

Reserved

Court No. - 14

Case :- BAIL No. - 8654 of 2019

Applicant :- Shridam Adhikari

Opposite Party :- Union of India through Directorate Of Revenue Intelligence (D.R.I.)

Counsel for Applicant :- Pal Singh Yadav, Chandra Shekhar Pandey, Prathama Singh

Counsel for Opposite Party :- Digvijay Nath Dubey

Connected With

Case :- BAIL No. - 8637 of 2019

Applicant :- Ram Prakash

Opposite Party :- U.O.I. through Directorate Of Revenue Intelligence (D.R.I.)

Counsel for Applicant :- Pal Singh Yadav, Chandra Shekhar Pandey, Prathama Singh

Counsel for Opposite Party :- Digvijay Nath Dubey

AND

Case :- BAIL No. - 8627 of 2019

Applicant :- Surjeet Kushwaha

Opposite Party :- U.O.I. through Directorate Of Revenue Intelligence (D.R.I.)

Counsel for Applicant :- Chandra Shekhar Pandey, Pal Singh Yadav, Parmanand Gupta, Prathama Singh

Counsel for Opposite Party :- Digvijay Nath Dubey, Arvind Kumar Tewari, Pramanand Gupta

AND

Case :- BAIL No. - 8638 of 2019

Applicant :- Chet Ram @ Ram Veer

Opposite Party :- U.O.I. Through Directorate Of Revenue Intelligence (D.R.I.)

Counsel for Applicant :- Pal Singh Yadav, Ayodhya Prasad Mishra, Bhup Chandra Singh, Chandra Shekhar Pandey, Prathama Singh

Counsel for Opposite Party :- Digvijay Nath Dubey

Hon'ble Chandra Dhari Singh, J.

1. Heard learned Counsel for applicants and Sri Digvijay Nath Dubey, learned Counsel appearing on behalf of the opposite party/ Directorate of Revenue Intelligence.
2. The accused applicants sought for bail in FIR/ Case Crime No.8 of 2019, under Section 8/20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act'), Police Station DRI Gomti Nagar, District Lucknow.
3. According to the prosecution story, on 10.05.2019 at about 5:00 AM, an information was received from the Deputy Director, DRA Zone Lucknow that a mini Truck Tata bearing Registration No.RJ 05 GB 5866 came from Odisha via Jabalpur, Jhansi Highway, Orai, Kanpur, Lucknow to Agra in which contraband (Ganja) is loaded. On the said information, the Intelligence Officer/ complainant constituted a team and went for raid, in the way at Shaheedpath Tiraha two persons were collected as independent witness and reached near Amausi Airport at about 07:30 AM.
4. In the prosecution story, it is further alleged that at about 8:45 AM, a mini Truck Tata came from Kanpur side and on confirmation, they stopped it. In the truck, one person was sitting along with the driver. The driver disclosed his identity as Pappu son of Mangal Singh. The person who was sitting along with the driver had disclosed his identity as Sridam Adhikari, (accused applicant of Bail No.8654 of 2019) son of Nagen Adhikari. On checking, it was also found that three persons, namely, Ram Prakash (accused applicant of Bail No.8637 of 2019) son of Dhuri Singh, Chet Ram alias Ram Veer (accused applicant of Bail No.8638 of 2019) son of Kalyan Singh and Sri Surjeet Kushwaha (accused applicant of Bail No.8627 of 2019)

son of Bholu Prasad Kushwaha were sitting in the back side of the truck in Dala. On asking regarding smell coming from truck, they told that contraband article Ganja is loaded in the truck and same was brought from Odisha. One Innova car was also coming from behind the truck bearing Registration No.UP 80 BY 0701. On asking, it was informed by the driver of Innova Car that he knew the co-accused applicant Chet Ram. The driver also informed that the co-accused applicant Chet Ram hired his Innova car and travelled from Agra to Mandala and from where, he boarded at the said truck and directed me to follow the same and therefore, he came behind the truck and stopped. The driver of Innova Car has disclosed his identity as Sri Hari Singh son of Sri Parsadi.

5. It is further alleged in the prosecution case that after informing the accused about their rights with respect to personal search available under the provisions of Sections 50 of NDPS Act and on their consent, the search was made in which mobile phones, Aadhar Cards, PAN Cards and cash were found from the possession of the accused applicants and thereafter in the search of mini truck under Section 49 of NDPS Act, 122 packets having weight of 650.740 kgs contraband was found kept in secret cavity of the truck. Thereafter, the recovery memo was prepared and the accused applicants put their signatures on the recovery memo. The raiding team sent the recovered contraband for chemical analysis after completing all the formalities.
6. Learned Counsel for the applicants has submitted that after arresting the accused applicants, the DRI Team forcefully took their signatures on the blank papers and thereafter, the alleged recovery memo was prepared which is clearly evident from the fact that the driver of Innova Car, namely, Hari Singh was

