IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-33729-2025

Date of decision: 21.07.2025

Jaswinder Singh alias Kala ....Petitioner

V/s

State of Punjab ....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Ruhani Chadha, Advocate for the petitioner.

Mr. Durgesh Garg, AAG Punjab.

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SUMEET GOEL, J.

1. The present petition, is the first attempt before this Court by the petitioner, under Section 483 of BNSS, 2023 for grant of regular bail in FIR No.21 dated 15.04.2025 registered under Section 21-C of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '*NDPS Act'*) and under Sections 27-A and 29 of *NDPS Act* (added later on) at Police Station Behrampur, District Gurdaspur.

2. The gravamen of the FIR in question is that on 15.04.2025, Sub Inspector Gurmukh Singh; accompanied by ASI Jagir Chand, ASI Satnam Singh and Manjit Singh, SRC Daljit Singh and PHG Naresh Kumar; was conducting anti-drone patrolling in the government vehicle alongwith standard investigative equipment near the villages of Toor and Mummy Chack Ranga etc and were heading towards the Ravi river. While searching the riverbank, the police patrolling team observed two young men loitering suspiciously. On noticing the police, one of them later identified as Sahil

Kumar son of Mukesh Kumar of Toor village, discarded a polythene bag into nearby bushes and attempted to retreat. Both the individuals were intercepted and upon inquiry, the second man identified himself as Rajan Kumar alias Gama, son of Kewal Krishan, also a resident of Toor village. After formally explaining their legal rights, both the suspects consented to an on the spot search. The discarded bag was inspected which contain heroin weighing 255 grams (including packaging). The contraband was resealed in the same polythene and placed in a plastic box and was subsequently entrusted to ASI Satnam Singh. The heroin, together with polythene bag, was seized via a formal recovery memo. Both the accused were booked under Sections 21(c)/61/85 of *NDPS Act* for possession of 255 grams of heroin. ASI Manjit Singh was dispatched with the ruqa to register the FIR.

3. Learned counsel for the petitioner, iterating the cause of the petitioner, has argued that the petitioner has been falsely implicated into the FIR in question. Learned counsel has further submitted that the only material available with the prosecution against the petitioner is a disclosure statement made by the co-accused – Sahil Kumar. Learned counsel has further argued that the petitioner has been in custody in other FIR(s) for the last 2/3 years and no mobile phone has been recovered from him in the jail. Learned counsel has, thus, submitted that there is no corroborative material against the petitioner other than the said disclosure statement made by co-accused Sahil Kumar which statement cannot withstand judicial scrutiny. On strength of these submissions, the grant of regular bail is entreated for.

4. On the contrary, learned State counsel has strenuously opposed the plea for grant of regular bail by arguing that the allegations against the

petitioner are serious in nature. Learned State counsel has argued that the petitioner is accused of being involved in a case pertaining to recovery of 255 grams of heroin and Rs.4,70,000/- of drug money. Learned State counsel has further submitted that the present case involves commercial quantity of contraband as envisaged in *NDPS Act* and, thus, the plea of the petitioner is to be considered in light of Section 37 of the *NDPS Act* (hereinafter referred to as *'Section 37'*). Learned State counsel has placed on record the custody certificate dated 09.07.2025 to argue that the there are 04 other FIR(s) against the petitioner under the *NDPS Act* apart from 01 other FIR under the Prisons Act. On the strength of these submissions, learned State counsel has sought for dismissal of the petition in hand.

5. I have heard learned counsel for the rival parties and have perused the record.

Prime Issue

6. The seminal legal issue that arises for cogitation in the present petition is; the parameters for application of Section 37 of the NDPS Act, 1985; while dealing with a regular bail petition under this Act.

The analogous issue that arises for consideration is as to whether the petitioner is entitled for grant of regular bail in the FIR in question in its factual milieu.

7. **Relevant Statutory Provisions**

(i) ***NDPS ACT, 1985***

Section 37 (as applicable w.e.f. 29.05.1989)

*"**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 applicable 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 limitation 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.]

(ii) **The Code of Criminal Procedure, 1973** (hereinafter to be referred as 'the Cr.P.C.)

*"**437. When bail may be taken in case of non-bailable offence. —** [(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but –*

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

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(iii) **The Terrorism and Disruptive Activities Act, 1985**

(hereinafter referred to as 'TADA')

Section 20(8)

"*(8) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any Rule made thereunder shall, if in custody, be released on bail or on his own bond unless,—*

(a) the Public Prosecutor has been given an opportunity to oppose the applicable for such release, and

(b) 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."

(iv) **The Maharashtra Control of Organised Crime Act, 1999** (hereinafter referred to as 'MCOCA')

Section 21(4)

"(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act, if in custody, be released on bail or on his own bond, unless—

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release, and

(b) 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."

