IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF SEPTEMBER, 2023
BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

CRIMINAL PETITION NO.6853/2023
C/W
CRIMINAL PETITION NOs.7039/2023, 7344/2023

IN CRL.P.NO.6853/2023:

BETWEEN:

MR. JUNAID HUSSAIN HAVERI
S/O ANWAR HAVERI
AGED ABOUT 24 YEARS
R/AT VILLA 14, AVR NAKSHATRA VILLA,
HANUMAN REDDY LAYOUT
CHINNAPANAHALLI
BANGALORE - 560 037
PERMANENT ADDRESS. PLOTNO. B1,
BARKAT VILLA, OPPOSITE GOVERNMENT
QUARTERS, SANTHOSHNAGAR
HUBLI - 580 032

…PETITIONER

(BY SRI HASMATH PASHA, SR. COUNSEL FOR
SRI KARIAPPA N.A, ADV.)

AND:

UNION OF INDIA
NARCOTIC CONTROL BUREAU
BANGALORE ZONAL UNIT
BANGALORE.

(REPRESENTED BY LEARNED
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA
BANGALORE - 560 001)

…RESPONDENT

(BY SMT. SHRIDEVI M BHOSALE, ADV.)

THIS CRL.P FILED U/S 439 CR.PC PRAYING TO ENLARGE THE PETITIONER ON BAIL IN NCB CR.NO.48/1/24/2023/BZU ON THE FILE OF RESPONDENT NCB BENGALURU ZONAL UNIT,BENGALURU FOR THE OFFENCE P/U/S 8(c) R/W SEC.22(C),27,27-A,28 AND 29 OF NDPS ACT WHICH IS PENDING ON THE FILE OF THE HONBLE XXXIII ADDL.CITY CIVIL AND SESSIONS JUDGE AND SPL.COURT FOR NDPS CASES, BENGALURU CITY.

IN CRL.P.NO.7039/2023:

BETWEEN:

SRI ABHAY KUMAR
S/O SHIVDAYAL MEENA
AGED ABOUT 24 YEARS
R/AT ROOM NO F-108
IIM BANGALORE HOSTEL
BANNEGHATTA ROAD
BENGALURU - 560 076.

…PETITIONER

(BY SRI MAHESH S, ADV.)

AND:

UNION OF INDIA
NARCOTIC CONTROL BUREAU (NCB)
BANGALORE ZONAL UNIT
BANGALORE - 560 001
THROUGH INTELLIGENCE OFFICER.

…RESPONDENT

(BY SMT. SHRIDEVI M BHOSALE, ADV.)

THIS CRL.P FILED U/S 439 CR.PC PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CR.NO.48/1/24/2023 REGISTERED BY BZU, BANGALORE FOR THE OFFENCE P/U/S 8(c) R/W 22(c), 27, 27A, 28 AND 29 N.D.P.S. ACT, PENDING ON THE FILE OF XXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE (NDPS), BENGALURU.

IN CRL.P.NO.7344/2023:

BETWEEN:

AYUSH KISHORE BORSE
AGED ABOUT 24 YEARS
S/O KISHORE BORSE
R/O FLAT NO.CO18, GROUND FLOOR
SATKO PALM TREES, SPICE GARDEN
LAYOUT, MARATHAHALLI
BANGALORE - 560 037.

…PETITIONER

(BY SRI JAYAKUMAR S PATIL , SR. COUNSEL FOR
SRI MOHAMAD JAHIR A, ADV.)

AND:

UNION OF INDIA
THROUGH NARCOTIC CONTROL BUREAU
BANGALORE ZONAL UNIT
BANGALORE - 560 027
REPRESENTED BY LEARNED
SPECIAL PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA,
BANGALORE - 560 001.

…RESPONDENT

(BY SMT. SHRIDEVI M BHOSALE, ADV.)

