IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) Nos. 2602 & 2725 of 2025
Reserved on: 16.01.2026
Date of Decision: 23.01.2026.

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1. Cr.MP(M) No. 2602 of 2025

Harshdeep Thakur ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

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2. Cr.MP(M) No. 2725 of 2025

Anshuman ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Vacation Judge.

Whether approved for reporting?[1] No

For the Petitioner(s) : Mr Arvind Sharma, Advocate in Cr.MP(M) No. 2602 of 2025 and Mr N.S. Chandel, Senior Counsel, assisted by M/s V.K. Gupta and Shwetima Dogra, Advocates in Cr.MP(M) No. 2725 of 2025.

For the Respondents/State: Mr Lokender Kutlehira, Additional Advocate General, for the respondents/State, in both the petitions.

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[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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Rakesh Kainthla, Vacation Judge

The petitioners have filed the present petitions seeking regular bail, in FIR No. 216 of 2024, dated 25.11.2024, registered at Police Station Dharamshala, District Kangra, H.P., for the commission of offences punishable under Sections 20, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). Since both the petitions have arisen out of the same FIR, they are being taken up together for disposal.

2. It has been asserted that, as per the prosecution, the police were on patrolling duty on 25.11.2024 near Tapowan near Vidhan Sabha Chinmay Ashram. They intercepted a vehicle bearing registration No. HP-01D-8971. Another vehicle bearing registration No. HP-73-5202 reached the spot, whose driver tried to reverse it after seeing the police. The police intercepted the vehicle. The driver revealed his name as Anshuman. The person sitting beside the driver revealed his name as Harshdeep Thakur. The police searched the vehicle and recovered 1108 grams of charas. Anshuman disclosed that charas was supplied by Vicky @ Bango. The police arrested Vicky @ Bango. The petitioners were falsely implicated, and there is no material to connect them to the commission of the crime. The prosecution has cited 16 witnesses,

out of whom only three have been examined. The trial is not likely to conclude soon. The police have filed the chargesheet before the Court, and no fruitful purpose would be served by detaining the petitioners in custody. Therefore, it was prayed that the present petitions be allowed and the petitioners be released on bail.

3. The petitions are opposed by filing separate status reports asserting that the police had set up a naka at Tapowan on 24.11.2024. The police were checking the documents of the vehicles bearing registration No. HP-01D-8971 at about 10:20 am. A vehicle bearing registration No. HP-73-5202 arrived on the spot, whose driver tried to reverse the vehicle after seeing the police. The police became suspicious and stopped the vehicle. The driver identified himself as Anshuman, and the person sitting beside the driver identified himself as Harshdeep Thakur. The police searched the vehicle and recovered a bag containing 1108 grams of heroin kept near Harshdeep Thakur's feet. The police arrested the occupants of the vehicle and seized the charas. FIR No. 62 of 2023 was registered against the petitioner, Anshuman. The chargesheet was filed before the Court, and the matter was listed for prosecution evidence on 09.01.2026. The petitioners

would indulge in a similar offence if released on bail. Hence, the status report.

4. I have heard Mr Arvind Sharma, learned Counsel for the petitioner Harshdeep Thakur and Mr N.S. Chandel, learned Senior Counsel assisted by M/s V.K. Gupta and Shwetima Dogra, learned counsel for the petitioner Anshuman, and Mr Lokender Kutlehria, learned Additional Advocate General for the respondents/State.

5. Mr Arvind Sharma, learned counsel for the petitioner Harshdeep Thakur, submitted that the petitioner is innocent and he was falsely implicated. There is no material to connect the petitioner to the commission of the crime. The petitioner was the occupant of the vehicle, which was being driven by Anshuman, and he cannot be connected to the contraband recovered from the vehicle. The police have filed the charge sheet before the Court, and no fruitful purpose would be served by detaining the petitioner in custody. The petitioner would abide by the terms and conditions that the Court may impose. Hence, he prayed that the present petition be allowed and the petitioner be released on bail.

