following terms:

"(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organized crime or any act preparatory to organized crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life, and shall also be liable to a fine, subject to a minimum fine of rupees five lacs."

Section 4 provides for punishment for possessing unaccountable wealth on behalf of member of organised crime syndicate. Section 20



provides for forfeiture and attachment of property, sub-section (2) whereof reads as follows:

"20.(2) Where any person is accused of any offence under this Act, it shall be open to the Special Court trying him, to pass on order that all or any properties, movable or immovable or both belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the properties so attached shall stand forfeited to the State Government, free from all encumbrances."

Section 21 provides for modified application of certain provisions of the Code of Criminal Procedure, sub-section (4) whereof is as under:

"21.(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless-

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and

(b) 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."

Section 24 reads, thus:





"24. Whoever being a public servant renders any help or support in any manner in the commission of organised crime, as defined in Clause (e) of Section 2, whether before or after the commission of any offence by a member of an organised crime syndicate or abstains from taking lawful measures under this act or intentionally avoids to carry out the directions of any Court or of the superior police officers in this respect, shall be punished with imprisonment of either description for a term which may extend to three years and also with fine."

34. The Act is deterrent in nature. It provides for deterrent punishment. It envisages three to ten years of imprisonment and may extend to life imprisonment. Death penalty can also be imposed if somebody commits a murder. Similarly, fines ranging between three to ten lakhs can be imposed.

44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the Court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the



intention of the Legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the Court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in Sub-section (4) of Section 21 of the Act, the Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the Court while granting or refusing bail undoubtedly would





be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby."

Counsel appearing for the accused petitioner has also referred the judgment delivered by the Hon'ble Apex Court in the case of **Sarija Banu @ Janarthani @ Janani Vs. State through Inspector of Police**, reported in **(2004) 12 SCC 266**. The Hon'ble Apex Court in para 7 of the aforesaid judgment has observed as under:-

"7. It is pertinent to note that in the bail application of the appellants, it was alleged, that there was serious violation of Section 42 of the NDPS Act In the impugned order nothing is stated about the alleged violation of Section 42, and it is observed that it was not necessary to consider such violation at this stage. The compliance with Section 42 is mandatory and that is a relevant fact which should have engaged the attention of the Court while considering the bail application."

Counsel appearing for the accused petitioner has also referred the judgment delivered by the Hon'ble Apex Court in the case of **Boota Singh & Ors. Vs. State of Haryana**, reported in **(2021) 19 SCC 606**. The Hon'ble



Apex Court in paras 14, 15 and 16 of the aforesaid judgment has observed as under:-

"14. The evidence in the present case clearly shows that the vehicle was not a public conveyance but was a vehicle belonging to accused Gurdeep Singh. The Registration Certificate of the vehicle, which has been placed on record also does not indicate it to be a Public Transport Vehicle. The explanation to Section 43 shows that a private vehicle would not come within the expression "public place" as explained in Section 43 of the NDPS Act. On the strength of the decision of this Court in Jagraj Singh alias Hansa, the relevant provision would not be Section 43 of the NDPS Act but the case would come under Section 42 of the NDPS Act.

15. It is an admitted position that there was total non-compliance of the requirements of Section 42 of the NDPS Act.

16. The decision of this Court in Karnail Singh as followed in Jagraj Singh alias Hansa, is absolutely clear. Total non-compliance of Section 42 is impermissible. The rigor of Section 42 may get lessened in situations dealt with in the conclusion drawn by this Court in Karnail Singh but in no case, total non-compliance of Section 42 can be accepted."