Relevant Case Law

8. The precedents germane to the matter(s) in issue are, thus:

I. *Re:* Nature, scope and ambit of Section 37 of NDPS Act of 1985

(i) The Hon'ble Supreme Court in a judgment titled as ***Union of India vs. Thamisharasi & Ors, 1995(4) SCC 190;*** has held as under:-

"11. xxxxxxxxxxxxx. In other words, under Section 437 of the Code the person is not to be released on bail "if there appears reasonable grounds for believing that he has been guilty of an offence" while according to Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, the accused shall not be released on bail unless "the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence....". The requirement of reasonable grounds for the belief in the guilt of the accused to refuse bail is more

stringent and, therefore, more beneficial to the accused than the requirement of reasonable grounds for the belief that he is not guilty of the offence under Section 37 of the N.D.P.S. Act. Under Section 437 Code of Criminal Procedure, the burden is on the prosecution to show the existence of reasonable grounds for believing that the accused is guilty while under section 37 of the Act the burden is on the accused to show the existence of reasonable grounds for the belief that he is not guilty of the offence. In the first case, the presumption of innocence in favour of the accused is displaced only on the prosecution showing the existence of reasonable grounds to believe that the accused is guilty while under the N.D.P.S. Act it is the accused who has to show that there are reasonable grounds for believing that he is not guilty.

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13. Accordingly, provision in Section 37 to the extent it is inconsistent with Section 437 of the Code of Criminal Procedure supersedes the corresponding provision in the Code and imposes limitations on granting of bail in addition to the limitations under the Code of Criminal Procedure as expressly provided in sub-section (2) of Section 37. These limitations on granting of bail specified in sub-section (1) of Section 37 are in addition to the limitations under Section 437 of the Code of Criminal Procedure and were enacted only for this purpose; and they do not have the effect of excluding the applicability of the proviso to sub-section (2) of Section 167 Code of Criminal Procedure which operates in a different field relating to the total period of custody of the accused permissible during investigation."

(ii) In a judgment titled as ***Customs, New Delhi vs. Ahmadalieva Nodira, 2004 (3) SCC 549,*** a Three Judge Bench of the Hon'ble Supreme Court has held as under:-

"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 the present accused-respondent is concerned, are (1) 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 for 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. xxxxxxxxxxxxxxxxxxxxxxx."

(iii) In a judgment titled as ***Union of India vs. Shri Shiv Shanker Kesari, 2007(4) RCR(Criminal) 186***, the Hon'ble Supreme Court has held as under:-

"7. The expression used in Section 37 (1)(b) (ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

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' xxxxxxxx.

9. It is often said "an attempt to give a specific meaning to the word 'reasonable' is trying to count what is not number and measure what is not space". The author of 'Words and Phrases' (Permanent Edition) has quoted from in re Nice & Schreiber 123 F. 987, 988 to give a plausible meaning for the said word. He says, "the expression 'reasonable' is a relative term, and the facts of the particular controversy must be considered before the question as to what constitutes reasonable can be determined". It is not meant to be expedient or convenient but certainly something more than that.

*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 depends on the circumstances in a given situation. (See: **Municipal Corporation of Greater Mumbai and another 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.*
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> *12. Additionally, the Court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion."*

(iv) A Three Judge Bench of the Hon'ble Supreme Court in a judgment titled as ***Satpal Singh vs. State of Punjab, 2018 (13) SCC 813,*** has held as under:

> *"4. Under Section 37 of the NDPS Act, when a person is accused of an offence punishable under Section 19 or 24 or 27A and also for offences involving commercial quantity, he shall not be released on bail unless the Public Prosecutor has been given an opportunity to oppose the application for such release, and in case a Public Prosecutor opposes the application, the court must be satisfied that there are reasonable grounds for believing that the person is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. Materials on record are to be seen and the antecedents of the accused is to be examined to enter such a satisfaction. These limitations are in addition to those prescribed under the Cr.P.C or any other law in force on the grant of bail. In view of the seriousness of the offence, the law makers have consciously put such stringent restrictions on the discretion available to the court while considering application for release of a person on bail. xxxxxxxxxx"*

(v) A Three Judge Bench of the Hon'ble Supreme Court in a judgment titled as ***Narcotics Control Bureau vs. Mohit Aggarwal, 2022 LiveLaw (SC) 613*** has held as under:

> *"13. The expression "reasonable ground" came up for discussion in **"State of Kerala and others Vs. Rajesh and others"** and this Court has observed as below:*
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> > *"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."

(vi) In a judgment titled as ***Mohd. Muslim @ Hussain vs. State (NCT of Delhi) 2023 LiveLaw (SC) 260***, the Hon'ble Supreme Court has held as under:-

"18. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is "not guilty of such offence" and that he is not likely to commit any offence while on bail. What is meant by "not guilty" when all the evidence is not before the court? It can only be a prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences

based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws – be balanced against the public interest.

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

(vii) In a judgment titled as ***Narcotics Control Bureau vs. Kashif, 2024 INSC 1045***, the Hon'ble Supreme Court has held 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.