neither arrested nor produced whereas his signature appears on the recovery memo. It is also alleged that the Raiding Team tortured them badly. The accused applicants were arrested at 8:45 AM on 10.05.2019 but the Raiding Team had not informed to the Officer In-charge of nearest police station i.e. Banthara/ Sarojini Nagar and they produced them on 11.05.2019 at about 11:00 AM i.e. after more than 25 hours without explaining any delay which is against the provisions of Section 52(3)(a) of NDPS Act as well as Section 167(1) of the Criminal Procedure Code. The raiding team has also not followed the provisions of Section 50 of NDPS Act while their personal search.

7. Learned Counsel for the applicants has further submitted that the raiding team got prepared the statements of the applicants in the custody under Section 67 of the NDPS Act and prepared the arrest memo on 11.05.2019. Since the applicants have been falsely implicated in this case, they preferred an application under Section 164(4) of Cr.P.C. in the court of Special Judge, Court No.6, Lucknow on 01.07.2019 stating therein that the raiding team had not complied with the provisions of Section 50 of NDPS Act and also violates the provisions of Sections 41, 42, and 43 of NDPS Act. The statements under Section 67 have been recorded forcibly. From the perusal of entire material facts and evidence as well as the provisions of NDPS Act, it is evident that the applicants are innocent and are being falsely implicated in the crime and thus, the applicants are entitled for bail. The applicants are in jail since 11.05.2019.
8. It is also alleged by learned Counsel for the applicants that the accused applicant Shridam Adhikari is a businessman and Class-B Contractor and manufacturer of bricks (cement) and recently started the business of footwear for which he came at Hathrus for raw material. The accused applicant Ram Prakash is

a poor person doing private work for earning livelihood. The accused applicant, Surjeet Kushwaha is a farmer and doing cultivation and mostly residing in his village. The accused applicant Chet Ram is a businessman involved in the business of mining.

9. The applicants undertake that in case, the applicants are released on bail, they will follow the terms and conditions of the bail and will never misuse the liberty of the same. There is no apprehension for absconding and tampering the prosecution witnesses in any manner.
10. Per contra, Sri Digvijay Nath Dubey, learned Counsel for the opposite party has submitted that the accused applicants were caught red handed while they were transporting the alleged contraband Ganja amounting to Rs.97.61 lac. In the statements recorded under Section 67 of the NDPS Act, the accused applicants confessed their conscious involvement in transportation of the said Ganja from Odisha to Agra. From the call details, it is evident that all the accused persons are continuous in contact and, therefore, learned Counsel for the applicant has wrongly argued that since the applicants are the resident of different places, therefore, they have no concerned to each other. The fact of hiring Innova Car has been duly recorded in the recovery memo and is corroborated with the statements of Hari Singh and Chetram. It has wrongly been stated by the applicants that the statements were recorded in the custody. The provisions of Sections 41, 42, 43 and 50 of NDPS Act have been followed by the raiding team which is evident from the recovery memo itself.
11. Learned Counsel for the opposite party has further submitted that in the instant case, the accused applicants have been

arrested with 650.740 kgs Ganja which is a commercial quantity, therefore, the Magistrate may authorise the detention of the accused persons till 180 days, hence the provisions of Section 167 of Cr.P.C. cannot be invoked in the present case. As per the report of CRCL, New Delhi “each sample under reference answered positive test for Ganja”. The applicants are not only indulged in the instant case but also involved in other similar cases, therefore, it cannot be said that the applicants have falsely been implicated in this case. The applicants are not entitled to get the benefit of Section 37 of NDPS Act as they are habitual offenders. In case, if the applicants are released on bail, there is a great chance that they will again commit such a serious offence. Therefore, the applicants are not entitled for bail.

12. I have considered the submissions of learned Counsel for the parties and perused the record.
13. It is not in dispute that the alleged seized contraband Ganja having weight of 650.740 kgs is much more than then commercial quantity i.e. 20 kgs, therefore, provisions of Section 37 of the NDPS Act are attracted in this case, which is in addition to Section 439 of Cr.P.C. and mandatory in nature.
14. In view of Section 37 of the NDPS Act, before granting bail for the offence under NDPS Act twin conditions as provided under Section 37(1)(b) (i) and (ii) have to be satisfied. Section 37 of the N.D.P.S. Act is quoted herein below:

"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."

15. On several occasions, the Apex Court has considered the issue relating to provisions of Section 37 of the NDPS Act and after wholesome treatment laid down guidelines in this regards, which would be useful to quote herein-below:

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

"12. It is plain from a bare reading of the non-obstante clause in the Section and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by sub-clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz; (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of

the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

13. The expression 'reasonable grounds' has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [Vide Union of India Vs. Shiv Shanker Kesari, 2007(7) SCC 798] Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court is not called upon to record a finding of 'not guilty'. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail."