THIS CRL.P FILED U/S 439 CR.PC PRAYING TO ENLARGE THE PETITIONER ON BAIL IN NCB CR.NO.48/1/24/2023/BZU REGISTERED BY THE RESPONDENT NCB BENGALURU ZONAL UNIT, BENGALURU ON THE FILE OF XXXIII ACC AND SJ.SPL.JUDGE (NDPS) BENGALURU FOR THE OFFENCE P/U/S 8(C) R/W SEC.22(C),27,27-A,28,29 OF NDPS ACT

THESE PETITIONS HAVING BEEN HEARD AND RESEVED, COMING ON FOR PRONOUNCEMENT THIS DAY, COURT MADE THE FOLLOWING:

ORDER

Accused Nos.1 to 3 in NCB Crime No.48/1/24/2023, registered by NCB, Bengaluru Zonal limit, Bengaluru for the offence punishable under Section 8(c) R/w Section 22(c), 27, 27(A), 28, 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act'), are before this Court seeking regular bail in these three petitions.

2. Heard the learned counsel appearing for the parties and also perused the material available on record.

3. Credible information was allegedly received by the Intelligence Officer of NCB, Bengaluru at about 10.30 a.m, on 20.06.2023 to the effect that a parcel bearing No.ET586713424IN sent from Coimbatore was available in Marathahalli Colony Sub Post Office, Bengaluru which was suspects to contain drugs. The information report under Section 42 of the NDPS Act was recorded and upon constituting a team, the NCB officers had gone to the Sub Post Office at Marathahalli Colony and requested the Postmaster to handover the aforesaid postal parcel. After receiving the suspected parcel from

the Postmaster, the officers cut open the same and found that plastic pouch covered with silver foil containing 50 numbers of LSD blots which totally weighed 0.560 grams was inside the parcel which was addressed to accused No.3 -Junaid Hussain Haveri, Villa No.14, AVR Nakshatra Villa, Hanuman Reddy Layout, Chinnapanahalli, Bengaluru-37. The contraband article found in the parcel was seized under panchanama and thereafter a requisition was given to Postmaster to depute one of the postman to deliver dummy parcel and accordingly, on 20.06.2023 at about 5.00 p.m, a postman took the dummy parcel and delivered the same to accused No.3 at the address mentioned in the parcel. Immediately, NCB officers apprehended him and took him to custody.

4. On the basis of voluntary statement made by accused No.3 - Junaid Hussain Haveri, NCB officers took him along with them with a instruction to deliver the same to accused No.2 - Abhay Kumar, who allegedly had booked the parcel in the name of accused No.3 - Junaid Hussain Haveri. Accordingly, the NCB officers and Junaid Hussain Haveri went to Indian Institute of Management hostel at Bengaluru and when accused No.2 - Abhay

Kumar came out of the hostel to collect the dummy parcel, the NCB officers apprehended him and on enquiry, accused No.2 allegedly revealed that he had booked parcel at the instance of accused No.1 - Ayush Borse and had given the address of accused No.3 for the purpose of delivery of parcel. Subsequently, accused No.2 was taken to the place of accused No.1 - Ayush Borse and even accused No.1 was apprehended by the NCB officers and on enquiry, he had admitted that he had booked the parcel containing contraband article LSD blots through telegram from a person called Swapnil Joshi and address for delivery was given by accused No.2 who was known to him. He also stated that at his request payments were made to Swapnil Joshi by accused Nos.2 through crypto currency as accused No.1 did not have crypto currency account. After recording voluntary statement of all the 3 accused persons, who were apprehended by the NCB officers, the arrest procedure was complied by the NCB officers and thereafter, they were produced before the Trial Court on 23.06.2023 and remanded to judicial custody. The bail applications filed by accused Nos.1 to 3 before the Court of XXXIII Addl.

City Civil & Sessions Judge & Special Judge (NDPS), Bengaluru was rejected in Crl.Misc.No.6714/2023 dated 01.08.2023, Crl.Misc.No.6175/2023 dated 28.07.2023 and Crl.Misc.No.6061/2023 dated 27.07.2023 respectively. It is under these circumstances, the petitioners are before this Court.

5. Sri Hashmath Pasha, learned Senior Counsel appearing for accused No.3 submits that the parcel was open in the post office by the NCB officers even before apprehending any one of the accused and the contraband article allegedly found in the parcel was subjected to panchanama. Thereafter, dummy parcel was delivered to accused Nos.2 and 3 respectively and they were apprehended. He refers to Section 2(viib) and Section 50A of the NDPS Act and submits that NCB officers in the present case had no authorization as provided under Section 50A of the NDPS Act to undertake "controlled delivery". He submits that the contraband article is LSD blots and if weight of contraband article is weighed minus the paper weight, the seized article cannot be considered as commercial quantity. In support of his arguments, he has placed reliance on the order of

the co-ordinate bench of this Court in the case of Crl.P.No.1104/2023 disposed of on 22.08.2023. He also submits that accused No.3 was not aware of the contents of postal parcel. Accused No.3 is a B.Tech graduate from a reputed institution and he has recently joined s multinational company at Bengaluru and was staying in a Villa along with accused No.2, who subsequently shifted to Indian Institute of Management hostel where he was pursuing his MBA course.