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II. *Re: <u>Realm of Bail Jurisprudence under TADA</u>*

In a judgment titled as ***Usmanbhai Dawoodbhai Memon vs. State of Gujarat, 1988(1) RCR(Criminal) 540,*** the Hon'ble Supreme Court has held as under:

"22. That takes us to the approach which a Designated Court has to adopt while granting bail in view of the limitations placed on such power under section 20(8). The sub-section in terms places fetters on the power of a Designated Court on granting of bail and the limitations specified therein are in addition to the limitations under the Code. Under section 20(8), no person accused of an offence punishable under the Act or any rule made thereunder shall, if in custody be released on bail or on his own bond unless the two conditions specified in Clause (a) and (b) are satisfied. In view of these more stringent conditions a Designated Court

should carefully examine every case coming before it for finding out whether the provisions of the Act apply or not. Since before granting bail the Court is called upon to satisfy itself that there are reasonable grounds for believing that the accused is innocent of the offence and that he is not likely to commit any offence while on bail, the allegations of fact, the police report along with the statements in the case diary and other available materials should be closely examined. A prayer for bail ought not to be rejected in a mechanical manner."

III. *Re: Realm of Bail Jurisprudence under MCOCA*

In a judgment titled as ***Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra & Anr. 2005(5) SCC 294,*** a Three Judge Bench of the Hon'ble Supreme Court has held as under:-

"43. Does this statute require that before a person is released on bail, the court, albeit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the Court to record such a finding? Would there be any machinery available to the Court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?

44. Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on records only for grant of bail and for no other purpose .

45. We are furthermore of the opinion that the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the Court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. xxxxxxxxxxxxxxxxxx.

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51. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the Court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the Legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the Court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

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53. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in Sub-section (4) of Section 21 of the Act, the Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the Court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby."

IV. *Re: "Reasonable ground for believing"* under Section 437 of Cr.P.C., 1973

(i) In a judgment titled as ***Central Bureau of Investigation vs. Vs. Vijay Sai Reddy, 2013(3) RCR (Criminal) 252***, the Hon'ble Supreme Court has held as under:-

> *"28) xxxxxxxxxxxxx. It has also to be kept in mind that for the purpose of granting 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 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. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."*

V. Realm of '*Reasonableness*' in law

(i) In a judgment titled as ***Municipal Corporation of Delhi vs. M/s Jagan Nath Ashok Kumar and another, 1987(4) SCC 497***, the Hon'ble Supreme Court has held as under:-

> *"6. xxxxxxxxxx. In Stroud's Judicial Dictionary, Fourth Edition, page 2258 states that it would be unreasonable to expect an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasy 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. But mankind must be satisfied with the reasonableness within reach; and in cases not covered by authority, the verdict of a jury or the decision of a judge sitting as a jury usually determines what is "reasonable" in each particular case. 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. See the observations, in Re a Solicitor [1945] K.B . 368 at 371 of the report .*

(ii) In a judgment titled as ***Gujarat Water Supply and Sewerage Board vs. Unique Erectors (Gujarat) (P) Ltd., and another, 1987(1) SCC 532***, the Hon'ble Supreme Court has held as under:-

> *"11. xxxxxxxxxxx. It is difficult to give an exact definition of the word 'reasonable'. Reason varies in its conclusions according to the idiosyncrasy of the individual and the times and the circumstances in which he thinks. The word 'reasonable' has in law prima facie meaning of reasonable in regard to those circumstances of which the actor, called upon to act reasonably, knows or ought to know."*

(iii) In a judgment titled as ***Collector and others vs. P. Mangamma and others, 2003(4) SCC 488***, the Hon'ble Supreme Court has held as under:-

> *"7. xxxxxxxxxxx. It would be hard to give an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasy of the individual and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic stands now like the jingling of a child's toy. But mankind must be satisfied with the reasonableness within reach; and in cases not covered by authority, the decision of the judge usually determines what is "reasonable" in each particular case; but frequently reasonableness "belong to the knowledge of the law, and therefore to be decided by the Courts". It was illuminatingly stated by a learned author that an attempt to give a specific meaning to the word "reasonable" is trying to count what is not number and measure what is not space. It means prima facie in law reasonable in regard to those circumstances of which the actor, called upon to act reasonably, knows or ought to know."*

VI. *Re: <u>UT RES MAGIS VALEAT QUAM PEREAT</u> (i.e. a thing may rather have effect than be destroyed)*

(i) In a judgment titled as ***Commissioner of Income-tax, Delhi vs. S. Teja Singh, 1958 SCC Online SC 30,*** a Three Judge Bench of the Hon'ble Supreme Court has held as under:-

> *"9. xxxxxxxxxxxxxxxxxx. A construction which leads to such a result must, if that is possible, be avoided, on the principle expressed in the maxim, "ut res magis valeat quam pereat". Vide **Curtis v. Stovin, (1889) 22 QBD 513** and in particular the following observations of Fry, L. J., at page 519 :*

> *"The only alternative construction offered to us would lead to this result, that the plain intention of the legislature has entirely failed by reason of a slight inexactitude in the language of the section. If we were to adopt this construction, we should be construing the Act in order to defeat its object rather than with a view to carry its object into effect."*

(ii) In a judgment titled as ***Management of Advance Insurance Co. Ltd. Vs. Shri Gurudasmal and others 1970(1) SCC 633,*** a Five Judge Bench of the Hon'ble Supreme Court has held as under:-

