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M.Cr.C.No.7850 of 2020 & Other
connected matters [Crime No.255 of 2020]
AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 7850 of 2020

1. Sambhav Parakh S/o Late Shri Rajesh Parakh Aged About 29 Years R/o Near Naya Talab, Gudhiyari Raipur, Tahsil And District Raipur, Chhattisgarh.

---- Applicant

Versus

1. State Of Chhattisgarh Through Police Station City Kotwali Raipur, District Raipur, Chhattisgarh.

---- Respondent

MCRC No. 8037 of 2020

1. Harshdeep Singh Juneja S/o Late Shri Mangat Singh Juneja Aged About 39 Years R/o Income Tax Colony, Raipur, Chhattisgarh

---- Applicant

Versus

1. State Of Chhattisgarh Through Police Station City Kotwali, Raipur, District Raipur, Chhattisgarh

---- Respondent

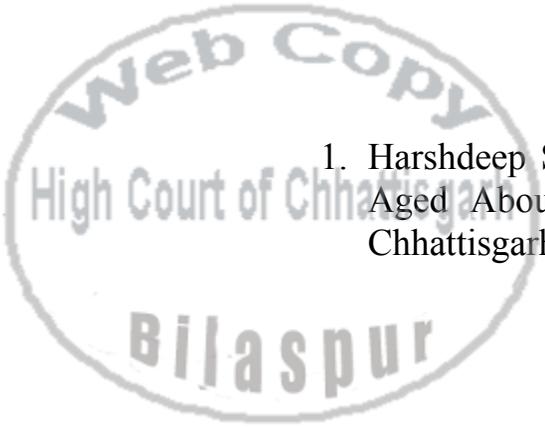
MCRC No. 8231 of 2020

1. Gaurav Shukla S/o Ved Prasad Shukla Aged About 27 Years R/o Krishna Niwas, Near Swastik Hospital, District Bilaspur, Chhattisgarh.

---- Applicant

Versus

1. State Of Chhattisgarh Through Police Station City Kotwali, District Raipur, Chhattisgarh.





2

M.Cr.C.No.7850 of 2020 & Other
connected matters [Crime No.255 of 2020]

---- Respondent

MCRC No. 8260 of 2020

1. Nikita Panchal, D/o Shri Sharad Panchal, Aged About 30 Years R/o Risali, Bhilai, Police Station Bhilai, District Durg (C.G.),

At Present R/o Ishita Paradise Flat, Police Station New Rajendra Nagar, Raipur, District Raipur Chhattisgarh.

---- Applicant

Versus

1. State Of Chhattisgarh, Through - The Station House Officer Police Station City Kotwali, Raipur, District Raipur Chhattisgarh.

---- Respondent

MCRC No. 8267 of 2020

1. Ashish Joshi S/o Shri Yojraj Joshi Aged About 36 Years R/o Vikas Colony, House No. 64, Sector - 5, Karnal, Police Station And District Karnal (Haryana)

At Present R/o Ishita Paradise 504, New Rajendra Nagar, Tahsil And District Raipur Chhattisgarh.

---- Applicant

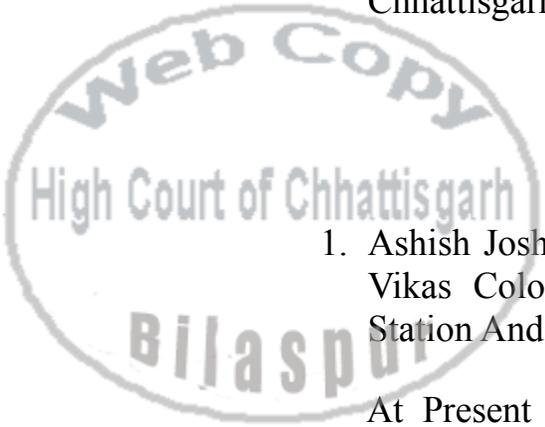
Versus

1. State Of Chhattisgarh Through The Station House Officer, Police Station City Kotwali, Raipur, District Raipur Chhattisgarh

---- Respondent

MCRC No. 8604 of 2020

1. Shreyansh Jhabak S/o Ramesh Jhabak Aged About 36 Years R/o Sakin Panchsheel Nagar , Police Station Civil Lines, District Raipur Chhattisgarh.





