

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 08th FEBRUARY, 2022

IN THE MATTER OF:

+ **BAIL APPLN. 3424/2021**

PRIYARANJAN SHARMA

..... Petitioner

Through

Mr. Amit Chaturvedi, Mr. Sumit Kumar Shukla, Ms. Radha R Tarkar, Advocates

versus

STATE OF NCT OF DELHI

..... Respondent

Through

Mr. Amit Chadha, APP for the State with SI Arvind Kumar and SI S.B. Saran, PS Crime Branch.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The present petition is filed under Section 439 Cr.P.C. seeking regular bail in FIR No.311/2019 dated 16.10.2019 registered at Police Station Crime Branch, Shakarpur for offences under Section 20, 29 of the NDPS Act.
2. The facts in brief leading to the present FIR are as follows:-
 - i. Information was received at 8:30 AM on 16.10.2019, from a special informer to SI Arvind Kumar that one Chhering @Charang R/o Jari, Himachal Pradesh was sending a large quantity of Charas from Malana and that the substance would be handed over to one Ranjan at the Bus Stop at Vande MataramMarg, New Delhi.
 - ii. The said information was recorded in writing and was produced before Inspector Shiv Darshan, along with the secret informer.

In turn, this was communicated telephonically to ACP Arvind Kumar, who gave permission to conduct raid and apprehend persons involved. The said information was recorded by SI Arvind Kumar vide DD No.5 at 9:00 AM and a raiding team headed by SI Arvind Kumar consisting of H/C Ramdas, H/C Lal Bahadur, Constable Kapil Nagar was formed and left for the site at 9:30 AM in a private car bearing registration No.UP-16-AK-0244 and driven by Constable Devender. On the way, the team stopped at ITO and requested 5-6 people to join the raiding team, but could not get any civilian for proceeding with the raid.

- iii. After reaching the spot, the police team took their position near the bus stop and SI Arvind Kumar was in the car alongwith Constable Devender. At 10:40 AM, one boy with a black coloured bag in his hand was seen near the bus stand, near the roundabout of Shankar Road and was identified as Suraj by the secret informer and within a few minutes, a Skoda car bearing registration No. HR-26-EA-4171 was seen approaching from Dhaula Kuan towards the Bus Stand and stopped there. The occupant of the car signalled the man with the black bag i.e. Suraj to sit inside the car. After a few moments, the SI and the team gheraoed the car. SI Arvind Kumar introduced himself and told them the information regarding possession and sale of Charas by them. It is stated that the accused were identified as Suraj S/o Chhering @Charang R/o H.No.127, Ward No.7, Sishamati Kullu, Himachal Pradesh and the ptitioenr herein,

Priyaranjan Sharma S/o Madan Mohan Sharma R/o Extn. Road No.1, Rajbanshi Nagar, Patna, Bihar. It is stated that the SI Arvind Kumar intimated them that he had to search them to see if they possessed illegal contraband and informed them their right to deny search by the SI Arvind Kumar and be searched in the presence of a Magistrate or Gazetted Officer. A formal notice under Section 50 of the NDPS Act was served on the petitioner and co-accused Suraj intimating to them their legal rights. It is stated that the petitioner and co-accused refused to be frisked before a Gazetted Officer. It is stated that the SI attempted to gather passersby to join the search proceedings, but could not convince the bystanders.

- iv. It is stated that the searches were conducted in the presence of SI Arvind Kumar. Both, the petitioner herein and co-accused Suraj were searched and checked. In the possession of the co-accused Suraj, a black bag having three compartments was recovered wherein two bundles of a sticky and smelly black substance was found wrapped in plastic and covered by Khaki cloth. The substance was taken out of the wrapping from the bag and a small sample was weighed and tested. It is stated that after testing, it was confirmed that the substance was Charas. The substance was marked and 25/25 gms. from each bundle were separated for sending it to a chemical laboratory/FSL for testing and the rest of the substance was seized by preparing seizure memos.
- v. It is stated that the petitioner herein was checked thereafter and

no substance was found in his possession and a separate recovery memo was prepared in respect of the petitioner. The petitioner and co-accused Suraj were taken in custody. The Skoda car bearing No. HR 26 EA 4171 was taken into custody vide a separate seizure memo. It is stated that the recovered items were seized and remanded to police custody.

- vi. The case was then handed over to the present I.O. namely, ASI Mahesh Kumar. The I.O. along with SI Arvind Kumar on the same day revisited the scene of crime at around 4:30 PM, made inquiries from SI Arvind Kumar and prepared a site map whereafter the statement of HC Lal Bahadur under Section 161 Cr.P.C. After collecting sufficient material and based on the inquiries, the petitioner and co-accused were formally arrested and a report under Section 57 of the NDPS Act was made.
- vii. During investigation, the belongings and mobile phones of the accused were recovered from their possession. It is stated that co-accused Suraj gave a disclosure statement that his father was engaged in the supply and sale of Charas and due to which he doesn't reside at one single place and keeps moving. He further disclosed that his father sources the Charas from village Malana in Himachal Pradesh and sends it into cities like Delhi, Gurgaon. He disclosed that sometimes he would send his relatives with a supply of the contraband and sometimes he would himself transport the contraband. He disclosed that his father sent him this time with two packets, each five kilograms to deliver in Delhi, one packet to the petitioner herein and the

other packet to another person whose contact number was given to him by his father.

