

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.MP (M) No. 456 of 2025

Reserved on : 01.04.2025

Decided on : 10.04.2025

Deepak Sharma

...Applicant

Versus

State of Himachal Pradesh

...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?¹ Yes.

For the applicant : Mr. Ashok Sharma, Senior Advocate
with Mr. Vinod Chauhan, Advocate.

For the respondent : Mr. Tejasvi Sharma & Mr. Varun
Chandel, Additional Advocates
General, with Mr. Rohit Sharma,
Deputy Advocate General.

Virender Singh, Judge

Applicant-Deepak Sharma, has filed the present application, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS'), with a prayer to release him on bail, during the pendency of trial, in case FIR No.50 of 2024, dated 19.09.2024, registered, under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985

¹ *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

(hereinafter referred to as the 'NDPS Act'), with Police Station Kotkhai, District Shimla, H.P.

2. According to the applicant, he is innocent person and has falsely been implicated, in the above noted case.

3. As per the applicant, the contraband has not been recovered from his possession and he has solely been booked on the basis of the bank transaction with Shahi Mahatma, who has been stated to be the distributor of the drugs.

4. It is the further case of the applicant that he is working in a private firm and is used to consume the Chitta for his personal gain and he has nothing to do with the allegations, as alleged, against him.

5. According to the applicant, in case, his CDR is seen, he has no call history with the main accused or any kind of financial transaction. According to him, he is not having any criminal history.

6. The applicant has also tried his luck by moving similar application, before learned Special Judge, under ND&PS Act (C.B.I. Court), Shimla, however, his application

was dismissed, vide order dated 24th January, 2025, on the ground that the applicant has committed heinous offence and quantity involved, in the present case, is commercial quantity. The applicant has also filed similar bail applications, on two occasions, which have been dismissed as withdrawn.

7. The applicant has given certain undertakings, for which, he is ready to abide by, in case, he is ordered to be released on bail.

8. On the basis of the above facts, Shri Ashok Sharma, Senior Advocate assisted by Mr. Vinod Chauhan, Advocate, has prayed that the applicant is also entitled to the relief of bail, as, his co-accused, in this case; namely, Neeraj Zilta and Kanwar Singh, have already been released on bail, by the Court of learned Special Judge-I, Shimla, on 29.03.2025.

9. In addition to this, learned Senior counsel has also relied upon the decision of the Hon'ble Supreme Court in ***Special Leave to Appeal (Crl.) Nos.16642 of 2023***, titled as ***Shince Babu versus The State of Kerala &***

Another and has prayed that the application may kindly be allowed.

10. When put to notice, the police has filed the status report, disclosing therein, that on 18.09.2024, SI Mehar Chand, I.O. ANTF(FU) CID, along with other police official, left the office in official vehicle, bearing registration No.HP03C-5663, for patrolling duty and duty to detect the crime relating to narcotics, towards Dhalli, Theog, Kotkhai, Jubbal, and Kharapathar.

10.1. When, the I.O., along with other police official, was present at a place known as Kharapathar, then, he received a secret information regarding the fact that Muddasir Ahmad Mochi, son of Shri Mohammad Makbool, village Bhatpura, Post Office Sunitpura, Tehsil Karolpura, District Kupwara, Jammu and Kashmir, is travelling in a taxi No.HP01-A-5028, from Shimla to Rohru and he was having large quantity of Chitta/Heroin with him.

10.2. As per the information, he was going to Rohru, in order to sell the same to someone and in case, the said vehicle is intercepted and the bag of Muddasir Ahmad

Mochi is searched, then, large quantity of Chitta could be recovered.

10.3. The said information was found to be authentic and reliable. As per the I.O., due to paucity of time, in case, he would have obtained search warrants, in that situation, the possibility of removal of the contraband was there. As such, the I.O. complied with the provisions of Section 42(2) of the NDPS Act and submitted the report to his superior.

10.4. Thereafter, the I.O. put picketing between Kotkhai- Kharapathar and contacted Up Pradhan, Gram Panchayat, Darkoti Ramesh Chauhan on telephone. After sometime, Ramesh Chauhan and Ravinder Chauhan, reached at the spot. They were apprised about the secret information and associated in the raiding party, as independent witnesses.

