

**HIGH COURT OF KERALA**  
**Bench: Justice A. Badharudeen**  
**Date of Decision: 6th June 2024**

Case Nos.: Bail Appl. Nos. 2008 and 2608 of 2024

**Petitioners:**

**S. John Bosco and Others ... Petitioners**

**Versus**

**Respondents:**

**Union of India and Others .. Respondents**

**Legislation:**

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) -  
Sections 21, 23, 25, 27(A), 28, 29, and 8(c)

**Subject:** Bail applications filed by accused in a case involving the seizure of a large quantity of heroin. The petitioners argued for bail on the grounds of innocence and procedural errors in the prosecution's case.

**Headnotes:**

Narcotics Control – Bail Application – Commercial Quantity of Narcotics – Petitioners were part of a group accused of transporting 217.525 kg of heroin – Defence claimed petitioners were unaware of the contraband and were merely fishermen – Prosecution opposed bail, citing substantial evidence of involvement – Court held that conditions under Section 37 of NDPS Act were not satisfied – Bail denied [Paras 1-8].

Involvement and Knowledge of Contraband – Petitioners argued lack of knowledge about the narcotics – Confession statements recorded under Section 67 of the NDPS Act deemed inadmissible based on Tofan Singh judgment – However, other evidence, including independent witness statements and call records, implicated petitioners – Court found prima facie involvement [Paras 3-13].

Section 37 NDPS Act – Conditions for Bail – Court reiterated that bail in cases involving commercial quantity of narcotics requires satisfaction of conditions under Section 37 – Reasonable grounds to believe accused are not guilty and will not commit offences while on bail – Court not satisfied with petitioners' arguments – Bail applications dismissed [Paras 14-20].

**Decision:**

Bail applications of petitioners dismissed. The Court held that the petitioners did not satisfy the conditions under Section 37 of the NDPS Act, and the evidence presented by the prosecution established prima facie involvement in the crime.

**Referred Cases:**

- Tofan Singh v. State of Tamil Nadu [(2021) 4 SCC 1]
- Narcotics Control Bureau v. Mohit Aggarwal [Manu/SC/0899/2022]
- Union of India v. Shiv Shankar Kesari [(2007) 7 SCC 798]

**Representing Advocates:****For Petitioner No. 8: W. Cleetus****For Petitioner No. 13: K.V. Sabu****For Respondents: T.C. Krishna (Deputy Solicitor General of India in charge), Renjit George (Senior Public Prosecutor)*****A.BADHARUDEEN, J.***

=====

*B.A.Nos.2008 of 2024 and**B.A.No.2608 of 2024*

=====

*Dated this the 6<sup>th</sup> day of June, 2024***C O M M O N   O R D E R**

B.A.No.2608/2024 is an application for regular bail at the instance of accused No.13 in Occurrence Report No.2/2022 of the Directorate of Revenue Intelligence, Kochi, now pending as S.C.1140/2022 on the files of First Additional District Court, Ernakulam. B.A.No.2008/2024 is at the option of accused No.8 in the said crime.

2. The learned counsel for the respective petitioners, including Advocate W. Cleetus appearing for accused No.8, who filed bail application for the first time. Both counsel also argued at length in tune with the argument tendered by the learned counsel for accused No.13 earlier, when this Court considered B.A.Nos.426 and 429 of 2023, pertaining to accused Nos.6, 10 to 15, 18, 19 along with accused Nos.22 and 23. Heard the learned Public Prosecutor also.

3. Perused the case records including the complaint filed by the Directorate of Revenue Intelligence Zonal Unit, Cochin arising out of O.R.2/22 of DRI, Kochi. In this case, the prosecution alleges commission of offences punishable under

Sections 21, 23, 25, 27(A), 28 and 29 r/w 8(c) of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as the `NDPS Act' for short). The prosecution allegation is that on 18.05.2022 officers of the Directorate of Revenue Vigilance Cochin seized 217.525 kg. of white colour substances on suspicion that the same is Heroin from 2 boats by name "Little Jesus" and "Prince", registered in Tamil Nadu. Accordingly, accused Nos.1 to 20 were arrested from the said boats along with the contraband and subsequently other accused including accused Nos.22 and 23.