Counsel appearing for the accused petitioner has also relied upon the order dated 09.11.2023 passed by the Coordinate Bench of Principal Seat at Jodhpur in the case of **Satyanarayan @ Sattu Vs. State of Rajasthan, through PP (S.B. Criminal Misc. 2nd Bail Application No.3678/2023)**. The Court while allowing the bail to the accused therein has observed in paras 5,7, 8 and 9 as under:-

"5. Heard and perused the material available on record. It is the case of defence that the Seizing Officer was neither posted as SHO nor any charge of the concerned Police Station was given to him. PW.1 Lakshmilal, the Sub-Inspector who conducted the search and seizure has been examined in the trial and he has categorically stated in cross-examination that one Shivraj was the SHO posted at the concerned police station. He has further admitted that there is nothing in writing, neither on record nor in the Roznamcha, which can prove the fact that the SHO handed over the charge of the police station to him. Now, this court deems it appropriate to discuss the law prevalent in the matter.

7. While enacting Section 42 of NDPS Act, the legislature put a complete ban on authorities beyond the ones mentioned in the Section to carry



out the functions under the Act. The legislature has clearly empowered the persons mentioned therein and it has also been specified through the notification No. F. 1(3) FD/EX/85- I, dated 16-10-86 as to who are authorised to do so.

8. Chapter V of the NDPS Act specifically provides that only the officers mentioned and empowered therein can give an authorisation to a subordinate to arrest and search if such officer has reason to believe about the commission of an offence and after reducing the information, if any, into writing. As per Section 42, only officers mentioned therein and so empowered can make the arrest or search as provided if they have reason to believe from personal knowledge or information. The specific rank of the officer and 'reason to believe' are two important requirements that are needed to be complied with necessarily. Firstly, the Magistrate or the Officers mentioned therein are empowered and secondly, they must have reason to believe that an offence under Chapter IV has been committed or that such arrest or search was necessary for other purposes mentioned in the Act. So far as the first requirement is concerned, it can be seen that the legislature intended that only certain Magistrates and certain Officers of higher rank are empowered and can act to effect the arrest or search.





9. The notification No. F. 1(3) FD/EX/85-I, dated 16-10-86, published in Rajasthan Gazette Part IV-C (II) dated 16-10-86 on page 269 reads as:-

S.O. 115.- In exercise of the powers conferred by section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No 61 of 1985) the State Government hereby authorise all Inspectors of Police, and Sub-Inspectors of Police, posted as Station House Officers, to exercise the powers mentioned in Section 42 of the said Act with immediate effect:

Provided that, when power is exercised by Police Officer other than Police Inspector of the are a concerned such officer shall immediately hand over the person arrested and articles seized to the concerned Police Inspectors or S.H.O. of the Police Station concerned.

Counsel appearing for the accused petitioner further has relied upon the order dated 17.11.2023 passed by the Coordinate Bench of Principal Seat at Jodhpur in the case of **Mahesh Vs. State of Rajasthan through PP (S.B. Criminal Misc. Bail Application No. 14739/2023)**. The Court allowed the bail of accused therein.





Counsel appearing for the accused petitioner has also relied upon the case of **Raju Munim Vs. State of Rajasthan**, reported in **2006 SCC OnLine Raj. 476**. The Court while allowing the appeal of the accused appellant therein observed in para 20 as under:-

"20. After considering the provisions of law in the context of submissions of the learned Counsel for the appellant I consider the facts and evidence of the present case. There is no doubt that PW-7 Yashwant Singh was holding the post of Sub Inspector at Police Station Bhawanimandi whereas S.H.O. at Police Station Bhawanimandi was Pradeep Kumar PW-8. However it was explained that at the time when he received an information from the informer then the S.H.O. had gone in connection with investigation of case No. 366/99 under Section 395 1PC and Case No. 161/99 under [Section 307](#) IPC. The learned Trial Court did not agree with the submissions of the learned Counsel for the accused and agreed with the submissions of the learned Public Prosecutor that PW-7 Yashwant Singh was the In-charge of the Police Station at that particular time in absence of S.H.O. Pradeep Kumar, in view of [Section 36](#) of the Cr.P.C. and it was merely an irregularity. I find that [Section 36](#) Cr.P.C. is not applicable in the present case because [Section 36](#) Cr.P.C. prescribes that police