6. Learned counsel appearing for accused No.2 having adopted the arguments of learned Senior Counsel for accused No.3 submits that accused no.2 was acquainted with accused No.1 only since March, 2023. Accused no.1 is a engineering graduate from Indian Institute of Technology, Mumbai and had jointed IIM at Bengaluru to pursue his MBA course. The whats app messages on which reliance is sought to be placed by the prosecution, did not relate to present transaction. Except voluntary statement of accused persons, there is no material to connect them to the alleged crime. He submits that merely for the reason that a sum of

Rs.10,100/- was transferred to the account of accused No.2 from the account of accused No.1 it cannot be said that the said amount was transferred for procuring of drugs.

7. Sri Jayakumar S Patil, learned Senior Counsel appearing for accused No.1 submits that accused No.1 is a engineer and he is employed in a private company at Bengaluru since July, 2022 onwards. The "controlled delivery" of consignment was not undertaken insofar as accused No.1 is concerned and therefore it cannot be said that he had booked the consignment. Except the bank transaction between accused Nos.1 and 2 there is no material to connect accused No.1 to the crime. One Aditya has also transacted certain amount to the account of accused No.2 but he has not been arraigned as accused in this case. The voluntary statement recorded under Section 67 of the NDPS Act is not admissible evidence and accordingly, he prays to allow the petition. In support of his arguments, he has placed reliance on the judgments of Hon'ble Supreme Court in the case of **ARYAN SHAH RUKH KHAN v. UNION OF INDIA AND**

ANOTHER - 2021 SCC ONLINE BOM 4127 and in the case of **RAKESH KUMAR SINGLA V. UNION OF INDIA- CRM-M NO.23220/2020 (O & M).**

8. *Per contra*, learned counsel appearing for respondent who has filed statement of objection has strongly opposed the bail application. She submits that in addition to voluntary statement, there are documentary evidence like whats app messages and bank transactions to connect the petitioners to the crime. The nexus between the parties is clearly established and the contraband article seized is of commercial quantity and therefore, in view of Section 37(1)(b) of the NDPS Act, the accused persons are not entitled for bail. In support of her arguments, she has placed reliance on the judgments of the Hon'ble Supreme Court in the following cases and accordingly, she prays to dismiss the petition.

1. UNION OF INDIA THROUGH NARCOTICS CONTROL BUREAU, LUCKNOW V. MD. NAWAS KHAN - (2021) 10 SCC 100,

2. UNION OF INDIA V. PRATEEK SHUKLA - (2021) 5 SCC 430,

3. NARCOTICS CONTROL BUREAU V. MOHIT AGGARWAL - 2022 SCC ONLINE SC 891 .

9. The material on record would go to show that on receipt of credible information, the NCB officers after recording report regarding information as required under section 42 of the NDPS Act had gone to the sub post office at Marathahalli colony and on their request postmaster had handed over the consignment/postal parcel No. ET586713424IN and on receipt of the same the NCB officers had cut open the parcel in the post office itself and had found 50 numbers of LSD blots which totally weighed 0.560 grams. The seized criminal antecedents was subjected to panchanama and the postmaster and postal assistant of a post office are the panch witnesses. There is no other independent pancha to the seizure panchanama. Thereafter, the officers had requested the postmaster to cooperate with them for the purpose of "controlled delivery" of consignment for the

purpose of identifying the accused persons. Section 2(viib) of NDPS Act defines the word "controlled delivery" and the same reads as follows:-

> ***Section 2(viib)*** *"controlled delivery" means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, controlled substances or substances substituted for them to pass out of, or through or into the territory of India with the knowledge and under the supervision of an officer empowered in this behalf or duly authorised under section 50A with a view to identifying the persons involved in the commission of an offence under this Act;"*

10. Section 50A of the NDPS Act provides the power to undertake "controlled delivery". Section 50A of the NDPS Act reads as follows:-

> ***"[50A. Power to under take controlled delivery.-****The Director General of Narcotics Control Bureau constituted under sub-section (3) of section 4 or any other officer authorised by him in this behalf, may, notwithstanding anything contained in this Act, undertake controlled delivery of any consignment to-—*
>
> *(a) any destination in India;*

(b) a foreign country, in consultation with the competent authority of such foreign country to which such consignment is destined, in such manner as may be prescribed.]"

