IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

CRIMINAL PETITIONS NO.8264,8277,10184 OF 2021 AND 297 OF 2022

CRIMINAL PETITION NO.8264 OF 2021

Between:
Kampat Phani Kumar

... Petitioner

AND

Union of India through Intelligence officer, Narcotics Control Bureau, Hyderabad sub-zone.

... Respondents

CRIMINAL PETITION NO.8277 OF 2021

Between:
Allanki Naresh Goud

... Petitioner

AND

Union of India through Intelligence officer, Narcotics Control Bureau, Hyderabad sub-zone.

... Respondents

CRIMINAL PETITION NO.10184 OF 2021

Between:

Pamarthi Ram Kishore

... Petitioner

AND

Union of India through Intelligence officer, Narcotics Control Bureau, Hyderabad sub-zone.

... Respondents

CRIMINAL PETITION NO. 297 OF 2022

Between:

Yachamaneni Sudhakar

... Petitioner

AND

Union of India through Intelligence officer, Narcotics Control Bureau, Hyderabad sub-zone.

... Respondents

DATE OF JUDGMENT PRONOUNCED**: 22.02.2022**

SUBMITTED FOR APPROVAL:

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? No
2. Whether the copies of judgment may be marked to Law Reporters / Journals? Yes
3. Whether His Lordship wish to see the fair copy of the Judgment? Yes

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LALITHA KANNEGANTI, J

*** HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**

+ CRIMINAL PETITIONS NO.8264,8277,10184 OF 2021 AND 297 OF 2022

% 22.02.2022

Between:
Kampat Phani Kumar

... Petitioner

AND

Union of India through Intelligence officer, Narcotics Control Bureau, Hyderabad sub-zone.

... Respondents

! Counsel for Petitioner : Mr. Sri V.Narasimha Charyulu

^ Counsel for Respondents : Sri B.Narsimha Sharma

CRIMINAL PETITION NO.8277 OF 2021

Between:
Allanki Naresh Goud

... Petitioner

AND

Union of India through Intelligence officer, Narcotics Control Bureau, Hyderabad sub-zone.

... Respondents

! Counsel for Petitioner : Mr. Sri Posani Venkateswarlu on behalf of Sri T.P. Acharya

^ Counsel for Respondents : Sri B.Narsimha Sharma

CRIMINAL PETITION NO.10184 OF 2021

Between:

Pamarthi Ram Kishore

... Petitioner

AND

Union of India through Intelligence officer, Narcotics Control Bureau, Hyderabad sub-zone.

... Respondents

! Counsel for Petitioner **:** Mr. Sri R.Chandra Sekhar Reddy

^ Counsel for Respondents **:** Sri B.Narsimha Sharma

CRIMINAL PETITION NO. 297 OF 2022

Between:

Yachamaneni Sudhakar

... Petitioner

AND

Union of India through Intelligence officer, Narcotics Control Bureau, Hyderabad sub-zone.

... Respondents

! Counsel for Petitioner **:** Mr. Sri P. Nageswara Rao

^ Counsel for Respondents **:** Sri B.Narsimha Sharma

< Gist:

> Head Note:

? Cases referred:

1) (2016) 3 SCC 379
2) (2021) 4 Supreme Court Cases 1
3) (2007) 7 SCC 798

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITIONS No. 8264, 8277, 10184 of 2021 AND 297 of 2022

O R D E R:

All these Criminal Petitions under Sections 437 and 439 Cr.P.C. are filed by the petitioners – Accused Nos. 5, 2, 3, 4 and 1 respectively in NCB F.No. 48/1/10/2021/NCB/SUB-ZONE/H;YD on the file of Intelligence Officer, NCB, Hyderabad Sub-Zone registered for the offence punishable under Section 8(C) read with Section 22(C), 27A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, seeking bail.