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6. Mr N.S. Chandel, learned Senior Counsel for the petitioner Anshuman, submitted that the bag was found near Harshdeep Thakur's feet, and the petitioner had no concern with it. Section 105 of Bhartiya Nagrik Suraksha Sanhita, 2023 requires that the proceedings be video-graphed and submitted to the Magistrate. These provisions are mandatory. The police failed to comply with these requirements, which vitiated the proceedings. He relied upon the judgments of ***Shadab vs. State of U.P. 2026 SCC Online AII 5, Kalu S.K. vs. State 2022 SCC Online Cal 4556, Shafi Mohammad vs. State of H.P. (2018) 5 SCC 311 and Sanjay Kumar vs. State of Bihar & Ors in Criminal Appeal No. 13646/2025*** in support of his submission.

7. Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that the petitioners are residents of the same District. They were travelling in the same vehicle from which the recovery was effected. Therefore, they would be in possession of the contraband. The quantity of charas recovered by the police was commercial, and the rigours of Section 37 of the NDPS Act apply to the present case. The petitioners have failed to satisfy the twin condition laid down

under Section 37 of the NDPS Act, and they are not entitled to bail. Hence, he prayed that the present petitions be dismissed.

8. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

9. The parameters for granting bail were considered by the Hon'ble Supreme Court in ***Pinki v. State of U.P., (2025) 7 SCC 314: 2025 SCC OnLine SC 781,*** wherein it was observed at page 380:

> (*i*) ***Broad principles for the grant of bail***
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> **56.** In ***Gudikanti Narasimhulu v. High Court of A.P., (1978) 1 SCC 240: 1978 SCC (Cri) 115***, Krishna Iyer, J., while elaborating on the content of Article 21 of the Constitution of India in the context of personal liberty of a person under trial, has laid down the key factors that should be considered while granting bail, which are extracted as under: (SCC p. 244, paras 7-9)
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> > "7. It is thus obvious that the nature of the charge is the vital factor, and the nature of the evidence is also pertinent. The punishment to which the party may be liable, if convicted or a conviction is confirmed, also bears upon the issue.
> >
> > *8. Another relevant factor is whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being.* [***Patrick Devlin, "The Criminal Prosecution in England"*** (Oxford University Press, London 1960) p. 75 — Modern Law Review, Vol. 81, Jan. 1968, p. 54.]
> >
> > *9. Thus, the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who*

is applying for bail to find whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance." (emphasis supplied)

57. In ***Prahlad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280: 2001 SCC (Cri) 674***, this Court highlighted various aspects that the courts should keep in mind while dealing with an application seeking bail. The same may be extracted as follows: (SCC pp. 284-85, para 8)

"*8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles, having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge.*" (emphasis supplied)

58. This Court in ***Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688***, speaking through Banerjee, J., emphasised that a court exercising discretion in matters of bail has to undertake the same judiciously. In highlighting that bail should not be granted as a matter of

course, bereft of cogent reasoning, this Court observed as follows: (SCC p. 602, para 3)

> "*3. Grant of bail, though being a discretionary order, but, however, calls for the exercise of such a discretion in a judicious manner and not as a matter of course. An order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts do always vary from case to case. While the placement of the accused in society, though it may be considered by itself, cannot be a guiding factor in the matter of grant of bail, the same should always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — the more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.*" (emphasis supplied)

59. In ***Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977***, this Court 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, yet the court is required to indicate the prima facie reasons justifying the grant of bail.

