

**AFR****Reserved on 13.05.2022
Delivered on 30.05.2022****Court No. - 80**

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45253 of 2021

Applicant :- Dheeraj Kumar Shukla

Opposite Party :- State of U.P.

Counsel for Applicant :- Chandra Shekhar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

1- This is second bail application moved on behalf of the applicant. The first bail application of the applicant has been rejected by detailed order dated 06.07.2021 passed in Criminal Misc. Bail Application No. 42092 of 2020.

2- By means of this second bail application, the applicant- Dheeraj Kumar Shukla, who is involved in Case Crime No. 0325 of 2020, under Sections 8/20 of Narcotic Drugs & Psychotropic Substances Act (hereinafter referred to as "N.D.P.S. Act"), police station Jhunsi, district Prayagraj, is seeking enlargement on bail during the pendency of trial.

3- Heard Mr. Chandra Shekhar Mishra, learned counsel for the applicant, Mr. Virendra Kumar Maurya, learned Additional Government Advocate assisted by Mr. Prashant Kumar Singh, learned Brief holder appearing on behalf of State of U.P. and perused the record.

4- In short compass, the facts of the case as per prosecution case are that on the information of informer, two vehicles white coloured Swift Dzire car and grey coloured Honda City car were intercepted on 23.06.2020 by the police team using necessary force and persons sitting in the vehicles were pulled out. On questioning,

they disclosed about transportation of illegal Ganja in the said vehicles. On interrogation at the spot, the apprehended accused persons, who were sitting in Honda City car, disclosed their names as Praveen Maurya alias Punit Maurya (owner), Rishabh Kumar (Driver) and Dhiraj Maurya, whereas person, who was driving Swift Dzire car disclosed his name as Dheeraj Kumar Shukla (applicant). The accused were enlightened about their legal rights to be searched before a Gazetted Officer, to which they declined and gave their consent saying that informant may take their search. Accordingly, they were searched, but no contraband was recovered from their personal search, except mobile phones and some cash amount etc. as mentioned in the recovery memo. On taking search of aforesaid vehicles, total 92.410 Kgs. of Ganja were recovered from the dicky of Honda City car bearing No. MH 04 AF 0076 and 65.160 Kgs. of Ganja were recovered from the dicky of Swift Dzire car bearing No. UP 70 EW 0246. As such, total 157.570 Kgs of illegal Ganja have been recovered in this case. Accused persons could not show the authorization for keeping and transporting the same. Separate samples of about 100-100 grams each of Ganja were taken out from each packets, thereafter samples and remaining Ganja as well as other recovered materials were separately sealed in white cloths. Specimens of seal were prepared. Accused persons disclosed that they have been engaged in the trafficking of Ganja since last several years. They also disclosed that they purchased the Ganja from one Hari, resident of Kodpad, Odisha and will sell the same on higher price in Prayagraj. Both the aforesaid vehicles were also seized. Contents of recovery memo

were explained to the accused persons and after taking their signatures, copy of recovery memo was handed over to them. On the basis of aforesaid recovery, a case was registered against the accused persons at Case Crime No. 0325 of 2020, under section 8/20 of N.D.P.S. Act, police station Jhunsi, district Prayagraj.

5- It is submitted by learned counsel for the applicant that instant second bail application has been moved mainly on the following two new grounds:-

(i)- After rejection of first bail application of the applicant on 06.07.2020, co-accused Sonoo Shukla and Praveen Maurya @ Puneet Maurya have been granted bail by the Coordinate Bench of this Court vide orders dated 14.07.2021 and 14.09.2021 in Criminal Misc. Bail Application Nos. 20323 of 2021 and 44698 of 2020 respectively, therefore, the applicant is also entitled to be released on bail on the ground of parity.

(ii)- Applicant is in jail but trial is not proceeding effectively.

6- Per-contra, learned Additional Government Advocate vehemently opposed the prayer for bail of the applicant by contending that:-

(i)- commercial quantity of Ganja is 20 Kg, whereas in this case total 157.570 Kgs. of illegal Ganja have been recovered (92.410 Kgs. of Ganja was recovered from the dicky of Honda City car bearing No. MH 04 AF 0076 and 65.160 Kgs. of Ganja from the dicky of Swift Dzire car bearing No. UP 70 EW 0246), which are much more than commercial quantity, therefore, provisions of Section 37 of the N.D.P.S. Act are attracted in the present case.