officers, superior in rank to an officer in charge of Police Station, may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station. As per [Section 36 Cr.P.C.](#) the police officers, who are superior in rank, may exercise the same powers of the in charge of the police station but in the present case PW-7 Yashwant Singh was not a superior officer than the S.H.O. Pradeep Kumar. [Section 42](#) of the Act lays down that any such officer, who is empowered in this behalf by general or special order of the Central Government or a State Government, may enter into such search and seizure. The State Government has issued the Notification dated 16.10.1986 under [Section 42](#) of the Act. The Public Prosecutor, appearing on behalf of the State of Rajasthan, has not shown any other Notification superseding to above referred Notification dated 16.10.1986, therefore search and seizure of contraband in the present case by unauthorised officer vitiates the trial of the case.”

Counsel appearing for the accused petitioner has also relied upon the order dated 06.05.2024 passed by the Coordinate Bench of this Court in the case of **Sunil Vs. State of Rajasthan (S.B. Criminal Misc. Bail Application**





No.4994/2024) & one other connected bail application. The Court allowed the bail of accused therein.

Counsel appearing for the accused petitioner has also relied upon the order dated 02.11.2023 passed by the Coordinate Bench of Principal Seat at Jodhpur in the case of **Ladu Ram Vs. State of Rajasthan (S.B. Criminal Misc. 3rd Bail Application No.8738/2023)**. The Court allowed the bail to the accused therein.

Counsel appearing for the accused petitioner has also relied upon the order passed by the High Court of Delhi at New Delhi in the case of **Kaushif Vs. Narcotics Control Bureau, reported in 2023 SCC OnLine Del 2881**. The Delhi High Court allowed the bail application of the accused therein.

Counsel appearing for the accused petitioner has also relied upon the judgment delivered by the Hon'ble Apex Court in **Roy V.D. State of Kerala, reported in (2000) 8 SCC 570**, wherein the Hon'ble Apex Court in paras 15 and 16 has observed as under:-

"15. It is thus seen that for exercising powers enumerated under sub-section (1) of Section 42 at any time whether by day or by night a warrant of arrest or search issued by a Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class who has been



specifically empowered by the State Government in that behalf or an authorisation under sub-section (2) of Section 41 by an empowered officer is necessary. Without such a warrant or an authorisation, an empowered officer can exercise those powers only between sunrise and sunset. However, the proviso permits such an empowered or authorised officer to exercise the said powers at any time between sunset and sunrise if he has reason to believe that such a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender and he records the grounds of his belief.

16. *Now, it is plain that no officer other than an empowered officer can resort to Section 41(2) or exercise powers under Section 42(1) of the NDPS Act or make a complaint under clause (d) of sub-section (1) of Section 36A of the NDPS Act. It follows that any collection of material, detention or arrest of a person or search of a building or conveyance or seizure effected by an officer not being an empowered officer or an authorised officer under Section 41(2) of the NDPS Act, lacks sanction of law and is inherently illegal and as such the same cannot form the basis of a proceeding in*





respect of offences under Chapter IV of the NDPS Act and use of such a material by the prosecution vitiates the trial.”

As regards the judgments/ order in the cases of **Satyanarayan @ Sattu (supra), Mahesh (supra), Ladhu Ram (supra)** are concerned, this Court is not inclined to follow the same as no satisfaction of the Court has been recorded as is required to be seen under the provisions of section 37(b) of the Act of 1985. As per the provision of Section 37(b)(ii) of the Act of 1985, the Court has to record the satisfaction that there are reasonable grounds of believing that the person accused of an offence punishable for offences involving commercial quantity is not guilty of such offence.

16. Since no satisfaction of the Court has been recorded as required under section 37(b)(ii) of the Act of 1985, the aforesaid orders/judgments cannot be followed to grant relief to the petitioner. The judgments passed in the case of **Boota Singh (supra), Raju Munim (supra) and Roy V.D. (surpa)** are the cases where there is non-compliance of certain provisions of the Act of 1985 and the right of an accused was considered at the stage of the trial/appeal. The non-compliance of any of the provisions of the Act of 1985 can only be scrutinized only on the basis of



the evidence to be led before the trial court i.e. the evidence of the material witnesses who are connected with the compliance of such provisions. Until and unless those witnesses who are connected with compliance of such provisions are got examined by the trial court only then it can be considered and scrutinized whether the compliance of any such provision has been made or not or if same has not been made then what were the reasons or causes which led to such non-compliance because some reasons or causes may be very material to be considered by the trial court or the appellate court.