3

M.Cr.C.No.7850 of 2020 & Other
connected matters [Crime No.255 of 2020]
---- Applicant

Versus

1. State Of Chhattisgarh Through The Station House Officer,
Police Station City Kotwali, District Raipur Chhattisgarh.

---- Respondent

MCRC No. 8649 of 2020

1. Alean Soren @ Alean Soreng S/o Gorge Soren Aged About
22 Years R/o Bandhuwapara, Sarkanda, P.S. Sarkanda,
District Bilaspur Chhattisgarh

---- Applicant

Versus

1. State Of Chhattisgarh Through The Station House Officer,
P.S. City Kotwali Raipur District Raipur Chhattisgarh

---- Respondent

MCRC No. 8658 of 2020

1. Rakesh Arora S/o Ashok Arora Aged About 31 Years R/o
Kapil Nagar, Sarkanda, District Bilaspur Chhattisgarh

---- Applicant

Versus

1. State Of Chhattisgarh Through The Station Hosue Officer,
P.S. City Kotwali, Raipur District Raipur Chhattisgarh

---- Respondent

MCRC No. 9511 of 2020

1. Laxman Gain S/o Late Sudhanshu Gain, Aged About 32 Years
R/o Jumani Camp, Farasgaon, Kondagaon (C.G.)

Presently Residing At GRP Chowki, Balod Chhattisgarh.

---- Applicant





M.Cr.C.No.7850 of 2020 & Other
connected matters [Crime No.255 of 2020]
Versus

1. State Of Chhattisgarh, Through Police Station - City Kotwali,
Raipur, District - Raipur Chhattisgarh.

---- Respondent

For Applicants :

- Shri Bhaskar Payashi, Advocate [MCRC No.7850 of 20220]
- Ms Naushina Ali, Advocate [MCRC No.8037 of 2020]
- Shri Manoj Paranjape, Advocate [MCRC No.8231 of 2020]
- Shri Jitendra Gupta, Advocate [MCRC Nos.8260 & 8267 of
2020]
- Shri Shailendra Dubey & Ms Shivali Dubey, Advocates
[MCRC No.8604 of 2020]
- Shri Atanu Ghosh, Advocate [MCRC Nos.8649 & 8658 of
2020]
- Shri P.R. Patankar, Advocate [MCRC No.9511 of 2020]

For Respondent /State :

- Shri Ravish Verma, Govt. Advocate

Investing Officer :

- Shri Mohd. Asrar Ali, ASI and Shri O.P. Sahu, ASI,
Investigating Officers, Police Station City Kotawali, Raipur
are also present.

Order On Board

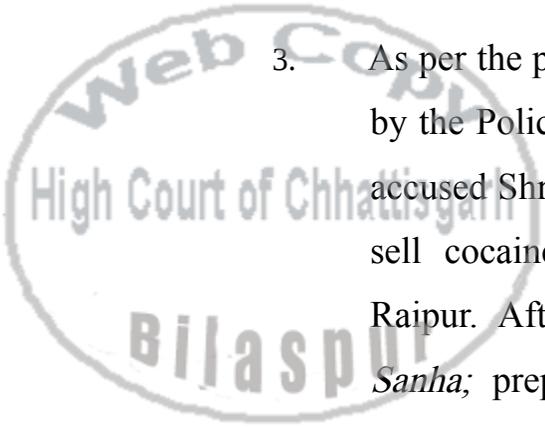
By

Prashant Kumar Mishra, J.