10.5. It has also been mentioned in the status report that at about 8.55 p.m., as per the information, taxi No.HP01A-5028, reached on the spot from Kotkhai side. With the help of police officials, the said vehicle was got stopped on the side of the road and the driver and the

person, sitting on the rear seat, were apprised about the secret information.

10.6. On inquiry, the driver disclosed his name as Deepan Lal and the person, sitting on the rear seat, disclosed his name as Muddasir Ahmad Mochi. Thereafter, the bag, which Muddasir Ahmad Mochi was carrying, was searched, along with vehicle. From the bag, as well as, from the vehicle, nothing incriminating was found. This fact, was documented.

10.7. Thereafter, the option, as per Section 50 was given to the driver, as well as, Muddasir Ahmad Mochi, upon which, both of them had opted to give their search to the gazetted police officer. Thereafter, at about 12.20 a.m., Dy. S.P. Sidharth Sharma, SDPO, Theog, was requested to come to the spot, upon which, he had reached at the spot at 1.25 a.m. Meanwhile, Constable Vikrant reached at the spot along with the receipt of the information, under Section 42(2) of the NDPS Act.

10.8. Thereafter, SDPO had inquired from Deepan Lal and Muddasir Ahmad Mochi and oral direction was given to SI Mehar Chand to search Muddasir Ahmad Mochi.

During search, from the underwear of accused Muddasir Ahmad Mochi, a black coloured plastic envelope was found, which, on opening, was found to be containing 468.380 grams of Chitta/Heroin.

10.9. Apart from this, currency notes of Rs.2530/- and Aadhar Card were also found, which were taken into possession. In the personal search of Deepan Lal, nothing incriminating was found. The entire process was photographed and videographed on the spot. As such Rukka was sent to the Police Station, for registration of the FIR, upon which, FIR, in question was registered.

10.10. Thereafter, SI Mehar Chand, submitted the photocopy of the information, under Section 42(2) of the NDPS Act, memo regarding personal search of the raiding party and official vehicle, along with carbon copy, search memo of Taxi No.HP01A-5028 and personal bag, along with carbon copy, consent memo, under Section 50 of the NDPS Act, of accused Muddasir Ahmad Mochi and Dipan Lal, along with carbon copy, memo regarding recovery of 468.380 grams of Chitta/Heroin, memo regarding personal search of driver Deepan Lal, along with carbon copy,

Mobile phone marka 'Redmi' of accused Muddasir Ahmad Mochi, by virtue of which, taxi No.HP01A-5028 Alto 800, along with documents, was taken into possession, along with carbon copy, photocopy of Rukka, parcel of case property, containing 468.380 grams of Chitta/Heroin, along with specimen seal having impression 'M', one cloth parcel containing currency notes of Rs.2530/- along with specimen seal, zimini No.1, along with carbon copy, NCB-I form in triplicate, along with carbon copy, Form No.1 duplicate, along with carbon copy, and other documents, before the Incharge, Police Station, Kotkhai.

10.11. The statements of the witnesses were recorded, under Section 180 of the BNSS. Thereafter, accused Muddasir Ahmad Mochi was interrogated and was arrested on 19.09.2024, at about 2.30 a.m. Thereafter, the case property was deposited with MHC Police Station, Kotkhai and the accused was medico-legally examined.

10.12. During investigation, the accused disclosed that he is in the business of selling Chitta/Heroin, as they are members of interstate gang, along with Shahi Mahatma. He has further deposed that he, in connivance with

Pradeep Ranta @ Pankaj Ranta, used to bring Chitta from Delhi and give the same to Shahi Mahatma, whereas, Shahi Mahatma, through peddlers, used to sell the same in the Rohru area. Sometimes, peddlers used to take Chitta from the house of Shahi Mahatma at Pinjore. According to him, Shahi Mahatma is doing the business from the said house/room.

10.13. Muddasir Ahmad Mochi has also disclosed that accused Shahi Mahatma, through mobile phone location used to sell Chitta to the intended purchaser. Shahi Mahatma has purchased Sim card, in the name of Muddasir Ahmad Mochi, and after using his Aadhar Card and Pan Card, got opened 2-3 Bank accounts in Kashmir and used to get money, in those Bank accounts. Accused Muddasir Ahmad Mochi sometimes through cheques and sometimes through cash used to withdraw the same, and pay the said amount to Pradeep Ranta.