(ii)- co-accused Sonoo Shukla and Praveen Maurya @ Puneet Maurya have been granted bail by the Coordinate Bench vide orders dated 14.07.2021 and 14.09.2021 respectively without considering the mandatory provisions of Section 37 of the N.D.P.S. Act and material on record available in the case diary as well as without giving any reason, therefore, benefit of parity of such bail orders cannot be given to the present applicant.

(iii)- the bail has been obtained by misrepresentation of facts and law. It is submitted that in this case, total 157.570 Kgs 'Ganja' was recovered from the dicky of the vehicles in question, therefore, provisions of Section 50 of N.D.P.S. Act is not attracted at all in view of the recent judgments of the Apex Court in the cases of **Varinder Kumar Vs. State of Himachal Pradesh, (2020) 3 SCC 321, Kallu Khan Vs. State of Rajasthan, 2021 SCC OnLine SC 1223** and **Dayalu Kashyap Vs. State of Chattisgarh, 2022 SCC OnLine SC 334.**

(iv)- Mr. Maurya, learned A.G.A. has also placed reliance upon following judgments of the Apex Court as well as of this Court:-

(a). In **Chandigarh Administration and another Vs. Jagjit Singh and another, AIR 1995 SC 705**, the Apex Court in paragraph-8 has held as follows:

"..... if the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal and unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order."

"..... The illegal/unwarranted action must be corrected, if it can be done according to law-

indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law-but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition.

"..... Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law."

(b). In **Special Leave Petition No. 4059 of 2000:**

Rakesh Kumar Pandey Vs. Munni Singh @ Mata Bux Singh and another, decided on 12.3.2001, the Hon'ble Apex Court strongly denounced the order of the High Court granting bail to the co-accused on the ground of parity in a heinous offence and while cancelling the bail granted by the High Court it observed that:-

"The High Court on being moved, has considered the application for bail and without bearing in mind the relevant materials on record as well as the gravity of offence released the accused-respondents on bail, since the co-accused, who had been ascribed similar role, had been granted bail earlier."

(c). In the case of **Satyendra Singh Vs. State of U.P., 1996 A.Cr.R. 867**, the following observations have been made by this Court :

Para 16: "The orders granting, refusing or cancelling bail are orders of interlocutory nature. It is true that discretion in passing interim orders should be exercised judicially but rule of parity is not applicable in all the cases, where one or more accused have been granted bail or similar role has been assigned inasmuch as bail is granted on the totality of facts and circumstances of a case. Parity can not be a sole ground and is one of the grounds for consideration of the question of bail."

7- Having heard the learned counsel for the parties, I find that the issue that arises for consideration before this

Court is "as to whether the applicant is entitled to be released on bail only on the ground of parity of bail orders dated 14.07.2021 and 14.09.2021 of co-accused Sonoo Shukla and Praveen Maurya @ Puneet Maurya, which have been passed by the Coordinate Bench without considering the mandatory provisions of Section 37 of the N.D.P.S. Act and without giving reasons."

8- Relevant part of the aforesaid bail order dated 14.07.2021 of co-accused Sonoo Shukla passed by the Coordinate Bench is being reproduced herein below:-

"Heard learned counsel for the applicant, learned A.G.A for the State and perused the record.

It has been argued by learned counsel for the applicant that applicant is innocent and he has been falsely implicated in the present case. It is alleged that 157.570 of Ganja was alleged to be recovered from the vehicle Swift Desire Car No. UP-70-EW-0246, which is registered in the name of accused-applicant. It is further contended that the alleged recovery was not made from the accused-applicant and he was implicated in this case on the ground that he is registered owner of the aforesaid Swift Desire Car. It is further contended that the recovery was made from Dheeraj Kumar Shukla, who is the brother of present accused-applicant from aforesaid Swift Desire Car. It is contended that on arrest of co-accused - Dheeraj Kumar Shukla, he stated that this car belongs to him. His father has purchased in the name of present accused-applicant for use of co-accused Dheeraj. It is further contended that Swift Desire Car No. UP-70-EW-0246 has been released in favour of the accused-applicant by the Court of learned Additional District & Sessions Judge Court No. 10, Allahabad on 15.10.2020. It is further contended that the alleged vehicle was used for transporting of alleged contraband without his knowledge of his brother or without his consent.