29-01-2021

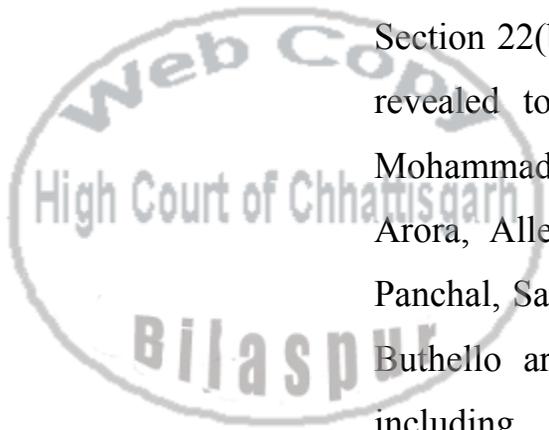
1. Since all the bail applications are arising out of crime No.255/2020 they are being considered and decided by this common order.
2. The applicants have preferred these bail applications under Section 439 of CrPC, as they are arrested in connection with Crime No.255/2020, registered at Police Station City Kotwali, Raipur (CG), for the offence punishable under Sections 22(c), 29, 25 & 27 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity 'the Act').
[As per the final report].
3. As per the prosecution case a secret information was received by the Police of Police Station City Kotwali, Raipur, that the accused Shreyansh Jhabak and Vikas Banchore are moving to sell cocaine near Government Polytechnic, Byron Bazar, Raipur. After taking down the information in the *Rojnamcha Sanha*; preparing *mukhbir* panchnama; and informing the City Superintendent of Police, ASI Mohd. Asrar Ali with Constable Kumar Gaurav Patel & Girdhar Prajapati reached the place of occurrence and having found the above two accused they were raided and after making necessary compliance of provisions of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') they were searched in which Shreyansh Jhabak was found in illicit possession of 7 gms. cocaine whereas Vikas Banchore was found in illicit possession of 10 gms. of cocaine, which were kept wrapped in polythene sheet in their trouser pocket. The seizure memos were prepared and the seized cocaine was weighed in the electronic weighing machine. During





interrogation and verification of their mobile phones and call details it was found that the accused persons are part of drug cartel/mafia who are engaged in the illicit trade and trafficking of cocaine and MDMA [Methylene-dioxy-methamphetamine] throughout the country including in several districts of the Chhattisgarh State.

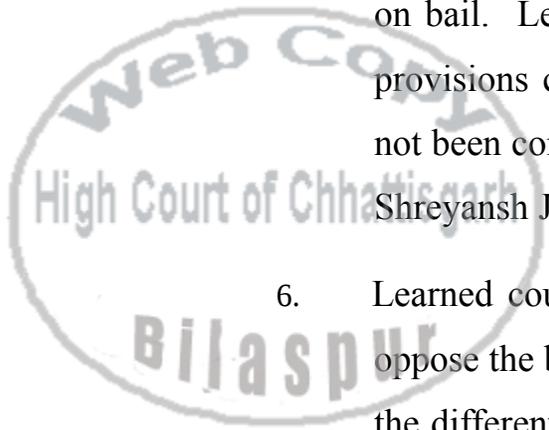
4. Based on the information, accused Abhishek Shukla was arrested and from his possession 93.610 gms. MDMA was recovered. The total quantity being 110.610 gms., more than the commercial quantity (100 gms.). The investigation further proceeded for offence under Section 22(c) instead of Section 22(b) of the Act. During further investigation it was revealed to the police that the co-accused Abdul Azim, Mohammad Minhaz, Rohiz Ahuja, Laxman Gain, Rakesh Arora, Allen Soren, Gaurav Shukla, Ashish Joshi, Nikita Panchal, Sambhav Parak, Harshdeep Singh Juneja & Royden Buthello are also involved in illicit trade and trafficking including sell, transportation and possession as also consumption of cocaine and MDMA. The illicit drugs were brought to Raipur from Mumbai & Goa and consumed at the drugs party by the accused persons and is also sold to other intending customers. Police has recorded the statements of witnesses to the search and seizure operation; disclosure statements of accused persons; and diary statements of other witnesses. They are: Shiva Mudaliyar, Prakash Harpal, Kewal Barmeda, Avinash Shukla, Dashmit Chawla, Mayank Agrawal & Har Kiran Kaur. Statements under Section 164 Cr.P.C. have also been recorded of the witnesses Dashmit Chawla & Avinash Shukla.