4. While canvassing regular bail to accused No.13, the learned counsel for accused No.13 reiterated the contentions earlier argued by another counsel on the submission that the accused No.13 happened to be inside the boats by name "Little Jesus" and "Prince" as fishermen without knowledge of transport of contraband in the boats. Although his confession was recorded, the same is inadmissible in evidence. Accordingly, it is argued that accused No.13 is innocent and therefore he deserves bail. Same contentions were reiterated by the learned counsel for accused No.8 also.

5. Whereas the learned Deputy Solicitor General of India would submit that there are sufficient materials in this case to see the involvement of the petitioners in this crime and as per the materials available, *prima facie*, it is established that all the accused herein were in the boats to accompany transport of huge quantity of contraband, coming to 217.525 kg of Heroine, the largest recovery in the country and presence of very less number of fishes in the boats, which were caught and kept for the purpose of preparing food for the accused, could not help the accused to contend that the accused accompanied the boats to Kochi to catch fish. It is also pointed out by the learned DSGI that the date of occurrence is a period during May and during this period, normally fishing operations would not be done. Accordingly the

learned DSGI, strongly opposed bail highlighting the rider under Section 37(1) of the NDPS Act.

6. While considering B.A.Nos.426 and 499 of 2023, vide order dated 16.02.2023, this Court dismissed the above petitions after discussing the arguments at length starting from paragraphs 5 to 20, holding that this Court could not satisfy that there are reasonable grounds for believing that the petitioners are innocent and they would not commit any offence while on bail and would satisfy both conditions under Section 37 (1)(b) and 37(1)(b)(ii) of the NDPS Act. Paragraphs 5 to 20 of the earlier common order in B.A.Nos.426 and 499 of 2023 are as under:

5. Advocate Lal K.Joseph, who appeared for the petitioners in B.A.No.426/2023, would submit that the petitioners are innocent. According to him, the petitioners are fishermen by profession and they were brought into as employees/fishermen of the boats by names; “Little Jesus” and “Prince”, controlled by accused Nos.1 to 5 and 21 to 23. Accordingly, they went for fishing at high sea. The petitioners did not have any knowledge about the contraband, its transport or recovery. It is submitted by the learned counsel for the petitioners that the petitioners were offered with Rs.2,500/- per day as bata and also share in the price of fish. Accordingly, being employees in the above boats, they were at the high sea for a period of two weeks more for fishing and on 18.05.2022 the Revenue Intelligence intercepted the ship and contraband was seized. According to Advocate Lal K.Joseph, they started fishing on 29.07.2017 after filling fuel on 27.4.2017 for the said purpose, as evident from the bills showing purchase of fuel, produced as Annexures-A4 and A5 in B.A.426/2023. Therefore, Advocate Lal K.Joseph would submit that his clients' complicity in this matter is without support of any materials and as such they are liable to be released on bail though the contraband would come to commercial quantity, where the rider under Section 37 of the NDPS Act will be applicable.

6. Whereas Advocate Shyam Kumar, who appeared for accused 22 and 23, argued at length to convince that accused 22 and 23 have no role in this occurrence. According to him, though they were arrayed as accused in this case on the allegation that they are the

owners of the above boats, the prosecution miserably failed to collect sufficient documents to show the complicity of accused Nos.22 and 23 in this matter, either as owners of the boats or as men associated with the contraband. He also argued that the confession statements recorded as that of Chrispen and as that of accused Nos.22 and 23 were given much emphasis by the prosecution to hold that they are the owners of the ships by name “Little Jesus” and “Prince”. He also pointed out that, in fact, the confession statement of Chrispen was recorded on 20.05.2022 and even prior to that, i.e on 19.05.2022 the petitioners were summoned to appear before the Revenue Intelligence Officer, DRI Unit Tuticorin and Trichi. Therefore, even without support of confession statements by anybody, accused Nos.22 and 23 were implicated as accused with ulterior motives. Therefore, they are liable to be released on bail. He also pointed out that, even otherwise statements of accused Nos.22 and 23 as well as the co-accused, recorded under Section 67 of the NDPS Act are the sole basis on which the prosecution alleges commission of offences by the petitioners and the same cannot be considered.

7. In support of this contention, the learned counsel for the petitioners has given emphasis to the decision of the Apex Court in [(2021) 4 SCC 1], **Tofan Singh v. State of Tamil Nadu**, to contend that statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act and therefore the implication of accused 22 and 23 in this crime merely based on the confession statements cannot be justified and, therefore, accused 22 and 23, who are innocent persons, are liable to be released on bail.