> *"21. It is no doubt true that the words are susceptible of the other meaning also but so long as the words are capable of bearing the meaning we have given it is not necessary to discover another meaning under which the whole scheme would become void. Provisions of law must be read as far as is possible with a view to their validity and not to render them invalid. In our judgment the expression 'belonging to' only conveys the meaning that it is a police force constituted and functioning in one area which may be authorised to function in another area. The change from 'for' to 'in' makes no difference because both expressions fit in with the meaning of the phrase 'belonging to' in the Entry. We see no force in this argument also.*

(iii) In a judgment titled as ***Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam, 1989(3) SCC 709,*** a Five Judge Bench of the Hon'ble Supreme Court has held as under:-

> *"49. The Courts strongly lean against any construction which tends to reduce a Statute to a futility. The provision of a Statute must be so construed as to make it effective and operative, on the principle "ut res majis valeat quam periat". It is, no doubt, true that if a Statute is absolutely vague and its language wholly intractable and absolutely meaningless, the Statute could be declared void for vagueness. This is not in judicial-review by testing the law for arbitrariness or unreasonableness under Article 14; but what a Court of construction, dealing with the language of a Statute, does in order to ascertain from, and accord to, the Statute the meaning and purpose which the legislature intended for it. In **Manchester Ship Canal Co. v. Manchester Racecourse Co., [1900] 2 Ch. 352** Farwell J. said:*

> *"Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning and not to declare them void for uncertainty." (See page 360 and 361)*

In ***Fawcett Properties v. Buckingham Country Council, [1960] 3 All ER 503,*** *Lord Denning approving the dictum of Farwell, J. said:*

> *"But when a Statute has some meaning, even though it is obscure, or several meanings, even though it is little to choose between them, the Courts have to say what meaning the Statute has to bear rather than reject it as a nullity." (Vide page 516)*

It is, therefore, the Court's duty to make what it can of the Statute, knowing that the Statutes are meant to be operative and not inept and that nothing short of impossibility should allow a Court to declare a Statute unworkable. In Whitney v. Inland Revenue Commissioners, [1926] AC 37 Lord Dunedin said:

> *"A Statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable." (vide page 52).*

(iv) In a judgment titled as ***Commissioner of Income Tax vs. Hindustan Bulk Carriers, 2003(3) SCC 57,*** a Three Judge Bench of the Hon'ble Supreme Court has held as under:-

> *"14. A construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in maxim ut res magis valeat quam pereat i.e. a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties. (See Broom's Legal Maxims (10th Edition), page 361, Craies on Statutes (7th Edition) page 95 and Maxwell on Statutes (11th Edition) page 221.)*

Analysis (re law)

9. The *NDPS Act*, a pivotal piece of legislation within our legal corpus, was meticulously enacted to discharge India's solemn international commitments. Foremost among these is the obligation arising from the

Single Convention on Narcotic Drugs, 1961. This statute stands as a specialized enactment, meticulously delineating the comprehensive control and rigorous regulation pertaining to all facets of operations involving narcotic drugs and psychotropic substances. Given that this seminal legislation was promulgated with the singular and paramount objective of stemming the burgeoning tide of drug abuse and illicit trafficking, its provisions are to be interpreted and construed with scrupulous adherence to the purposive approach of statutory construction. This venerable jurisprudential principle mandates that courts, in deciphering the true import and scope of the enactment, must transcend a mere literal or grammatical reading of the text. The interpretative endeavor must, therefore, be a dynamic and teleological one, ensuring that the NDPS Act remains an efficacious instrument in combating the pervasive menace of drug abuse, rather than being rendered sterile by a rigid or myopic textual analysis.

10. *Section 37* governs the arena of bail involving certain offences under the *NDPS Act*. It prescribes rigorous stipulations that must be meticulously adhered to by courts when deliberating upon plea(s) for bail, on merits, in cases falling under Sections 19, 24, 27A, and critically, in all offences involving a commercial quantity of any contraband. The seminal inclusion of these exacting provisions, effectuated through a deliberate and specific amendment in 1989, unequivocally underscores and reflects the legislative intent to impose a significantly elevated threshold for the grant of bail. Crucially, by virtue of it being in the nature of *non obstante* clause– having commenced with '*Notwithstanding*', the strictures enunciated under *Section 37* operate as an additive layer to the general conditions governing

bail, as meticulously enumerated under the Code of Criminal Procedure, 1973/Bharatiya Nagarik Suraksha Sanhita, 2023 and any other extant law. This exacting interpretation of *Section 37* and its overriding effect have been consistently reaffirmed and indelibly etched through a succession of authoritative pronouncements, including ***Satpal Singh*** (supra) and ***Ahmadalieva Nodira*** (supra) wherein the Hon'ble Supreme Court has steadfastly underscored the indispensable character of the pre-conditions as contained in *Section 37*. Consequently, the otherwise extensive discretionary latitude ordinarily vested in a court when adjudicating a plea for bail is, in the context of cases falling within the purview of *Section 37*, ineluctably circumscribed and significantly curtailed by the specific and stringent conditions therein enumerated.