60. In Prasanta ***Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496: (2011) 3 SCC (Cri) 765***, this Court observed that where a High Court has granted bail mechanically, the said order would suffer from the vice of non-application of mind, rendering it illegal. This Court held as under with regard to the circumstances under which an order granting bail may be set aside. In doing so, the factors which ought to have guided the Court's decision to grant bail have also been detailed as under: (SCC p. 499, para 9)

> "*9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion*

judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(*i*) *whether there is any prima facie or reasonable ground to believe that the accused had committed the offence*;

(*ii*) *nature and gravity of the accusation*;

(*iii*) *severity of the punishment in the event of conviction*;

(*iv*) *danger of the accused absconding or fleeing, if released on bail*;

(*v*) *character, behaviour, means, position and standing of the accused*;

(*vi*) *likelihood of the offence being repeated*;

(*vii*) *reasonable apprehension of the witnesses being influenced*; *and*

(*viii*) *danger, of course, of justice being thwarted by grant of bail.*" (emphasis supplied)

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62. One of the judgments of this Court on the aspect of application of mind and requirement of judicious exercise of discretion in arriving at an order granting bail to the accused is ***Brijmani Devi v. Pappu Kumar, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170***, wherein a three-Judge Bench of this Court, while setting aside an unreasoned and casual order (***Pappu Kumar v. State of Bihar, 2021 SCC OnLine Pat 2856*** and ***Pappu Singh v. State of Bihar, 2021 SCC OnLine Pat 2857***) of the High Court granting bail to the accused, observed as follows: (***Brijmani Devi v. Pappu Kumar, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170]***), SCC p. 511, para 35)

"*35. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or*

> *vexatious in nature but are supported by adequate material brought on record to enable a court to arrive at a prima facie conclusion. While considering an application for the grant of bail, a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence(s) alleged against an accused.*" (emphasis supplied)

10. The present petition has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

11. The status report mentions that the police intercepted the vehicle bearing registration No. HP-73-5202 and found the petitioners travelling in it. The police recovered 1108 grams of charas from the vehicle during its checking. The petitioners are residents of Chamba and were found travelling together in the vehicle at Dharmshala, a different District. In ***Madan Lal versus State of H.P. (2003) 7 SCC 465: 2003 SCC (Cri) 1664: 2003 SCC OnLineSC 874***, the contraband was recovered from a vehicle, and it was held that all the occupants of the vehicle would be in conscious possession of the contraband. It was observed:

> "19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle,

and as noted by the trial court, they were known to each other, and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.

20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act, which relates to offences for possession of such articles. It is submitted that to make the possession illicit, there must be conscious possession.

21. It is highlighted that unless the possession was coupled with the requisite mental element, i.e., conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

22. The expression "possession" is a polymorphous term that assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in the ***Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja [(1979) 4 SCC 274: 1979 SCC (Cri) 1038: AIR 1980 SC 52]*** to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the context of all statutes.

23. The word "conscious" means awareness of a particular fact. It is a state of mind which is deliberate or intended.

24. As noted in ***Gunwantlal v. State of M.P. [(1972) 2 SCC 194: 1972 SCC (Cri) 678: AIR 1972 SC 1756],*** possession in a given case need not be physical possession but can be constructive, having power and control over the article in the case in question, while the person to whom physical possession is given holds it subject to that power or control.

25. The word "possession" means the legal right to possession (see ***Heath v. Drown [(1972) 2 All ER 561: 1973 AC 498: (1972) 2 WLR 1306 (HL)]***). In an interesting case, it was observed that where a person keeps his firearm in his mother's flat, which is safer than his own home, he must be considered to be in possession of the same. (See ***Sullivan***

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> ***v. Earl of Caithness [(1976) 1 All ER 844: 1976 QB 966: (1976) 2 WLR 361 (QBD)].***)
>
> 26. Once possession is established, the person who claims that it was not a conscious possession has to establish it because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54, where a presumption is also available to be drawn from possession of illicit articles.
>
> 27. In the factual scenario of the present case, not only possession but conscious possession has been established. It has not been shown by the accused-appellants that the possession was not conscious in the logical background of Sections 35 and 54 of the Act."

12. Therefore, *prima facie*, the petitioners were in possession of the charas, and the burden would shift upon them to show that they were not in conscious possession as per Sections 35 and 54 of the NDPS Act.