10.14. Accused Muddasir Ahmad Mochi, had also facilitated the contact of Shahi Mahatma with the smugglers in Kashmir and they were now planning to bring Chitta from Kashmir. On 19.09.2024, SDPO, constituted a

SIT by deputing SHO Police Station, Theog as incharge of the SIT.

10.15. It is the further case of the police, as mentioned, in the status report, that on 20.09.2024, Muddasir Ahmad Mochi, was produced before the Court of JMFC Chopal, Camp at Theog, from where, he was remanded to police custody. Inventory of the case property was got prepared by producing the same before the Court of learned Judicial Magistrate First Class, Chopal and samples were sent to SFSL Junga, whereas, the remaining case property was deposited with District Malkhana, Kaithu. On 20.09.2024, SIT incharge, Inspector Jaswant Singh associated Shahi Mahatma, in the investigation and he was arrested on 11.50 p.m. on that day.

10.16. During investigation, Shahi Mahatma has disclosed that from the last 8 months, he is in the business of selling Chitta. Harinder Manta and Pradeep Kumar @ Pankaj Ranta are also involved in the business of distribution of Chitta and Muddasir Ahmad Mochi, is known to him for the last 5 years and all are in this business. Accused Muddasir Ahmad Mochi and Pradeep

Kumar @ Pankaj Ranta, used to purchase Chitta sometimes from Delhi and sometimes from Karnal, and hand over the same to him in his room at Pinjore, from where, Muddasir Ahmad Mochi, used to supply the Chitta at Rohru. Thereafter, he used to place the Chitta at different locations and from those locations, he used to further pass on to Rakesh @ Tinu, resident of Seema (Badali), Sarthak Sood resident of Rohru, Ravinder (Motta), Naresh resident of Bijori, Neeraj resident of Melthi and Ashu (Aate) resident of Rohru.

10.17. The above persons, according to Shahi Mahatma, after receiving the Chitta from different locations, used to separate the same in small packets and sell the same further to other persons. The persons, who used to purchase Chitta, used to contact him and transfer the amount in the bank account of Muddasir, which he had got opened in Srinagar (J&K). According to him, earlier he had used his Dhanlaxmi bank account opened with Punjab National Bank and now he is using the bank accounts opened in the name of Muddasir Ahmad Mochi.

10.18. Shahi Mahatma, with the help of Harinder Manta and Pradeep Kumar @ Pankaj Ranta, has made a syndicate and they work, as drug peddlers and supply the same to different locations. In lieu of that, they used to give free Chitta to all the peddlers, for their consumption. Shahi Mahatma had also talked to the drugs smugglers of Kashmir; namely Mushtaq and Javed.

10.19. On 21.09.2024, accused Shahi Mahatma, was produced before the Court, from where, he was remanded to police custody.

10.20. It has been mentioned, in the status report, that on 20.09.2024, mobile phone of Muddasir Ahmad Mochi, was sent to SFSL Junga. On 23.09.2024, mobile phones of Shahi Mahatma and his wife were also taken into possession. Thereafter, those were sent to SFSL Junga. Result regarding mobile phone of Muddasir Ahmad Mochi, has been received. Service provider has been requested to provide the CDRs of mobile phones of Muddasir Ahmad Mochi, and Shahi Mahatma.

10.21. Thereafter, bank statements of accused Muddasir Ahmad Mochi and Shahi Mahatma were

obtained. Perusal of the same shows that there are transactions of crores of rupees in the bank accounts of above two accused persons. Shahi Mahatma is using his vehicle, bearing registration HP10C-1425, and after receiving the information regarding arrest of accused Muddasir Ahmad Mochi, on 19.09.2024, accused Shahi Mahatma, along with his companion Pankaj Ranta, had tried to flee away, in the said vehicle. Pankaj Ranta succeeded in fleeing away, whereas, accused Shahi Mahatma was arrested by RPF.