11. An analytical perusal of *Section 37* reflects that, in order to enable a Court to grant bail to an accused, *firstly,* the Public Prosecutor has to be given an opportunity to oppose such plea and, *secondly,* where the Public Prosecutor so opposes, the Court has to:

> (i) Satisfy itself that there are reasonable grounds for believing that the applicant-accused is not guilty of such offence; and
>
> (ii) Such applicant-accused is not likely to commit any offence while on bail.

It is axiomatic that the conditions stipulated in *Section 37* are fundamentally cumulative and not alternative as held by the Hon'ble Supreme Court in the case of ***Ahmadalieva Nodira*** (supra) and ***Thamisharasi*** (supra). This statutory design unequivocally translates into a requirement for the concurrent and holistic satisfaction of all the delineated

prerequisites: namely, the existence of reasonable grounds for concluding the accused-applicant's ostensible innocence, coupled with the absence of any credible apprehension that the accused will recidivate upon release.

12. The *first* condition that is required to be met with is that the Court is satisfied '*that there are reasonable grounds for believing that he is not guilty of such offence'*.

The linchpin of this aspect of the matter is "*reasonable grounds*". It goes without saying that there can be no determinative *nay* exhaustive definition of the expression "*reasonable*"—for this concept by itself is incapable of a rigid definition as held by the Hon'ble Supreme Court in ***Jagan Nath*** (supra), ***Gujarat Water Supply*** (supra) and ***P. Mangamma*** (supra). Its very essence is imbued with an ineluctable contextual fluidity — rendering a universally prescriptive definition an exercise in jurisprudential futility. The nuanced contours of '*reasonableness*' are inextricably woven into the singular factual matrix of each individual case, the prevailing social-legal milieu, and indeed, the conscientious and objectively informed discernment of the Court. Consequently, the formidable task of ascertaining what precisely constitutes '*reasonable*' in any given instance devolves unequivocally upon the sagacity and judicious application of mind of the Court. Borrowing, with impunity, from wisdom of Benjamin N. Cardozo, – – "*After all an arbitrator as a Judge, has to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in social life."*

12.1. The Hon'ble Supreme Court in the case of ***Shri Shiv Shanker Kesari*** (supra) and ***Kashif*** (supra) has enunciated that the expression

"*reasonable grounds of non-commission*" means something more than *prima facie* grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. There is no gainsaying that while examining the issue of "*reasonable grounds*" the Court is not required to return a clear finding of guilt or innocence of the bail-applicant. To put it another way; the Court while dealing with such a bail plea, is not required to exhaustively weigh or sift through the evidence for arriving at a conclusive finding(s) as to whether the bail-applicant is guilty of such offence or not. The expression "*reasonable grounds for believing*", as stipulated in Section 437 of Cr.P.C., was interpreted to such effect by the Hon'ble Supreme Court in ***Vijay Sai Reddy*** (supra). The Court is only required to record its satisfaction, for the limited purpose, for adjudication of such bail plea. This interpretation is further underscored by the fact that the question of bail fundamentally implicates the personal liberty of an individual—a right meticulously protected within the contours of Article 21. Consequently, the term *"reasonable"* — which, is flexible in meaning and depends entirely upon the context in which it has been used, ought to be understood within this specific legal and legislative context. A rigid interpretation that ignores this context could not only act as an absolute bar to granting bail but also contradict the fundamental principle of '*presumption of innocence until proven guilty*'— for pre-conviction incarceration would regrettably transmute into a punitive measure, the moment an inequitable, arbitrary, or unjustifiable impediment is erected against the otherwise legitimate consideration of bail. The Hon'ble Supreme Court in the case of ***Mohit Aggarwal*** (supra) has held that such satisfaction ought to be on the basis of

substantial probable causes for believing that the bail-applicant is not guilty of the alleged offences.

12.2. There is another aspect *nay* pertinent aspect of the matter, which craves attention of this Court. While the lexicology of *Section 37* places a significant burden on the accused-applicant to demonstrate '*reasonable grounds of non-commission*' — the paramount importance of bail as a matter of personal liberty — also imposes an equal duty on the Court to take a *prima facie* overview of all the evidence/material available on record. This ensures that the strict conditions are applied with judicial scrutiny and an unwavering commitment to fair procedure, preventing an arbitrary restriction upon personal liberty. The general axiom against meticulously sifting evidentiary material at the bail stage must be applied with measured flexibility for a bail petition under *Section 37.* This deviation is compelled by statutory mandate of arriving at an affirmative finding of '*reasonable grounds of non-commission*'. This onerous prerequisite necessitates a preliminary, yet substantive, evaluation of the material available on record, transcending a superficial glance.

12.3. Indubitably, for the limited purpose of adjudicating such plea for bail, the Court may even look into the probable defence of the bail-applicant, if the facts/circumstances of a given case so require. This approach is fundamentally necessitated by the practical reality that the prosecution's case, as presented in the case diary, would inherently bereft of any exculpatory material or the defence version of events. Consequently, to ensure that an accused is afforded a reasonable, effective and proper opportunity to seek & argue for his liberty, the Court ought to take a

preliminary glance at plausible defence. This is crucial to avoid mechanical application of law.