Learned A.G.A. has opposed the prayer for bail, but he could not dispute the aforesaid facts and

submitted that the alleged recovery was not made from the accused-applicant. He has not disputed the above facts that the alleged vehicle was not released in favour of the accused applicant.

Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties, nature of evidence and all attending facts and circumstances of the case, without expressing any opinion on merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed."

9- Relevant part of bail order dated 14.09.2021 of co-accused Praveen Maurya @ Puneet Maurya passed by the Coordinate Bench is being also reproduced herein below:-

"Heard learned counsel for the applicant, learned AGA, appearing for the State and perused the material brought on record.

It has been contended by the learned counsel for the applicant that 92.410 kilograms contraband article, i.e. Ganja, is said to have been recovered from the vehicle in which the applicant and one co-accused were sitting along with the driver. He further submits that there is no compliance of mandatory provisions of Section 50 N.D.P.S. Act, hence the recovery is bad in the eyes of law. It has also been submitted that the applicant is languishing in jail since 24.06.2020. The applicant has no other reported criminal antecedent.

Learned A.G.A. has vehemently opposed the prayer.

*Courts have taken notice of the overcrowding of jails during the current pandemic situation (Ref.: *Suo Motu Writ Petition (C) No. 1/2020, Contagion of COVID 19 Virus in prisons before the Supreme Court of India*). These circumstances shall also be factored in while considering bail applications on behalf of accused persons.*

*Having heard the submissions of learned counsel of both sides, nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, *prima facie* satisfaction of the Court in support of the charge,*

*reformative theory of punishment, and larger mandate of the Article 21 of the Constitution of India, the dictum of Apex Court in the case of *Dataram Singh v. State of U.P. and another*, reported in (2018) 2 SCC 22 and without expressing any opinion on the merit of the case, I find it to be a case of bail."*

10- Before delving into the matter, it is apposite to quote the Section 37 of N.D.P.S. Act, which are as follows:-

"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."

11- On several occasions, the Apex Court has considered the issue relating to provisions of Section 37 of the N.D.P.S. Act and after wholesome treatment laid down guidelines in this regard observing *inter alia* that recording of finding in terms of Section 37 of N.D.P.S. Act is a *sine qua non* for granting bail under N.D.P.S. Act. Reference of some of the relevant decisions are as follow:-

(i). The expression 'reasonable grounds' has not been defined in the N.D.P.S. Act, but the Apex Court in the case of **Union of India Vs. Rattan Mallik @ Habul, 2009 (1) SCC (Crl) 831**, has settled the expression "reasonable grounds". Relevant paragraphs no. 12, 13 and 14 are quoted herein below:

"12. It is plain from a bare reading of the non-obstante clause in the Section 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 sub-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 Vs. Shiv Shanker Kesari, (2007) 7 SCC 798] 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."

(ii). In case of **Union of India Vs. Ram Samujh, (1999) 9 SCC 429**,

9 SCC 429, Apex Court has made following observations in paragraph 7 of the said judgment, which are reproduced herein below:-

"7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered and followed. It should be borne in mind that in murder case, accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to number of innocent young victims, who are vulnerable: it causes deleterious effects and 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 NDPS Act, has succinctly observed about the adverse effect of such activities in Durand Didien v. Chief Secretary, Union Territory of Goa. [1990] 1 SCC 95 as under:

"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 proportion 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, the Parliament in the wisdom has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine."

(iii). In **Union of India Vs. Shiv Shankar Kesari, (2007) 7 SCC 798**, Apex Court elaborated and explained the conditions for granting of bail as provided under Section 37 of the Act. Relevant paragraph Nos. 6 and 7 are extracted here in below :-

"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."

(iv). In **State of Kerala Etc. Vs. Rajesh Etc. AIR 2020**

Supreme Court 721, Apex Court again considered the scope of Section 37 of N.D.P.S. Act and relying upon earlier decision in Ram Samujh (Supra) held as under:

"20. 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 of the 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.