- viii. At the time of investigation, the CDR and CAP records of the mobile phones of the accused were obtained. The mobile number used by the petitioner was found to be registered in his own name and the mobile phone used by co-accused Suraj was registered in the name of Babloo R/o Bambola, Mandi, Himachal Pradesh. The CDRs denoted that on 15/16.10.2019, co-accused Suraj and petitioner herein were in touch with co-accused Chhering @Charang who has not been arrested till date and proceedings under Section 82 Cr.P.C. got initiated against him.
 - ix. The FSL Rohini vide RC 800/2021 dated 18.10.2019 committed its report to the Crime Branch confirming after chemical analyses that the substances seized at the scene of crime was Charas.
 - x. The Skoda car bearing No. HR 26 EA 4171 from where the petitioner apprehended was owned and registered in the name of Chitranjan Sharma, brother of the petitioner herein and was released on superdari by the Trial Court in his favour on an undertaking.
 - xi. Chargesheet dated 01.04.2020 was filed before the Trial Court on 09.04.2020. It is stated therein that no recovery of Charas was made qua the present petitioner.
3. The petitioner's bail application was rejected by the learned Sessions Court vide order dated 26.07.2021 stating that the petitioner was present in

the car from where the contraband of a commercial quantity was seized and that the case was at an initial stage where charges were yet to be framed and the Trial to commence. It was stated that Section 37 of the NDPS created an embargo because of which the petitioner could not be enlarged on bail and on the mere reason that the CDRs of the raiding team were not aligned with the prosecution's case was not a reason to disbelieve the prosecution.

4. Heard Mr. Amit Chaturvedi, learned counsel for the petitioner, and Mr. Amit Chadha, learned APP for the State, and perused the material on record.

5. Mr. Amit Chaturvedi, learned counsel for the petitioner contends that there is no recovery of the contraband from the petitioner. He states that the petitioner is alleged to be arrested at Vande Mataram Marg which is a busy main road and there is no independent witness which casts a serious doubt on the veracity of the story of the prosecution. He further states that according to the case of the prosecution, the petitioner was waiting near a bus stand but the said road does not have any bus stand. It is further contended that there is non-compliance of Section 42 and Section 50 of the NDPS Act and the search and seizure was not conducted in front of the Gazetted Officer. It is the story of the prosecution that the search was conducted in front of ACP Arvind Kumar who had granted permission to the team lead by SI Arvind Kumar to conduct a raid cannot be believed. He states that the chargesheet fails to show how the officer who authorised the raid suddenly appeared at the spot when he was not accompanying the team. It is submitted that except the fact that the petitioner and the co-accused had given a telephone call to co-accused Chhering @Charang a day prior to the incident, nothing has been found on the analysis of the CDR of the

petitioner. An argument was raised by the co-accused Suraj in BAIL APPLN. 1847/2021 which was withdrawn on 18.01.2022 that the call detail records of the I.O. would show that he was not at the spot when the raid was conducted.

6. Per contra, Mr. Amit Chadha, learned APP, states that information was received that co-accused would be bringing contraband from Himachal Pradesh, a raiding party was constituted after taking authorisation of the higher officials and in compliance of Section 42 of the NDPS Act and the raiding party left for the spot. He states that at 10:40 AM, co-accused Suraj was seen coming with a black colour bag who was identified by the informer. The Skoda car bearing No. HR-26-EA-4171 was seen approaching from Dhaula Kuan to the bus stand and co-accused Suraj was there. Suraj sat in the car and at that point of time, the car was surrounded. The petitioner and the co-accused were searched and checked. The black colour bag being carried by Suraj contained 10 kilograms of Charas which is a commercial quantity under the NDPS Act. It is further submitted that the CDR of the accused persons would indicate that they were in communication with each other on the day of the incident and a day prior to the incident as well as the fact that the petitioner and the co-accused contacted Chhering @Charang, who is the kingpin of the drug cartel. It is contended that the substance has been confirmed as Charas by the Forensic Science Laboratory. Mr. Amit Chadha, learned APP contends that the investigation is going on as one of the accused Chhering @Charang, who is the kingpin is absconding.

7. A perusal of the records indicates that a secret informer gave information on 16.10.2019 that a person named Chhering @Charang was

indulging in supply of Charas after collecting the same from Malana, Himachal Pradesh and supplied the drugs through his son and co-accused Suraj. The information was given by the secret informer that on 16.10.2019, Suraj would come to supply Charas to one Ranjan at the Bus Stop at Vande Mataram Marg at 10:40 AM. Compliance under Section 42 of the NDPS Act was done and a trap was laid. The fact that independent witnesses have not been involved cannot discredit the case of the prosecution, which has been held by several judgments that non-joining of independent witnesses cannot discredit the entire case of the prosecution (refer Surinder Kumar v. State of Punjab, 2020 (2) SCC 563 and Jarnail Singh v. State of Punjab, 2011 (3) SCC 521).