The statutory embargo imposed upon the grant of bail by virtue of Section 37 of the NDPS Act is textually and substantively analogous to that engrafted in Section 20(8) TADA. The Hon'ble Supreme Court in the case of ***Usmanbhai Dawoodbhai Memon*** (supra), while interpreting the stringent conditions contained in Section 20(8) TADA (which are *pari materia* with conditions contained for bail enumerated in Section 37 NDPS Act) enunciated that in view of the strict fetters, a Court while dealing with a bail plea ought to closely examine the allegations, police report, case diary and other available material. In view of the strikingly similar phraseology and legislative intent underlying these enactments, the interpretative dicta of the Apex Court *qua* TADA would apply *mutatis mutandis* to *Section 37 NDPS Act.*

However, as a matter of abundant caution, and indeed, even at the sake of reiteration, it is imperative to emphasize that the findings or observations made by the Court during the adjudication of bail application must, under no circumstances, unduly influence or prejudice the subsequent trial proceedings. The trial court is mandated to adjudicate the case before it solely on the basis of evidence formally led during the trial, unburdened by any preliminary assessment of probabilities or *prima facie* views formed at bail stage.

It goes without saying that it is neither pragmatic nor feasible to lay any universal exhaustive yardstick or inexorable set of guidelines for such adjudication as every case has its own unique factual conspectus, which

has to be taken into account by the Court which is in seisin of the matter. It was said by Lord Denning, which observation met with approval by the Hon'ble Supreme Court, that:

> *"....Each case depends on its own facts, and a close similarity between one case and another is not enough, because even a single significant detail may alter the entire aspect. In deciding such case, one should avoid the temptation to decide cases (As said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, its broad resemblance to another case is not at all decisive."*

13. The *second* proscriptive condition, delineated in *Section 37*, for the grant of bail, mandates an affirmative finding that the applicant is '*not likely to commit any offence whilst on bail'*.

The term *'likely'* by its inherent semantic ambiguity, consistently eludes any singular, precise or universally applicable definition, thereby mandating its interpretation strictly in accordance with the specific statutory context in which it is deployed. In the particular context of *Section 37* where the Court must be satisfied that the accused is *'not likely to commit an offence while on bail',* this term demands a nuanced and careful interpretation. It is imperative that *'likely'* be construed as denoting a *'reasonable probability'* or a *'palpable probability',* rather than a mere *'nascent possibility'* or a *'speculative probability'*. This distinction is crucial because assessing the *'likelihood of committing an offence'* necessitates a predictive judgment concerning future conduct—an inherently complex and often indeterminate task upon which no conclusive adjudication can be made with absolute certainty. An expansive interpretation of *'likely'* in this context would effectively amount to erecting an insurmountable legal impediment to

the grant of bail. It would invariably result in imposing an oppressive burden on the bail applicant to prove a negative fact about future events. *Ergo,* to ensure that the stringent conditions of *Section 37* do not lead to an effective denial of bail, the term *'likely'* must be interpreted as requiring a demonstrable & substantial probability of re-offending, rather than a remote or theoretical one. The adjudicating Court is obliged, to arrive at a considered determination regarding the accused-applicant's propensity for recidivism, which ought to be premised upon some discernible, tangible and cogent material on record. To adopt a contrary stance, and equating '*likely*' with that of a '*mere conceivable probability*', would risk transforming a conditional stricture into an unjustified and absolute preclusion of bail and would render the operative efficacy of the statute patently unworkable as has been held by the Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain*** (supra). Any statutory provision ought to be interpreted in a way which makes it workable. It is a foundational and immutable principle of statutory construction that the Court must resolutely lean against any interpretive paradigm which would, by its operation, render a legislative enactment otiose, unworkable, or reduce it to a state of utter futility. The provisions of a statute be judiciously construed in a manner that ensures their efficacy, operability, and practical utility, in faithful adherence to the venerable legal maxim, "*ut res magis valeat quam pereat*" (i.e. that the thing may rather have effect than be destroyed). Any interpretative approach that conspicuously diverges from the discernible legislative intent, as evinced through the plain text, must be scrupulously eschewed as has been observed by the Hon'ble Supreme Court in ***S. Teja Singh*** (supra), ***Shri Gurudasmal***

(supra), ***Tinsukhia Electric Supply*** (supra) and ***Hindustan Bulk Carriers*** case (supra). Vide; Craies on Statute Law, p. 90 and Maxwell on The Interpretation of Statutes, Tenth Edition, pages 236-237;

> *"A statute is designed", observed Lord Dunedin in Whitney v. Commissioners of Inland Revenue (2), "to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable".*

Ergo, the objective of *Section 37* is not to construct an impregnable and absolute interdiction against the grant of bail. Consequently, it becomes ineluctable that these provisions be judiciously construed in a manner that harmonizes seamlessly with the legislative intent, thereby precluding any interpretation that would transmute these conditions into an insurmountable barrier to liberty.

13.1. This determination ought to be predicated upon a scrupulous consideration of pertinent factors, including, but not limited to, the antecedents of the accused-applicant, the specific role ascribed to him in the alleged offence, and any other material circumstances that bear upon his future conduct, etc.

