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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-52458-2023
Reserved on: 17.11.2023.
Pronounced on: 04.01.2024.

Sukhpal Singh Khaira

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vikram Chaudhri, Sr. Advocate with
Mr. Keshavam Chaudhri, Advocate
Mr. Parvez Chaudhary, Advocate
Ms. Hargun Sandhu, Advocate
Mr. Digvijay Singh, Advocate and
Mr. Rishab Tiwari, Advocate
for the petitioner.

Mr. Harin P. Raval, Sr. Advocate
Mr. Gurminder Singh, AG Punjab
Mr. Luvinder Sofat, D.A.G., Punjab and
Mr. Shiva Khurmi, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
35	05.03.2015	Sadar Jalalabad	21, 24, 25, 27, 28, 29, 30, 27-A, 27-B of Narcotics Drugs and Psychotropic Substances Act, 1985 [NDPS Act] and S. 25-A of Arms Act and Section 88 of IT Act

1. The petitioner, an MLA from Punjab, and a former Leader of Opposition, who was initially neither named nor prosecuted in the FIR captioned above, but his role surfaced during a further investigation conducted by a new Special Investigation Team [SIT] for violating 27-A, 27-B of the NDPS Act, in addition to other provisions of FIR, came up before this Court under Section 439 of the CrPC, 1973, seeking bail.

2. Counsel for the petitioner on instructions argued that in case this Court grants bail to the petitioner, they would have no objection to any condition whatsoever and also refers to para no. 11 of the petition in which it was explicitly mentioned that the petitioner would comply with all the conditions imposed by this Court. The petitioner contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

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3. While opposing the bail, the contention on behalf of the State is that the quantity of contraband involved in the case falls in the commercial category, and they have collected sufficient evidence that prima facie points towards petitioner's dealings with the drugs trade and the international mafia.

FACTS:

4. Facts of the case are being taken from a reply dated 18.10.2023 filed by the concerned Superintendent of Police, which reads as under: -

"[5]. That the brief background of the matter is that case FIR No.35 dated 05.03.2015 was registered under Sections 21, 24, 25, 27, 28, 29, 30 of the NDPS Act, 1985, 25 of the Arms Act, 66 of the Information Technology Act, 2000 at Police Station Sadar Jalalabad against 11 accused persons namely Harbans Singh, Subhash Chander, Gurdev Chand, Gurdev Singh, Manjit Singh UK, Sonia, Manjit Singh son of Satnam Singh, Anil Kumar alias Neelu, Shanti Singh, Nirmal Singh and Kala Singh alias Kali. In this case, following recoveries were made from the aforesaid 11 accused persons: -

SR. NO.	NAME OF ACCUSED	RECOVERY EFFECTED	DATE OF PRESENTATION OF POLICE REPORT U/S 173 CrPC, 1973
1.	Harbans Singh Son of Satnam Singh	(i) 300 gms of Heroin (ii) 01 Country Made Pistol .312 bore (iii) 02 live cartridges	06.09.2015
2.	Subhash Chander Son of Shiva Ditta	260 gms of Heroin	06.09.2015
3.	Gurdev Chand Son of Nyamat Chand	260 gms of Heroin	06.09.2015
4.	Gurdev Singh Ex Chairman Son of Shiv Singh	(i) 350 gms of Heroin (ii) 24 Gold Biscuits (iii) 01 Revolver .32 Bore (iv) 25 live cartridges of .32 Bore (v) 01 Pakistani SIM Card	06.09.2015
5.	Manjit Singh U.K., Son of Buta Singh	(i) 300 gms of Heroin (ii) 01 Pakistani Mobile (iii) 01 Pakistani SIM Card	06.09.2015
6.	Sonia Wife of Anil Kumar @ Neelu	100 gms of Heroin	06.09.2015
7.	Manjit Singh Son of Satnam Singh	-	06.09.2015
8.	Shenty Singh Son of Charanjit Singh	100 gms of Heroin	06.09.2015
9.	Nirmal Singh @ Nimma Son of Iqbal Singh	100 gms of Heroin	06.09.2015



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10.	<i>Kala Singh @ Kaali Son of Madhi</i>	-	18.10.2016
11.	<i>Anil Kumar @ Neelu Son of Hans Raj (He was earlier absconding and was declared proclaimed offender on 01.12.2015 and was subsequently arrested on 16.04.2019)</i>	-	31.08.2019

A total 1.8 Kg of psychotropic substances (Heroin) was recovered from the aforesaid accused persons in addition to the following: -

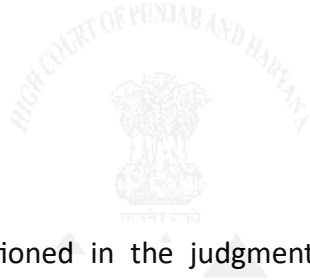
- (i) 24 Gold Biscuits (one gold biscuit was subsequently recovered from accused Kashmir Singh @ Billa)*
- (ii) 01 Country made Pistol .315 Bore alongwith 02 live cartridges.*
- (iii) 01 Revolver .32 Bore along with 25 live cartridges of .32 Bore.*
- (iv) 01 Pakistani Mobile*
- (v) 02 Pakistani SIM cards”.*

5. The other accused, from whose possession the police had initially recovered a massive quantity of drugs, gold, and weapons, were prosecuted before Special Court, Fazilka. Before filing a police report under Section 173 Code of Criminal Procedure, 1973 [CrPC], on May 8, 2015, the petitioner had filed CWP No.8999 of 2015 in this Court, seeking an investigation by CBI and other reliefs. On July 14, 2016, the State informed the Court that the petitioner had no cause of action to maintain and continue with this writ petition as the petitioner was not an accused in this case and the trial was already going on in which two witnesses had already been examined. Subsequently on Mar 16, 2017, due to subsequent events, the petitioner withdrew the CWP, without prejudice to approach again if the need arose.

6. In the trial, the testimonies of PW4 Ajmer Singh & PW5 Jaswant Singh were recorded, and on July 06, 2016, a request was made by the prosecution to re-call them, which the Trial Court declined.

7. In between vide order dated June 11, 2017, the Government of Punjab had constituted another Special Investigation Team headed by SSP Fazilka to investigate the matter further.

8. The trial against ten accused persons against whom challan had been presented commenced in the Court of Special Judge Fazilka. At the final stage of the first trial, the State moved an application under Section 319 CrPC to summon the petitioner as an accused. The State filed this application based on the testimonies of PW4, PW5, and PW13. On October 31, 2017, Special Judge Fazilka convicted and sentenced nine accused



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to various terms mentioned in the judgment and acquitted one accused, whereas accused namely Anil (A-11) has already been declared proclaimed offender. After pronouncing the judgment of conviction, the Sessions Judge also allowed the application filed by the Investigator under Section 319 CrPC and issued non-bailable warrants against the petitioner. The State's counsel had supplied a photocopy of the judgment, and I have also gone through the same. Counsel for the petitioner submits that, per his information, all the convicts have challenged the conviction by filing separate appeals pending adjudication.

9. The petitioner challenged the non-bailable warrants, and the order passed in the application under Section 319 CrPC by filing CRR No. 4070 of 2017. On November 17, 2017, a Co-ordinate Bench of this Court dismissed the revision petition but quashed non-bailable warrants.

10. Aggrieved by the dismissal of the revision petition, the petitioner filed SLP(CrI) No. 9063 of 2017 before the Hon'ble Supreme Court. On May 10, 2019, in Sukhpal Singh Khaira vs The State of Punjab, 2019 (6) SCC 638, a two-member Bench of Hon'ble Supreme Court, formulated a question of law and referred the matter to a Larger Bench.

11. On December 05, 2022, a Constitutional Bench of Hon'ble Supreme Court, In Sukhpal Singh Khaira vs The State of Punjab, decided the reference in the following terms: -

"[38]. For all the reasons stated above, we answer the questions referred as hereunder.

[39]. (I) Whether the trial court has the power under Section 319 CrPC for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?

The power under Section 319 CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.

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[40]. (II) Whether the trial court has the power under Section 319 CrPC for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?

The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split-up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion.”

12. On February 9, 2023, a two-member Bench of Hon’ble Supreme Court passed the following order: -

“[1]. Indisputably, in the present cases the order under Section 319 Cr.P.C. was passed by the learned High Court after the learned Trial Judge had pronounced the order of conviction and sentence against the accused, who were being tried by the learned Trial Judge.

[2]. The order passed under Section 319 Cr.P.C. against the present appellants was challenged before the learned Single Judge vide judgment dated 17th November, 2017 of the High Court by way of revision petitions. The learned Single Judge rejected the revisions. Aggrieved thereby present appeals were filed.