2. The case of the prosecution in brief is that on 14.08.2021, at about 13.30 hours, on receipt of reliable information that Yachamaneni Sudhakar (Accused No.1) aged about 45 years, whitish-complexioned person of Patwari Enclave, Opposite IDL Colony, Hyderabad with around 3 kgs. of Alprazolam was coming in a car bearing Registration No. AP 09 CU 7710 along with other person to sell the contraband to one Allanki Naresh (Accused No.2) for approximately Rs. 12 lakhs who will also come in a car bearing Registration No. TS 11 EC 7292 along with one other person and the exchange of contraband and money will take place near Ujwala Grand on

Medak – Hyderabad Road, Gandi Maisamma, Domara Pochampally Dindigul, Medchal- Malkajgiri, at around 16.00 hours, a team of NCB, Hyderabad proceeded to the above mentioned location, secured two independent witnesses and intercepted the persons came in the above said vehicles while exchanging the bags having cash and contraband and seized 3.2 kgs. of Alprazolam, Rs.12.75 lacs cash in the presence of independent witnesses under panchanama dated 14.08.2021. Accused Nos. 1, 2, 3 and 4 were summoned to give their voluntary statements. During the course of investigation, search operations were conducted at the residence of Accused No.1 and M/s Shree Karthikeya Life Sciences, Balanagar and recovered 50 gms. of Alprazolam and raw material used in manufacture of Alprazolam.

Accused No.5 in his voluntary statement dated 15.08.2021 admitted that in January 2021, Accused No.1 approached him and asked to join his company M/s Shree Karthikeya Life Science to help him and till date, he paid Rs.1,10,000/- in cash. Later, he came to know that Accused No.4 is the partner of Accused No.1. Thereafter, Accused No.5 took single bed room pent house on rent basis in the same building where M/s Shree Karthikeya Life Science exists and

every month they used to manufacture 5 kgs. of Alprazolam and used to deliver different persons located in Gummadidala and Dindigal and Accused No.1 requested to provide and drive Honda Amze car having Registration No. AP 09 CU 7710 for delivery of Alprazolam.

The accused confessed that they do not have any permission or license for manufacturing, storing, transporting, sale and possession of such chemical. It is submitted that Accused No.5 not only assisted Accused No.1 in transporting but also assisted in manufacturing Alprazolam. The voluntary statements of Accused Nos. 2 and 3 also corroborated the fact that sometimes, Accused No.1 used to come in Honda Amaze car having Registration No. AP 09 CU 7710 and sometimes, he used to come by auto rickshaw for supply of Alprazolam. Accused No.4 who worked in pharma companies assisted Accused No.1 in manufacturing the contraband.

It is stated that the seized contraband was produced before the Hon'ble XXI Metropolitan Magistrate, Cyberabad at Medchal on 19.08.2021 and samples were drawn in her presence and they were sent to CFSL, Hyderabad for chemical analysis. The CFSL report dated 22.11.2021 confirmed

the presence of Alprazolam and Nordazepam (both are banned substances) in the seized contraband.

3. **Crl.P.No. 297 of 2022 (Accused No.1):**

Sri P. Kasi Nageswara Rao, learned counsel appearing for Accused No.1 submits that it is alleged that approximately 3.25 kgs. of Alprazolam was seized. He submits that Alprazolam is not a contraband and the same is a medicine enlisted in Schedule H1 of Drugs and Cosmetics Act. He submits that the respondent officials have seized the white powder but the same was not sent for analysis and without getting the same analyzed, it cannot be concluded that the petitioners were carrying Alprazolam and they ought not have been arrayed as accused. It is submitted that the NCB officials have not followed the procedure under Sections 50 and 42 of the NDPS Act. It is stated that seizure was affected at 17.30 hours on 14.08.2021 and as per panchanama, panchas were called at 17.30 hours and calling the panchas and conducting seizure at the same time would clearly establish that the petitioner and others have been implicated in this case. Learned counsel submits that the petitioner was arrested on 16.08.2021 and since then he has been languishing in jail. He submits that M/s Shree Karthikeya Life Science has a licence

and as per the terms and conditions of the licence, the licensee is permitted to store and stock allopathic drugs including Alprazolam purchased under valid purchase invoice. He submits that being a licensee, Accused No.1 can stock Alprazolam and he cannot be alleged to have committed the offence under the NDPS Act. Hence, it is submitted that the case of the petitioner may be considered for grant of bail.