13. In ***Sanjay Kumar*** (supra), a submission was made before the Hon'ble Supreme Court that the driver had picked up the passengers on the way, and he cannot be fastened with liability. In the present case, there is no material on record to show that the vehicle being driven by the petitioner, Anshuman, was a commercial vehicle or that he had picked up another co-accused on the way. Therefore, no advantage can be derived from the cited judgment.

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14. It was submitted that the police had failed to comply with the requirements of Section 105 of BNSS. No such plea was taken in the bail petition, and it is difficult to adjudicate the same without allowing the police to reply to it. Further, the police specifically mentioned the status report that the photography and the videography of the incident were conducted by HC Vijay Kumar. Whether the video recording was sent to the nearest Magistrate or not was mentioned in the absence of any plea regarding the violation of Section 105 of BNSS. Therefore, the judgments in ***Shadab*** (supra), Kalu ***S.K.*** (supra) and ***Shafi Mohammad*** (supra) will not help the petitioner.

15. The status report mentions that 1108 grams of charas were recovered by the police, which is a commercial quantity. Hence, the rigours of Section 37 of the NDPS Act apply to the present case.

16. Section 37 of the NDPS Act provides that in an offence involving a commercial quantity, the Court should be satisfied that the accused is not guilty of the commission of an offence and is not likely to commit any offence while on bail. It reads as follows:

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> "37. Offences to be cognisable 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 cognisable.
>
> (b) No person accused of an offence punishable for offences under section 19, section 24, or section 27A and also for offences involving commercial quantity, shall be released on bail or 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 an 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."

17. This Section was interpreted by the Hon'ble Supreme Court in ***Union of India Versus Niyazuddin& Another (2018) 13 SCC 738,*** and it was held that in the absence of the satisfaction that the accused is not guilty of an offence and he is not likely to commit an offence while on bail, he cannot be released on bail. It was observed:

"7. Section 37 of the NDPS Act contains special provisions with regard to the grant of bail in respect of certain offences enumerated under the said Section. They are:

(1) In the case of a person accused of an offence punishable under Section 19,

(2) Under Section 24,

(3) Under Section 27A and

(4) offences involving a commercial quantity.

8. The accusation in the present case is with regard to the fourth factor, namely, commercial quantity. Be that as it may, once the Public Prosecutor opposes the application for bail to a person accused of the enumerated offences under Section 37 of the NDPS Act, in case the court proposes to grant bail to such a person, two conditions are to be mandatorily satisfied in addition to the normal requirements under the provisions of the Cr.P.C. or any other enactment.

(1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such an offence;

(2) that person is not likely to commit any offence while on bail."

18. This position was reiterated in ***State of Kerala Versus Rajesh, AIR 2020 SC 721,*** wherein it was held:

"19. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under the NDPS Act. In ***Union of India vs Ram Samujh and Ors., (1999) 9 SCC 429***, 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 the 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. The reason may be the 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 vs Chief Secy. 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 proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and a deadly impact on society as a whole, Parliament, in its wisdom, has made effective provisions by introducing Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. 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 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."

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 the 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 the commission of an offence under the Act unless the two 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 an offence. If either of these two conditions is not satisfied, the ban on 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 the 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 at hand, the High Court seems to have

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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."

19. A similar view was taken in ***Union of India v. Mohd. Nawaz Khan, (2021) 10 SCC 100: (2021) 3 SCC (Cri) 721: 2021 SCC OnLine SC 1237,*** wherein it was observed at page 110:

> "**21.** Under Section 37(1)(*b*)(*ii*), the limitations on the grant of bail for offences punishable under Sections 19, 24 or 27-A and also for offences involving a commercial quantity are:
>
> (*i*) The Prosecutor must be given an opportunity to oppose the application for bail; and
>
> (ii) There must exist "reasonable grounds to believe" that (*a*) the person is not guilty of such an offence, and (*b*) he is not likely to commit any offence while on bail.
>
> **22.** The standard prescribed for the grant of bail is "reasonable ground to believe" that the person is *not* guilty of the offence. Interpreting the standard of "reasonable grounds to believe", a two-judge Bench of this Court in ***Shiv Shanker Kesari*** [***Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798: (2007) 3 SCC (Cri) 505***], held that: (SCC pp. 801-02, paras 7-8 & 10-11)
>
> > "*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 the existence of such facts and circumstances as are sufficient in themselves to justify the recording of satisfaction that the accused is not guilty of the offence charged.*

8. 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".