17. Counsel appearing for the accused petitioner has also referred the case of **Kashif (supra)**. The case of **Kashif (supra)** relates to bail matter and the accused Kashif was allowed bail. However, it is to be noted that in that case no recovery was made from the applicant (Kashif) or at his instance. Therefore, the Hon'ble Apex Court observed that since no recovery was made from the applicant (Kashif) or at his instance, therefore, the embargo of Section 37 of the NDPS Act is not applicable on the applicant (Kashif).

The facts of the present case are quite different from the facts of case of **Kashif (supra)** for the reasons that in the present case the contraband weighing more than the commercial quantity was found in the vehicle which was in possession of the petitioner.





18. The Hon'ble Apex Court in the case of **Union of India Vs. Ajay Kumar Singh @ Pappu (Criminal Appeal No. of 2023 [Arising out of SLP (CRL.) No. 2351 of 2023])** decided on 28.03.2023 referring section 37 of the Act of 1985 has observed in paras 16, 17 and 18 as under:-

"16. In view of the above provisions, it is implicit that no person accused of an offence involving trade in 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.

17. The quantity of "ganja" recovered is admittedly of commercial quantity. The High Court has not recorded any finding that the respondent-accused is not prima facie guilty of the offence alleged and that he is not likely to commit the same offence when enlarged on bail rather his antecedents are indicative that he is a regular offender. In the absence of recording of such satisfaction by the court, we are of the opinion that the High Court manifestly erred in enlarging the respondent-accused on bail.

18. In view of the aforesaid facts and circumstances and considering the role assigned to the respondent-accused and the illegality committed in releasing him on bail, we set aside



the impugned final order dated 17.10.2022 passed by the High Court of judicature at Allahabad and allow the appeal."

19. The Hon'ble Apex Court in the case of **Union of India Vs. Rattan Mallik @ Habul, reported in (2009) 2 SCC 624** has observed in paras 16 and 17 as under:-

"16. Merely because, according to the Ld. Judge, nothing was found from the possession of the respondent, it could not be said at this stage that the respondent was not guilty of the offences for which he had been charged and convicted. We find no substance in the argument of learned counsel for the respondent that the observation of the learned Judge to the effect that "nothing has been found from his possession" by itself shows application of mind by the Ld. Judge tantamounting to "satisfaction" within the meaning of the said provision. It seems that the provisions of the NDPS Act and more particularly Section 37 were not brought to the notice of the learned Judge.

17. Thus, in our opinion, the impugned order having been passed ignoring the mandatory requirements of Section 37 of the NDPS Act, it cannot be sustained. Accordingly, the appeal is allowed and the matter is remitted back to the High Court for fresh consideration of the



application filed by the respondent for suspension of sentence and for granting of bail, keeping in view the parameters of Section 37 of the NDPS Act, enumerated above. We further direct that the bail application shall be taken up for consideration only after the respondent surrenders to custody. The respondent is directed to surrender to custody within two weeks of the date of this order, failing which the High Court will take appropriate steps for his arrest."

20. The Hon'ble Apex Court in the case of ***State of Karnataka etc. Vs. Rajesh etc. (Criminal appeal No(s). 154-157 of 2020, decided on 24.01.2020*** after considering the provisions of section 37 of the Act of 1985 has observed in paras 2, 20 and 22 as under:-

"2. The appellant-prosecution has challenged the discretion exercised by the learned Single Judge of the High Court of Kerala in granting post-arrest bail to the accused respondents without noticing the mandate of Section 37(1)(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985(hereinafter being referred to as "NDPS Act") under the order impugned dated 10th May, 2019 followed with 12th June, 2019 rejecting the application filed by the appellant under Section 482 of the Code of Criminal Procedure(hereinafter being



referred to as "CrPC") for recalling the order of post-arrest bail dated 10th May, 2019.