10.22. On 16.10.2024, accused Harinder Manta, was arrested, who, on inquiry, disclosed that he is in the habit of consuming Chitta from the year 2020 and earlier, he used to get Chitta from his friends, but, thereafter, he is purchasing the same from Delhi. In the year 2022, Solan police had arrested him for allegedly possessing 150 grams Chitta. Again, in the year 2023, he has been arrested by the Police, along with Chitta. Thereafter, in the month of January/February, he has contacted Shahi Mahatma for purchasing Chitta, upon which, Shahi Mahatma, used to provide Chitta in Rohru.

10.23. Accused Harinder Manta, used to transfer the amount in the Bank account of Shahi Mahatma, maintained in ICICI Bank. Thereafter, Shahi Mahatma, used to forward him the location, from where, he used to lift Chitta. Thereafter, accused Shahi Mahatma had allured him to join the business of Chitta. The said offer was accepted and he had also joined the said business, thereafter.

10.24. Accused Harinder Manta used to purchase Chitta from Delhi from Nigerian national and on the directions of Shahi Mahtma, he used to keep Chitta at a particular location and in lieu of that, amount was paid to him in cash. In the month of March, 2024, amount was transferred online, but, mostly, he used to get amount in cash. In the month of March, 2024, he had purchased 100 grams Chitta on three occasions and sold the same in the area through Shahi Mahatma. On the basis of above facts, accused Harinder Manta was arrested.

10.25. Thereafter, the police had obtained the statement of bank account No.048701503074 maintained by Harinder Manta with ICICI Bank Rohru. Perusal of the

same shows that accused Harinder Manta, from his bank account had transferred a sum of Rs.21,500/- to the bank account of Shahi Mahatma, maintained with Mangal Das & Sons. During investigation, it has been found that accused Arvind Chauhan, has transferred a sum of Rs.1,65,000/-, in the bank account of Harinder Manta, from 18.07.2023 to 11.09.2024.

10.26. Similarly, accused Naresh had transferred a sum of Rs.14,000/- from 05.03.2024 to 12.09.2024, in the bank account of Harinder Manta. Apart from this, there is withdrawal of Rs.36,69,010/- and deposit of Rs.36,67,942/- in the bank account of Harinder Manta.

10.27. On analysis of the statement of account of accused Shahi Mahatma and Muddasir Ahmad Mochi, it was found that there were transactions of lacs of rupees in the bank account of Shahi Mahtama, maintained with ASP International Bank.

10.28. Thereafter, bank account statements of Shahi Mahatma, maintained with ASP International Bank were obtained and it was found that Deepak Sharma (applicant)

has made transactions from his bank account, which is linked with mobile No.93171-12131.

10.29. As per the said statement, on 22.05.2024, Deepak Sharma (applicant), has transferred a sum of Rs.1000/-, on 22.05.2024, a sum of Rs.1000/-, on 22.05.2024, a sum of Rs.700/-, on 23.05.2024, a sum of Rs.1000/-, on 23.05.2024, a sum of Rs.1000/-, on 23.05.2024, a sum of Rs.1000/-, on 31.05.2024, a sum of Rs.1000/-, on 31.05.2024, a sum of Rs.1000/-, on 01.06.2024, a sum of Rs.1000/-, on 01.06.2024, a sum of Rs.1000/-, on 02.06.2024, a sum of Rs.1000/-, on 02.06.2024, a sum of Rs.800/-, on 02.06.2024, a sum of Rs.1000/-, on 04.06.2024, a sum of Rs.1000/-, on 04.06.2024, a sum of Rs.500/-. Thus, a total sum of Rs.15,000/- was credited in his account.

10.30. Apart from this, in the bank account of Shahi Mahatma, maintained with Mangal Dass & Sons, there are transactions of Rs.5600/- on 11.09.2024 and in the Bank account No.7541002100001139, maintained with ASP International Bank, on 21.02.2024, he has transferred a sum of Rs.600/- on 21.02.2024, a sum of Rs.400/-, on

