

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

% **Date of Order: 13th April, 2022**

+ **BAIL APPLN. 631/2022**

RENUKA@ RENUKA BISWAS ...Petitioner

Through: Mr. Vikas Jain and Mr. Vishal
Krishnantrey, Advocates

versus

THE STATE NCT OF DELHI ...Respondent

Through: Ms. Kusum Dhalla, APP for
State

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present petition has been preferred under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter, referred to as the "Code") for seeking regular bail in FIR bearing No. 226/2019 under Sections 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter, referred to as the "NDPS Act") registered at PS – Special Cell, Delhi.

2. The brief facts of the case as per the prosecution are that on 15th December 2019, at around 5:40 am, the Police Station - Special Cell, Lodhi Colony, New Delhi received information that a person named Anubhav Dushad @ Vicky, r/o Munirka Village, New Delhi has been

dealing in narcotic drugs supply, and was to deliver a consignment of narcotic drugs to a woman named Renuka, on the very same day, near New Delhi Railway Station. A raiding team was accordingly constituted, and the concerned persons were apprehended from the spot. The consignment recovered contained a light-brown powder weighing 3 Kgs, that upon being checked through field testing kit, turned out to be narcotic substance 'Heroin'. An FIR was accordingly registered under Sections 21 and 29 of NDPS Act.

3. Learned counsel for the petitioner submitted that the petitioner is innocent, is a person of good standing, has clean antecedents and has been falsely implicated in the present case. It is also submitted that the petitioner has to take care of her minor son and ailing parents. It is further submitted that the petitioner has been in judicial custody for the last two years and considering the fact that the chargesheet has been already filed, the petitioner is no more required for any investigative purposes.

4. It is further alleged that there was non-compliance of the requirement under section 50 of the NDPS Act. It is also prayed that since the applicant is a woman, she is entitled to the special consideration for bail as prescribed under the proviso to Section 437(1) of Cr.P.C. The learned counsel on instructions also submitted that the petitioner undertakes not to tamper with the evidence and shall not influence the witnesses and shall abide by any terms/conditions imposed on her while granting bail. In light of the aforesaid, it is submitted that the applicant be granted bail.

5. *Per Contra*, Ms. Kusum Dhalla, learned APP for State vehemently objected the instant application and submitted that a total of 3 Kgs of Heroin was recovered from the possession of the applicant herein, and accordingly under Section 37 of the NDPS Act, no person accused of an offence involving commercial quantities of narcotic substances under the said Act, should be released on bail.

6. It is prayed that the intent behind legislating the Act was to stop the cascading effect of drug-addiction, and serious ramifications, on the society at large. It is prayed that if the applicant being alleged of the grave offence is released on bail, it will defeat the legislative intent behind the special Act.

7. It is further submitted that a *prima facie* opinion of the innocence of the accused is not a sufficient condition in deciding grant of bail. There should be existence of 'reasonable grounds' pointing to existence of facts and circumstances justifying the accused's innocence. In the instant case, there are no cogent reasons whatsoever for grant of bail to the accused, and therefore the instant petition being devoid of merits be dismissed.

8. Heard learned counsels for the parties and perused the record including the contents of the FIR, the averments of the bail application as well as the Status Report filed by the state.

9. Since the applicant has been accused of possessing a commercial quantity of the contraband which has been recovered from her, it is

pertinent to refer and analyse the provisions and objective of the NDPS Act. Section 37 of the Act reads 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.

10. In view of the gravity of the consequences of drug trafficking, the offences under the Act have been made cognizable and non-bailable. The Section does not allow granting bail for offences punishable under Section 19 or Section 24 or Section 27A and for offences involving commercial quantity unless the twin conditions prescribed under the Section have been met. The conditions include - *first*, hearing the Public Prosecutor and *second*, satisfaction of the Court based on reasonable grounds that the accused is not guilty of the offence and that he is likely to not commit an offence of a similar nature.

11. The fetters on the power to grant bail do not end here, rather they are over and above the consideration of relevant factors that must be done while considering the question of granting bail. The court also needs to be satisfied before grant of bail about the provisions of Section 439 of the Code. Thus, it is evident that the present section limits the discretion of the court in matters of bail by placing certain additional factors over and above what has been prescribed under the Code.

12. The contours of Section 37 of the NDPS Act have been analysed by the Hon'ble Supreme Court in the case of *Union of India v. Ram Samujh (1999) 9 SCC 429*. The Hon'ble Court extracted the Statement of Objects and Reasons for the introduction of Section 37 of the Act amended through Bill No. 125 of 1988. It is relevant to extract those for the present analysis, which reads as:

“6. The aforesaid section is incorporated to achieve the object as mentioned in the Statement of Objects and Reasons for introducing Bill No. 125 of 1988 thus:

“Even though the major offences are non-bailable by virtue of the level of punishments, on technical grounds, drug offenders were being released on bail. In the light of certain difficulties faced in the enforcement of the Narcotic Drugs and Psychotropic Substances Act, 1985, the need to amend the law to further strengthen it, has been felt.”(emphasis supplied)

*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 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. Chief Secy., Union Territory of Goa* [(1990) 1 SCC 95: 1990 SCC (Cri) 65] as under: (SCC p. 104, para 24)*

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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.”*

13. Thus, what is evident from the above is that the offences prescribed under the Act are not only a menace to a particular individual but to the entire society at large, especially, the youth of the country. Such offences have a cascading effect and are in vogue these days, thus destroying the capabilities and lives of a big chunk of the population and trend has been growing over the years. Therefore, in order to prevent the devastating impact on the people of the nation, Parliament in its wisdom deemed it fit to introduce stringent conditions for grant of bail under the Act. The Court must stay mindful of the legislative intent and mandate of the Act while considering the question of bail in such matters.