8. Per contra, the learned Deputy Solicitor General of India(‘DSGI’ for short hereinafter) would submit that there are sufficient materials in this case to see the involvement of the petitioners herein in this crime. In so far as the involvement of accused 22 and 23, who got arrayed as accused subsequently on the allegation that they are the owners and men of the boats “Little Jesus” and “Prince”, the learned DSGI would submit that apart from the confession statement given by Chrispen as well as accused 22 and 25, one Guna, an independent witness who mediated the sale of the above 2 boats in favour of accused Nos.22 and 23, and witnessed payment of entire sale price to the above boats by accused 22 and 23 to Chrispen, had given statement in this

regard and the said statement is the main plank on which the prosecution alleges that the above boats were purchased by accused Nos.22 and 23 from Chrispen and they are the owners of the two boats at the time of recovery of the contraband. The learned DSGI also submitted that on search and inspection of the mobile phone of Guna, the draft sale agreement in that line also was found and recovered by the Investigating Agency.

9. Regarding the involvement of the petitioners in B.A.No.426/2023, the learned DSGI also argued that they could not be held as persons inside the boats without knowledge of transport of the contraband. In this connection, the learned DSGI argued that they had started journey in the boats on 29.04.2022 and after staying at the high sea for a substantive long period till 18.05.2022, they reached Kochi and on doubt they were intercepted, and large quantity of Heroin was seized. Further at the time of recovery, the fish found in the two boats were negligible. The said aspect also shows their knowledge as to transport of Heroin in the above boats. Since the petitioners in B.A.No.426/2023 were arrested from inside the boats while transporting the contraband, their complicity is well made out in so far as the offences alleged to be committed, particularly under Section 21 of the NDPS Act. The learned DSGI placed a 3 Bench decision of the Apex Court reported in [Manu/SC/0899/2022], **Narcotics Control Bureau v. Mohit Aggarwal** to contend that even though it was held in **Tofan Singh's** case (supra) by majority view that a confession statement recorded under Section 67 of the NDPS Act is inadmissible, the disclosure made by an accused which led the NCB team to arrive at and raid the godown of the coaccused which resulted in the recovery is admissible in evidence. Further it is submitted that statements recorded under Section 67 of the NDPS Act have some sort of relevance during the crime stage. In this connection, the learned counsel given emphasis to para.16 of the above judgment which is as under:

*“16. Coming back to the facts of the instant case, the learned Single Judge of the High Court cannot be faulted for holding that the Appellant-NCB could not have relied on the confessional statements of the Respondent and the other coAccused recorded Under Section 67 of the NDPS Act in the light of law laid down by a Three Judges Bench of this Court in Tofan Singh (supra), wherein as per the majority decision, a confessional statement recorded Under Section 67 of the NDPS Act has been held to be inadmissible in the trial of an*

*offence under the NDPS Act. Therefore, the admissions made by the Respondent while in custody to the effect that he had illegally traded in narcotic drugs, will have to be kept aside. However, this was not the only material that the Appellant-NCB had relied on to oppose the bail application filed by the Respondent. The Appellant-NCB had specifically stated that it was the disclosures made by the Respondent that had led the NCB team to arrive at and raid the godown of the co-Accused, Promod Jaipuria which resulted in the recovery of a large haul of different psychotropic substances in the form of tablets, injections and syrups. Counsel for the Appellant-NCB had also pointed out that it was the Respondent who had disclosed the address and location of the co-Accused, Promod Jaipuria who was arrested later on and the CDR details of the mobile phones of all co-Accused including the Respondent herein showed that they were in touch with each other.”*

10. Whereas Advocate Shyam Kumar given emphasis to the decision of the Apex Court reported in CrI.A.No.1897/2019 to contend that apart from the inadmissible nature of statement recorded under Section 67 of the NDPS Act, when the prosecution records do not justify the involvement of accused 22 and 23 in this case, rider under Section 37 would not apply and they are liable to be released on bail. He has also placed decisions of the Apex Court reported in [(2011) 1 SCC 609], **Vijaysinh Chandubha Jadeja v. State of Gujarat**, judgment in Criminal Appeal No.1079 of 2002 reported in [ABC 2012 (II) 70 SC], **Narcotics Central Bureau v. Sukh Dev Raj Sodhi**; [(2021) 1 SCC (Cri) 181], **Gangadhar Alias Gangaram v. State of Madhya Pradesh**, judgment in Criminal Appeal No.421 of 2021 and Order in Petition for Special Leave to Appeal (Cri) No.5703/2021 and (Cri) No.8919/2021, in support of this contention.

