

**IN THE HIGH COURT OF JAMMU & KASHMIR AND  
LADAKH AT JAMMU**

**Bail App No. 305/2023**

Reserved on: 05.11.2024  
pronounced on: 08.11.2024

**Vishal Sharma son of late Sh. Parshotam Lal Sharma resident of  
Shanti Nagar Jammu through his uncle Pitamber Lal Khajuria  
resident of 60 Raman Lane Talab Tillo Jammu**

**...petitioners**

Through: - Mr. Tarun Sharma Advocate.

Vs.

**UT of Jammu and Kashmir th. SHO/I/C Police Station Nagrota  
Jammu.**

**...respondents**

Through: - Mr. Pawan Dev Singh Dy. AG

**CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**

1 The petitioner has invoked the jurisdiction of this Court under Section 439 of the CrPC seeking bail in a case arising out of FIR No. 459/2019 for offences under Sections 8/21/22/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity 'the NDPS Act') registered with Police Station, Nagrota, Jammu, which is stated to be pending before the Court of 2<sup>nd</sup> Additional Sessions Judge, Jammu.

2 As per the prosecution case, on 10.12.2019, the police had laid a naka near Security Headquarters Sidhra Jammu. At about 2200 hours, one Skoda Octiva Car bearing registration No. JK02AH-2222 was intercepted by the police at the naka. The driver of the car disclosed his identity as Sameer Mirza, whereas the other occupants of the aforesaid car disclosed their identity as Udham Singh, Munish

Khanna and Vishal Sharma, the petitioner herein. Upon search of the bag that was in custody of accused Udham Singh, 300 capsules of Simplex Tramadol, 100 capsules of Tapentadol, 25 mg Spasmo Proxyvon TX and 12 bottles of Onerex CC were recovered. From the personal search of accused Munish Khanna, 100 capsules of Simplex Tramadol, 100 capsules of Tapentadol and 06 bottles of Onerex CC were recovered, whereas, from the personal search of the petitioner, 100 capsules of simplex Tramadol, 44 capsules of Tapentadol and 04 bottles of Onerex CC were recovered. Besides this, 68 capsules of Simplex Tramadol, 44 capsules of Tapentadol and 04 bottles of Onerex CC were recovered from accused Sameer Mirza.

3 A docket was prepared by the naka party, on the basis of which, FIR No.459/2019 for offences under Sections 8/21/22/29 came to be registered with Police Station, Nagrota and the investigation was set into motion. After investigating the case, during which the statements of witnesses under Section 161 CrPC were recorded and samples of the recovered drugs were subjected to chemical examination by the FSL, it was found that the petitioner along with co-accused have entered into a conspiracy with regard to possession and sale of illicit contraband drugs. Accordingly, offences under Sections 8/21/22/29 of NDPS Act were found established against the petitioner and co-accused and chargesheet was laid before the trial Court.

4 The learned trial Court, vide its order dated 21.12.2020, framed charges for offences under Sections 8/21/22/29 of NDPS Act against the petitioner and co-accused and trial of the case commenced.

During trial of the case, out of 07, 05 prosecutio witnesses were examined by the trial Court.

5           The petitioner has sought bail on the ground that he has been in custody for the last more than 04 years, but the trial of the case has not concluded. Therefore, on account of his long incarceration, he is entitled to bail. It has been contended that the quantity of drugs alleged to have been recovered from the possession of the petitioner does not fall within the category of ‘commercial quantity’ and, as such, the bar to grant of bail as contained in Section 37 of the NDPS Act is not attracted to the present case. It has been further contended that there are discrepancies and inconsistencies in the testimony of the prosecution witnesses whose statements have been recorded by the trial Court. Therefore, there is reasonable ground for believing that the petitioner has not committed the alleged offences. It has also been contended that there is no evidence on record to show that the petitioner has conspired with the co-accused for the purpose of conducting illicit trade of contraband drugs. It has been submitted that two co-accused have already been enlarged on bail in the present case on medical grounds, as such, the petitioner also deserves to be admitted to bail.

6           No reply has been filed by the respondent-UT. However, record of the trial Court was called and the same has been received.

7           I have heard learned counsel for the parties and perused record of the case.

8           The allegation against the accused including the petitioner is that commercial quantity of contraband drugs were recovered from their possession. According to the petitioner, the individual quantity of contraband recovered from his possession does not fall under the category of 'commercial quantity' and that there is no evidence on record to show that he has conspired with the co-accused. In this context, it is to be noted that there is no dispute to the fact that the total quantity of contraband drugs recovered from the petitioner and co-accused falls under the category of 'commercial quantity'. As per the material on record, the petitioner and co-accused were found to be travelling together in a private car when they were caught by the police at a naka and the recovery of the contraband drugs was effected from them. The fact that the petitioner and the co-accused were traveling in the same private vehicle and all of them were carrying contraband drugs raises a strong presumption that they were working in tandem for indulging in illicit trade of contraband drugs. It is on this account, that the learned trial Court has framed the charge for offence under Section 29 of NDPS Act against the petitioner and co-accused. The order of charge has not been challenged by the petitioner. Therefore, at this stage, it cannot be stated that the petitioner is not involved in the conspiracy and, as such, the entire quantity of contraband drugs recovered from the petitioner and co-accused is to be taken into consideration while determining the question regarding grant of bail to the petitioner. Thus, the bar to grant of bail as contained in Section 37 of NDPS Act would get attracted to the case of the petitioner.