[3]. Since the Bench hearing the matter in this Court found that it involves an important issue, the matters were referred to a Larger Bench. The Constitution Bench vide its judgment dated 05.12.2022 rendered in Sukhpal Singh Khaira v. The State of Punjab, reported in (2022) 17 SCC 246, has held that once the learned Trial Judge passes an order on sentence, the Court become functus officio and it is not within its jurisdiction to pass an order under Section 319 Cr.P.C.

[4]. Indisputably, in the present case, the orders under Section 319 Cr.P.C. has been passed after the accused, who were facing trial, were convicted and sentenced.

[5]. In view of the law laid down by the Constitution Bench in Sukhpal Singh Khaira (Supra) these appeals are allowed. The order passed by the learned Trial Judge under Section 319 Cr.P.C. against the appellants as well as by the learned Single Judge of the High Court are quashed and set aside.”

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13. After this, the petitioner, Sukhpal Singh Khaira, and his PA, Munish Kumar, filed an application before the Ld. Judge Special Court, Fazilka, with a prayer to drop the proceedings, as an outcome of the order dated 09.02.2023 passed by the Hon'ble Supreme Court of India.

14. On April 13, 2023, the trial Court (Special Judge, Fazilka) passed the following order: -

"8. Resultantly, the application having been filed by the applicants stands disposed off with the following directions: -

a) The proceedings of this case arising out of the summoning order dated 31.10.2017 under Section 319 Cr.P.C. pronounced by learned predecessor of this Court, stand disposed without prejudice to the right of State/investigating agency/SIT to carry out any investigating/inquiry with regard to the involvement of the applicants and other suspects in the smuggling of drugs or to present charge sheet under Section 173 Cr.PC.

b) The passports of both the applicants Sukhpal Singh Khaira and Manish Kumar be released to them forthwith against proper receipt and while retaining the photocopies of those passports on the file for further reference."

15. After that, on May 3, 2023, the trial Court made the following observations: -

"[1]. Main file has been received with the record of trial arising out of FIR No.35 dated 05.03.2015 under Sections 21, 24, 25, 27, 28, 29, 30 NDPS Act, Section 25/54 Arms Act and Section 66 IT Act 2000 which has been perused and considered.

[2]. By way of separate detailed orders dated 13.04.2023 and 17.04.2023 respectively, proceedings of this case against additional accused Sukhpal Singh Khaira, Manish Kumar and Joga Singh have been dropped in view of the order dated 09.02.2023 passed by Hon'ble Supreme Court of India in Criminal Appeals No. 885 and 886 of 2019 on the basis of ratio of judgment dated 05.12.2022 of Hon'ble Supreme Court of India in titled as Sukhpal Singh Khaira versus The State of Punjab. By way of ratio decidendi of this judgment, it has been held by the constitutional bench of Hon'ble Supreme Court that "once the trial judge passes an order on sentence, the court become functus officio and it is not within its jurisdiction to pass an order under section 319 Cr.PC."

[3]. Admittedly, it was on the basis of ratio decidendi of judgment in Sukhpal Singh Khaira's case (Supra), that additional accused Sukhpal Singh



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Khaira, Manish Kumar and Joga Singh have been exonerated from these proceedings vide orders as mentioned in para 1 of this order. Since, additional accused Charanjit Kaur and Major Singh Bajwa were also summoned under section 319 Cr.PC by way of same order dated 31.10.2017 vide which the above said accused Sukhpal Singh Khaira, Manish Kumar and Joga Singh were summoned as additional accused, no further proceedings against additional accused Charanjit Kaur and Major Singh Bajwa can be carried out on the basis of such summoning order dated 31.10.2017 in view of guiding principal laid down in Sukhpal Singh Khaira's case (supra). Hence, the proceedings of this Criminal Miscellaneous Petition, so far as these arose out of the summoning order dated 31.10.2017 under Section 319 Cr.PC stands dropped against additional accused Charanjit Kaur and Major Singh Bajwa also. Before parting with this order, it is made clear that the dropping of these proceedings shall be without prejudice to the right of State/ investigating agency/ SIT to carry out any investigation/ inquiry with regard to the involvement of these accused and other suspects in the smuggling of drugs or to present charge sheet under Section 173 Cr.PC. Proceedings stands dropped accordingly. File be consigned to record room."

16. Subsequently, vide order dated September 4, 2023, the Director, Bureau of Investigation, Punjab, constituted another SIT to investigate FIR No.35 of 2015. On September 28, 2023, vide rapat no.5, the SIT added offences under Section 27-A and 27-B of NDPS Act and also arraigned Gurpreet Singh @ Gopi, Kashmir Singh @ Billa, Major Singh Bajwa, Charanjit Kaur, Sukhpal Singh Khaira-petitioner, Joga Singh (PSO of the petitioner) and Munish Kumar (PA of petitioner) as additional accused.

17. During the investigation, Gurdev Singh (A-6) [an Ex-chairman of the Market Committee, Dhilwan, and Ex-Sarpanch of Village Lakhon Ke Padde, falling in Bholath constituency], had disclosed his proximity to the petitioner, and the Investigator gathered evidence of family relations between him and the petitioner. Accused Gurdev Singh had disclosed to the Investigator that the petitioner had assured him of all help and protection in case he was trapped in any drug trafficking matter. In return, Gurdev Singh (A-6) would provide funding to the elections of the petitioner and money as and when he needed it.

18. The petitioner, Sukhpal Singh Khara, was arraigned as accused on 28.09.2023 and arrested on the same morning.



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19. Facts leading to the arrest of the petitioner given by the State in its reply dated 18.10.2023 filed by the concerned Superintendent of Police, the relevant portion of the same extracted as below: -

[10]. That during the pendency of the trial, an application dated 21.09.2017 was moved under Section 319 of the Code of Criminal Procedure, 1973 to summon Joga Singh, PSO of Sukhpal Singh Khaira, Sukhpal Singh Khaira, Manish, PA, Charanjit Kaur and Major Singh Bajwa. The aforesaid application was moved, inter-alia, on the following grounds:-

(i) During investigation of the case, accused Gurdev Singh, Ex Chairman, revealed that he had family relations with Sukhpal Singh Khaira. He has been told by Sukhpal Singh Khaira that if he is trapped in any case of drug trafficking he would be protected by Sukhpal Singh Khaira (Case Diary No. 04 dated 08.03.2015 recorded by SI Jaswant Singh, SHO, PS Sadar Jalalabad).

(ii) It is also recorded in Case Diary No. 5 dated 09.03.2015 recorded by Sh. Ajmer Singh, DSP, Sub-Division Jalalabad that during investigation, accused Gurdev Singh revealed that he had family relations with Sukhpal Singh Khaira. Accused Gurdev Singh provided funds and vehicles to Sukhpal Singh Khaira during elections or whenever so required by Sukhpal Singh Khaira.

[11]. That during the interregnum, vide order No. 5952/C dated 06.11.2017 another SIT was formed by SSP, Fazilka comprising of SP/D, Fazilka, DSP/Sub Division, Jalalabad and SHO, PS Sadar Jalalabad. This SIT submitted its report to DIG/Ferozepur on 25.06.2021 through SSP, Fazilka. However, this report was not accepted and kept pending by DIG, Ferozepur. In this report, there is no mention of other 9 co-accused mentioned alongwith their roles in the initial findings of previous SIT. This SIT did not summon or arrest the co-accused including Sukhpal Singh Khaira even after 04 years of investigation. It did not appreciate the evidence brought on record against Sukhpal Singh Khaira in the chargesheet filed on 06.09.2015 against aforesaid 09 accused and supplementary chargesheet filed against one accused on 31.08.2019. Due to incomplete and unprofessional report of this SIT, Departmental Action has been taken against members of this SIT, vide letter No. 3996-3997/Crime/Inv. 5 dated 03.10.2021.

[14]. That during the interregnum, accused Anil Kumar @ Neelu was arrested on 16.04.2019. Police Report under Section 173(8) of the Code of Criminal Procedure to challan accused Anil Kumar @ Neelu was presented to court on 31.08.2019. In the challan filed against Anil Kumar @ Neelu, it was mentioned that final report under Section 173(8) of the Code of Criminal Procedure shall be presented after the decision of Hon'ble Supreme Court in SLP No. 9063 of 2017 filed by Sukhpal Singh Khaira and SLP No. 9150 of 2017 filed by Joga Singh, PSO.

[15]. That trial against accused Anil Kumar @ Neelu is under progress in the trial court at Fazilka.

20. Feeling aggrieved, the petitioner filed CRWP No. 9859 of 2023 to declare the arrest illegal and a violation of Article 21 of the Constitution of India and Sections 41 & 80 CrPC, 1973. In the writ petition, the petitioner had also challenged his arrest as void ab initio on the grounds of illegality and violation of Supreme Court judgments passed in



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this FIR itself, in which the application filed by the State Government under Section 319 CrPC for summoning the petitioner was refused by the Hon'ble Supreme Court, although it had been allowed by the Sessions court and affirmed by the High court.