14.03.2024, a sum of Rs.2000/-, on 17.04.2024, a sum of Rs.3300/-, on 19.04.2024, a sum of Rs.3300/-, on 21.04.2024, a sum of Rs.3200/-, on 21.04.2024, a sum of Rs.2900/-, on 21.04.2024, a sum of Rs.300/-, on 22.04.2024, a sum of Rs.1000/-, on 22.04.2024, a sum of Rs.1000/-, on 22.04.2024, a sum of Rs.900/-, on 22.04.2024, a sum of Rs.80/-, on 02.05.2024, a sum of Rs.1000/-, on 02.05.2024, a sum of Rs.1000/-, on 02.05.2024, a sum of Rs.1000/-, on 02.05.2024, a sum of Rs.1000/-, on 05.05.2024, a sum of Rs.1000/-, on 05.05.2024, a sum of Rs.1000/-, on 05.05.2024, a sum of Rs.200/-, on 13.05.2024, a sum of Rs.1000/-, on 13.05.2024, a sum of Rs.1000/-, on 13.05.2024, a sum of Rs.800/-, on 13.05.2024, a sum of Rs.200/-, on 17.05.2024, a sum of Rs.1000/-, on 17.05.2024, a sum of Rs.1000/-, on 17.05.2024, a sum of Rs.1000/-, on 20.05.2024, a sum of Rs.1500/-. Thus, he has made total transactions worth Rs.32,680/-.

10.31. It is the further case of the Police that accused Deepak Sharma (applicant), had made a transaction of Rs.5870/- in the bank account of Muddasir Ahmad Mochi,

maintained with Axis Bank, as such, there is total transaction of Rs.59,150/-.

10.32. On 14.01.2025, accused Deepak Sharma (applicant) was associated, who has disclosed that he is consuming Chitta from the year 2024. Initially, when, he has started consuming Chitta, he used to purchase the same from local boys; namely Naresh Kumar, Ankush. Thereafter, with his friends and other boys of the area, he had started purchasing Chitta, for further sale about one year ago. Naresh, resident of Rohru, has disclosed to him about the involvement of Shahi Mahatma. Thereafter, he has started purchasing Chitta, from Shahi Mahatma.

10.33. It has also been mentioned, in the status report, that in the Bank account of applicant Deepak Sharma, there were transactions, from the account of accused Purskrit Verma, of a sum of Rs.900/- on 13.10.2023, a sum of Rs.900/- on 13.10.2023, a sum of Rs.900/- on 15.10.2023, a sum of Rs.900/- on 16.10.2023, a sum of Rs.900/- on 31.10.2023, a sum of Rs.900/- on 01.11.2023, a sum of Rs.1000/- on 09.12.2023, a sum of Rs.400/- on 11.12.2023, a sum of Rs.1100/- on

14.12.2023, a sum of Rs.1000/- on 19.12.2023, a sum of Rs.700/- on 20.12.2023, a sum of Rs.400/- on 13.10.2023, a sum of Rs.900/- on 04.01.2024, a sum of Rs.900/- on 11.01.2024, a sum of Rs.370/- on 13.01.2024, a sum of Rs.200/- on 13.01.2024, a sum of Rs.1200/- on 08.02.2024, a sum of Rs.800/- on 16.02.2024, a sum of Rs.300/- on 24.02.2024, a sum of Rs.100/- on 24.02.2024, a sum of Rs.400/- on 26.02.2024, a sum of Rs.200/- on 29.03.2024, a sum of Rs.1000/- on 10.05.2024, a sum of Rs.1000/- on 10.08.2024, a sum of Rs.1800/- on 12.08.2024, a sum of Rs.700/- on 14.08.2024, a sum of Rs.900/- on 24.08.2024.

10.34. It has further been mentioned in the status report that accused Jatin Thakur, has transferred a sum of Rs.678/- on 26.08.2024, a sum of Rs.600/- on 24.09.2024, a sum of Rs.2580/- on 25.09.2024. Thus, he has transferred a total sum of Rs.3858/-.

10.35. Accused Mohit Thakur, has transferred a sum of Rs.300/- on 07.08.2024, a sum of Rs.1500/- on 09.08.2024, a sum of Rs.300/- on 09.08.2024, a sum of

Rs.1000/- on 11.08.2024, a sum of Rs.500/- on 11.08.2024. Thus, he has transferred a total sum of Rs.3600/-.

10.36. Similarly, accused Naresh has transferred a sum of Rs.400/- on 05.02.2024, a sum of Rs.500/- on 17.02.2024, a sum of Rs.1300/- on 19.03.2024. Thus, he has transferred a total sum of Rs.2200/-.