9           Section 37 of the NDPS 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. From a perusal of the aforesaid provision, it is clear that in the cases in which commercial quantity of contraband is alleged to have been recovered from the accused, bail can be granted only if there are reasonable grounds to believe that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. The said mandate of the legislature is required to be followed at the time of consideration of the bail application of the accused. These limitations on grant of bail are in addition to the limitations under the [Code of Criminal Procedure](#).

11. The Supreme Court in the case of [Union of India vs Ram Samujh and another, 1999](#) (9) SCC 429, has laid down broad parameters to be followed while considering application for bail moved

by the accused involved in the offences under [NDPS Act](#). The relevant excerpts of the observations are reproduced as under:-

*"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 deathblow 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\]](#) as under:*

*"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.*

*To check the menace of dangerous drugs flooding the market, Parliament has 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 socioeconomic 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."*

12 From the perusal of the aforesaid observations of the Supreme Court, it is clear that unless two conditions mandated under Section 37 of the NDPS Act are satisfied an accused who is involved in offence relating to commercial quantity of contraband, cannot be enlarged on bail. 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.

13. The Supreme Court in the case of **State of Kerala Vs. Rajesh and others, 2020 (12) SCC 122**, while interpreting the expression reasonable grounds appearing in Section 37 of the NDPS Act, has observed as under:-

*"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. In the backdrop of the legal position, as enunciated by the Supreme Court, it is clear that unless it is shown from the material on record, which would include the statements of the witnesses recorded by the prosecution before the trial court in support of its case, that there are reasonable grounds to justify the satisfaction that the accused is not guilty of the alleged offences, the accused cannot be enlarged on bail.

15 It has been contended by learned counsel for the petitioner that there are inconsistencies and contradictions in the statements of the prosecution witnesses as regards the occurrence and, therefore, it cannot be concluded that there are reasonable grounds for believing that the petitioner is not involved in the alleged offences. However, during course of arguments, learned counsel for the petitioner could not point out any inconsistency or contradiction, much less the contradiction or inconsistency, that would go to the root of the case. Even otherwise, it has to be borne in mind that, while deciding a bail application, this Court is not required to appreciate and scrutinize the evidence, in detail, at this stage. A meticulous and critical analysis of the evidence by the prosecution at this stage is not permissible. Otherwise also, a *prima facie* look at the statements of the prosecution witnesses recorded by the trial Court reveals that there are hardly any



inconsistencies and contradictions on essential aspects of the case. Thus, it is not a case where it can be opined that the petitioner is not, *prima facie*, involved in the alleged occurrence. Thus, the satisfaction that the accused is not guilty of the alleged offences cannot be recorded. Therefore, the bar to grant of bail under Section 37 of NDPS Act is clearly attracted to the case of the petitioner. On this ground alone, the present petition deserves to be dismissed.

16 Coming to the contention of the learned counsel for the petitioner that there has been delay in trial of the case which has resulted in violation of right of the petitioner guaranteed under Article 21 of the Constitution and, as such, he is entitled to grant of bail. In this regard, learned counsel for the petitioner has placed heavy reliance upon the judgments of the Supreme Court in the cases of **Mohd Muslim vs. State (NCT of Delhi)**, AIR 2023 SC 1648 and **Ankur Choudhary vs. State of Madhya Pradesh** (Special Leave to Appeal (Crl) No. 4648/2024, decided on 28.05.2024)

17 There can be no dispute to the legal position that undue delay in conducting trial entitles an accused to grant of bail and even in a case to which Section 37 of NDPS Act is attracted, but then, delay in trial alone cannot offer a ground for grant of bail, particularly in a case where commercial quantity of contraband drugs has been recovered from an accused. Unless it is shown that delay in trial has occurred due to the reasons attributable to the prosecution and not due to the reasons attributable to the accused, delay in trial alone would not entitle an accused to grant of bail.

18 In the present case, a perusal of the trial Court record would show that challan was filed on 31.12.2019, whereafter, due to covid-19 pandemic which commenced in the month of March, 2020, the entry to the trial Courts was severely restricted which resulted in adjournment of cases for a pretty long time. It is on account of this, that the trial Court could frame charges against the petitioner only on 21.12.2020. The trial Court record further indicates that the prosecution has been producing the witnesses before the Court on regular intervals, and, in fact, as of today, only one prosecution witness remains to be examined. Therefore, it cannot be stated that there has been any undue delay in conclusion of the trial. The instant case, in these circumstances, is not the one where the delay in trial has occurred due to the reasons attributable to the prosecution. The ground urged by learned counsel for the petitioner regarding grant of bail to the petitioner due to long incarceration is, therefore, without any substance.

19 So far as grant of bail to the co-accused is concerned, learned counsel for the petitioner has fairly admitted that the co-accused were granted bail on medical grounds and not on merits. Therefore, the petitioner cannot claim parity with the said co-accused.

20 For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed. However, a direction is issued to the trial Court to conclude trial of the case within a period of two months from the date a copy of this order is made available to it. Anything stated in this order shall remain confined to the determination

of this application and shall have no bearing upon the merits of the case.

A copy of this order along with the trial Court record be sent back.

**(Sanjay Dhar)**  
**Judge**

**Jammu**  
**08.11.2024**  
**"sanjeev"**

*Whether the order is speaking:           Yes*  
*Whether the order is reportable:        Yes*