21. During the pendency of the above-mentioned criminal writ petition, the counsel for the petitioner brought to the notice of this Court their intention to also file a regular bail petition, and they wanted the same to be filed before this Court for the reason that the writ petition challenging the illegality of the arrest was being argued before this Court. After arguing extensively, the petitioner's counsel submitted that he was seeking interim bail under section 482 CrPC, 1973, and he may be permitted to withdraw the said prayer and file a separate bail petition under Section 439 CrPC, 1973, straightway to this Court. The petitioner's counsel further clarified that they would not claim any prejudice for losing an opportunity before Sessions Court and by coming straightway to this Court.

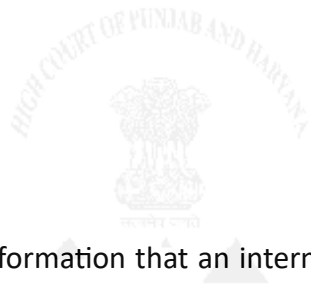
22. Although Sessions Court and High Courts have concurrent bail jurisdiction, as a practice, the bail petitions are initially filed before the Sessions Court and, after that, in the High Court. It is advantageous and beneficial to the accused for the reason that even if the Sessions Court rejects the bail, they can still get an opportunity to raise the same facts and refer the same judicial precedents before the High Court, in addition to new points, without waiting for the change in the circumstances. On the contrary, whenever an accused files bail straightway to the High Court, they lose this second inbuilt opportunity to get their matter reviewed within the highest court of the said State.

23. Vide order dated Oct 11, 2023, this Court permitted the petitioner to file a separate petition for bail before this Court, not routing it through the Sessions Court. In this background and the exceptional circumstances, this Court had heard the present bail petition on merits without deciding the legality of filing bail straightway in this Court.

REASONING:

24. I have heard Mr. Vikram Chaudhary, Sr. Advocate, Ld. Counsel for the petitioner, Mr. Harin P. Raval, Sr. Advocate and Mr. Gurminder Singh, Advocate General for the State of Punjab, and other counsel for the parties at length on various dates and gone through the record. The following paragraphs will reflect the arguments and counter arguments addressed by the parties and its outcome.

25. The present FIR, in which the police arrested the petitioner on September 28, 2023, traces back to March 05, 2015. The Investigator had received secret and



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exceptionally reliable information that an international drug mafia was operating at the Pakistan border, and one person named Harbans Singh, who owned land at the border of India and Pakistan was facilitating the drug smuggling, taking advantage of the proximity to Pakistan border. After completing the procedural requirement, a substantial number of police officials raided the premises and recovered massive amounts of Heroin, gold, and pistols from various accused. After completion of the investigation, the Investigator filed a police report under Section 173(2) CrPC against eleven accused. Since the 11th accused, Anil Kumar, could not be traced, he was mentioned as a proclaimed offender. The petitioner was neither named as an accused in the FIR nor in the report under Section 173 CrPC.

26. Mr. Vikram Chaudhary, Sr. Advocate, Ld. Counsel for the petitioner referred to para 5.1 of the bail petition and argued that the petitioner had been arrested because he parted ways with the Aam Aadmi Party [AAP], which is now the ruling party in Punjab. He referred to para 5.6 of the bail petition and stated that it is regime revenge by fabricating, padding, and creating false evidence. He further referred to portions of para 5 to substantiate his submission. On this, Mr. Harin P. Raval, Sr. Advocate and Mr. Gurminder Singh, Ld. Advocate General for the State of Punjab vehemently denied such allegations and termed them as false, baseless, and figments of imaginations, and further stated that FIR was registered when the present ruling party (AAP) was not even in power; as such, the allegations are simply to divert attention from the petitioner's involvement in the heinous crime and his connection with Pakistani smugglers and foreign handlers. An analysis of these submissions leads to an outcome that the allegations and counter-allegations need evidence, and at the bail stage, this Court cannot comment on the same; as such, the Court is refraining from making any comments on these arguments.

27. The petitioner's counsel's next submission is that the arrest itself was illegal and has referred to various portions of the grounds of the bail petition. Ld. Advocate General, Punjab countered the said submission mainly on the ground that the petitioner had filed a separate criminal writ petition challenging his arrest as illegal, and as such, these points could not be considered in the present bail petition. I agree with the Advocate General, Punjab, and the scope of these submissions might need an answer in the connected writ petition, but certainly, given the fact that the same pleas have been taken up in both the petitions, as the criminal writ petition which was filed first, these points have to be considered in the said petition and not in the present petition which is filed later. Advocate General, Punjab has referred explicitly to the affidavit of Sukhpal Singh Khaira dated 12.09.2016 filed in CWP No.8999 of 2015 in which he had explicitly

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made the following statement which reads as follows: -

“5. That the period of 1 year 9 months of no action against the deponent has not derailed the investigation in any manner and has not caused any prejudice to anyone. **The deponent is not requesting the Hon’ble Court to restrain the Respondent-State to investigate the matter against him but is only beseeching the court to grant him one month time if the investigating agency finally decides to arraign the deponent as an accused in the FIR.** The time is sought only for the purpose of availing legal remedies to the deponent. The State can demonstrate the nature of evidence and allegations as collected against the deponent at the time of arguments while availing those legal remedies, but, if the deponent is arrested on any day all of a sudden the same shall cause serious violation of Article 21 of the Constitution of India. As the deponent is a political figure and elections are going to be conducted in the State of Punjab within 6 months, the fear and apprehension of getting involved in this case would seriously hamper the deponent’s political campaign as required during the election process. The Hon’ble High Court many a times before has rescued the persons situated alike as the deponent having fear of false implication due to political vendetta.”


(Emphasis supplied)

28. The petitioner’s counsel argued that the Hon’ble Supreme Court has granted no leave and liberty to the State of Punjab to conduct any further inquiry/investigation insofar as the petitioner is concerned. Further, no application for review or recall of the order passed by the Hon’ble Supreme Court has ever been filed or pending before the Hon’ble Supreme Court on behalf of the State of Punjab, and it is not discernible how, why, and under what circumstances could the said Court issue any direction for further inquiry/investigation qua the petitioner as also to file a charge sheet under Section 173 CrPC once the Supreme Court had nullified the proceedings initiated against him.

29. Counsel for the petitioner further argued that prosecution could not take into consideration the evidence which was part of the trial at first stage and this fact is very much clear from judgment of Hon’ble Supreme Court passed in the case of petitioner, while deciding the reference and had stated as follows:

“The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split-up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in

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the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion.”

30. Ld. Advocate General contended that the investigation against Anil (A-11) was going on; and while filing the police report against the ten accused, it was explicitly mentioned that the petitioner was a suspect, and further investigation was being conducted. Further investigation brought the evidence to the surface and Gurdev Singh, who is one of the accused, (Government of Punjab conveys that they are in the process of giving him pardon and are exploring steps to declare him as an approver), and is a political acquaintance and supporter of the petitioner. In a nutshell, the Investigator found further evidence about the exchange of calls between Gurdev Singh (A-6), Charanjit Kaur, and Major Singh Bajwa, who was the handler of a drug cartel and petitioner. The prosecution referred to the investigation conducted in this regard by Ravinder Pal Singh, who has also testified as PW-13 in the first session trial titled ‘State of Punjab vs. Harbans Singh and others,’. He further submits that the evidence that was adduced during the first trial has to be read in the light of the observations made by Hon’ble Constitutional Bench (*Supra*) and the fact remains that State referred to the cartel and at that time, they did not arraign the petitioner as an accused.

31. Ld. AG referred to the reply and further submitted that Gurdev Singh used to give the proceeds of the drugs to Sukhpal Singh Khaira since 1997 and was funding the elections of Sukhpal Singh Khaira, and in return, Sukhpal Singh Khaira would assure protection from the drug detections squads. Gurdev Singh was working as per the dictates of his handler operating from the United Kingdom. Apart from this the members of the international drug cartel, Sukhpal Singh Khaira and Gurdev Singh had close association with Ranjit Singh alias Dara, a resident of Muthada, who is absconding in cases registered against him in Districts Fatehgarh Sahib and Patiala. The said Ranjit Singh @ Dara was wanted in the famous Bhola Drug case. The technical details about the movement and Call Detail Records and the conversation between Gurdev Singh, Charanjit Kaur, Major Singh Bajwa, and Sukhpal Singh Khaira confirmed his involvement and depicted the nexus among the members of the drug cartel. The SIT recommended an investigation based on the suspicious role of Sukhpal Singh Khaira and submitted its report on 14.03.2016 to IGP Bathinda. The fact that despite such a report and its acceptance, he could successfully avoid lawful investigation into the crime and his involvement is grounds for denying him bail.