5. Learned counsels appearing for the applicants would argue that more than the small quantity, but less than the commercial quantity of contraband has been seized from Shreyansh Jhabak, therefore, the provisions contained in Section 37 of the Act concerning limitation on granting bail would not attract and the applicant having remained in jail for more than three months is entitled to be released on bail. For other accused persons, learned counsels would further argue that no seizure has been made from them and they have been arrested only on the basis of disclosure made by co-accused or by witnesses and, as such, they are entitled to be released on bail. Learned counsels would also argue that mandatory provisions contained in Sections 42 & 50 of the Act having not been complied with, therefore, this also entitles applicant-Shreyansh Jhabak to be released on bail.

6. Learned counsels appearing for the State, *per contra*, would oppose the bail applications. Learned counsels would refer to the different panchnama prepared at the time of investigation and notices issued to the accused persons before their personal search. It is vehemently put forth that provisions contained in Sections 42 & 50 have been duly complied with before personal search of the accused Shreyansh Jhabak, Vikas Banchore & Abhishek Shukla. Learned counsels would further submit that the total quantity of the contraband recovered in the present case is more than 110 gms., which is above commercial quantity, therefore, the provisions contained under Section 37 of the Act would apply and the applicants are not entitled to be released on bail. For such accused from whom recovery has not been made, learned

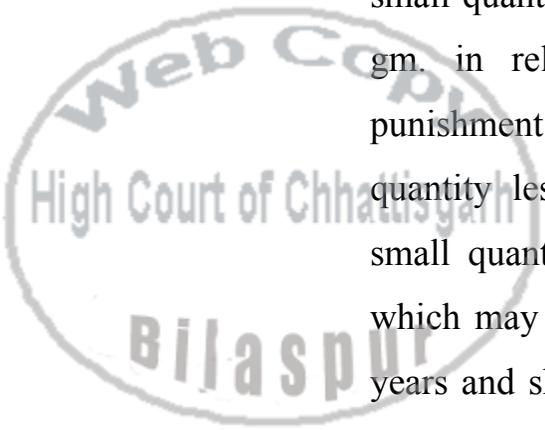




counsel would submit that the charge sheet having been filed for offence under Section 29 of the Act also, all the accused persons are involved in criminal conspiracy to possess, sell, consume and carry on trade of illicit psychotropic substance and, as such, they are also not entitled to be released on bail.

7. I have heard learned counsels appearing for the parties at length and perused the case diary.
8. Section 22 of the Act prescribes punishment for contravention in relation to psychotropic substances. Section 22 (a) provides for punishment where the contravention involves small quantity which is 2 gms. in relation to cocaine and 0.5 gm. in relation to MDMA. Clause (b) provides for punishment up to 10 years when the contravention involves quantity lesser than commercial quantity but greater than small quantity whereas clause (c) provides for punishment which may extend to 20 years but shall not be less than 10 years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees. Proviso to Section 22 further empowers the Court to impose a fine exceeding two lakh rupees for reasons to be recorded in the judgment.
9. Section 25 of the Act provides for punishment for allowing premises, etc., to be used for commission of an offence. The said provision is quoted below :

25. Punishment for allowing premises, etc., to be used for commission of an offence.—
Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any





other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.

10. Section 29 of the Act prescribes provision for punishment for abetment and criminal conspiracy. Sub-section (1) thereof says that whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code, be punishable with the punishment provided for the offence.

11. Section 37 of the Act speaks about limitation on granting bail. The entire provision is reproduced hereunder :

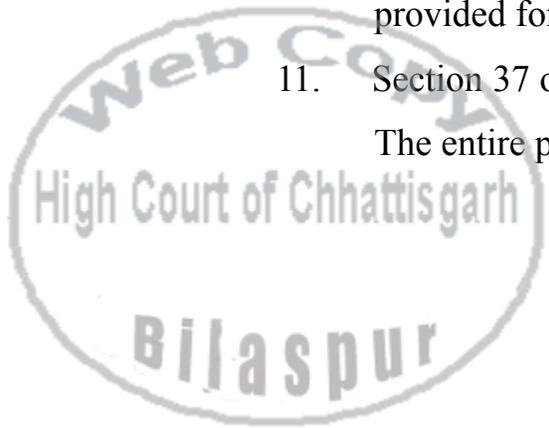
37. Offences to be cognizable and non-bailable.--
(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973—