To ascertain the likelihood of an accused-applicant exhibiting a propensity for recidivism whilst enlarged on bail, the adjudicating Court may judiciously consider the antecedents of the accused-applicant. While such antecedents undeniably constitute a pertinent and germane factor in informing the Court's holistic determination, they are by no means to be regarded as exclusively determinative or conclusively dispositive of the ultimate finding.

The additional pre-requisites for grant of bail as contained in Section 21(4) of MCOCA are in *pari material* with those contained in *Section 37* of the *NDPS Act*. Accordingly, the judicial expositions rendered in the context of Section 21(4) MCOCA acquire persuasive relevance in construing the twin conditions stipulated under *Section 37* of the *NDPS Act.* The Hon'ble Supreme Court in the case of ***Ranjitsing Brahmajeetsing Sharma*** (supra), while dealing with a bail plea under MCOCA has held that it is difficult to predict the future conduct of an accused.

Thus, another measure, by which such condition under *Section 37* can be met, is mandating the applicant-accused to regularly cause appearance, at stipulated time/interval, before the concerned Illaqa (jurisdictional) Magistrate/Trial Court or the concerned Police Station and submit an affidavit to the effect that he has not been involved in any other offence after being released on bail. Still further, the requirement of the provision can be met with, in essence, if leave is reserved in favour of the State/Prosecution to seek for recall of the bail order upon their gathering information about such successful bail-applicant being involved in an offence, after his being released on bail.

No exhaustive set of guideline(s) to govern, this aspect of the satisfaction of a Court can possibly be laid down, however, alluring this aspect may be. It is neither fathomable nor desirable to lay down any straightjacket formulation in this regard. To do so would be to crystallize into a rigid definition, a judicial discretion, which even the Legislature has, for best of all reasons, left undetermined. Any attempt in this regard would be, to say the least, a *quixotic* endeavour. Circumstantial flexibility, one

additional, or different fact, may make a sea of difference between conclusions in two cases. Such exercise would thus, indubitable, be dependent upon the factual matrix of the particular case which the Court is in seisin of, since every case has its own peculiar factual conspectus. Such judicial discretion, but of-course, ought to be exercised in accordance with the principles of justice, equity and good conscience. An age old adage reads, thus:

> *"The judge even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to the primordial necessity of order in the social life. Wide enough in all conscience is the field of discretion that remains"*

14. As a sequitur to above-said rumination, the following postulates emerge:

(I) (i) A bail plea on merits; in respect of an FIR under NDPS Act of 1985 involving offence(s) under Section 19 or Section 24 or Section 27-A thereof and for offence(s) involving commercial quantity; is essentially required to meet with the rigour(s) of Section 37 of NDPS Act.

(ii) The rigour(s) of Section 37 of NDPS Act do not apply to a bail plea(s) on medical ground(s), interim bail on account of any exigency including the reason of demise of a close family relative etc.

(iii) The rigour(s) of Section 37 of NDPS Act pale into oblivion when bail is sought for on account of long incarceration in view of Article 21 of the Constitution of India i.e. where the bail-applicant has suffered long under-trial custody, the trial is procrastinating and folly thereof is not attributable to such bail-applicant.

II. The twin conditions contained in Section 37(1)(b) of NDPS Act are in addition to the conditions/parameters contained in Cr.P.C./BNSS or any other applicable extant law.

III. The twin conditions contained in Section 37(1)(b) of NDPS Act are cumulative in nature and not alternative i.e. both the conditions are required to be satisfied for a bail-plea to be successful.

IV. For consideration by bail Court of the condition stipulated in Section 37(1)(b)(i) of NDPS Act i.e. "*there are reasonable grounds for believing that he is not guilty of such offence":*

(i) The bail Court ought to sift through all relevant material, including case-dairy, exclusively for the limited purpose of adjudicating such bail plea.

(ii) Such consideration, concerning the assessment of guilt or innocence, should not mirror the same degree of scrutiny required for an acquittal of the accused at the final adjudication & culmination of trial.

(iii) Plea(s) of defence by applicant-accused, if any, including material/documents in support thereof, may be looked into by the bail-Court while adjudicating such bail plea.

V. For consideration of the condition stipulated in Section 37(1)(b)(ii) i.e. '*he is not likely to commit any offence while on bail*':

(i) The word '*likely*' ought to be interpreted as requiring a demonstrable and substantial probability of re-offending by the bail-applicant, rather than a mere theoretical one, as no Court can predict future conduct of the bail-applicant.

(ii) The entire factual matrix of a given case including the antecedents of the bail-applicant, role ascribed to him, and the nature of offence are required to be delved into. However, the involvement of bail-applicant in another NDPS/other offence cannot *ipso facto* result in the conclusion of his propensity for committing offence in the future.

(iii) The bail-Court may, at the time of granting bail, impose upon the applicant-accused a condition that he would submit, at such regular time period/interval as may stipulated by the Court granting bail, an affidavit before concerned Special Judge of NDPS Court/Illaqa (Jurisdictional) Judicial Magistrate/concerned Police Station, to the effect that he has not been involved in commission of any offence after being released on bail. In the facts of a given case, imposition of such condition may be considered to be sufficient for satisfaction of condition enumerated in Section 37(1)(b)(ii).