32. Ld. Advocate General, Punjab, submits that the investigation was continuing, and it was explicitly mentioned in the police report under Section 173 CrPC that one person



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was an absconder, and an investigation was going on. It cannot be said that the remaining would be absolved simply because prosecution was launched against some of the accused. He further submits that the Investigating Agency was previously siding with the petitioner. Despite the availability of the clinching evidence, they chose not to prosecute him as an accused. He submitted that crime never dies, and now the present regime, which is making all-out efforts to curb the drug menace and control corruption in government employees, has launched against all out initiatives against these mafias, corrupt government officials, and their supporters. Ld. Advocate General, Punjab further argued that the petitioner is not entitled to bail solely for the reason that initially, at his instance and due to his clout, the Investigating Agency sided with him, and now, in case this Court grants bail, there is a likelihood of petitioner hampering the evidence and influencing the trial. He further submits that even per call details, the petitioner was constantly in touch with the co-accused, who operates from the United Kingdom. This, coupled with the recovery of the Pakistani SIM card, establishes an international connection, and the conviction of other accused by the Special Court establishes the involvement of such petitioner in drug cartel, and as such, is not entitled to bail. He further submits that the petitioner is the kingpin because he had given patronage to the mafia and has massive assets that are disproportionate to the non-source of income, corroborating the majority of such assets and drug money that he received as a share in helping in dealing with the international drug mafia. He further submits that the fresh evidence collected by the Punjab Police is corroborated by the Enforcement Directorate, which has launched a separate prosecution against the petitioner for money laundering and uncounted wealth.

33. The reply stated that during the pendency of the investigation, vide order No. 3227-31/Reader dated 09.03.2015, an SIT was constituted by IGP Bathinda to investigate the case above FIR No. 35 of 2015, registered in the police station, Sadar Jalalabad. During the investigation of the case, the police report under Section 173 (2) of CrPC was presented to the court on 06.09.2015 against nine accused (except the absconding accused Kala Singh @ Kaali and Anil Kumar @ Neelu) out of eleven accused persons mentioned above. The reply does mention that further investigation of other accused persons shall continue, and supplementary police report(s) under section 173(8) of the CrPC shall be presented to the court at the proper time. Report under Section 173(8) filed against Kala Singh @ Kaali on 18.10.2016. Accused Anil Kumar alias Neelu was declared a proclaimed offender on 01.12.2015 and was ultimately arrested on 16.04.2019, against whom a charge sheet under Section 173(8) of CrPC was filed on 31.08.2019. The trial of Anil Kumar @ Neelu is pending in the Special Court, Fazilka, Panjab. The reply also states that the investigation conducted by SIT collected massive



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evidence of the accused being part of an international drug cartel and added offence under Section 27-A and 27-B of NDPS Act vide rapat no.5 dated 28.09.1993, the involvement of the following nine persons who are facilitating drug trafficking in the State of Punjab as well as cross the border on an international level: -

- (i) Gurpreet Singh @ Gopi
- (ii) Kashmir Sing @ Billa
- (iii) Major Singh Bajwa
- (iv) HC Joga Singh No. 4/24 IRB
- (v) Sukhpal Singh Khaira (Petitioner)
- (vi) Charanjit Kaur
- (vii) Baljit Kaur @ Bindo
- (viii) Manish PA
- (ix) Harjit Singh, PSO

34. Since this Court is adjudicating bail petition, the evidence whatever gathered by the State before the consideration of their application under Section 319 CrPC, that is not relevant at this stage in view of the order of Hon'ble Supreme Court. This Court is taking into consideration evidence collected thereafter. It is clarified that these observations are only for the purpose of deciding the present bail petition, with no bearing whatsoever, while adjudicating the other petition and any subsequent petition, or at the time of discharge, or faces the trial, if the stage arises.

35. An analysis of the response leads to a clear inference that the evidence collected against the petitioner, which does not form part of the first trial, is sketchy and inconclusive. However, it remains undisputed that the quantity which is attributed to the petitioner with the aid of Sections 27-A, 27-B, and 29 of NDPS Act, which was initially recovered from most co-accused (convicts) falls under the commercial category. Section 37¹ of the NDPS Act mandates under sub-section (1) (b) of section 37, that no person accused of an offence punishable for offences involving commercial quantity shall be released on bail unless- (i) the Public Prosecutor has been given an opportunity to oppose the application of release, and (ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that accused is not guilty of such offence and is not likely to commit any offence while on bail. Thus, the rigors of S. 37 of the NDPS Act apply in the present case, and the burden

¹ **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.

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is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act. Given the legislative mandate of S. 37 of the NDPS Act, the Court can release a person accused of an offence punishable under the NDPS Act for possessing a commercial quantity of contraband only after recording reasonable satisfaction of its rigors.

36. Ld. Advocate General submitted that mere reading of Section 37 reveals that the legislature intends to make the law stringent to curb the drug menace. It is further to be noticed that the provisions are couched in negative language, meaning that to grant bail, the Court needs to record a finding that there are reasonable grounds for believing that the petitioner is not guilty of the offense. The burden of proof is also on the petitioner to satisfy the Court about his non-involvement in the case. While interpreting the provisions of Section 37 of the NDPS Act, the Court must be guided by the objective sought to be achieved by putting these stringent conditions. The movement and call details chart of Gurdev Singh, Charanjit Kaur, and Major Singh Bajwa (Drug cartel handler), nexus within the cartel and conversation Chart, and the interpretation of call detail of Sukhpal Singh Khaira, Gurdev Singh, Charanjit Kaur & Major Singh Bajwa was verified by ASI/LR Ravinderpal Singh, which points out towards the petitioner's involvement. These technical details and analysis clearly show the nexus and the business association among the cartel members.

ANALYSIS OF JUDICIAL PRECEDENTS CONCERNING S. 37 NDPS ACT:

37. In *Tofan Singh v. State of Tamil Nadu*, 2020:INSC:620, the majority view of the larger bench of Hon'ble Supreme Court is that a confessional statement is not admissible in evidence. This view has been followed by Hon'ble Supreme Court in *Cr.A 1273 of 2021, Sanjeev Chandra Agarwal v. Union of India*, decided on 25th October, 2021.

38. In *Narcotics Control Bureau v Kishan Lal*, 1991 (1) SCC 705, Supreme Court holds, [6]. Section 37 as amended starts with a non-obstante clause stating that notwithstanding anything contained in the Code of Criminal Procedure, 1973 no person accused of an offence prescribed therein shall be released on bail unless the conditions contained therein were satisfied. The Narcotic Drugs And Psychotropic Substances Act is a special enactment as already noted it was enacted with a view to make stringent provision for the control and regulation of operations relating to narcotic drugs and psychotropic substances. That being the underlying object and particularly when the provisions of Section 37 of Narcotic Drugs And Psychotropic Substances Act are in negative terms limiting the scope of the applicability of the provisions of Criminal Procedure Code regarding bail, in our view, it cannot be held that the High Court's powers to grant bail under Section 439 Criminal Procedure Code are not subject to the limitation mentioned under Section 37 of Narcotic Drugs And Psychotropic Substances Act. The non-obstante clause with which the

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Section starts should be given its due meaning and clearly it is intended to restrict the powers to grant bail. In case of inconsistency between Section 439 Criminal Procedure Code and Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 Section 37 prevails.

39. In *Union of India v. Thamisharasi*, 1995 (4) SCC 190, Supreme Court holds,

[9]. The question, therefore, is: Whether Section 37 of the N.D.P.S. Act is an inconsistent provision of this kind to exclude the applicability merely of the proviso to sub-section (2) of Section 167 Criminal Procedure Code when sub-section (2) of Section 167 is expressly made applicable by the N.D.P.S. Act? The non-obstante clause at the beginning of clauses (a) and (b) thereof are inconsistent with the corresponding provisions of the Code. Clause (a) makes every offence punishable under this Act to be cognizable. Clause (b) imposes limitations on granting of bail specified therein which are in addition to the limitations under the Code of Criminal Procedure on granting of bail as stated in sub-section (2) of Section 37. Clause (b) of sub-section (1) specifies the two limitations on granting of bail, namely, (1) an opportunity to the Public Prosecutor to oppose the bail application and (2) satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. The learned Additional Solicitor General contends that these limitations on granting of bail specified in clause (b) of sub-section (1) of Section 37 indicate that the applicability of the proviso to sub-section (2) of Section 167 Criminal Procedure Code is excluded in such cases. We are unable to accept this contention.

[10]. The limitations on granting of bail specified in clause (b) of sub-section (1) of Section 37 come in only when the question of granting bail arises on merits. By its very nature the provision is not attracted when the grant of bail is automatic on account of the default in filing the complaint within the maximum period of custody permitted during investigation by virtue of sub-section (2) of Section 167 Criminal Procedure Code. The only fact material to attract the proviso to sub-section (2) of Section 167 is the default in filing the complaint within the maximum period specified therein to permit custody during investigation and not the merits of the case which till the filing of the complaint are not before the court to determine the existence of reasonable grounds for forming the belief about the guilt of the accused. The learned Additional Solicitor General submitted that this belief can be formed during investigation by reference to the contents of the case diary even before the chargesheet has been filed. This is fallacious till the complaint is filed the accused is supplied no material from which he can discharge the burden placed on him by Section 37(1)(b) of the N.D.P.S. Act. In our opinion, such a construction of clause (b) of sub-section (1) of Section 37 is not permissible.