10.37. Similarly, accused Brij Mohan has transferred a sum of Rs.1800/- on 19.02.2024, a sum of Rs.200/- on 19.02.2024, a sum of Rs.600/- on 01.03.2024, a sum of Rs.200/- on 01.03.2024. Thus, he has transferred a sum of Rs.2800/-.

10.38. Thus, according to the Police, Deepak Sharma (applicant), has made transactions worth Rs.33,228/- from his account with the other accused persons. As such, there is specific allegation that Deepak Sharma (applicant), has made transactions of a total sum of Rs.92,378/- with the other accused persons.

10.39. Lastly, it has been apprehended that in case, the applicant is ordered to be released on bail, he may

tinker with the evidence and also help the other accused to flee away.

11. On the basis of the above facts, a prayer has been made to dismiss the application.

12. As stated above, applicant Deepak Sharma has moved application for bail, in the Court of learned Special Judge, under NDPS Act, however, his application has been dismissed on 24.1.2025.

13. In the cause title of the bail application, the offences involved, in the present case, have been mentioned, as, Sections 21 and 29 of the NDPS Act, whereas, in this case, the police registered FIR, under Section 21, 27-A, 29 of the NDPS Act and Section 111 of the BNS. The provisions of Section 21, 27-A and 29 of the NDPS Act, are reproduced, as under:-

21. Punishment for contravention in relation to manufactured drugs and preparations.—

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable.-

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

27A. Punishment for financing illicit traffic and harbouring offenders.—

Whoever indulges in financing, directly or indirectly, any of the activities specified in sub-clauses (i) to (v) of clause (viii b) of section 2 or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

29. Punishment for abetment and criminal conspiracy:-

(1) Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which--

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.

14. From the bare reading of Section 29 of the NDPS Act, it can be said that in this section also, similar punishment has been provided, as has been provided for the main offence. The contraband, weighing 468.368 grams, has been recovered from accused Muddasir Ahmad Mochi, with whom, the applicant had financial transactions. As such, it can be said that rigors of Section

37 of the NDPS Act are fully applicable to the case of the applicant.

15. The applicant, in the present case, has been arrested, under the provisions of NDPS Act. The legislature, in its wisdom, has enacted this statute to curb the menace of drug abuse with stringent punishment. Certain conditions are there, in the NDPS Act, in the shape of Section 37 of NDPS Act, which are, in addition to the conditions, as contained in Section 483 of the BNSS.

16. Once, it has been held that the contraband allegedly recovered from the possession of the accused (applicant) falls in the category of 'commercial quantity', as per the Notification issued by the Central Government, then, the rigors of Section 37 of the NDPS Act come into play.

17. The contraband allegedly recovered in this case, admittedly, falls within the definition of 'commercial quantity'. As such, the rigors of Section 37 of NDPS Act are applicable, in this case.

18. In a recent decision, in case, titled as ***Narcotics Control Bureau versus Mohit Aggarwal***,

reported in **AIR 2022 SC 3444**, the Hon'ble Supreme Court has reiterated the earlier view regarding compliance of the conditions, as enumerated in Section 37 of the NDPS Act. The relevant paras 10 to 15 of the judgment are reproduced, as under:

"10. The provisions of Section 37 of the NDPS Act read 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. It is evident from a plain reading of the non-obstante clause inserted in sub-section (1) and the conditions imposed in subsection (2) of Section 37 that there are certain restrictions placed on the power of the Court when granting bail to a person accused of having committed an offence under the NDPS Act. Not only are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be factored in. The conditions imposed in sub-section (1) of Section 37 is that (i) the Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offence while on bail.

12. The expression “reasonable grounds” has come up for discussion in several rulings of this Court. In “Collector of Customs, New Delhi v. Ahmadalieva Nodira”, (2004) 3 SCC 549, a decision rendered by a Three Judges Bench of this Court, it has been held thus:

“7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. **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.” [emphasis added]

13. The expression “reasonable ground” came up for discussion in “State of Kerala and others Vs. Rajesh and others” (2020) 12 SCC 122 and this Court has observed as below:

“20. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. **The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.** In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.” [emphasis added]

14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional

consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.”