VI. There is no gainsaying that the nature, mode and extent of exercise of power by a Court; while satisfying itself regarding the conditions stipulated in Section 37 of NDPS Act; shall depend upon the judicial discretion exercised by such Court in the facts and circumstances of a given case. No exhaustive guidelines can possibly be laid down as to what would constitute parameters for satisfaction of requirement under Section 37 (*ibid*) as every case has its own unique facts/circumstances. Making such an attempt is nothing but a utopian endeavour. *Ergo,* this issue is best left to the judicial wisdom and discretion of the Court dealing with such matter.

Analysis (re facts of the case in hand)

15. The FIR in question pertains to recovery of 255 grams of Heroin and Rs.4,70,000/- stated to be drug money. The quantity of contraband is a commercial quantity. Further, on account of recovery of Rs.4,70,000/- as drug money, the petition in hand also attracts the rigour(s) of Section 37 of NDPS Act.

The petitioner was arrested on 21.04.2025 in the present FIR and is in continuous custody since then. The petitioner has been arraigned as an accused into the FIR in question on the basis of disclosure statement made by co-accused namely Sahil. The petitioner was admittedly in jail when the recovery from co-accused (Sahil) was made and no phone has been recovered from the petitioner. There is no other material available against the petitioner, at this stage, in form of any recovery made from the petitioner himself or CDRs (Call Detail Records) between the petitioner and the co-accused or any bank transaction between them. Hence, the only material available against the petitioner is in the form of disclosure statement of co-accused from whom the contraband and drug money are stated to have been recovered. This Court in a judgment titled as ***Anshul Sardana vs. State of Punjab : 2025:PHHC:004198;*** relying upon the judgments passed by the Hon'ble Supreme Court in ***Tofan Singh vs. State of Tamil Nadu, AIR 2020 Supreme Court 5592, Smt. Najmunisha, Abdul Hamid Chandmiya @ Ladoo Bapu vs. State of Gujrat, Narcotics Control Bureau', 2024 INSC 290, State of (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & Anr., 2022(1) RCR (Criminal) 762*** and ***Vijay Singh vs. The State of Haryana, bearing Special Leave to Appeal (Crl.) No.(s) 1266/2023*** has held as under:

> *"6.3. It is well established principle of law that a confession made by co-accused under Section 67 of the NDPS Act is inherently a very weak piece*

> *of evidence. Such statement(s), by themselves, cannot form the sole basis for the conviction of an individual and must be scrutinized with utmost caution in conjunction with other substantive evidence. Moreover, no recovery has been effected from the possession of the petitioner, who has been subsequently implicated as an accused solely on the basis of disclosure statement of the co-accused. However, as regular bail pertains to life and liberty of individual, Courts are obligated to strike a balance between safeguarding personal liberty and ensuring the effective administration of justice as also investigation. The final evidentiary value and admissibility of the disclosure statement made by a co-accused fall within the domain of the trial Court and are to be adjudicated during the course of the trial in accordance with established principles of law. However, while adjudicating a plea for regular bail, this Court cannot remain oblivious to the circumstances under which the petitioner has been arraigned or implicated, including the nature of the allegations, the evidence linking the petitioner to the offence as well as the specific role attributed to the petitioner in the commission of the alleged offence. A prime facie examination of these factors is essential to ensure that the process of law is not mused, abused or misdirected."*

In view of the above, in the considered opinion of this Court, the requirement of Section 37(1)(b)(i) stands met with.

16. As per custody certificate dated 09.07.2025, the petitioner is in custody for about last 02 months and 17 days in the FIR in question. Indubitably, the petitioner is stated to be involved in 04 other NDPS FIR(s) and one FIR under the Prisons Act. However, the facts remain that the petitioner has been languishing in *gaol* for the last 2/3 years *albeit* being incarcerated in another FIR(s). Thus, in the considered opinion of this Court, the requirement of Section 37(1)(b)(ii) can be met with by mandating the petitioner to submit an affidavit before the concerned Special Judge, NDPS Court on the first working day of every month stating that he has not committed any offence after being enlarged on bail in the present FIR.

Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

17. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned Special Court, NDPS Act/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned Special Court, NDPS Act/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

(i) The petitioner shall not mis-use the liberty granted.

(ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.

(iii) The petitioner shall not absent himself on any date before the trial.

(iv) The petitioner shall not commit any offence while on bail.

(v) The petitioner shall deposit his passport, if any, with the trial Court.

(vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaqa Magistrate.

(vii) The petitioner shall not in any manner try to delay the trial.

(viii) The petitioner shall submit, on the first working day of every month, an affidavit, before the concerned Special Judge of NDPS Court, to the effect that he has not been involved in commission of any offence after being released on bail. In case the petitioner is found to be involved in any offence after his being enlarged on bail

in the present FIR, on the basis of his affidavit or otherwise, the State is mandated to move, forthwith, for cancellation of his bail which plea, but of course, shall be ratiocinated upon merits thereof.

18. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned Special Court, NDPS Act/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State shall be at liberty to move cancellation of bail of the petitioner.

19. Ordered accordingly.

20. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

21. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

July 21, 2025
Ajay

Whether speaking/reasoned: Yes
Whether reportable: Yes