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 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.

22. We may further like to observe that the learned Single Judge has failed to record a finding mandated under [Section 37](#) of the [NDPS Act](#) which is a sine qua non for granting bail to the accused under the [NDPS Act](#)."

21. The Division Bench of the Principal Seat at Jodhpur in the case of ***Daulat Singh @ Gatu Vs. State of Rajasthan, reported in 2014(2) CR.L.R. (Raj.) 738*** after





considering the judgment of the **Hon'ble Apex Court** delivered in the case of **Dadu @ Tulsidas Vs. State of Maharashtra, reported in (2000) 8 SCC 437** has observed in paras 11 and 12 as under:-

"11. The authority of Hon'ble the Supreme Court under Article 142 of the Constitution of India is an extraordinary authority and that is not abide by the statutory provisions. The power available can very well be exercised beyond statutory limits if that is required for dispensing complete justice in any case. It shall be pertinent to notice here that as per Article 141 of the Constitution of India the law declared by the Supreme Court shall be binding on all courts within the territory of India, as such, the binding effect in the form of precedent is available to the judgments declaring law by the Apex Court. Article 142 of the Constitution of India nowhere refers judgments but decree or order. The decrees or orders passed by the Apex Court while exercising its extraordinary authority under Article 142 of the Constitution of India cannot be taken as precedent. It shall also be appropriate to mention that the Constitution of India nowhere prescribes any authority to High Courts akin to the powers available to Hon'ble the Supreme Court as per Article 142 (1) of the Constitution of India. This Court, thus, is required to operate within the four





corners of the statutes applicable. The resultant is that Hon'ble Supreme Court may grant release on bail or suspension of sentence without getting itself satisfied with the requirements of Section 37 of the Act of 1985, if that is necessary for doing complete justice, such an authority, however, is not available to the High Court or the trial court, as the case may be. As already stated, the order passed in the case of *Mansingh (supra)* is a reflection of the authority exercised under Article 142 of the Constitution of India, thus, is not having a binding effect or in other words, an authority of precedent for the High Court or the other courts subordinate. The judgments given in the case of *Dadu alias Tulsidas v. State of Maharashtra (supra)* and *Rattan Mallik (supra)* are laying down law, hence, are having binding effect and those are required to be adhered in their true spirit.

12. Looking to the discussions made above, our conclusion is that the applications preferred by an accused of the offences punishable under Sections 19, 24 and 27 A under the Act of 1985 and also for the offences involving commercial quantity of contraband for his release on bail or for suspension of sentence are required to be considered by the High Courts or the trial courts, as the case may be, by taking into consideration the provisions of Section 37 of the Act of 1985 . The law discussed





and settled in the case of *Dadu alias Tulsidas v. State of Maharashtra (supra)* and *Rattan Mallik (supra)*, thus, is to be followed by the courts while dealing with the applications submitted by the accused of the offences referred in Section 37 of the Act of 1985 for grant of bail or for suspension of sentence.”



22. The Hon'ble Apex Court in the case of ***Narcotics Control Bureau Vs. Mohit Agarwal (Criminal Appeal Nos.1001-1002 of 2022)*** decided on **19.07.2022** after taking into consideration the provisions of section 37 of the Act of 1985 has observed in paras 11, 12, 13 and 14 as under:-

"11. It is evident from a plain reading of the non-obstante clause inserted in sub-section (1) and the conditions imposed in sub-section (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 Criminal Appeal Nos. of 2022 @ Petitions for Special Leave to Appeal (Criminal) No. 6128-6129 OF 2021 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. Ahmadalieva Nodira](#)" 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" 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.”