40. In *Union of India v Ram Samujh*, 1999 (9) SCC 429, decided on 30 Aug 1999, Supreme Court holds,

[8]. To check the menace of dangerous drugs flooding the market, the Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless mandatory conditions provided in Section 37, namely,
 (i) there are reasonable grounds for believing that accused is not guilty of such offence; and
 (ii) that he is not likely to commit (sic) while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid

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mandate while ordering the release of the respondent accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in the dangerous drugs, the Court should implement the law in the spirit with which the Parliament, after due deliberation, has amended.

41. In *Union of India v. Merajuddin*, (1999) 6 SCC 43, a three Judges Bench of Supreme Court while cancelling the bail, observed in Para 3, as follows,

The High Court appears to have completely ignored the mandate of Sec. 37 of the Narcotic Drugs and Psychotropic Substances Act while granting him bail. The High Court overlooked the prescribed procedure.

42. In *Supdt. Narcotics Central Bureau Chennai v R Paulsamy*, (2000) 9 SCC 549, decided on 30 Mar 2000, Supreme Court holds,

[6]. In the light of Section 37 of the Act no accused can be released on bail when the application is opposed by the public prosecutor unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offences and that he is not likely to commit any offence while on bail. It is unfortunate that matters which could be established only in offence regarding compliance with Secs. 52 and 57 have been pre-judged by the learned single Judge at the stage of consideration for bail. The minimum which learned single Judge should have taken into account was the factual presumption in law position that official acts have been regularly performed. Such presumption can be rebutted only during evidence and not merely saying that no document has been produced before the learned single Judge during bail stage regarding the compliance of the formalities mentioned in those two sections.

43. In *Babua v. State of Orissa*, (2001) 2 SCC 566, Supreme Court holds,

[3]. In view of Section 37(1)(b) of the Act unless 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 alone will entitle him to a bail. In the present case, the petitioner attempted to secure bail on various grounds but failed. But those reasons would be insignificant if we bear in mind the scope of Section 37(1)(b) of the Act. At this stage of the case all that could be seen is whether the statements made on behalf of the prosecution witnesses, if believable, would result in conviction of the petitioner or not. At this juncture, we cannot say that the accused is not guilty of the offence if the allegations made in the charge are established. Nor can we say that the evidence having not been completely adduced before the Court that there are no grounds to hold that he is not guilty of such offence. The other aspect to be borne in mind is that the liberty of a citizen has got to be balanced with the interest of the society. In cases where narcotic drugs and psychotropic substances are involved, the accused would indulge in activities which are lethal to the society. Therefore, it would certainly be in the interest of the society to keep such persons behind bars during the pendency of the proceedings before the Court, and the validity of Section 37(1)(b) having been upheld, we cannot take any other view.

44. In *Bijando Singh v. Md. Ibocha*, 2001 LawSuit(SC) 1470, decided on Supreme Court

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holds,

[3]. Being aggrieved by the order of the Special Court (NDPS), releasing the accused on bail, the appellant moved the Guwahati High Court against the said order on the ground that the order granting bail is contrary to the provisions of law and the appropriate authority never noticed the provisions of Section 37 of the Narcotic Drugs And Psychotropic Substances Act. The High Court, however, being of the opinion that if the attendance of the accused is secured by means of bail bonds, then he is entitled to be released on bail. The High Court, thus, in our opinion, did not consider the provisions of Section 37 of the Narcotic Drugs And Psychotropic Substances Act.

45. In *Customs, New Delhi v. Ahmadalieva Nodira*, (2004) 3 SCC 549, (Decided on 11-03-2004) a three Judges Bench of Supreme Court holds,

[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 the present accused-respondent is concerned, are (1) 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 for 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.

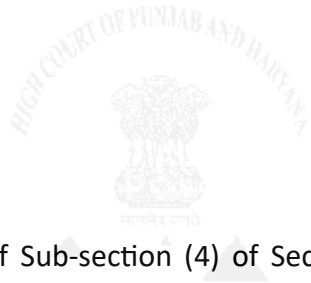
46. In *N.C.B. Trivandrarum v. Jalaluddin*, 2004 LawSuit(SC) 1598, (Decided on 22-04-2004) Supreme Court observed,

[3]. ...Be that as it may another mandatory requirement of Section 37 of the Act is that where Public Prosecutor opposes the bail application, the court should be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. In the impugned order we do not find any such satisfaction recorded by the High Court while granting bail nor there is any material available to show that the High Court applied its mind to these mandatory requirements of the Act.

47. In *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, (2005) 5 SCC 294, a three-member bench of Supreme Court, while dealing with a similar provision under MCOCA, holds,

[35]. Presumption of innocence is a human right. [see *Narendra Singh and Another v. State of M. P.*, (2004) 10 SCC 699] Article 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. Sub-Section (4) of Section 21 must be interpreted keeping in view the aforementioned salutary principles. Giving an opportunity to the public prosecutor to oppose an application for release of an accused appears to be reasonable restriction

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but clause (b) of Sub-section (4) of Section 21 must be given a proper meaning.

[36]. Does this statute require that before a person is released on bail, the court, albeit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the court to record such a finding? Would there be any machinery available to the court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?

[37]. Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on records only for grant of bail and for no other purpose.

[45]. It is furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

[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.

48. In *Union of India v. Shiv Shanker Kesari*, (2007) 7 SCC 798, the Hon'ble Supreme Court holds,

[6]. As the provision itself provides no person shall be granted bail unless the two conditions are satisfied. They are; the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty and. that he is not likely to commit any offence while on bail. Both the conditions have to be satisfied. If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail.

[7]. The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

[8]. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word 'reasonable'. Stroud's Judicial Dictionary, Fourth Edition, page 2258 states that it would be unreasonable to expect an exact definition of the word "reasonable". Reason varies it, its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy. (See : *Municipal Corporation of Delhi v. M/s Jagan Nath Ashok Kumar and another*, (1987)4 SCC 497 and *Gujarat Water Supplies and Sewerage*



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Board v. Unique Erectors (Gujarat) Pvt Ltd and another [(1989)1 SCC 532]. [9]. It is often said "an attempt to give a specific meaning to the word 'reasonable' is trying to count what is not number and measure what is not space". The author of 'Words and Phrases' (Permanent Edition) has quoted from in re Nice &, Schreiber 123 F. 987, 988 to give a plausible meaning for the said word. He says, "the expression 'reasonable' is a relative term, and the facts of the particular controversy must be considered before the question as to what constitutes reasonable can be determined". It is not meant to be expedient or convenient but certainly something more than that.

[10]. The word 'reasonable' signifies "in accordance with reason". In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See : Municipal Corporation of Greater Mumbai and another v. Kamla Mills Ltd., 2003(4) RCR(Civil) 265 : (2003)6 SCC 315)."

[11]. The Court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

[12]. Additionally, the Court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion.

49. In N.R. Mon v. Md. Nasimuddin, (2008) 6 SCC 721, Supreme Court holds,

[9]. ...The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant 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. In the case hand the High Court seems to have completely overlooked underlying object of Section 37.

50. In Union of India v. Rattan Mallik @ Habul, (2009) 2 SCC 624, Supreme Court holds,

[14]. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the Narcotic Drugs and Psychotropic Substances Act, the Court is not called upon to record a finding of 'not guilty'. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the Narcotic Drugs And Psychotropic Substances Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to

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commit an offence under the said Act while on bail. The satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail.

51. In *Union of India v. Sanjeev v. Deshpande*, (2014) 13 SCC 1, a three-judges bench of Supreme Court holds,

[5]. ...In other words, Section 37 departs from the long-established principle of presumption of innocence in favour of an accused person until proved otherwise.

52. In *Union of India v. Niyazuddin*, (2018) 13 SCC 738, (Decided on 28-07-2017) Supreme Court holds,

[7]. ...Section 37 of the NDPS Act contains special provisions with regard to grant of bail in respect of certain offences enumerated under the said Section. They are :- (1) In the case of a person accused of an offence punishable under Section 19, (2) Under Section 24, (3) Under Section 27A and (4) Of offences involving commercial quantity. The accusation in the present case is with regard to the fourth factor namely, commercial quantity. Be that as it may, once the Public Prosecutor opposes the application for bail to a person accused of the enumerated offences under Section 37 of the NDPS Act, in case, the court proposes to grant bail to such a person, two conditions are to be mandatorily satisfied in addition to the normal requirements under the provisions of the Cr.P.C. or any other enactment. (1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence; (2) that person is not likely to commit any offence while on bail.

[8]. There is no such consideration with regard to the mandatory requirements, while releasing the respondents on bail.