19. The Hon’ble Supreme Court in a case, ***Criminal Appeal No. 5544 of 2024***, titled as ***‘Narcotics Control Bureau versus Kashif’***, Neutral Citation No. 2024 INSC 1045, has again reiterated the law, as enumerated by it, in ***Mohit Aggarwal***’s case (supra). The Hon’ble Supreme Court, in this case, has held that the provisions of Section 37 of NDPS Act are mandatory in nature. Relevant paragraphs 8 and 39 of the said judgment are reproduced, as under:

“8. There has been consistent and persistent view of this Court that in the NDPS cases, where the offence is punishable with minimum sentence of ten years, the accused shall generally be not 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 finding as mandated in Section 37 is a sine qua non for granting bail to the accused involved in the offences under the said Act. Apart from the granting opportunity of hearing to the Public Prosecutor, the other two conditions i.e., (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that (ii) he is not likely to commit any offence while on bail, are the cumulative and not alternative conditions.

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39. The upshot of the above discussion may be summarized as under:

(i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.

(ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

(iii) The purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the Narcotic drugs and psychotropic substances.

(iv) Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be

released on bail nor would vitiate the trial on that ground alone.

(v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act."

(self-emphasis supplied)

20. In this case, the police has also added Section 27-A of the NDPS Act, which has been reproduced above.

21. Sub-Section (viii b) of Section 2 of the NDPS Act, is reproduced, as under:-

(viii b) "illicit traffic", in relation to narcotic drugs and psychotropic substances, means-

(i) cultivating any coca plant or gathering any portion of coca plant;

(ii) cultivating the opium poppy or any cannabis plant;

(iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances;

(iv) dealing in any activities in narcotic drugs or psychotropic substances other than those referred to in sub-clauses (i) to (iii); or

(v) handling or letting out any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv); other than those permitted under this Act, or any rule or order made, or any condition of any licence, term or authorisation issued, thereunder, and includes —

(1) financing, directly or indirectly, any of the aforementioned activities;

(2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities; and

(3) harbouring persons engaged in any of the aforementioned activities;

22. The legislature, in its wisdom, has included Section 27-A also in Section 37(b)(i) of the NDPS Act. As such, before releasing a person, who has been named, as accused for the offence punishable under Sections 19, 24 and 27A and also for the offences involving commercial quantity, the rigors of Section 37(b)(i) & (ii) are to be satisfied, by recording findings in this regard. Hence, no benefit can be derived by the applicant, from the decision of Hon'ble Supreme Court in **Shince Babu's** supra, as the offences, in the case before the Hon'ble Supreme Court, were, under Sections 22(c) and 29 of the NDPS Act, and not under Section 27A of the NDPS Act.

23. Bail, in this case, has also been sought on the ground of parity, as co-accused of the applicant; namely Neeraj Zilta and Kanwar Singh, have been released on bail by the Court of learned Special Judge-I, Shimla, vide order dated 29.03.2025, passed in Bail Applications No.130 & 131/2025, copy of which has been placed on record.

24. Perusal of the order passed by learned Special Judge-I, Shimla, reveals that the said order has been passed by the learned Special Judge, in utter disregard to the law laid down by the Hon'ble Supreme Court in ***Kashif's*** case (supra). In the order, the learned Special Judge-I, Shimla, has not touched the provisions of Section 37 of the NDPS Act, which are not only applicable to the case involving commercial quantity, but also applicable, where, the FIR has been registered under the provisions of Section 27A of the NDPS Act.

25. In para 31, learned Special Judge, on the basis of assumption, has held that the applicants, before the learned Special Judge, may have developed drug dependencies at a tender age and were acquiring contraband for personal consumption. At the time of

deciding the bail application, the Courts are not expected to draw such assumption, as it has been mandated, in **Kashif's** case supra that the provisions of NDPS Act are to be interpreted literally and not liberally. As such, no benefit can be taken by the applicant on the basis of the said order.

26. Considering all these facts, no case to pass any order in favour of the applicant, under Section 483 BNSS, is made out, at this stage. Consequently, the bail application of the applicant is dismissed.

27. Any of the observations, made herein above, shall not be taken as an expression of opinion, on the merits of the case, as these observations, are confined, only, to the disposal of the present bail application.

28. Before parting with this order, this Court records its deep concern qua the manner, in which, the applications are being assigned to different Courts by the Learned Sessions Judges in the State.