23. The Hon’ble Apex Court in the case of **Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)**, reported in **(1980) 1 SCC 81** has observed as under:-

“18. The conditions which courts have to be cognizant of are 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. What is meant by "not guilty" when all the evidence is not before the court? It can only be a 18 As per the counter-affidavit dated 21.02.2023 filed by the respondent-state before this court. prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on





the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws - be balanced against the public interest. “



24. The recent view of the Hon'ble Apex Court and other Courts after having due consideration to the provisions of section 37 of the Act of 1985 is that while granting bail to a person accused of an offence punishable for the offence involving commercial quantity, the Court should record its satisfaction 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.

25. The counsel appearing for the accused petitioner has referred the judgment of **Ranjitsingh Brahmajeetsing Sharma (supra)** relating to a case for offence under the provisions of Maharashtra Control of Organised Crime Act, 1999, wherein there is a similar section like section 37 of the Act of 1985. In that case, the Hon'ble Apex Court granted bail.

26. The Hon'ble Apex Court in the case **Mohammed Anis Vs. Union of India & Ors., reported in 1994 Supp(1) SCC 145** has observed as under:-

"Apex Court has been conferred extraordinary powers by Article 142(1) of the Constitution so that it can do complete justice in any cause or matter



pending before it. The question regarding the width and amplitude of this Court's power under Article 142(1) came up for consideration before this Court in Delhi Judicial Service Assn., Delhi v. State of Gujarat and again before the Constitution Bench in Union Carbide Corpn. v. Union of India. In the first case this Court observed that the power conferred by Article 142 (1) coupled with the plenary powers under Articles 32 and 136 empowers the Court to pass such orders as it deems necessary to do complete justice to the cause or matter brought before it. This power to do complete justice is entirely of different level and of a different quality which cannot be limited or restricted by provisions contained in statutory law. No enactment made by the Central or State Legislature can limit or restrict the Court's powers under Article 142(1) though while exercising it the Court may have regard to statutory provisions (See paragraphs 50 and 51 of the judgment). In the second case this Court clarified that the expression "cause or matter" must be construed in a wide sense to effectuate the purpose of conferment of power. This power has been conferred on the Apex Court only and the exercise of that power is not dependent or conditioned by any statutory provision. The constitutional plenitude of the powers of the Apex Court is to ensure due and proper administration of





justice and is intended to be co-extensive in each case with the needs of justice of a given case and to meeting any exigency. Very wide powers have been conferred on this Court for due and proper administration of justice and whenever the Court sees that the demand of justice warrants exercise of such powers, it will reach out to ensure that justice is done by resorting to this extraordinary power conferred to meet precisely such a situation. True it is, that the power must be exercised sparingly for furthering the ends of justice but it cannot be said that its exercise is conditioned by any statutory provision. Any such view would defeat the very purpose and object of conferment of this extraordinary power. In the Union Carbide case this Court observed as under: (SCC p.634, para 83)

"It is necessary to set at rest certain misconceptions in the arguments touching the scope of the powers of this Court under Article 142(1) of the Constitution.... The proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded, operates to limit the powers of the Apex Court under Article 142(1) is unsound and erroneous."

Proceeding further, the Court observed: (SCC p.635, para 83)





"The power under Article 142 is at an entirely different level and of a different quality. Prohibitions or limitations on provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142."

That is so for the obvious reason that statutory provisions cannot override constitutional provisions and Article 142(1) being a constitutional power cannot be limited or conditioned by any statutory provision."

27. This Court has to go by the provisions of statutory law because any order of the Court without considering the provisions of the law in force or contrary to the same is said to be per-incurriam and this Court would like to restrain itself from passing such order.

28. In the present case there is recovery of contraband weighing more than the commercial quantity as notified and also there are five other criminal cases pending against the petitioner. There are no reasons for satisfaction of this Court so as to believe that the accused petitioner is not guilty of offences under the provisions of the Act of 1985 and that he is not likely to commit any offence while on bail as he is already facing five other criminal cases.