'*7*. ... *Stroud's Judicial Dictionary*, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasies of the individual and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy.'

[See ***MCD v. Jagan Nath Ashok Kumar [MCD v. Jagan Nath Ashok Kumar, (1987) 4 SCC 497], SCC p. 504, para 7 and Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd. [Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd., (1989) 1 SCC 532***]]

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10. The word "reasonable" signifies "in accordance with reason". In the ultimate analysis, it is a question of fact whether a particular act is reasonable or not, which depends on the circumstances in a given situation. (See ***Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd. [Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd. (2003) 6 SCC 315***]

11. The court, while considering the application for bail with *reference* to Section 37 of the Act, is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the

> matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty."(emphasis supplied)
>
> **23.** 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."

20. It was held in ***Union of India v. Ajay Kumar Singh, 2023 SCC OnLine SC 346,*** that bail cannot be granted without complying with the requirement of Section 37 of the NDPS Act. It was observed:

> **4.** This apart, it is noticed that the High Court, in passing the impugned order of bail, had lost sight of Section 37 of the NDPS Act, which, *inter alia*, provides that no person accused of an offence involving commercial quantity shall be released on bail unless the twin conditions laid down therein are satisfied, namely, (i) the public prosecutor has been given an opportunity to oppose the bail application; and (ii) the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any such offence while on bail.
>
> **15.** For the sake of convenience Section 37(1) is reproduced hereinbelow:—
>
> "37. Offences to be cognisable and non-bailable.-
>
> (1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognisable.

(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."

16. In view of the above provisions, it is implicit that no person accused of an offence involving trade in a commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.

21. It was held in ***State of Meghalaya v. Lalrintluanga Sailo, 2024 SCC OnLine SC 1751,*** that the grant of bail without considering Section 37 of the NDPS Act is impermissible. It was observed:

"**5.** There cannot be any doubt with respect to the position that, in cases involving the commercial quantity of narcotic drugs or psychotropic substances, while considering the application of bail, the Court is bound to ensure the satisfaction of conditions under Section 37(1)(b)(ii) of the NDPS Act. The said provision reads thus:—

> *"37(1)(b)(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."*

6. While considering the cases under the NDPS Act, one cannot be oblivious of the objects and reasons for bringing the said enactment after repealing the then-existing laws relating to Narcotic drugs. The object and reasons given in the acts themselves read thus:—

> *"An act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances and for matters connected therewith."*

In the decision in ***Collector of Customs, New Delhi v. Ahmadalieva Nodira (2004) 3 SCC 549***, the three-judge bench of this Court considered the provisions under Section 37(1)(b) as also 37(1)(b)(ii) of the NDPS Act, with regard to the expression "reasonable grounds" used therein. This Court held that it means something more than the *prima facie* grounds and that it contemplates substantial and probable causes for believing that the accused is not guilty of the alleged offence. Furthermore, it was held that the reasonable belief contemplated in the provision would require the existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

As relates to the twin conditions under Section 37(1)(b)(ii) of the NDPS Act, viz., that, firstly, there are reasonable grounds for believing that the accused is not guilty of such offence and, secondly, he is not likely to commit any