11. In this case, the statement given by Guna is very vital. According to Guna (LW53), he had mediated the sale of 2 boats, viz. “Little Jesus” and “Prince” owned by Chrispen and thereafter Chrispen had sold the above ships to Mr.Arabath Ali. Para.99 of the complaint is relevant in this regard. The statement of Mr.Guna (LW53) is narrated as follows:

*“99. Mr.Guna[LW-53] S/o Kupparethinam, aged 35 years in his voluntary statement dated 21.10.2022 recorded under Section 67 of Narcotic Drugs and Psychotropic Substances Act, 1985 interalia stated that his address is Chellavenantheel street, Opposite*

of Devarsanga – office, Jegathapattinam(P.O),  
Manalmelkudi Taluk,

*PuthukottaiDist; that he can read, write and understand Tamil; that he can understand Malayalam little bit and his Mobile Number is 9025425306.*

99.1. *He further stated that he had nothing to do with the seizure of Heroin on 20.05.2022 and that he and his friend “Hari” were the middlemen for sale of “Little Jesus” boat owned by Mr.Chrispen; that he came to know from Hari that Mr.Arabath was looking for a boat and the same was informed to him by one Faizal; that they were also offered half the catch of fish and double the wages if they were willing to go for fishing; that they identified a seller Mr.Chrispen and he, Hari, Faisal, Arabath, his brother Ebrahim, Chrispen and one of Chrispen's men met at Thankam Lodge on 03.02.2022 to finalise the deal; that the sale was fixed at Rupees 55 lakhs; that Arabath handed over Rs.25 lakhs as advance in front of them and an agreement was made on white paper by the person who accompanied Chrispen; that he is submitting the copy of the said agreement; that he denied Arabath's offer to register the boat in his name.*

99.2. *He further stated that after 10 days Arabath handed over to Chrispen Rs.30 lakhs at Nagercoil in Madurai route in presence of him and Hari; that Chrispen paid them 5 lakhs as commission; that later they came to know through Faisal that the boat was regisrtered to a person named Mr.Abdulla, a native of Kottaipattinam; that Faizal is know to him through his friend Hari only; that he did not know anything about the whereabouts of Mr.Abdulla; that he was present in the “Little Jesus” boat when the same was intercepted by Navy.”*

99.3. *He further stated that on reaching Cochin Hari tried to contact Ebrahim but he did not respond; that he called Faisal and he did not pick the call; that he contacted Chrispen and informed the details; the next day Chrispen came to Cochin and handed over Rs.5000; that thereafter they did not have any contact with Chrispen; that using the satellite phone he had called his wife, Lakshmi to her number 8870462451 and Hari contacted his wife, Vigneswari and Sayed Ebrahim to his number 9942735912 to inform that they were returning; that he had contacted Arabath, Faisal, Sayed Ebrahim*



*and Chrispen from his mobile number 9025425306; that Faisal was contacted in his number 919894436676, Chrispen in his number 9489504745 and Sayed Ebrahim in his number 9942735912; that from the photographs, he identified Faisal, Arabath and Chrispen.”*

12. Thus the role of accused Nos.22 and 23 as the men behind the transport of contraband after purchase of the boats from Chrispen is well established *prima facie*, by the statements of Sri Guna, an independent witness, who mediated the sale. That apart, it is submitted by the learned DSGI that the call details collected by the Investigating agency emphatically proved close relation in between accused 22, 23, 1, 2 and 3 during the period of sale of boats and the period of recovery.

13. Though it is argued by Advocate Lal K. Joseph that the petitioners in B.A.No.426/2023, who are fishermen, as per their confession statements recorded under Section 67 of the Evidence Act, reiterated their innocence in the matter of transport of contraband, the prosecution agency was not inclined to exclude them, the confession statements of the petitioners alone in this regard are quite insufficient to hold their innocence at this stage, since they were nabbed from the boats while transporting contraband. Therefore, this Court cannot hold *prima facie* that they are absolutely innocent, at this stage. But they can establish the same during trial.