[9]. Hence, we are satisfied that the matter needs to be considered afresh by the High Court. The impugned order is set aside and the matter is remitted to the High Court for fresh consideration. It will be open to the parties to take all available contentions before the High Court.

53. In *Satpal Singh v. State of Punjab*, (2018) 13 SCC 813, (Decided on 27-03-2018) a bench of three judges of Supreme Court directed that since the quantity involved was commercial, as such High Court could not have and should not have passed the order under sections 438 or 439 CrPC, without reference to Section 37 of the NDPS Act.

54. In *State of Kerala v. Rajesh*, (2020) 12 SCC 122 (Decided on 24-01-2020), the While canceling the post-arrest bail granted to the accused, Hon'ble Supreme Court has held that any concession of release granted sans noticing the mandate of sec. 37(1)(b)(ii) is bad in law. While discussing the broad parameters laid down for grant of bail in the NDPS case, the Court has held that the expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable cause for believing that the accused is not guilty of the alleged offence. Hon'ble Supreme Court holds,

[21]. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for

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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.

55. In *Sujit Tiwari v. State of Gujarat*, 2020 SCC Online SC 84, (Decided on 28-01-2020) in the given facts, Supreme Court granted bail, by observing,

[10]. The prosecution story is that the appellant was aware of what his brother was doing and was actively helping his brother. At this stage we would not like to comment on the merits of the allegations levelled against the present appellant. But other than the few WhatsApp messages and his own statement which he has resiled from, there is very little other evidence. At this stage it appears that the appellant may not have even been aware of the entire conspiracy because even the prosecution story is that the brother himself did not know what was loaded on the ship till he was informed by the owner of the vessel. Even when the heroin was loaded in the ship it was supposed to go towards Egypt and that would not have been a crime under the NDPS Act. It seems that Suprit Tiwari and other 7 crew members then decided to make much more money by bringing the ship to India with the intention of disposing of the drugs in India. During this period the Master Suprit Tiwari took the help of Vishal Kumar Yadav and Irfan Sheikh who had to deliver the consignment to Suleman who had to arrange the money after delivery. The main allegation made against the appellant is that he sent the list of the crew members after deleting the names of 4 Iranians and EsthekharAlam to Vishal Kumar Yadav and Irfan Sheikh through WhatsApp with a view to make their disembarkation process easier. Even if we take the prosecution case at the highest, the appellant was aware that his brother was indulging in some illegal activity because obviously such huge amount of money could not be made otherwise. However, at this stage it cannot be said with certainty whether he was aware that drugs were being smuggled on the ship or not, though the allegation is that he made such a statement to the NCB under Section 67 of the NDPS Act.

[11]. At this stage, without going into the merits, we feel that the case of the appellant herein is totally different from the other accused. Reasonable possibility is there that he may be acquitted. He has been behind bars since his arrest on 04.08.2017 i.e. for more than 2 years and he is a young man aged about 25 years. He is a B.Tech Graduate. Therefore, under facts and circumstances of this case we feel that this is a fit case where the appellant is entitled to bail because there is a possibility that he was unaware of the illegal activities of his brother and the other crew members. The case of the appellant is different from that of all the other accused, whether it be the Master of the ship, the crew members or the persons who introduced the Master to the prospective buyers and the prospective buyers.

[12]. We, however, feel that some stringent conditions will have to be imposed upon the appellant.

56. In *UOI v. Prateek Shukla*, (2021) 5 SCC 430, (decided on 8-3-2021), Hon'ble

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Supreme Court holds,

[12]. ...Merely recording the submissions of the parties does not amount to an indication of a judicial or, for that matter, a judicious application of mind by the Single Judge of the High Court to the basic question as to whether bail should be granted. The provisions of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a case for grant of bail has been made out...

57. In *Shreyansh Jhabak v. State of Chhattisgarh*, decided on 20.9.2021, Law Finder Doc Id # 2004763, Supreme Court holds,

[4]. No recovery has been made from the the petitioner. The petitioner has been implicated on the basis of statements made by a co-accused under Section 164 of the Code of Criminal Procedure. There is apparently no other material against him. Investigation was completed in December, 2020 and the final report has been filed. A co-accused has also been enlarged on bail.

[6]. The High Court arrived at the prima facie conclusion that the petitioner was habitual offender only on the basis of statements of co-accused, which would be inadmissible. There were no materials against the petitioner apart from the statements of the co-accused.

[7]. In the circumstances, we deem it appropriate to grant bail to the petitioner on stringent conditions to be imposed by the Trial Court, including but not limited to the conditions with regard to sureties, bail bonds etc. Apart from reporting to the investigating authority on a regular basis, the petitioner shall not leave the jurisdiction of the Trial Court without leave of the Court.

58. In *UOI through NBC, Lucknow v. Md. Nawaz Khan (2021) 10 SCC 100*, (Decided on 22-09-2021), Hon'ble Supreme Court holds,

[28]. As regards the finding of the High Court regarding absence of recovery of the contraband from the possession of the respondent, we note that in *Union of India v. Rattan Mallik*, (2009) 2 SCC 624, a two-judge Bench of this Court cancelled the bail of an accused and reversed the finding of the High Court, which had held that as the contraband (heroin) was recovered from a specially made cavity above the cabin of a truck, no contraband was found in the 'possession' of the accused. The Court observed that merely making a finding on the possession of the contraband did not fulfil the parameters of Section 37(1)(b) and there was non-application of mind by the High Court.

[29]. In line with the decision of this Court in *Rattan Mallik* (supra), we are of the view that a finding of the absence of possession of the contraband on the person of the respondent by the High Court in the impugned order does not absolve it of the level of scrutiny required under Section 37(1)(b) (ii) of the NDPS Act.

59. In *Bharat Chaudhary v. Union of India*, 2021 SCC OnLine SC 1235, a three-judges bench of Hon'ble Supreme Court holds,

[10]. After carefully examining the arguments advanced by learned counsel for the parties and having cursorily glanced at the records, we are of the opinion that the impugned order cancelling the bail granted in favour of *Bharat Chaudhary* [A-4], is not sustainable in view of the fact that the records sought to be relied upon by the prosecution show that one test report dated 6th December, 2019, two test reports dated 17th December,

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2019 and one test report dated 21st December, 2019 in respect of the sample pills/tablets drawn and sent for testing by the prosecuting agency conclude with a note appended by the Assistant Commercial Examiner at the foot of the reports stating that "quantitative analysis of the samples could not be carried out for want of facilities". In the absence of any clarity so far on the quantitative analysis of the samples, the prosecution cannot be heard to state at this preliminary stage that the petitioners have been found to be in possession of commercial quantity of psychotropic substances as contemplated under the NDPS Act. Further, a large number of the tablets that have been seized by the DRI admittedly contain herbs/medicines meant to enhance male potency and they do not attract the provisions of the NDPS Act. Most importantly, none of the tablets were seized by the prosecution during the course of the search conducted, either at the office or at the residence of A-4 at Jaipur, on 16th March, 2020. Reliance on printouts of Whatsapp messages downloaded from the mobile phone and devices seized from the office premises of A-4 cannot be treated at this stage as sufficient material to establish a live link between him and A-1 to A-3, when even as per the prosecution, scientific reports in respect of the said devices is still awaited.

60. In *State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta*, 2022 SCC OnLine SC 47, (Decided on 10-01-2022), a three-judge bench of Hon'ble Supreme Court holds,

[11]. It has been held in clear terms in *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No@ Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless.

[12]. However, the evidence brought before us against Mohammed Afzal [A-2], respondent in SLP (Crl.) No. 1569/2021, subject matter of the second case i.e., NCB Case FN No. 48/01/07/2019/BZU, who was granted bail vide order dated 08th January, 2020, will have to be treated on an entirely different footing. There are specific allegations levelled against the said respondent regarding recovery of substantial commercial quantities of drugs from a rented accommodation occupied by him pursuant to which he was arrested on 16th June, 2019. This aspect has been completely overlooked while passing the order dated 08th January, 2020 wherein, the only reason that appears to have weighed with the High Court for releasing him on bail is that his case stands on the same footing as A-1, A-3 and A-4 who had been enlarged on bail vide orders dated 11th October, 2019, 16th September, 2019 and 09th September, 2019, in connection with the second case registered by the Department. We are of the firm view that A-2 cannot seek parity with the aforesaid co-accused and no

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such benefit could have been extended to him in view of Section 37 of the Act when he was found to be in conscious possession of commercial quantity of psychotropic substances, as contemplated under the NDPS Act. That being the position, the petitioner-NCB succeeds in SLP (Crl.) No. 1569/2021. The bail granted to the respondent-Mohammed Afzal [A-2] is cancelled forthwith at this stage and he is directed to surrender before the Sessions Court/Special Judge (NDPS) within a period of two weeks, for being taken into custody.