21. 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."

(v). The Apex Court in **Union of India vs Prateek Shukla (Crl.A. No. 284/2021), AIR 2021 SC 1509** has held that 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. The provisions of Section 37 of the N.D.P.S. Act provide the legal norms which have to be applied in determining whether a case for grant of bail has been made out. The relevant paragraph nos. 11 of the said judgment are reproduced herein under :

"11. Ex facie, there has been no application of mind by the High Court to the rival submissions and, particularly, to the seriousness of the allegations involving an offence punishable under the provisions of the NDPS Act. 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. There has been a serious infraction by the High Court of its duty to apply the law....."

NOTE:- Here it is also relevant to mention that in the case of Prateek Shukla (supra), Review Petition (Crl.) No.323 of 2021 was filed but the same was rejected by the Apex Court vide order dated 17.08.2021.

(vi). The Apex Court in the matter of **The State (NCT of Delhi) Narcotics Control Bureau Vs. Lokesh Chadha, (2021) 5 SCC 724** has held that :

".....Section 37 of the NDPS Act stipulates that no person accused of an offence punishable for the

offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail, where the Public Prosecutor oppose the application, unless 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."

(vii). Narcotics Control Bureau Vs. Laxman Prasad Soni, Etc. (Criminal Appeal Nos. 438-440 of 2021 decided by the Apex Court on 19.04.2021).

In the said case, there was recovery of 229 Kgs. of Ganja from the possession of accused persons. Out of which 25 Kgs. of Ganja was recovered from one vehicle occupied by the accused. There was another vehicle namely truck in which rest of the contraband material was found. The accused persons, who were arrested along with 25 Kgs. Ganja have been granted bail by the co-ordinate Bench of this Court vide order dated 23.09.2019 in Criminal Misc. Bail Application Nos. 38036 of 2019, 38066 of 2019 and 38048 of 2019 without considering provisions of Section 37 of the N.D.P.S. Act.

The aforesaid order dated 23.09.2019 has been set-aside by the Apex Court on account of the reason that the applications for bail were allowed by the High Court without considering the import and effect of Section 37 of the N.D.P.S. Act.

(viii). The Apex Court in **Union of India v. Vimla Singh, decided on 19.08.2021 in Criminal Appeal No. 862 of 2021, has set-aside the bail order passed by High Court to four accused on the ground that High Court has not taken into account the effect and rigour of Section 37 of the N.D.P.S. Act.**

(ix). The Apex Court in the case of **Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan, (2021) 10 SCC 100** has held that:-

"23.....the test which the High Court and this Court are required to apply while granting bail is also for offences involving commercial quantity shall be released on bail, where there are reasonable grounds for believing that he is 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 grant of bail under the NDPS Act have been prescribed."

12- The Apex Court in several cases deprecated the practice of passing bail orders without giving reasons. In order to deal the issue involved in the case in hand, it would be useful to refer following judgments of the Apex Court.

(i). The Apex Court in **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and another, (2004) 7 SCC 528** has held that:-

*"....although it is established that a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case, the court is required to indicate the *prima facie* reasons justifying the grant of bail."*

(ii). The Apex Court in the case of **Sonu vs Sonu Yadav and another, 2021 SCC OnLine SC 286** has observed that an order without reasons is fundamentally contrary to the norms which guide the judicial process. The administration of criminal justice by the High Court cannot be reduced to a mantra containing a recitation of general observations. That there has been a judicious application

of mind by the judge who is deciding an application under Section 439 of the CrPC must emerge from the quality of the reasoning which is embodied in the order granting bail.