14. Hence, when the prosecution alleges possession of commercial quantity of contraband, the rider under Section 37 of the NDPS Act would apply. Section 37 of the NDPS Act provides as under:

*“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 a perusal of Section 37(1)(a)(i), when the Public Prosecutor opposes bail application of a person involved in a crime, where commercial quantity of the contraband was seized, the Court can grant bail only after satisfying two conditions: viz; (1) There are 'reasonable grounds' for believing that the accused is not guilty of such offences and (2) he will not commit any offence while on bail.

16. The Apex Court considered the meaning of 'reasonable grounds' in the decision reported in (2007) 7 SCC 798, ***Union of India v. Shiv Shankar Kesari*** and held that the expression 'reasonable grounds' 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.

17. It was further held that the Court while considering the application for bail with reference to S.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.

18. While considering the rider under Section 37 of the NDPS Act, the same principles have been reiterated, in the decisions reported in ***Superintendent, Narcotics Central Bureau v. R.Paulsamy*** [2000 KHC 1549: AIR 2000 SC 3661: (2000) 9 SCC 549: 2001 SCC (Cri) 648: 2001 CriLJ 117], ***Customs, New Delhi v. Ahmadalieva Nodira*** [2004 KHC 505: AIR 2004 SC 3022:2004(3) SCC 549: 2004 SCC (Cri) 834: 2004 (110) DLT 300: 2004 CriLJ 1810: 2004 (166) ELT 302], ***Union of India v. Abdulla*** [2004 KHC 1992: 2004(13) SCC 504: 2005 CriLJ 3115: 2005 All LJ 2334], ***N.R.Mon v. Md.Nasimuddin*** [2008 KHC 6547: 2008(6) SCC 721: 2008(2) KLD 316: 2008(2) KLT 1022: 2008(9) SCALE 334:

AIR 2008 SC 2576:2008 CriLJ 3491: 2008(3) SCC (Cri) 29], **Union of India v. Rattan Malik** [2009 KHC 4151: 2009(2) SCC 624: 2009(2) KLT SN 83: 2009 (1) SCC (Cri) 831:2009 CriLJ 3042: 2009 (4) ALL LJ 627: 2009(2) SCALE 51], **Union of India v. Niyazuddin** [2017 KHC 4465: AIR 2017 SC 3932: 2018 (13) SCC 738], **State of Kerala v. Rajesh** [2020(1) KHC 557: AIR 2020 SC 721: 2020(1) KLJ 664: 2020(2) KLT SN1 : ILR 2020(1), Ker.848]

19. On a plain reading of Section 37(1) (b) and 37(1) (b)(ii) of the NDPS Act, within the ambit of the Settled law, it has to be understood that two ingredients shall be read conjunctively and not disjunctively. Therefore satisfaction of both conditions are *sine qua non* for granting bail to an accused who alleged to have been committed the offences under Section 19 or Section 24 or Section 27A and also for the offences involving commercial quantity as provided under Section 37(1)(b) of the NDPS Act. Unless Section 37 is not amended by the legislature in cases specifically referred under Section 37(1)(b) of the NDPS Act, the Court could not grant bail without recording satisfaction of the above twin ingredients.

20. On evaluation of the prosecution materials on par with the arguments tendered by the respective counsel for the petitioners and the learned DSGI, this Court cannot satisfy that there are reasonable grounds for believing that the petitioners are innocent and they will not commit any offence while on bail. Therefore applications for regular bail at the instance of the petitioners must fail.”

7. Though the respective counsel for the petitioners argued at length, in fact, they reiterated the contentions earlier raised and nothing argued to substantiate change in circumstances to hold that the petitioners would deserve bail after diluting the rider under Section 37 of the NDPS Act.

8. In this context, it is relevant to note that, as conceded by both sides, trial in this case has started as on 27.05.2023 and 2 witnesses were already examined. So this is a matter in which trial is in progress and in such a case release of the petitioners on bail would stall the trial otherwise.

In view of the above discussion, both the bail applications stand dismissed.

© All Rights Reserved @ LAWYER E NEWS

\*Disclaimer: Always compare with the original copy of judgment from the official website.