Crl.Petition No. 8277 of 2021 (Accused Nos. 2 and 3):

Sri Posani Venkateswarlu, learned counsel appearing on behalf of Sri T. P. Acharya, learned counsel for the petitioners – Accused Nos. 2 and 3 submits that the NCB officials failed to follow the procedure while seizing the contraband and the procedure adopted by them is unknown to law and contrary to the precedents. He submits that even as per the complaint, they have mixed the powder in all the packets and then placed the same before the Magistrate and samples were drawn. He submits that in the remand report, it is stated that contraband seized was Alprazolam but the FSL report shows that along with Alprazolam, Nordazepam is also present. He submits that the Hon'ble Apex Court in ***Union of India v.***

Mohanlal[1] has categorically held that samples have to be drawn before the Magistrate and the procedure adopted by the police has caused prejudice to the accused and on that ground also they are entitled for bail. He also submits that in between 04.00 and 06.00 P.M., the NCB officials intercepted four persons and seized substance and thereafter, conducted panchanama within two hours. According to the learned counsel, within two hours, it is humanly impossible to complete panchanama wherein 2500 words were written and it draws a presumption that the accused have been intercepted somewhere and brought to the place stated in the remand report. He submits that these things would draw a conclusion that the petitioners might not have been involved in this case and as such, the rigor of Section 37 of the NDPS Act is not applicable. He further submits that in catena of cases, the Supreme Court has observed that basing on illegal search, there shall not be any conviction because search and seizure is preliminary evidence, illegal search cannot be treated as preliminary evidence.

He submits that these petitioners are implicated basing on the confession of co-accused and as per the judgment

[1] (2016) 3 SCC 379

of the Hon'ble Apex Court in ***Tofan Singh v. State of Tamilnadu***[2], confession of co-accused cannot be the basis for convicting the accused and that such confession cannot be taken into consideration. He submits that it is the case of the prosecution that as per the call data, there is communication among the accused. He submits that call data is not admissible in evidence unless and until such call data is recorded; it may not be used either as preliminary evidence or secondary evidence or substantive evidence. It is submitted that in the entire charge-sheet, there is no whisper about recording of their voice. It is also submitted that just because they are moving together, a conclusion cannot be drawn that petitioners have committed the offence and all of them have colluded together. Learned counsel submits that the manner in which the search was conducted, how the panchanama was drafted and basing on call data, the petitioners were alleged to have committed the offence, would *prima facie* create any amount of doubt on the case of the prosecution, as such, once they have come out of the rigor of Section 37 of the Act, then the procedure contemplated under Section 439 Cr.P.C. has to be followed.

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[2] (2021) 4 Supreme Court Cases 1

According to the learned counsel, the petitioners have no criminal antecedents and they are ready to cooperate with the investigation. He submits that there is no possibility of tampering with the evidence and influencing the witnesses because all the witnesses are official witnesses and panch witnesses and entire investigation is completed and charge sheet is also filed. He further submits that as the petitioners are languishing in jail from the last 155 days, and as they are the bread winners of the family, their case may be considered for grant of bail.

Crl.Petition No. 10184 of 2021 (Accused No.4):

Sri R. Chandra Sekhar Reddy, learned counsel appearing for Accused No.4 submits that the petitioner – Accused No.4 has been implicated in this case and he was never in possession of Alprazolam of 50 grams, laboratory equipment and raw material products. He submits that in fact, the NCB officials, in order to harass the petitioner, falsely implicated him in the present case. It is submitted that NCB officials have failed to follow the procedure under Section 42 of the NDPS Act and the Investigating Agency extracted the statement of the petitioner – Accused No.4 on the basis of which he is implicated by threat and coercion. It is submitted that the petitioner was

arrested on 16.08.2021 and since then, he has been languishing in jail. He further submits that the quantity alleged to have been seized from the petitioner is not a commercial quantity but intermediary quantity, hence, his case may be considered for grant of bail. It is also argued that the NCB officials have not followed the procedure and for statistical purpose, the present case has been foisted. He relied on the judgment of the Apex Court in ***Mohanlal' case*** (cited supra).