*ii. In case of **Union of India Vs. Ram Samujh 1999 (9) SCC 429**, Apex Court has made following observations in paragraph 7 of the said judgment, which are reproduced herein below:-*

"7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered and followed. It should be borne in mind that in murder case, accused commits murder of one or two persons, while those persons who are dealing in narcotic

drugs are instruments in causing death or in inflicting death blow to number of innocent young victims, who are vulnerable: it causes deleterious effects and deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under NDPS Act, has succinctly observed about the adverse effect of such activities in Durand Didien v. Chief Secretary. Union Territory of Goa. [1990] 1 SCC 95 as under:

"24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportion in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, the Parliament in the wisdom has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine."

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

"6. As the provision itself provides no person shall be granted bail unless the two conditions are satisfied. They are; the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty and that he is not likely to commit any offence while on bail. Both the conditions have to be satisfied. If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail."

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

iv. *In recent decision of Apex Court in **State of Kerala Etc. Vs. Rajesh Etc. AIR 2020 Supreme Court 721**, Apex Court again considered the scope of Section 37 of N.D.P.S. Act and relying upon earlier decision in Ram Samujh (Supra) held as under:*

"20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

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

the matter of bail under the NDPS Act is indeed uncalled for."

v. *The Apex Court in **Union of India vs Prateek Shukla, AIR, 2021 SC 1509** has held that merely recording the submissions of the parties does not amount to an indication of a judicial or, for that matter, a judicious application of mind. The provisions of Section 37 of the N.D.P.S. Act provide the legal norms which have to be applied in determining whether a case for grant of bail has been made out. The relevant paragraph nos. 11,12 and 13 of the said judgment are reproduced herein under :*

"11. Ex facie, there has been no application of mind by the High Court to the rival submissions and, particularly, to the seriousness of the allegations involving an offence punishable under the provisions of the NDPS Act. Merely recording the submissions of the parties does not amount to an indication of a judicial or, for that matter, a judicious application of mind by the Single Judge of the High Court to the basic question as to whether bail should be granted. The provisions of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a case for grant of bail has been made out. There has been a serious infraction by the High Court of its duty to apply the law. The order granting bail is innocent of an awareness of the legal principles involved in determining whether bail should be granted to a person accused of an offence under the NDPS Act. The contention of the respondent that he had resigned from the Company, Altruist Chemicals Private Limited, must be assessed with reference to the allegations in the criminal complaint which has been filed in the Court of the District and Sessions Judge, Gautam Budh Nagar (Annexure P-6).

The relevant part of the complaint reads as follows:

"18. That during investigation of the case, letter dated 27.11.2018 was sent to the Registrar of Companies for providing details of the Directors etc of the company in question i.e. U/s Altruist Chemicals Pvt Ltd and vide its report dated 03.12.2018 Registrar of Companies provided the said information and from the perusal of said

information/documents, it reveals that accused Prateek Shukla and Bismillah Khan are the Directors.

Accused Himanshu Rana was also Director but he has resigned from the directorship. From the perusal of the documents, it also reveals that they had registered the company, i.e., Altruist Chemical Pvt. Ltd. At 001, Block Ab-Sector-45, Noida, which is a residential area and accused persons also obtained Unique Registration No. from the NCB on the above said premises."

12. *We may also note at this stage the contention of the respondent in the application for bail which was filed before the High Court (Annexure P-8) that he had transferred 99% of his shareholding in the Company to Bismilla Khan Ahmadzai. Bismilla Khan Ahmadzai, as the prosecution alleges at this stage, is an Afghan national. The application for bail which had been filed before the High Court as well as the counter affidavit which has been filed in the present proceedings suppress more than what they disclose. Be that as it may, we are of the view that the High Court was clearly not justified in granting bail and the reasons provided by the High Court, as we have already indicated above, do not reflect application of mind to the seriousness of the offence which is involved. Indicating that the respondent as an educated person with a Bachelor of Technology "may not commit any offence" is an extraneous circumstances which ought not to have weighed with the High Court in the grant of bail for an offence under the NDPS Act.*

13. *For the above reasons, we are of the view that the High Court has mis-applied the law to the facts in arriving at a decision for the grant of bail to the respondent. We accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 7 May 2019. As a consequence, the bail which has been granted by the High Court to the respondent shall stand cancelled. The respondent shall surrender forthwith as a result of the cancellation of bail by the present order of this Court."*

Etc, (Criminal Appeal No. 438-440 of 2021 decided by the Apex Court on 19.04.2021).