61. In *Narcotics Control Bureau v. Mohit Aggarwal*, Criminal Appeal Nos. 1001-1002 of 2022, decided on 19.7.2022, Supreme Court holds,

[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 subsection (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.

[13]. The expression "reasonable ground" came up for discussion in *"State of Kerala and others v. 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."

[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

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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.

62. In Mohd. Muslim alias Hussain v. State (NCT of Delhi), 2023 SCC OnLine SC 352, Supreme Court holds,

[20]. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

63. In Ankush Kumar @ Sonu v. State of Punjab, (2018) SCC Online P&H 1259, a single bench of Punjab and Haryana High Court observed,

[43]. However, more problem lies with the second part of Section 37 (1) (b)(ii), which requires the Court to be satisfied that there are reasonable grounds for declaring that the accused is not likely to commit 'any offence' while on bail. This part of Section 37(1)(b)(ii) militates against the rationale and reasoning considered by the Hon'ble Supreme Court in the above said case of Nikesh Tarachand Shah's case (supra), wherein it has implied that if such language extends in operation not only to the offence under the special Act but also to any offence under any other legal provision where such conditions are not required to be applied for grant of bail then such language enters the realm of unconstitutionality. Therefore, this language is also arbitrary on that count because it requires the Court to satisfy itself that the petitioner is not likely to commit any offence on the earth while on bail. Had this Section restricted the requirement of the satisfaction of the Court that the accused is not likely to commit any offence under NDPS Act, then probably it could have some rational behind it. However, since the language of the second part has been thrown open the entire criminal arena to be considered by the Court before grant of bail under NDPS Act, therefore, this language does not have even the nexus to the object to be achieved by NDPS Act.

[44]. Moreover, a Court of law would always be well advised to keep in mind that 'prophesy is not thy domain'. No Court, howsoever trained, can be "reasonably" satisfied that a person would not commit any offence, may be even under NDPS Act, after coming out of the custody. It can only be a guess-work, which may or may not turn out to be correct. However, it is not the guess-work which is mandated, but it is 'reasonable satisfaction'. It can occur to mind that if a person is a first offender then he is not likely to commit an offence again or that if a person has committed, say; ten offences then he is more likely to commit offence again. But it has to be kept in mind that the second, third, fourth and the Nth offence is always committed by an accused only after first, having committed the first offence. Likewise, there cannot be any 'reason' and,

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therefore, the 'reasonable ground' to believe that if a person has committed ten offences, he is again likely to commit the offence. Examples galore in daily life when a criminal calls it a day, say, after 10th crime also. After all scriptures do tell us as to how Maharishi Balmiki turned into a "Maharishi" and created that Epic, which became a treaties of one of the biggest religion of the world. Furthermore, as observed above, an offence is a conduct of a person as reflected into facts or set of facts made punishable by law, the Court cannot grope into approximation and to arrive at any degree of satisfaction as to whether a person would indulge in set of facts after coming out of the custody. The crime being based on mens-rea is a function of mental state of an individual, which cannot be guessed by any Court in advance, by any means. Moreover, as observed above, it is not the guess-work by Court qua possibility of future conduct and mental state of accused, which is required under second part of Section 37(1)(b)(ii). It is the reasonable 'satisfaction' on the basis of the material on record which is required. By extension of any human logic, it cannot be said that the Court can record, any degree of satisfaction, based on some reasonable ground, as to whether a person would commit an offence or whether he would not commit an offence after coming out of the custody. Neither the Court would be able to record a satisfaction that the accused would, likely, commit the offence after coming out of the custody, nor would the Court be able to record a satisfaction that the accused would not commit any offence after coming out of the custody. Hence, the second part of Section 37(i)(b) (ii) requires a humanly impossible act on the part of the Court. Since the second part of Section 37 (1)(b)(ii) requires a satisfaction of the Court, which is impossible by extension of any human logic, therefore, this is an irrational requirement. There is no rational way for a Court to record its satisfaction or to arrive at this satisfaction qua possible future conduct and mental state of an accused. Any record relating only to the past conduct of a person cannot be reasonably made a basis for future reasonable prediction, as against the guess work, regarding the possible mental state or possible conduct of that person. Even the sophisticated psychological theories of human behaviour, using sophisticated statistical tools of factorization, based on common minimum behavioural factors in large number of people, are still struggling to find a credible answer in this regard.

[48]. But, so far as second part of Section 37(1)(b)(ii), i.e. regarding the satisfaction of the Court based on reasons to believe that the accused would not commit 'any offence' after coming out of the custody, is concerned, this Court finds that this is the requirement which is being insisted by the State, despite the same being irrational and being incomprehensible from any material on record. As held above, this Court cannot go into the future mental state of the mind of the petitioner as to what he would be, likely, doing after getting released on bail. Therefore, if this Court cannot record a reasonable satisfaction that the petitioner is not likely to commit 'any offence' or 'offence under NDPS Act' after being released on bail, then this Court, also, does not have any reasonable ground to be satisfied that the petitioner is likely to commit any offence after he is released on bail. Hence, the satisfaction of the Court in this regard is neutral qua future possible conduct of the petitioner. However, it has come on record that earlier also, the petitioner was involved in a case, but he has been acquitted in that case. So his antecedents are also clear as of now. Moreover, since this Court has already recorded a prima-facie satisfaction that petitioner is not involved even in the present case and that earlier also the petitioner was involved in a false case, then this

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Court can, to some extent, venture to believe that the petitioner would not, in all likelihood, commit any offence after coming out of the custody, if at all, the Court is permitted any liberty to indulge in prophesy.

64. The main argument of counsel for the petitioner is that the phone calls are old, and the calls made between the petitioner and his PSO and Secretary were done in the ordinary course of business and cannot be attributed as having been made for the drug trade. He further submits that even if these call records are not intercepted for tapping, mere records of receiving phone calls do not disclose the conversation. The entire evidence against the petitioner revolves around these specific phone calls, which are actually between Gurdev Singh, the petitioner, etc. While filing the police report under Section 173 (2) CrPC against 10 accused, they did not name the petitioner as an accused, and this is the main categorical submission to this Court in the writ petition that the petitioner filed. He further submits that, thus, practically speaking, except old call details between the petitioner and his PSO, and Secretary, there is no new evidence that the Investigator has collected against the petitioner, and as such, on this ground alone, the petitioner is entitled to bail.

65. The foundational submission made by Ld. Advocate General for the State of Punjab is that the summoning of an accused under Section 319 of the Code of Criminal Procedure and further investigation by the SIT are separate and distinct aspects of the criminal justice system. In the first charge sheet submitted by the police in this case, it was very clearly mentioned that further investigation against the suspects is still underway, along with an investigation against the named accused absconding. After the arrest of absconding accused Anil Kumar @ Neelu, a chargesheet was presented against him on 31.08.2019, in which his name was mentioned along with the fact that in the meantime, the Court has exercised power under Section 319 of the CrPC based on evidence recorded in court, which was made subject matter of challenge and as SLP was pending, the police had reserved the right to further investigation and filed a supplementary chargesheet under Section 173 (8) of the CrPC, it is submitted that the trial against one of the accused, Anil, is still continuing before Special Court, Fazilka. There is no bar to move an application under Section 319 of CrPC during the trial's pendency if further evidence comes up against any other person or accused. On the same analogy, there is no bar on the police to further investigate the crime against the accused who have not faced trial earlier. The trial against Anil Kumar alias Neelu is in progress with the competent Court at Fazilka and investigation is going on. The petitioner was never put up before the Id. Trial Court for its adjudication. There is nothing to disagree with this jurisprudence and there is nothing available in record that can fully counter this argument; however, it neither justify further custody nor fastens

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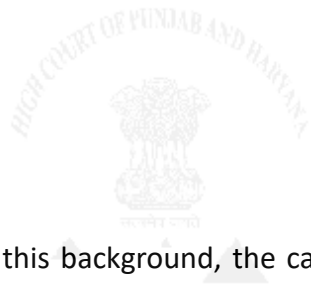
the rigors of S. 37 of NDPS Act.

66. Satisfying the fetters of S. 37 of the NDPS Act is candling the infertile eggs. The stringent conditions of section 37 placed in the statute by the legislature do not create a bar for bail for specified categories, i.e., punishable under section 19 or section 24 or section 27A and also for offences involving commercial quantity ; however, it creates hurdles by placing a reverse burden on the accused, and once crossed, the rigors no more exist, and the factors for bail become similar to the bail petitions under general penal statutes. Thus, both the twin conditions need to be satisfied before a person accused of possessing a commercial quantity of drugs or psychotropic substance is to be released on bail. The first condition is to provide an opportunity to the Public Prosecutor, enabling them to take a stand on the bail application. The second stipulation is that the Court must be satisfied that reasonable grounds exist for believing that the accused is not guilty of such an offense and is not likely to commit any offense while on bail. If either of these conditions is not met, the bar on granting bail operates. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing the accused is not guilty of the alleged offence. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offense, the Court still cannot give a finding on the assurance that the accused is not likely to commit any such crime again. Thus, the grant or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts.