(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

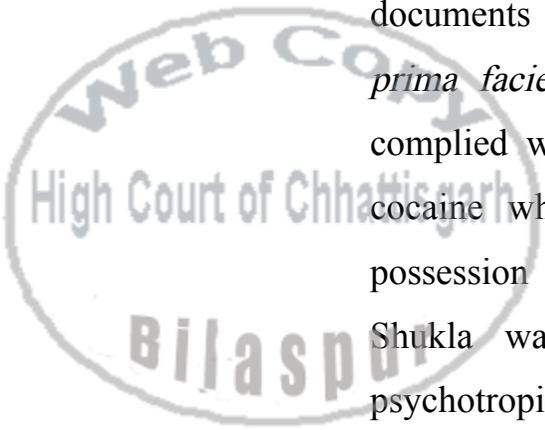




M.Cr.C.No.7850 of 2020 & Other connected matters [Crime No.255 of 2020] not likely to commit any offence while on bail.

(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 or any other law for the time being in force, on granting of bail.]

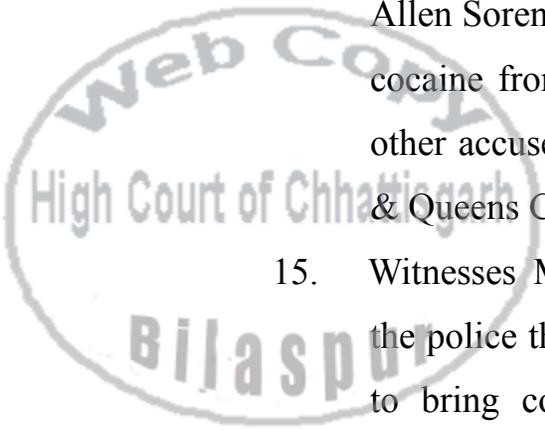
12. Having kept in mind the above referred provisions contained in the Act, I shall now proceed to discuss the material available against the accused persons.
13. Applicant Shreyansh Jhabak was served with notice under Section 50 before carrying his personal search. The documents regarding compliance of Section 50 of the Act, *prima facie*, establishes that the provision has been duly complied with. He was found in possession of 7 gms. of cocaine whereas accused Vikas Banchore was found in possession of 10 gms. of cocaine and accused Abhishek Shukla was found in possession of 93.610 gms. of psychotropic substance [MDMA]. Thus, the total quantity of contraband recovered from the accused persons is more than the commercial quantity.
14. One Avinash Shukla informed the police that he knows Shreyansh and Vikas Banchore for the last ten years. They introduced him to Abhishek Shukla, who is popularly known as David in the drug world. This witness was also introduced to Allen Soren, Abdul Aziz @ Saddam, Gourav Shukla, Mohd. Minhaz @ Honey, Rakesh Arora and Ashish Joshi. He met them at a party at Devendra Nagar, Raipur. Abhishek Shukla, Shreyansh and Vikas Banchore offered him one gram of cocaine at Rs.9,000/-, but he did not purchase owing to





shortage of funds. Shreyansh and Vikas informed him that if he needs more quantity of cocaine he should contact Abhishek Shukla @ David. Nikita Panchal, Ashish Joshi and Harshdeep Juneja (owner of Mocha Hotel at VIP Road, Raipur) regularly organize drug party in the hotel. Sambhav Parakh, Manager of Queens Club of India, in conspiracy with Harshdeep Juneja, Shreyansh, Minhaz @ Honey and Vikas Banchore are engaged in sale and supply of cocaine and MDMA by chatting in code words and they also encouraged other persons to adopt the trade for hefty financial gain. He also informed the police that Abhishek Shukla @ David, Allen Soren, Abdul Aziz @ Saddam and Gourav Shukla bring cocaine from Goa & Mumbai and then the same is sold by other accused persons in the party organized at Mocha Hotel & Queens Club and in other hotels of Raipur city.