8. The petitioner and the co-accused Suraj were informed about their rights under Section 50 of the NDPS Act. It is stated in the Status Report that in the meantime, ACP Arvind Kumar, who authorised the raid, came to the spot and introduced himself. During the search, 10 kilograms of Charas were recovered from the bag which was in possession of Suraj. Suraj was present with the petitioner when both were apprehended by the Police. The fact that no contraband was recovered from the body of the petitioner is of no consequence especially when Suraj was waiting with the contraband. The petitioner arrived in a car bearing No. HR 26 EA 4171 which belonged to his brother. He got down from the car and while walking towards the car both were arrested and the 10 kilograms for the contraband was recovered from the car.

9. Material on record also indicates that the petitioner was using a mobile phone No. 9999777134 and he was in touch with Chhering @Charang on 15/16.10.2019. The contention of the co-accused Suraj in

BAIL APPLN.1847/2021 that the CDR of the investigating officer reveals that he was at different spots when the raid was conducted and, therefore, the story of the prosecution indicating the manner in which the raid was conducted cannot be accepted for the reason that the area where the petitioner was arrested is surrounded by the ridge and there are various towers within the distance of 750 metres where the petitioner was arrested. Therefore, the possibility of various towers catching signal of the mobile phone cannot be ruled out.

10. The question as to whether there was a bus stop or not where the petitioner was arrested is a matter of trial. Nothing has been produced by the petitioner to demonstrate that there was no bus stop at the time when the petitioner was arrested.

11. Grant or refusal of bail, in a case involving commercial quantity of contraband substances under the NDPS Act is governed by Section 37 of the NDPS Act. The same is reproduced as under:

"37. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]"

12. The parameters for grant of bail to an accused have been laid down in a number of judgements of the Supreme Court. In State of M.P. v. Kojad, (2001) 7 SCC 673, embarked to elucidate as to why bail conditions under the NDPS are stringent to the extent of being severe & uncompromising, it held as follows:

*"5.....The purpose for which the Act was enacted and the menace of drug trafficking which it intends to curtail is evident from its scheme. A perusal of Section 37 of the Act leaves no doubt in the mind of the Court that a person accused of an offence, punishable for a term of imprisonment of 5 years or more, shall generally be not released on bail. **Negation of Bail is the rule and its grant an exception under sub-clause (ii) of clause (b) of Section 37(1). For granting the bail the Court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence***

while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section(1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for. ”

(emphasis supplied)

13. The Supreme Court in Collector of Customs v. Ahmadalieva Nodira, (2004) 3 SCC 549 has observed as under:-

"6. As observed by this Court in Union of India v. Thamisharasi [(1995) 4 SCC 190 : 1995 SCC (Cri) 665 : JT (1995) 4 SC 253] clause (b) of sub-section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are: (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.

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the

alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence....." (emphasis supplied)

14. In Union of India v. Rattan Malik, (2009) 2 SCC 624, the Supreme Court has observed as under:-

"12. It is plain from a bare reading of the non obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by clause (b) of subsection (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

13. The expression "reasonable grounds" has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide Union of India v. Shiv Shanker Kesari [(2007) 7 SCC 798 : (2007) 3 SCC (Cri) 505]). Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to

Section 37 of the NDPS 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 NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail.” (emphasis supplied)

15. In State of Kerala & Ors. v. Rajesh & Ors., (2020) 12 SCC 122, the Supreme Court has observed as under:-

"19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 CrPC, but is also subject to the limitation placed by Section 37 which commences with non obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

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."

16. The facts of the case indicate that co-accused Suraj was carrying 10 kilograms of Charas. The petitioner arrived in his white colour Skoda car which belonged to his brother, the driver of the car gave a signal to Suraj and Suraj moved towards the car. The petitioner was driving the car, he came out of the car and went near Suraj. Both of them spoke to each other and when they were moving towards the car, they were apprehended along with the bag which Suraj was carrying that contained 10 kilograms of Charas. All these factors, coupled with the fact the petitioner and Suraj were in touch with Chhering @ Charang, who is absconding, indicate that the petitioner is a part of the well-organised drug cartel dealing with supply of Charas.

17. In Gurdev Singh v. State of Punjab, (2021) 6 SCC 558, the Supreme Court had discussed the deleterious impact of narcotic drugs on society, and how the menace of drug addiction did not only have the ability of destroying the life of just one individual, but how it could destroy the lives of generations to come. The consequences of dealing of drugs and drug abuse can be experienced across the board, from causing economic issues to societal disintegration. The purpose of enacting the NDPS Act was to curb this menace, and this purpose must be borne in mind while considering the

grant of bail pertaining to the NDPS Act.

18. The petitioner has not been able to satisfy that there are reasonable grounds to believe that he is not guilty of such an offence. The fact that he is a member of the cartel gives a strong apprehension that he is likely to commit such an offence in the future as well.

19. The petition is dismissed with the above observations along with pending applications.

SUBRAMONIUM PRASAD, J

FEBRUARY 08, 2022 /hsk