67. The record reveals that the petitioner has been arraigned, arrested, and interrogated prima facia on the evidence of calls with the handler from UK, PSO, and PA; unexplained money that points out its source to the drug trade; and confessional statement of co-accused recorded after the decision of the prosecutions’ application filed under S. 319 CrPC.

68. Given above, this Court cannot take into consideration the evidence collected and produced before the trial Court till the decision of application under Section 319 CrPC. However, after that whatever evidence the prosecution has gathered and collected, can be taken into consideration while deciding the present petition.

69. The petitioner’s custodial interrogation did not lead to the recovery of any other incriminating evidence, and once an accused has already been subjected to custodial interrogation, the parameters to assess the evidence collected so far are different than while dealing with an anticipatory bail because the accused in such a situation was not subjected to the custodial interrogation, which is undoubtedly more productive to



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gather evidence. Given this background, the calls between the petitioner and his PSO, PA, and the handler from UK; the disproportionate money which the Enforcement Directorate has already seized; absence of any recovery or any incriminating evidence during the petitioner's custodial interrogation; and the evidentiary value of a disclosure statement made by a co-accused, whose pardon has been approved, and the absence of any other evidence connecting the petitioner, it can be inferred at this stage that for the purpose of satisfying the rigors of section 37 of NDPS Act, the petitioner cannot be said to be prima facie guilty for any allegations, and its most likely effect on the final outcome would be sufficient for satisfaction of conditions of Section 37 of NDPS Act. Any detailed discussions about the evidence may prejudice the case of the prosecution, petitioner, or the other accused. Regarding the second rider of S. 37, this Court will put very stringent conditions in this order to ensure that the petitioner does not repeat the offence. Given the above, once the petitioner has satisfied the riders of section 37 of the NDPS Act, the bail has to be dealt with under CrPC, 1973, and there is no justification to deny bail. Suffice it to say that due to the reasons mentioned above, and keeping in view the nature of the allegations, the petitioner has satisfied the twin conditions of section 37 and has crossed the hurdles, justifying the disruption of any further pretrial incarceration.

70. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. In *Sushila Aggarwal v. State (NCT of Delhi)*, 2020:INSC:106 [Para 92], (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Court can and is imposing stringent and restrictive conditions.

71. Thus, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail, subject to the following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

72. In *Madhu Tanwar and Anr. v. State of Punjab*, 2023:PHHC:077618 [Para 10, 21], CRM-M-27097-2023, decided on 29-05-2023, this court observed,

[10] The exponential growth in technology and artificial intelligence has transformed identification techniques remarkably. Voice, gait, and facial recognition are incredibly sophisticated and pervasive. Impersonation, as we know it traditionally, has virtually become impossible. Thus, the remedy lies that whenever a judge or an officer believes that the accused might be a flight risk or has a history of fleeing from justice, then in such cases, appropriate conditions can be inserted that all the expenditure that shall be incurred to trace them, shall be recovered from such person, and the State

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shall have a lien over their assets to make good the loss.

[21] In this era when the knowledge revolution has just begun, to keep pace with exponential and unimaginable changes the technology has brought to human lives, it is only fitting that the dependence of the accused on surety is minimized by giving alternative options. Furthermore, there should be no insistence to provide permanent addresses when people either do not have permanent abodes or intend to re-locate.

73. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above, in the following terms:

(a). Petitioner to furnish personal bond of Rs. One Lac (INR 1,00,000/);

AND

(b) To give one surety of Rs. Five Lacs (INR 5,00,000/-), to the satisfaction of the concerned court, and in case of non-availability, to any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned officer/court must satisfy that if the accused fails to appear in court, then such surety can produce the accused before the court.

OR

(b). The petitioner to hand over to the concerned court a fixed deposit for Rs. One Lac only (INR 1,00,000/-), with the clause of automatic renewal of the principal and the interest reverting to the linked account, made in favor of the 'Chief Judicial Magistrate' of the concerned district, or blocking the aforesaid amount in favour of the concerned 'Chief Judicial Magistrate'. Said fixed deposit or blocking funds can be from any of the banks where the stake of the State is more than 50% or from any of the well-established and stable private sector banks. In case the bankers are not willing to make a Fixed Deposit in such eventuality it shall be permissible for the petitioner to prepare an account payee demand draft favouring concerned Chief Judicial Magistrate for a similar amount.

(c). Such court shall have a lien over the funds until the case's closure or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, and at that stage, subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes if any, shall be endorsed/returned to the depositor.

(d). The petitioner is to also execute a bond for attendance in the concerned court(s) as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the declarations made in the bail petition and all other stipulations, terms, and conditions of section 438(2) of the Code of Criminal Procedure, 1973, and of this bail order.



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(e). While furnishing personal bond, the petitioner shall mention the following personal identification details:

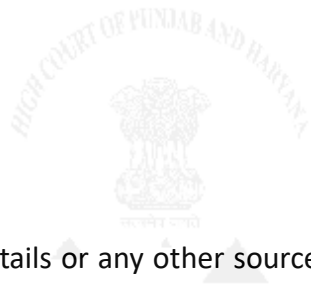
1.	AADHAR number	
2.	Passport number	
3.	Mobile number	
4.	E-Mail	

74. The petitioner shall hand over his passport to the Investigator/ Police Station, within 24 hours of his release from the jail, with liberty to seek permission to travel abroad. Once, and if, the trial Court takes cognizance of the matter, this condition will be subject to the concerned Court's discretion.

75. The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the police officials, or any other person acquainted with the facts and the circumstances of the case, to dissuade them from disclosing such facts to the police, or the court, or to tamper with the evidence.

76. Petitioner to comply with their undertaking made in the bail petition, made before this court through counsel as reflected at the beginning of this order or in earlier orders. If the petitioner fails to comply with any of such undertakings, then on this ground alone, the bail might be canceled, and the victim/complainant may file any such application for the cancellation of bail, and the State shall file the said application.

77. The petitioner is directed not to keep more than one prepaid SIM, i.e., one prepaid mobile phone number, till the conclusion of the trial; however, this restriction is only on prepaid SIMs [mobile numbers] and not on post-paid connections or landline numbers. The petitioner must comply with this condition within fifteen days of release from prison. The concerned DySP shall also direct all the telecom service providers to deactivate all prepaid SIM cards and prepaid mobile numbers issued to the petitioner, except the one that is mentioned as the primary number/ default number linked with the AADHAAR card and further that till the no objection from the concerned SHO, the mobile service providers shall not issue second pre-paid SIM/ mobile number in the petitioner's name. Since, as on date, in India, there are only four prominent mobile service providers, namely BSNL, Airtel, Vodafone-Idea, and Reliance Jio, any other telecom service provider are directed to comply with the directions of the concerned Superintendent of Police/Commissioner of Police, issued in this regard and disable all prepaid mobile phone numbers issued in the name of the petitioner, except the main number/default number linked with AADHAR, by taking such information from the



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petitioner's AADHAR details or any other source, for which they shall be legally entitled by this order. This condition shall continue till the completion of the trial or closure of the case, whichever is earlier. In Vernon v. The State of Maharashtra, 2023 INSC 655, [para 45], while granting bail under Unlawful Activities (Prevention) Act, 2002, Supreme Court had directed imposition of the similar condition, which reads as follows, "(d) Both the appellants shall use only one Mobile Phone each, during the time they remain on bail and shall inform the Investigating Officer of the NIA, their respective mobile numbers."

78. Given the background of allegations against the petitioner, it becomes paramount to protect the drug detection squad, their family members, as well as the members of society, and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within fifteen days from release from prison and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offence.

79. During the trial's pendency, if the petitioner repeats or commits any offence where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, it shall always be permissible to the respondent to apply for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of the court seized of the subsequent application that the accused was earlier cautioned not to indulge in criminal activities. Otherwise, the bail bonds shall remain in force throughout the trial and after that in Section 437-A of the Cr.P.C., if not canceled due to non-appearance or breach of conditions.

80. In return for the protection from further incarceration at this stage, the Court believes that the accused shall also reciprocate through desirable behaviour. If the petitioner again indulges in drugs, then while considering grant of bail in such cases, the concerned Courts may keep it as a factor that this Court had granted a final opportunity to the petitioner to mend his ways.

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81. The conditions mentioned above imposed by this court are to endeavour that the accused does not repeat the offence and to ensure the safety of the witnesses. In *Mohammed Zubair v. State of NCT of Delhi*, 2022:INSC:735 [Para 28], Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed".

82. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

83. If the petitioner finds bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

84. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation as per law.

85. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offence in this FIR, and if the new section prescribes maximum sentence which is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above, then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days providing an opportunity to avail the remedies available in law.

86. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

87. There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer



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wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

04.01.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: **YES.**