11. From a reading of the aforesaid provisions of law, it is very clear that, exercise of "controlled delivery" which is a investigative tool is undertaken by the investigating officers who are authorised as provided under section 50A of the NDPS Act with a view to identifying the persons involved in the commission of the offence under the NDPS Act

12. Learned Senior Counsel appearing for accused No.3 has raised a specific contention that requirements of Section 50A of the NDPS Act has not been complied with by the NCB officers before undertaking the exercise of "controlled delivery". He submits that, the officers were not authorised under Section 50A of the NDPS Act and therefore, it cannot be said that the accused persons were identified.

13. Learned counsel appearing for respondent has failed to demonstrate before this court that, the officers who had undertaken the exercise of "controlled

delivery" with the help of postman and post master of Marathahalli sub post office were authorised as provided under section 50A of the NDPS Act. In the absence of authorization as provided under Section 50A of the NDPS Act which is the mandatory requirement of law, it cannot be said that exercise of "controlled delivery" undertaken by the NCB officers had successfully led them to identify the persons involved in the commission of offence under NDPS Act. The NCB officers have recorded the delivery proceedings of dummy parcel of speed post on 20.06.2023 at 17 hours. A perusal of the said report would indicate that, there is no mention about authorization under section 50A of the NDPS Act obtained by the officers before undertaking the "controlled delivery" mechanism. In fact, from reading of the delivery proceedings it is seen that immediately after the consignment was opened by the NCB officers in the post office, they had requested the postmaster to designate postman for the purpose of "controlled delivery" exercise. In addition to the same, the exercise of "controlled delivery" was undertaken by the NCB only as against accused Nos.2 and 3. Though it is the specific case of the

prosecution that the consignment was booked by accused No.1 through accused No.2 in the name of accused No.3, the exercise of "controlled delivery" was not undertaken by the NCB officers as against accused No.1 for the reasons best known to them.

14. Learned counsel appearing for respondent has placed reliance on the confession statement made by accused Nos.1 to 3. Section 67 of the NDPS Act authorises the officers referred to in Section 42 of the NDPS Act, who are authorised by the competent authority, to record confession statement during the course of any enquiry. It is trite that the confession statement itself cannot be relied upon as evidence against the accused who has made such statement or against the co-accused. It is only if the investigating officer is able to recover any document, article or thing through which the said accused can be connected to the crime, then the confession statement of accused to the said extent can be relied upon.

15. The Hon'ble supreme court in the case of **TOFAN SINGH V. STATE OF T.N, - AIR 2020 SC 5592**

has held that a confession statement made before an officer designated section 42 or Section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with Section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Article 14, 20(3) and 21 of the Constitution of India. In the said case the Hon'ble supreme Court held that, the statement recorded under section 67 of the NDPS Act cannot be used as 'confession statement' in trial of offence under the NDPS Act.

16. The Bombay High court in the case of **ARYAN SHAH RUKH KHAN v. UNION OF INDIA AND ANOTHER - 2021 SCC ONLINE BOM 4127** at paragraph Nos. 14, 15 and 16 has observed as follows

> *"14. Having regard to the material brought on record by the Respondent on the issue of conspiracy, this Court prima facie has not noticed any positive evidence against the Applicants on the said issue. This Court is of the opinion that the claim put forth by the Respondent that Applicants should be considered to have intention to commit an*

offence under the NDPS Act, having found in possession of commercial quantity, in the backdrop of case of hatching conspiracy is liable to be rejected.