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

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

16. Possession is the core ingredient to be established before the accused are made criminally liable. The expression 'possession' is a polymorphous term, which assumes different colour in different context as settled by the Apex Court. There are three kind of possession, namely, Physical Possession, Constructive Possession and Conscious Possession. The words 'conscious possession' connotes a particular state of mind which is deliberate and intended.
17. Hon'ble Supreme Court while dealing with the question of possession and application of Section 50 in the case of ***Megh Singh Vs. State of Punjab, 2003 CRI. L.J. 4329***, held that word 'possession' includes conscious possession. Further Section 50 applies in case of personal search of a person and it does not extend to search of a vehicle or container or a bag or premises. Relevant paragraph nos. 9 to 13 and 16 are extracted here as under:

"9. The expression 'possession' is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in *Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and Ors.* (AIR 1980 SC 52), to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the context of all statutes.

10. The word 'conscious' means awareness about a particular fact. It is a state of mind which is deliberate or intended.

11. As noted in ***Gunwantal v. The State of M.P.*** (AIR 1972 SC 1756) possession in a given case need not be physical possession but can be constructive, having power and control over the article in case in question, while the person whom physical possession is given holds it subject to that power or control.

12. The word 'possession' means the legal right to possession (See ***Health v. Drown*** (1972) (2) All ER 561 (HL)). In an interesting case it was observed that where a person keeps his fire arm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See *Sullivan v. Earl of Caithness* (1976) (1) All ER 844 (QBD)).

13. Once possession is established the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles. This position was highlighted in *Madan Lal and Anr. v. State of Himachal Pradesh* (2003) (6) SCALE 483).

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16. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a

container or a bag, or premises. (See Kalema Tumba v. State of Maharashtra and Anr. (JT1999 (8) SC 293), The State of Punjab v. Baldev Singh (JT1999 (4) SC 595), Gurbax Singh v. State of Haryana(2001(3) SCC 28). The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in Baldev Singh's case (supra). Above being the position, the contention regarding non-compliance of Section 50 of the Act is also without any substance."

18. The Apex Court in the case of ***Dehal Singh vs. State of Himanchal Pradesh, 2011 (72) ACC 661***, has again consider the issue of "conscious possession". In the said case, two accused persons were travelling in a car and they knew to each other. From the windows/door of the said car, recovery of 27 Kgs. 800 gms. of charas was made, which were found concealed between the shields and doors of the car. The Apex Court in the said case taking into consideration the provisions of Sections 35 and 54 of the N.D.P.S. Act has held that accused was not only in possession, but conscious possession of recovered contraband also.
19. No material has been brought on record by the applicants to show that there was any prior ill-will or enmity of the applicants with the DRI Team concerned. Illicit trafficking is an organized crime and are done adopting different *modus operandi* by a group of persons with their different role. So far as plea of false implication is concerned, in my view, it is a stereo typed defence raised in every case, where accused are found in possession of contraband. Experience shows that such statements are made in almost every case, therefore, such kind of plea of false implication without any basis is not liable to be accepted at this stage.

20. So far as argument of learned counsel for the applicants that applicant are in jail since 11.05.2019 are concerned, it is relevant to mention that in the case of *Union of India v. Rattan Mallik (supra)*, the accused was in jail for last three years, but the Apex Court has made an observation that the stated circumstances may be relevant for grant of bail in matters arising out of conviction under Penal Code etc., but are not sufficient to satisfy the mandatory requirements as stipulated in clause (b) of sub-section (1) of Section 37 of the N.D.P.S. Act.
21. It is admitted fact that the raiding team has recovered 650.740 kgs Ganja from the aforesaid mini truck, which is a commercial quantity and in the said vehicle, all the accused applicants were travelling. The accused applicants have been apprehended by the raiding team on the spot and were having conscious and constructive possession over the recovered Ganja. There is specific statutory presumption in relation to contraband that comes within the ambit of N.D.P.S. Act. In view of Section 54 of the N.D.P.S. Act presumption shall be drawn against the accused unless and until the contrary is proved. The expression "unless and until the contrary is proved", clearly imposes the burden of proving that possession of prohibited substance is legal on the accused himself.
22. In the light of analysis of the case as mentioned above and considering the recovery of huge quantity of Ganja as mentioned above, coupled with the fact that applicants were apprehended at the spot and was having conscious and constructive possession over the recovered Ganja, I do not find any reasonable ground in terms of Section 37 of the N.D.P.S. Act to hold that applicants are not guilty of an offence and they are not likely to commit any offence while on bail.

23. It is made clear that this finding is for a limited purpose and is confined to the question of deciding the bail applications of accused applicants only. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.
24. In view of the facts and circumstances of the case and on account of the reasons mentioned above, I do not find any good ground for enlarging the applicants on bail at this stage. The bail applications of the applicants are accordingly *rejected*.

Order Date:22.09.2021
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