> offence while on bail it was held therein that they are cumulative and not alternative. Satisfaction of the existence of those twin conditions had to be based on the 'reasonable grounds', as referred to above.
>
> **7.** In the decision in ***State of Kerala v. Rajesh (2020) 12 SCC 122***, after reiterating the broad parameters laid down by this Court to be followed while considering an application for bail moved by an accused involved in offences under the NDPS Act, in paragraph 18 thereof this Court held that the scheme of Section 37 of the NDPS Act would reveal that the exercise of power to grant bail in such cases is not only subject to the limitations contained under Section 439 of the Code of Criminal Procedure, but also subject to the limitation placed by Section 37(1)(b)(ii), NDPS Act. Further, it was held that in case one of the two conditions thereunder is not satisfied, the ban on granting bail would operate.
>
> **8.** Thus, the provisions under Section 37(1)(b)(ii) of the NDPS Act and the decisions referred supra reveal the consistent view of this Court that while considering the application for bail made by an accused involved in an offence under the NDPS Act, a liberal approach ignoring the mandate under Section 37 of the NDPS Act is impermissible. Recording a finding mandated under Section 37 of the NDPS Act, which is a *sine qua non* for granting bail to an accused under the NDPS Act, cannot be avoided while passing orders on such applications."

22. In the present case, the petitioners were *prima facie* found in possession of a commercial quantity of charas. There is nothing on record to show that they would not indulge in the commission of an offence if released on bail. Hence, they have failed to satisfy the twin conditions laid down under Section 37 of the NDPS Act and are not entitled to bail.

23. It was submitted that the grounds of arrest were not communicated to the petitioners, and their arrest is illegal. This submission is not acceptable. Hon'ble Supreme Court held in ***Mihir Rajesh Shah v. State of Maharashtra, 2025 SCC OnLine SC 2356*** that the communication of the grounds of the arrests in all the offences would apply prospectively from the date of the pronouncement of the judgment. It was observed:

> "**58.** We are cognizant that there existed no consistent or binding requirement mandating the written communication of the grounds of arrest for all the offences. Holding as above, in our view, would ensure implementation of the constitutional rights provided to an arrestee as engrafted under Article22of theConstitution of India in an effective manner. Such clarity on obligation would avoid uncertainty in the administration of criminal justice. *The ends of fairness and legal discipline, therefore, demand that this procedure, as affirmed above, shall govern arrests henceforth.*" (Emphasis supplied)

24. This judgment was followed by a co-ordinate bench of this Court in ***Kabir Khan vs State 2025:HHC:39246,*** wherein it was observed:

> "7. In light of the fact that in the said judgment, Hon'ble Supreme Court has been pleased to clearly hold that as previously there existed no consistent or binding requirements mandating written communication of the grounds of arrest for all the offences, the ends of fairness and legal discipline, therefore, demand that this procedure as affirmed shall govern arrests henceforth, this means

> that the Hon'ble Supreme Court has been pleased to make directions issued therein prospective."

25. In the present case, the petitioners were arrested before the judgment of the Hon'ble Supreme Court in ***Mihir Rajesh*** (supra), and the requirement of communicating the grounds of arrests will not apply to their case.

26. It was submitted that the bail is a Rule and Jail is an exception, and the petitioners are entitled to bail on this consideration. This submission will not help the petitioners, as they are *prima facie* involved in the commission of an offence punishable under Section 20 of the NDPS Act involving the commercial quantity. It was laid down by the Hon'ble Supreme Court in ***Narcotics Control Bureau v. Kashif, (2024) 11 SCC 372: 2024 SCC OnLine SC 3848*** that in cases under the NDPS Act involving the commercial quantity, the negation of bail is the rule and its grant an exception. It was observed at page 381:

> ***"Compliance with the mandate under Section 37***
>
> **9.** There has been a consistent and persistent view of this Court that in the NDPS cases, where the offence is punishable with a minimum sentence of ten years, the accused shall generally not be released on bail. *Negation of bail is the rule, and its grant is an exception*. While considering the application for bail, the court has to bear in mind the provisions of Section 37 of the NDPS Act, which are mandatory in nature. The recording of findings as mandated in Section

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> 37 is a sine qua non for granting bail to the accused involved in the offences under the said Act."

27. No other point was urged.

28. In view of the above, the present petitions fail, and it is dismissed.

29. The observation made herein before shall remain confined to the disposal of the petitions and will have no bearing whatsoever on the merits of the case.

(Rakesh Kainthla)
Vacation Judge

23rd January, 2026.
(Nikita)