15. Section 67 of the NDPS Act provides for powers to call for information. Hence, it also empowers Investing Officer to record confessional statement of the Accused which has a binding effect. Prosecution has claimed that confessional statements given by Accused persons admitting to have committed offence alleged against them, however, such confessional statements are not having any binding effect in law as the said issue is squarely covered by the Apex Court in the matter of Tofan Singh v. State of Tamil Nadu in Criminal Appeal No. 152 of 2013. Once the confessional statement of the Applicants/Accused cannot bind them of the offence in view of the Judgment of Supreme Court in the matter of Toofan Singh [cited supra], the claim put forth by the Respondent that Accused persons have accepted their involvement in the crime is liable to be rejected.

16. However, in view of submissions made by Mr. Singh, it is worth to clarify here that such confessional statements can be considered by the investigating agency

only for the investigation purpose and cannot be used as a tool for drawing an inference that Applicants have committed an offence under the NDPS Act as has been alleged against them."

17. In the case of **RAKESH KUMAR SINGLA V. UNION OF INDIA** - **CRM-M NO.23220/2020,** Punjab and Haryana high court at paragraph Nos.9, 10 and 11 has observed as follows:-

"9. A Division Bench of Hon'ble Supreme Court in Tofan Singh Vs. State of Tamil Nadu (2013) 16 SCC 31 while discussing the ratio laid down in decisions of Raj Kumar Karwal Vs. Union of India (1990) 2 SCC 409 and Kanhiyalal Vs. Union of India (2008) 4 SCC and certain other judgments observed that the ratio laid down in the case of Kanhiyalal Vs. Union of India (supra) is required to be re-looked and thus, referred the matter to a Larger Bench. The matter was referred to a Larger Bench of three judges, who culled out following two issues for determination:-

"1. Whether an officer "empowered under Section 42 of the NDPS Act" and/or "the officer empowered under Section 53 of the NDPS Act" are "Police Officers" and therefore,

statements 4 of 7 recorded by such officers would be hit by Section 25 of the Evidence Act; and

2. What is the extent, nature, purpose and scope of the power conferred under Section 67 of the NDPS Act available to and exerciseable by an officer under Section 42 thereof, and whether power under Section 67 is a power to record confession capable of being used as substantive evidence to convict an accused."

The Larger Bench in its judgment has concluded in para 152 that "a confessional statement made before an officer designated under Section 42 or Section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with Section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20 (3) and 21 of the Constitution of India." It was further held that the judgments rendered in Kanhiyalal (supra) and Raj Kumar Karwal (supra) do not state the correct law and are thus overruled. The reference was therefore answered by stating:-

"(i) That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under Section 67 of the NDPS 5 of 7 Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."

10. In the instant case, the Narcotics Bureau is relying not only upon the statement given by a co-accused implicating the petitioner herein but also upon a statement given under Section 67 of the NDPS act by the petitioner. The petitioner has been nominated as an accused on the do statement of co-accused Paramjit Kaur who had sent the consignment to Ferozepur. The complety of the petitioner will have to be determined by the quality of evidence led during trial. As far as the self inculpatory statement relied upon, this Court is prima facie of the opinion that the ratio as down

in the reference order in Tofan Singh's case would come to the aid of the petitioner to allow him the benefit of regular bail.

11. Learned counsel for the NCB has also placed reliance on Whatsapp messages by which the petitioner could be implicated. However, on the asking of this Court, whether a certificate under Section 65B of the Indian Evidence Act is available at the present moment to authenticate the said messages, the answer is in negative. The recent judgment rendered by the Supreme Court in the matter of Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others (2020)7 SCC tha held that a certificate Section 65B of the Indian Evidence Act is required when reliance is being placed upon electronic record. Therefore, the said message would be of no evidentiary valor as date

18. Therefore, in the absence of any other concrete material to connect the accused persons to the crime solely on the basis of confession statement recorded by the investing officer, it cannot be said that there is a *prima-facie* material to establish the guilt of the accused.

19. Learned counsel for respondent has also placed reliance on Whats App conversation messages between the accused Nos.2 and 3 to connect them to the present crime.

20. From a reading of the voluntary statement of accused No.3 it is seen that the alleged Whats App conversation was in respect of a parcel which he had received earlier and the same was kept by him near front door window of villa and it was picked up by somebody. Therefore, it is very clear that Whats App conversation of which extracts are placed on record by the prosecution do not relate to the present transaction.