29. The bail application of applicant was firstly decided on 24.1.2025, by the Court of learned Special Judge, under ND&PS Act (CBI Court), Shimla, whereas, his

subsequent bail application was assigned to Special Judge-I, Shimla, which was dismissed as withdrawn on 27.02.2025 and the bail applications of Neeraj Zilta and Kanwar Singh, who are also co-accused, in this case, were again assigned to learned Special Judge-I, Shimla, District Shimla.

30. It is no longer *res integra* that till filing of the charge sheet, the subsequent bail applications, arising out of the same FIR, should be assigned to the same Court, if available, in order to avoid conflicting decisions and to minimize the trend of forum shopping, which is antithesis to the Rule of Law.

31. It has also been mentioned in the status report that accused Mohit Thakur, has been released, on bail, on 11.12.2024, by the learned ADJ-I, Shimla. Thereafter, 33 other co-accused have also been released, on bail, by learned ADJ-I, Shimla, on 01.01.2025. Apart from them, Sahil Thakur, Abhishek, Aman Negi, Anshul Negi, Balwan Singh, Prashant Rathore, Ashish Kumar, Sikander Thakur, Khushi Ram and Ajay Kumar and Jai Verma, have also been released on bail by learned ADJ-I, Shimla.

32. Learned Registrar General of this Court is directed to issue instructions, in this regard, on administrative side, if not earlier issued, and in case the same have already been issued, then, the same be reiterated again, so that the contradictory decisions in the bail applications of the different accused can be avoided.

33. As stated above, learned Special Judge-I, Shimla, while deciding the bail applications of Neeraj Zilta and Kanwar Singh, who are co-accused in this case, has not dealt with the provisions of Section 37 of the NDPS Act and giving them the benefit of Section 27 of the NDPS Act and on the ground that there is no financial transaction subsequent to July, 2024, granted relief of bail to them.

34. In the cases, involving commercial quantity and Sections 19, 24 and 27A, of the NDPS Act, before releasing the accused on bail, it is mandated that the findings, with regard to the satisfaction of twin conditions, as enumerated, in Section 37(b)(i) and (ii) of the NDPS Act, are to be recorded.

35. No doubt, the power to grant bail by the Court is discretionary one, but, this discretionary power should

not be exercised arbitrarily and in violation to the mandatory provisions of law or on the basis of the assumption.

36. Learned Special Judge-I, Shimla, has released the above two accused persons; namely Neeraj Zilta and Kanwar Singh, on the basis of the assumption that they may have developed drug dependencies at a tender age and were acquiring contraband for personal consumption.

37. The said findings, *prima facie*, from any stretch of imagination do not come within the definition of discretionary power. Hence, this Court is of the *prima facie* view that the learned Court, which has granted bail, has not considered the provisions of Section 27-A, as well as, Section 37 of the NDPS Act.

38. Although, it is the duty of the State to assail the order passed by the learned Special Judge-I, Shimla, while releasing Neeraj Zilta and Kanwar Singh, on bail, but, when, the State authorities have failed to do their duty, then, it is high time for this Court to invoke the provisions of Section 483(3) of the BNSS, *suo motu*, in the present matter.

39. Consequently, *suo motu* proceedings are ordered to be initiated against; i) Neeraj Zilta son of Shri Shishu Pal Zilta, resident of Village Siao, Post Office Pujarli No.4, Tehsil Rohru, District Shimla, H.P.; and ii) Kanwar Singh son of Shri Krishan Chand, resident of Village Kotsari, Post Office Samoli, Tehsil Rohru, District Shimla, H.P., by issuing show cause notices, calling upon them, as to why the bail granted to them, by learned Special Judge-I, Shimla, while deciding bail application Nos.130/2025 & 131/2025, in FIR No.50 of 2024, dated 19.09.2024, registered, under Sections 21, 27-A and 29 of the NDPS Act and Section 111 of the BNS, with Police Station, Kotkhai, District Shimla, be not cancelled and why they be not committed to the judicial custody. Notice be issued to abovesaid Neeraj Zilta and Kanwar Singh, for **2nd May, 2025.**

April 10, 2025_(ps)

(Virender Singh)
Judge