29. Drug abuse has taken its toll in almost all the districts of Rajasthan. The addicts primarily belong to youth age. The high rate of drug consumption is leading to issues like illegal trade, drug trafficking, and smuggling. The problem of drug addiction has a significant bearing on drug trafficking which has become a significant challenge for governments and social reformers. The NCB reports that the main internal factor for drug trafficking in India is the illicit cultivation of opium, poppy and cannabis. Also, the diversion from licit opium sources to illegal opium production is a major concern. In the trends of 2020, Rajasthan is among the 3 major states, along with Uttar Pradesh and Madhya Pradesh, from where the opium is trafficked to other parts of the country.

Young Indians addicted to drugs are spoiling their lives. Drug addiction is the worst kind of addiction and it causes numerous mental and physical ailments and such youth go often into depression. In order to cope up with stress and depression, they try to consume more drugs and keep spiraling around and are never able to leave this addiction. They lose their sense of control and become vulnerable and many of them commit suicide or get involved in different kinds of criminal activities.

Drug abuse has a direct impact on social and economic aspect of the nation. The impact of drug is realized





in workplace, family and the society. It results in violence at home and gang wars in cities, increase crimes and even stresses the public health system and we find young mass addicted to drugs which leads to unsafe life. Addiction not only breaks the family harmony but also puts high economic burden on the society. The economic impact due to Drug abuse is immeasurable.

According to UNDCP report, the economic effects of drug abuse can be measured in two forms, i.e. cost of government drug enforcement policies and the lost human productivity such as lost wages and decreased production that results from illness and premature deaths related to drug abuse. There are many hidden costs relating to disturbance in social life, wastage of young energy.

One can notice apparent rapid changes in societal alignment owing to the reduced family and community cohesiveness, increased unemployment and underemployment, economic and social marginalization and increased crime as a direct result of the problem of drug abuse. Youth forms the basic unit of the society. The harmony of the society depends on its younger members. When the members of society become drug abusers then it disturbs the entire societal harmony. Every society suffers due to even a single drug abuser. It affects the life style and also financial condition of the society concerned.



It is a common practice in the rural areas for the farmers to leave their tools and machineries lying in the fields unsupervised. The drug addicts often end up resorting to the commission of offences like stealing of tools, equipments and machineries of the farmers of their safe and regular farming style. Thus, it develops a strong correlation between addiction and an increased risk of commission of offences.

When drug problems in a community are perceived as serious, people must face unpleasant alternatives. They can accept the reality of drugs in their neighbourhood, adapting to a situation that they cannot hope to change immediately; they can change their lifestyle to reduce the threat of drug dealing and violence in their localities; they can change the environment by some form of community action either with or without the support of the police. Many of these alternatives are not available to persons living in poverty or with limited means. Thus, with fewer choices, the poor pay a greater personal price for drug problems than others.

One aspect of this connection between drugs and crime is temporal causation; that is involvement in property crime generally precedes the addiction career. After addiction occurs, property crime increases and narcotic use is further increased. Drugs and crime cannot be considered separately, in isolation from each other, especially if they emerge from a common set of circumstances. It is a well accepted fact that



drug use is a strong correlate of being booked for a criminal offence, but age is the more important correlate of criminal involvement and poverty an even more important predictor of property crime.

30. It can thus very precisely be concluded that what is alluring for one can be daunting for the others. The addicts are, therefore, an added burden to the law-abiding population.

31. Having considered the material available on the record in the form of charge-sheet and the pendency of five other criminal cases against the petitioner, in the opinion of this Court it cannot be said at this stage that the accused petitioner is not guilty of the offences involving commercial quantity of the contraband and that he is not likely to commit any offence while on bail.

32. Having due regards to the contentions of the counsel appearing for the accused petitioner as well as learned Public Prosecutor and the case law referred, this Court is not inclined to enlarge the accused petitioner on bail and accordingly the bail application is dismissed.



33. In view of the submissions made by the counsel appearing for the accused petitioner regarding non-compliance of provisions of sections 42, 43, 50 and 52A of the Act of 1985, this Court deems just and proper to direct the trial court to expedite the trial and conclude the same as early as possible.



(GANESH RAM MEENA),J

Sharma NK/Dy. Registrar