14. As far as the condition under Section 37(b)(i) is concerned, there is no ambiguity in its interpretation. It is merely a manifestation of the doctrine of *audi alteram partem*. Since the crime is an act against the

society, the legislature has contemplated that the Public Prosecutor must be given an opportunity to oppose a Bail Application under the Act. Additionally, under Section 37(b)(ii) of the NDPS Act, the Court is not required to be merely satisfied about the dual conditions i.e., *prima facie* opinion of the innocence of the accused and that the accused will not commit a similar offence while on bail, but the court must have '*reasonable grounds*' for such satisfaction.

15. The term '*reasonable grounds*' under Section 37(b)(ii) has been interpreted by the Hon'ble Supreme Court in the case of ***Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798***. It was a case where an appeal was preferred against the order granting bail under the NDPS Act by the High Court. The prosecution alleged that the raiding party seized nearly 400 kgs. of poppy straw from the possession of the accused therein. The Special Court rejected the bail while the High Court granted the bail on the ground that the recovery was not from the exclusive possession of the accused. The Supreme Court set aside the order granting bail. In this context, it interpreted '*reasonable grounds*' under Section 37 of the Act, as under:

“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. 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”.

16. Thus, the term ‘reasonable grounds’ is not capable of any rigid definition, but its meaning and scope will be determined based on the surrounding facts and circumstances of each case. What may be reasonable in one set of facts may not be reasonable in another set of facts. However, the standard of satisfaction in such cases is more than mere satisfaction on a *prima facie* opinion. Thus, the Court before exercising its discretion for granting the bail must record the reasonable grounds before granting bail to the accused.

17. The Hon’ble Supreme Court recently in the case of ***Union of India v. Md. Nawaz Khan (2021) 10 SCC 100*** has reiterated the position of law with respect to Section 37 of the Act. After analysing its previous decisions, the Court prescribed the following test for granting bail under Section 37 of the Act:

“20. Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed.”

18. Thus, the Court must be conscious about the mischief that is sought to be curbed by the Act and the consequences that might ensue if the person accused of the offence under the Act is released on bail. The Court must be satisfied on the basis of *reasonable grounds* discernible from the facts and circumstances that the Applicant is not *prima facie* guilty of offences that the accused is charged with.

19. Additionally, the Court also needs to be satisfied that the person so released will not commit the offence while being on bail. Both the conditions are interlinked because the Parliament in its wisdom, intends that in cases where there is a possibility of commission of this grave offence under the Act, the person need not be released. It is so because if the person is released, he is most likely to repeat the offence, thus impacting the society at large. Thus, to not give any leeway to the accused, the Court must be satisfied about the dual conditions on reasonable grounds.

20. Proceeding to the application of Section 37 in the instant matter, the Public Prosecutor has been heard who has vehemently opposed the bail petition with reasons. With respect to the second condition prescribed thereunder, this Court is satisfied that there are no reasonable grounds, based on the analysis of the provision in the foregoing paragraphs and its application to the facts of the case, for this Court to believe that the Petitioner is not guilty of the offence that she has been charged with. Since this court is not satisfied on this ground, there is no question to consider that the accused will not commit the offence while on bail.

21. In view of the aforementioned facts, circumstances, analysis and reasoning, keeping in mind the legal provisions and the underlying intent as well as the mischief that is sought to be curbed by the NDPS Act, this Court is of the considered view that the conditions stipulated under Section 37 of the Act are not satisfied and there are no 'reasonable grounds' to presume the accused as not being guilty of the offence.

22. Another argument that has been pleaded by the learned counsel for the Applicant is that the applicant, being a woman, is entitled to the special consideration for bail as prescribed under the proviso to Section 437(1) of Cr.P.C. It is pertinent to reiterate that since a special legislation is invoked, Section 37 of the said Act begins with the words "Notwithstanding anything contained in the Code of Criminal Procedure, 1973" and restrains the grant of bail in the circumstances as aforementioned, the special consideration for bail to the applicant being a woman is not available.

23. Accordingly, taking into consideration the amount of the contraband recovered from the possession of the applicant and the gravity of the allegations against the backdrop of the facts of the case and the reasoning mentioned hereinabove, this Court is not inclined to allow the instant Bail Application as being devoid of any merit and hence, is liable to be dismissed.

24. Therefore, in light of the aforesaid analysis of the provisions of the law, the jurisprudence pertaining thereto, and the relevant rulings

of the Hon'ble Supreme Court referred above as well as application to the facts of the instant case, the instant Bail Application stands dismissed.

25. It is made clear that observations made herein shall have no bearing whatsoever on the merits of the case at any stage during the trial or any other proceedings before any other Court.

26. Pending applications, if any, also stand disposed of.

CHANDRA DHARI SINGH, J

APRIL 13, 2022

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