The relevant paragraph nos. 11 and 12 of the said judgments are reproduced herein under:-

"11. In the earlier part of this judgment, we have extracted the lone sentence in the order of the High Court which is intended to display some semblance of reasoning for justifying the grant of bail. The sentence which we have extracted earlier contains an omnibus amalgam of (i) "the entire facts and circumstances of the case"; (ii) "submissions of learned Counsel for the parties"; (iii) "the nature of offence"; (iv) "evidence"; and (v) "complicity of accused". This is followed by an observation that the "applicant has made out a case for bail", "without expressing any opinion on the merits of the case". This does not constitute the kind of reasoning which is expected of a judicial order. The High Court cannot be oblivious, in a case such as the present, of the seriousness of the alleged offence, where a woman has met an unnatural end within a year of marriage. The seriousness of the alleged offence has to be evaluated in the backdrop of the allegation that she was being harassed for dowry; and that a telephone call was received from the accused in close-proximity to the time of death, making a demand. There are specific allegations of harassment against the accused on the ground of dowry. An order without reasons is fundamentally contrary to the norms which guide the judicial process. The administration of criminal justice by the High Court cannot be reduced to a mantra containing a recitation of general observations. That there has been a judicious application of mind by the judge who is deciding an application under Section 439 of the CrPC must emerge from the quality of the reasoning which is embodied in the order granting bail. While the reasons may be brief, it is the quality of the reasons which matters the most. That is because the reasons in a judicial order unravel the thought process of a trained

judicial mind. We are constrained to make these observations because the reasons indicated in the judgment of the High Court in this case are becoming increasingly familiar in matters which come to this Court. It is time that such a practice is discontinued and that the reasons in support of orders granting bail comport with a judicial process which brings credibility to the administration of criminal justice.

12. For the above reasons, we are of the view that the order of the High Court granting bail without due application of mind to the relevant facts and circumstances as well to the provisions of the law requires the interference of this Court.”

(iii). The Apex Court in the matter of **Ms Y versus State of Rajasthan and another, 2022 SCC OnLine SC 458** considering the earlier decisions as well as judgment of the Apex Court in the matter of **Mahipal v. Rajesh Kumar @ Polia and another, (2020) 2 SCC 118** has again insisted for giving reasoned order while granting or refusing bail. The relevant paragraph nos. 22 and 23 of the said judgments are reproduced herein under:-

“22. The impugned order passed by the High Court is cryptic, and does not suggest any application of mind. There is a recent trend of passing such orders granting or refusing to grant bail, where the Courts make a general observation that “the facts and the circumstances” have been considered. No specific reasons are indicated which precipitated the passing of the order by the Court.

23. Such a situation continues despite various judgments of this Court wherein this Court has disapproved of such a practice. In the case of Mahipal (supra) this Court observed as follows:

“25. Merely recording “having perused the record” and “on the facts and circumstances of the case” does not subserve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to

*which our judicial system is committed, that factors which have weighed in the mind of the Judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. **Judges are duty-bound to explain the basis on which they have arrived at a conclusion.***

(emphasis supplied)"

(iv). In quite recent, the Apex Court in the case of **Manoj Kumar Khokhar versus State of Rajasthan and another, (2022) 3 SCC 501** considering several previous judgments on the issue has held that thought detail evaluation of facts on merit is not permissible, but the Court granting bail cannot obviate its duty to apply its judicial mind and to record reasons, brief as they may be, for the purpose of deciding whether or not to grant bail.

13- In view of the above discussion, it is crystal clear that before granting bail for the offence under N.D.P.S. Act, twin conditions as provided under Section 37(1)(b)(i) and (ii) have to be satisfied, which is in addition to Section 439 of Cr.P.C. and mandatory in nature.

14- Having examined the bail orders of co-accused in its entirety, I find substance in the submission of learned A.G.A. that co-accused Sonoo Shukla and Praveen Maurya @ Puneet Maurya have been granted bail by the

Coordinate Bench of this Court without taking into account the effect and rigour of Section 37 of the N.D.P.S. Act and ignoring the settled law laid down by the Apex Court regarding application of Section 37 of the N.D.P.S. Act, whereas recovered quantity is undisputedly is commercial quantity. In the conspectus of the facts of the case, Section 50 of the N.D.P.S. Act is also not applicable as the recovery of 'Ganja' was from the dicky of vehicles. I also find that no reason on merit of the case has been recorded for granting bail to them. The Apex Court in the cases which are mentioned in preceding paragraph nos. 11 and 12 has deprecated the practice of granting or refusing bail without indicating reason on merit.