Crl.Petition No.8264 of 2021 (Accused No.5):

Sri V. Narasimha Charyulu, learned counsel for Accused No.5 submits that Accused No.5 has nothing to do with the alleged offence. In fact, he is eking out his livelihood by running taxi and he has been implicated in this case only on the ground that Accused Nos. 1 and 2 sat in his car. He submits that Accused No.1 confessed that he is the owner of chemical but was not in possession of the same. He submits that if at all there are allegations, they are against Accused Nos. 1 and 4 but not against this accused. He submits that it is nowhere stated that this petitioner has knowledge about the transportation of narcotic substance nor he was financially benefited out of it. He also reiterated the contentions advanced by the other counsel that the NCB officials failed to follow the procedure

contemplated under Sections 42 and 50 of the NDPS Act. He also submits that the hasty manner in which the panchanama was conducted would show that all the petitioners have been implicated in this case. He submits that the petitioner was arrested and remanded to judicial custody on 16.08.2021 and since then, he has been languishing in jail.

4. On the other hand, learned Standing Counsel for NCB Sri B. Narsimha Sharma filed counter-affidavit as well as additional affidavit along with all relevant material and complaint. He submits that on credible information that Accused No.1 is going to sell 3 kgs. of Alprazolam along with other persons to one Avinash for Rs. 12 lacs and exchange of contraband will take place at Ujwal Grand on Medchal-Hyderabad Road, the NCB officials reached the place and by following the procedure contemplated under the NDPS Act for conduct of search and seizure, arrested the petitioners. He submits that he does not dispute the fact that NCB officials mixed contraband and took it to the Magistrate and later, before the Magistrate, as contemplated under the Act and as per the judgment of the Hon'ble Apex Court in ***Mohanlal's case,*** have taken out the samples. He submits that as per the FSL report, the said contraband is containing two substances; one is

Alprazolam and other is Nordazepam and both are psychotropic substances as per the Schedule.

It is submitted that even if the NCB officials have mixed the powder from all the packets, the accused failed to submit before this Court what is the prejudice caused to them. It is submitted that in this case, both the quantities that are seized are commercial quantities and both are psychotropic substances and in the entire Petition or during the course of arguments, except stating that prejudice is caused to them, they have failed to submit before this Court what is the prejudice caused to them. He submits that a huge quantity of contraband is seized and based on these grounds, the petitioners are not entitled for bail. He submits that Accused Nos.1 to 5 were intercepted by the team of NCB officials in the presence of two independent witnesses while they were trying to exchange Alprazolam of 3.2 kgs. for the cash of Rs.12.75 lacs. He submits that Accused Nos. 1 to 5 confessed that they do not have any permission or licence for manufacturing, storing, transporting, sale and possession of such chemical.

It is submitted Accused No.5 not only assisted Accused No.1 in transportation of Alprazolam, but also assisted in manufacturing. He submits that one dryer also seized from

the pent house of Accused No.5 whose keys are available with Accused No.1. He submits that the statements of Accused Nos. 2 and 3 also corroborated the said facts. The learned Standing Counsel for NCB submits that Accused No.4 is having knowledge of working in pharma companies and in his statement, he mentioned that he worked in Dr. Reddy's Laboratories from 1993 to 2016 and later joined MSN Laboratories as Executive which establishes that he can assist Accused No.1 in manufacturing contraband. He submits that Accused Nos. 1, 2, 3 and 5 have the knowledge of carrying the substance which is a scheduled substance under the NDPS Act at Sl.No. 178. He submits that Section 50 of the Act applies only for personal search of the accused and not when it is made in respect of some baggage, article, vehicle which the accused at the relevant point of time was carrying. With regard to the submission that within two hours, the panchanama was completed, the learned Standing Counsel submits that there are two sets of panchas and officers involved in this case; one at Ujwala Grand on 14.08.2021 and other on 14/15.08.2021 at 17.30 hours at M/s Shree Karthikeya Life Sciences which is as under:

S NO	Panchanama date and location	Panchas approached at	Starting time of	Seizure effect at

			panchanama	
1.	14.08.2021 at Ujwala Grand	1545hrs	1600hrs	1730hrs
2.	14/15.08.2021 at M/s.Shree Karthikeya Life Sciences	1730hrs	1845hrs	Whole night

Hence, the learned Standing Counsel submits that the contention of the learned counsel for the petitioners that it is a stage-managed show and the petitioners are implicated in the crime, has no legs to stand. He submits that as per Section 37 of the NDPS Act, if bail has to be granted to the petitioners, the Court has to record reasons that the petitioners are not guilty of such offence and that they are not likely to commit any offence. He submits that as per the information furnished by the Nodal officer, Reliance JIO, Hyderabad, the call data of Accused No.5 from 01.03.2021 to 14.08.2021 shows that he was regularly contacting mobile numbers of Accused Nos. 1 and 4 which establishes the conspiracy between the three accused. He submits that not only the call data but as per the tower location, it is found that both Accused Nos. 4 and 5 were found either at their residence or at M/s Shree Karthikeya Life Science most of the times and Accused Nos. 4 and 5 were frequently visiting the tower location of M/s Shree Karthikeya Life Science

during the check period. It is also submitted that as per the data of tower location, Accused No.1 is static at a single place for 80% of the times i.e. tower location of his residence cum M/s Shree Karthikeya Life Science and he is not moving to any other location on daily basis at a fixed time.

It is submitted that Accused No.3 is the one who is providing raw-material to Accused No.1. The tower location of Accused No.4 most of the times is found at residence or M/s Shree Karthikeya Life Science. He submits that Accused No.6 is absconding and Accused Nos. 2 and 3 are habitual Alprazolam traffickers who sell Alprazolam to toddy shops for earning easy money. It is submitted that the NCB officials have analyzed more than 26,000 tower locations of the accused and marked them in respective CDRs., wherein it is established that Accused No.1 most of the times is static at tower location and Accused Nos. 2 and 3 are most of the times static at their residence and Accused Nos. 4 and 5 are moving between their residence and M/s Shree Karthikeya Life Science. They found to be in shorter spells in other locations. Further, during the course of investigation, it is established that Accused No.6 is found to be working at M/s Mahasai Laboratories in addition to supervising

the illegal work of his brothers - Accused Nos. 2 and 3 and from 14.08.2021, he did not turn up to his work.

Learned Standing Counsel submits that to connect Accused No.1 to the crime that he is in possession and attempted in trafficking the said seized Alprazolam of 3.25 kgs., it is stated that he has been identified by owner and watchman of the residence and both of them confirmed his relation with M/s Shree Karthekeya Life Sciences and with Accused Nos. 4 and 5; he has been identified by Proprietor of M/s Sri Nidhi Pharma and Assistant Manager (warehouse), M/s Sri Yadadri Life Science where M/s Shree Karthikeya Life Science took legitimate business earlier and both of them confirmed that he is related to M/s Shree Karthikeya Life Science and L.W.12 who provided SIM card to him and confirmed that Accused No.1 is running a pharma company in the said premises and Accused No.5 is also related with him. Further, Accused No.1 is found to be calling Accused Nos. 4 and 5 frequently on his mobile number and Accused Nos. 2, 4 and 5 from his other mobile. He submits that as far as Accused No.2 is concerned, he is identified along with Accused Nos. 3 and 6; Accused No.3 is identified by L.W.8 who is proprietor of M/s Narmada Chemicals who sold raw material used for manufacturing of Alprazolam.