15. Witnesses Mayank Agrawal and Dashmit Chawla informed the police that the accused persons have formed a drug cartel to bring cocaine, MDMA and other drugs from Goa & Mumbai and thereafter to sell them individually or in group of persons in the parties organized at the above named hotels and that all the accused persons are connected through mobile phone, chatting in social media and by other means.
16. Shiva Mudaliyar, Prakash Harpal and Kewal Barmeda are witnesses to the search and seizure operation including compliance of Section 50 of the Act.
17. Witness Harkiran Kaur further informed the police that she knows Shreyansh Jhabak 5-6 years back and they have a group who attend drug party in which all the accused persons were supplying, selling and consuming cocaine & MDMA.





This witness specifically names Shreyansh as a drug peddler who has supplied drug to her on several occasions.

18. In their statements under Section 164 Cr.P.C. the witnesses Dashmit Chawla & Avinash Shukla have named almost all the accused persons who were involved in illicit trafficking and consumption of drugs.
19. Since commercial quantity of illicit contraband has been recovered from three of the accused persons and the prosecution has also filed the charge sheet under Section 29 of the Act, it will be treated that all the accused persons have hatched criminal conspiracy to commit offence under Section 22 (c) of the Act. Thus, provisions contained in Section 37 would be attracted against all the accused persons.
20. In a recent judgment in the matter of *State of Kerala and others v Rajesh and others*¹, the Supreme Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in the offences under the Act. The following has been laid down in paras 18 to 20 :

18. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in the offences under the NDPS Act. In *Union of India v. Ram Samujh* , it has been elaborated as under:

“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental

1 (2020) 12 SCC 122



M.Cr.C.No.7850 of 2020 & Other connected matters [Crime No.255 of 2020] in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in *Durand Didier v. State (UT of Goa)*, as under : (SCC p. 104, para 24)



‘24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.’

8. To check the menace of dangerous drugs flooding the market, Parliament has



M.Cr.C.No.7850 of 2020 & Other connected matters [Crime No.255 of 2020] provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

- (i) there are reasonable grounds for believing that the accused is not guilty of such offence; and
- (ii) that he is not likely to commit any offence while on bail

are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid 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 dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended.”



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.

21. Learned counsels appearing for the State have vehemently argued that off late Chhattisgarh and particularly Raipur is fast becoming hub for drug traders, therefore, if the accused persons are treated leniently it will harm the interest of the society and the youth of this tribal State would waste their hard earned money on drugs and ruin their career and life.

22. Apropos this submission it would be profitable to refer the observation made by the Supreme Court in *Babua alias Tazmul Hossain v. State of Orissa*², in the following words in para 3 :

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

2 (2001) 2 SCC 566



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.

23. Learned counsels for such accused from whom there has been no seizure of drugs would argue for their release on bail, however, in *Joyce Karoung v. Narcotics Control Bureau*³, the Delhi High Court has held that all those persons who are major link in the entire operation have to be treated in the same manner as if they have taken part in trading of commercial quantity of drugs. Relying upon the decision rendered by the Supreme Court in *Babua* (supra) the Delhi High Court has held thus at paras 23 & 24 :

23. It is not a case that the Petitioner has been apprehended solely on the basis of statement given by the co-accused. Petitioner is also alleged to have been arrested as part of the search and seizure operation from one of the places, which was disclosed by the co-accused during the operation. Not only is the petitioner alleged to have been apprehended, she is alleged to have led

3 Bail Appln. 1086 of 2018 [2-6-2018] : MANU/DE/2279/2018



to the arrest of another co-accused Stephen, who is alleged to have come to collect the bag of drugs from the petitioner. The petitioner is alleged to be a major link in the entire operation. Stephen who is apprehended on the disclosure of the petitioner in his statement under section 67 has also named the petitioner and shown her involvement. Not only has he named her, but has also stated that earlier also he had come with one James to collect drugs from the petitioner.

24. The ratio of the judgment of the Supreme Court in Babua (supra) is squarely applicable in the facts of the present case. At this juncture, in my view, it cannot be prima facie held that the petitioner is not guilty of the offence, if the allegations made are established. Nor can it be prima facie said that there are no grounds to hold that she is not guilty of such offence. As held by the Supreme Court 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. As per the allegations, qua the petitioner it is not the first time, there are allegations of involvement of the in similar transaction in the past.