15- In the light of dictum of aforesaid judgments of the Apex Court as well as the reasons mentioned in preceding paragraph nos. 13 and 14, this Court is of the view that such bail orders of the Coordinate Benches, which have been passed without giving reason on merit and without taking note of limitations provided under Section 37 of the N.D.P.S. Act in cases of a recovery of contraband of commercial quantity have no persuasive value and the same is not binding upon this Court. A judge is not bound to grant bail to an accused on the ground of parity even where the order granting bail to an identically placed co-accused contains no cogent reasons or if the same has been passed in flagrant violation of well established principle of law. If any illegality is brought to the knowledge of the Court, the same should not be permitted to perpetuate. It is also well settled that no judge is obliged to pass orders against his conscience merely to maintain consistency. Hence, the benefit of parity of bail

orders dated 14.07.2021 and 14.09.2021 of co-accused Sonoo Shukla and Praveen Maurya @ Puneet Maurya cannot be extended to present applicant. Accordingly, the submission of learned counsel for the applicant for granting bail to the applicant on the ground of parity is hereby rejected. The issue of parity is decided against the applicant.

16- So far as next argument of learned counsel for the applicant that the applicant is in incarceration for a long time since 24.06.2020, therefore, he is liable to be released on bail is concerned, it is argued by learned A.G.A. that in the case of **Union of India v. Rattan Mallik** (supra), the accused was in jail for last three years, but the Apex Court has made an observation that the stated circumstances may be relevant for grant of bail in matters arising out of conviction under Penal Code etc., but are not sufficient to satisfy the mandatory requirements as stipulated in clause (b) of sub-Section (1) of Section 37 of the N.D.P.S. Act. Learned A.G.A. further submits that the argument of learned counsel for the applicant has no leg to stand on the ground that there is good authority to hold that mere long detention in jail does not entitle an accused to be enlarged on bail pending trial. It has been held to this effect in **Vijay Kumar vs. Narendra and others, (2002) 9 SCC 364**, **Ramesh Kumar Singh vs. Jhabbar Singh and others, 2004 SCC (Cri) 1067** and **Girand Singh vs. State of U.P., (2010) 69 ACC 39**. Learned A.G.A. has also referred to the judgment of the Apex Court rendered in the case of **Rajesh Ranjan Yadav @ Pappu Yadav vs. CBI through**

its Director reported in (2007) 1 SCC 70 wherein the Apex Court has held as under:

".....None of the decisions cited can be said to have laid down any absolute and unconditional rule about when bail should be granted by the Court and when it should not. It all depends on the facts and circumstances of each case and it cannot be said there is any absolute rule that the mere fact that the accused has undergone a long period of incarceration by itself would entitle him to be enlarged on bail".

17- Here it would be relevant to mention that before the Division Bench of this Court in the case of **Satya Pal Vs. State of U.P., (1998) 37 ACC 287**, the following question had been referred by learned Single Judge for decision :-

"Whether a fresh argument in a second bail application for an accused should be allowed to be advanced on those very facts that were available to the accused while the first bail application was moved and rejected."

The Division Bench after wholesome treatment has answered as under :-

"Accordingly our answer to the question referred is that fresh arguments in a second bail application for an accused cannot be allowed to be advanced on those very facts that were available to the accused while the first bail application was moved and rejected."

18- In the light of analysis of the case as mentioned above and considering the recovery of huge quantity of Ganja as mentioned above, coupled with the fact that the applicant was apprehended at the spot and was having conscious and constructive possession over the recovered Ganja, I do not find any reasonable ground in terms of Section 37 of the N.D.P.S. Act to hold that the applicant is not guilty of

an offence and he is not likely to commit any offence while on bail.

19- In view of the facts and circumstances of the case and on account of the reasons mentioned above, I do not find any good ground for enlarging the applicant on bail. The second bail application of the applicant is accordingly **rejected**.

20- It is made clear that the finding recorded and observation made herein above is for a limited purpose and is confined to the question of releasing the accused applicant on bail only. The trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.

21- However, trial Court is directed to conclude the trial of the applicant expeditiously in accordance with provisions of Section 309 Cr.P.C without granting unnecessary adjournment to either of the party.

22- Copy of this order be sent to the concerned Court below for compliance.

Order Date :- 30.05.2022
Shubham