He further submits that Accused No.3 is also found to be buying raw material in the name of Yashwanth Reddy and he is also identified by the proprietor of M/s Sri Sruthi Life Science where he worked till March 2020 which establishes that Accused No.3 had knowledge in procuring raw material. He has been identified along with Accused No.2 and 6 by L.W.13 who is the previous owner of Maruti Swift car bearing Registration No. TS 11 EC 7292 used for trafficking of Alprazolam. As far as Accused No.4 is concerned, learned Standing Counsel submits that analysis shows that he is in regular contact with Accused No.1 most of the time at Shree Karthikeya Life Sciences and as far as Accused No.5 is concerned, car which stands in his name was used for trafficking and he was identified by L.Ws.9 and 10 and majority of the time, he is found to be at Shree Karthikeya Life Sciences.

The learned Standing Counsel summing up his arguments, submits that huge commercial quantity of Alprazolam and Nordazepam was seized and once it is a commercial quantity, the twin conditions of Section 37 of the Act have to be satisfied and the NCB by filing the relevant documents and the scientific data could establish *prima facie* that the petitioners are actively involved in the offence. When

once it is established *prima facie* by the NCB the involvement of the petitioners, unless and until a finding is given that there are reasonable grounds to believe that they are not guilty of the offence, this Court may not be able to grant bail to the petitioners. He submits that in this type of offences, where huge contraband is involved and when the petitioners fail to satisfy the twin conditions under Section 37 of the NDPS Act, they are not entitled for bail. Further, he submits that there is every likelihood that they may abscond and it would be difficult for the prosecution to conclude the trail. Hence, he opposed the bail.

5. Having heard the learned counsel on either side, perused the material available on record.

6. The contentions of the learned counsel on behalf of the accused appear to be four-fold: 1) the NCB officials have mixed contraband which is contrary to the judgment of the Apex Court in ***Mohanlal's case*** (cited supra) and it caused prejudice to the accused; 2) the panchanama was conducted within two hours and 2,500 words are written therein which is humanly impossible; 3) basing on the call data, they cannot be arrayed as accused as it can never be taken as preliminary evidence or secondary evidence or substantive evidence; and 4) as there is

no *prima facie* case made out, they do not have to satisfy the twin conditions of Section 37 of the Act and the case has to be considered within the parameters of Section 439 Cr.P.C.

7. In this case, 3.25 kgs. of contraband is seized and as per the FSL report, it contains Alprazolam and Nordazepam. Admittedly, in this case, samples were drawn before the Magistrate but the grievance of the petitioners is that the NCB officials have seized the bags and mixed the substance therein and taken them to the Magistrate. In the arguments, none of the counsel could point out what is the prejudice caused to the accused. Investigation reveals that admittedly at M/s Shree Kartikeya Life Science along with Alprazolam, Nardazepam was also found which strengthens the case of prosecution. Though two products are found as per the FSL report both of them are commercial quantities and both are notified substances as per the NDPS Act.

8. The Hon'ble Apex Court in ***Mohanlal's*** case held as under:

> " 15. It is manifest from Section 52-A(2) (c) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the

> correctness of the, inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as of true, and (c) to draw representative samples in the presence of magistrate and the certifying the correctness of the list of samples so drawn.
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> 16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.
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> 17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above. scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.

Admittedly, in this case, the samples are drawn before the Magistrate. In the light of the above facts, this Court is not able to appreciate the contention of the learned counsel for the petitioner on the aspect of mixing of samples.

9. The second contention is with regard to the call data. It is argued that it cannot be considered as primary evidence or secondary evidence or substantive evidence. In this, NCB is not solely relying on call data, but they have also placed on record the tower location apart from that they could establish the nexus between all the accused by examining some of the witnesses, which corroborates with the call data and the tower location. Hence, this ground also has no legs to stand.

10. Relying on the judgment of the Apex Court in ***Tofan Singh's case***, it is submitted that the confession of co-accused cannot be a basis and the same is inadmissible. The case of the NCB is not based solely on the confession of the accused or on the call data. Apart from that they have other evidence on record to *prima facie* connect the accused to the alleged crime. Hence the judgment of the Apex Court in ***Tofan Singh' case*** has no application to the facts of the case.