24. It is also to be seen that statements of two accused persons have been recorded under Section 67 of the Act and they have named other accused persons as part of the entire operation. It is also to be kept in mind that the prosecution has filed the charge sheet for criminal conspiracy under Section 29 of the Act. Thus, all the accused persons being part of a bigger drug cartel/mafia their act cannot be examined in isolation and on stand alone basis, but the whole case has to be treated as one of peddling of commercial quantity of illicit contraband.





25. In so far as violation of the mandatory provisions as contained under Section 50 of the Act is concerned, albeit I am satisfied that the said provision has been duly complied with, the law in this regard has been settled by the Supreme Court in *Supdt., Narcotics Control Bureau, Chennai v. R. Paulsamy*⁴, holding that at the stage of consideration for bail violation of the provision cannot be presumed before the matter is considered during trial. The following has been held thus in para 6 :

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 Sections 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 with the formalities mentioned in those two sections.

26. In *Hassan Azadeh v Union of India*⁵ the Goa Bench of the Bombay High Court denied bail to an accused in a case where 109 gms. cocaine was seized. The following was observed in para 24 :

4 (2000) 9 SCC 549

5 2017 SCC OnLine Bom 8149





24. Besides, the Chemical Analyser had stated the weight of the powders taken by him from the packets and found to be more than 100 grams, which he had mixed and weighed and thereafter repacked them after carrying out the tests. Moreover, at this stage, the rigour of Section 37 of the Act shall clearly apply to the case of the applicant, which bars his release on bail on being found in possession of commercial quantity of cocaine, prima facie. Besides, there has been strong resistance to the application for bail and moreover, there are reasonable grounds to believe that he is guilty of the offence, which acts as deterrent to allow him the benefit of bail. Furthermore, in terms of Section 35 of the Act, there is a presumption of culpable mental state of the accused in a prosecution for the offences under this Act, though it is another matter that it shall be a defence for the accused to prove that he had no such mental state with respect to the act charged for an offence in that prosecution. Last but not the least, the statement of the applicant recorded in terms of Section 67(c) of the Act is also a material circumstance against him. In that view of the matter and once there is a prima facie finding that the accused has been found in possession of cocaine, which is a commercial quantity, the rigour of Section 37 of the Act would come into play, thereby disentitling the applicant to any favourable order. Last but not the least, it is always open to the Prosecutor to recall and reexamine the Chemical Analyser and get the details of the tests carried out by him on the said contraband. It would not tantamount to filling in the lacunae if the Chemical Analyser had made appropriate notes while conducting such tests. The judgments relied upon on behalf of the applicant nowhere support his case for his release on bail. There is no merit in his application, which is hereby dismissed.





27. Having considered the entire facts situation of the case, the violations for which the charge sheet has been filed and the judgments rendered by the Supreme Court and different High Courts on the issue which has fallen for consideration, I am of the considered opinion that all the accused persons, being part of a drug cartel, who bring drugs from Goa & Mumbai to Chhattisgarh and supply the same to individuals or to groups by organizing parties in different hotels, are not entitled to be released on bail, more so when the prosecution is alleging criminal conspiracy under Section 29 of the Act.
28. Considering entire facts situation of the case and particularly considering the seriousness of the offence and the nature of evidence available on record, this Court is not inclined to grant bail to the applicants.
29. Accordingly, all the bail applications are rejected.

Sd/-

(Prashant Kumar Mishra)
Judge

Gowri

HEAD NOTES

- Where commercial quantity of illicit psychotropic substance seized, limitation for grant of bail contained in Sec. 37 NDPS Act would be attracted and the accused is not entitled to be released on bail.
- When commercial quantity of illicit psychotropic substance is recovered from one accused, in view of Sec. 29 NDPS Act, such other accused from whom no recovery has been made are also not entitled for bail as they have major link in the entire operation and have taken part in drug peddling and allowed consumption in their premises.