11. Now dealing with the contention of the learned counsel for NCB with regard to the twin conditions under Section 37 of the NDPS Act, it is appropriate to have a look at the judgment in ***State of Kerala Vs. Rajesh***[3] (Criminal Appeal Nos. 154-157 of 2020 dated 24.01.2020), wherein the Hon'ble

[3] (2007) 7 SCC 798

Apex Court considered the application moved by the State of Kerala against grant of regular hail to the accused without noticing the mandate of Section 37 (1)(b)(ii) of NDPS Act. The Apex Court held thus:

> 18. The jurisdiction of the Court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted in case there are reasonable grounds for believing that accused is not guilty of such offence, and that he is not likely to commit any offence while on bail. It is the mandate of the legislature which is required to be followed
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> 20.The scheme of Section 37 reveals that the exercise power to grant bail is not only subject to the limitations contained under Section 439 of the CriC, 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 firstcondition 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 freasonable 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."
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> Accordingly, the Apex Court set aside the order passed by the High Court releasing the accused on bail.

12. In light of the law laid down by the Apex Court in the above judgment, the Court while considering the application

for bail with reference to Section 37 of NDPS Act is not called upon to record a finding of 'not guilty'. It is for the limited purpose and is confined to the question of releasing the accused on bail and the Court is called upon to see if there are reasonable grounds for believing that the accused is guilty and record its satisfaction about existence of such ground. But the Court shall not consider the matter as if it is pronouncing the judgment of acquittal and recording finding of 'not guilty'. Additionally, the Court has to record a finding that while on bail the accused is not likely to commit any offence basing on the antecedents of the accused.

13. This Court is very much conscious of the fact that when stringent conditions are imposed for grant of bail under Section 37, all other sections under the NDPS Act also have to be implemented strictly. Now certain discrepancies or procedural lapses were pointed out by the petitioners, which, according to this Court, are not of substantial character and they further failed to demonstrate before this Court what is the prejudice caused to the accused. Looking at the menace of this psychotropic substances and the effect it has on the society, stringent condition under Section 37 of the Act has been imposed. The drug menace is increasing multifold ruining the

lives of the young generation of this nation. The Apex Court in ***Tofan Singh's case*** (cited supra), in para 162, held as under:

> " The illicit production, distribution, sale and consumption of drugs and psychotropic substances, is a crime of multi-dimensional magnitude, that imposes a staggering burden on the society. In an article "Narcotic Aggression and Operation Counter Attack: published in *Mainstream* dated 7-3-1992 V.R. Krishna Iyer, J said:
>
> " Religion is opium of the people, but today opium is the religion of the people, and like God, is omnipresent, omnipotent and omniscient. Alas! Opium makes you slowly ill and eventually kills, makes you a new criminal to rob and buy the stuff, tempts you to smuggle at risk to become rich quick, makes you invisible trafficker of psychotropic substances and operator of a parallel international illilcit currency and sub rosa evangelist mafia culture. Drug business makes you if not killed betimes, the possessor of pleasure, power and empire. What noxious menace is this most inescapable evil that benumbs the soul of student, teacher, doctor, politician, artists and professional, and corrupts innocent millions of youth and promising intellectuals everywhere."

14. A great responsibility is cast upon the investigating agency in conducting the investigation in a meticulous way so that the accused will not escape from the clutches of law. In view of the lopsided investigation, several cases the accused were acquitted and the investigating agency must understand

and realize the impact of it on the society. The investigating team shall follow the procedure strictly, else their procedural lapses will enure to the benefit of the accused. The officers shall be imparted special training enlightening them about the specific provisions and non-compliance of the same what are the consequences that entail. There should be periodical training and whenever there are any lapses on the part of the officers, appropriate action shall be initiated. There should be a combined effort from the investigating team, prosecutors and the judiciary in the process of reaching the targeted goals.

15. *Prima facie,* this Court feels that NCB officials could connect the accused to the alleged crime and the accused could not satisfy the conditions under Section 37 of the NDPS Act, as such they are not entitled for bail.

16. The Criminal Petitions are accordingly, dismissed.

LALITHA KANNEGANTI, J

22nd February 2022

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