21. Learned counsel for respondent has failed to demonstrate before this Court that Whats App conversation which are placed on record in anyway relates to present transaction and not to the earlier transaction. In fact, accused No.3 has specifically stated in his voluntary statement that Whats App chat with accused No.2 was regard to previous parcel and thereafter he had affixed his signature on the extract of Whats App chats. There is nothing on record to show that

accused Nos.2 and 3 knew the contents of parcel which was ordered by accused No.1 in the name of accused No.3. Accused No.3 is only the addressee of the consignment while accused No.2 had allegedly transferred the amount to Swapnil Joshi through crypto currency account as per instruction of accused No.1. It is only the accused No.1 who knew the contents of consignment/postal parcel as he was the person who had placed order for the same through telegram. The person who has sent the consignment i.e., Swapnil Joshi is yet to be arrested.

22. Accused No.1 has in his voluntary confession statement has stated that after having booked the consignment through telegram with Swapnil Joshi, since he did not have crypto currency account he had requested accused No.2 to make the payment to the account of Swapnil Joshi. Accused No.1 had thereafter transferred a sum of Rs.10,100/- through bank transaction to the account of accused No.2 and at his request his friend Aditya had forwarded a further amount of Rs.6,000/- to the account of accused No.2. The said

two transactions are supported by documents. Therefore, at this stage, there is some material to connect accused No.1 in further of his voluntary confession statement that he had booked the consignment with Swapnil Joshi and the amount was paid to Swapnil Joshi through crypto currency account, at his instance, from the crypto currency account, of accused No.2. However, there is no material at this stage to show that accused No.2 had knowledge that the amount that was being paid from his crypto currency account was towards purchase of drugs.

23. There is also no material to show that accused Nos.2 and 3 had the knowledge that the consignment/parcel which was booked by accused No.1 contain contained narcotic drugs/psychotropic substance. Since the consignment/parcel was opened even before it was delivered to the addressee and the contraband article found in the consignment/parcel was seized under a panchanama in the absence of accused, the only option open for the NCB officers to connect the accused to the crime was by identifying them through the technique known as "controlled delivery". However, since the NCB

officers have not complied with mandatory requirements of section 50A of the NDPS Act before undertaking the exercise of "controlled delivery", the report of "controlled delivery" on which reliance has been placed by the prosecution cannot be considered since the exercise of "controlled delivery" gets vitiated for non-compliance of the mandatory requirement under section 50A of the NDPS Act.

24. Accused No.3 is a B.Tech graduate who has completed his bachelor of engineering from the National Institute of Technology at Suratkal and he is presently working for multi national company while accused No.2 is a engineering graduate from Indian Institute of Technology, Mumbai and he is now pursuing his MBA in Indian Institute of Management at Bengaluru. Accused No.1 is also a engineering graduate presently working for a private company.

25. Learned counsel for respondent has placed strong reliance on section 37(1)(b) of the NDPS Act and submits that the seized contraband article is of commercial quantity and therefore the petitioners cannot

be granted bail. In support of her argument she has placed reliance on the judgements in the cases of **UNION OF INDIA THROUGH NARCOTICS CONTROL BUREAU (supra), UNION OF INDIA V. PRATEEK SHUKLA (supra) & NARCOTICS CONTROL BUREAU V. MOHIT AGGARWAL (supra).**

26. In the aforesaid judgments, the Hon'ble Supreme Court after having narrated the rigor of section 37(1)(b) of the NDPS Act has observed that, if the Court has reasons to believe that accused is not guilty or if the Court has reasons to believe that accused would not commit similar offence in future, the bail can be granted. It is not in dispute that accused Nos.1 to 3 have no criminal antecedents. Accused Nos.2 and 3 are aged about 24 years and they have completed their engineering degree from reputed institution of the country. There is no material to show that they were aware about the contents of parcel. Therefore, there is no reason for this Court to believe that they would commit similar offence in future. At this stage since there is no other material to connect accused Nos.2 and 3 to

the crime, except their voluntary statement, and therefore a prima-facie doubt arises with regard to their guilt in the case on hand.

27. The Hon'ble Supreme court in the case of **MOHD. MULSIM ALIAS HUSSAIN V. STATE (NCT OF DELHI) - 2023 SCC ONLINE SC 352** paragraph number 20 and 21 has observed as follows:-

> *"20. 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.*
>
> *21. The standard to be considered therefore, is one, where the court would look at*

the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation as held in Union of India v. Rattan Malik."

28. Accused Nos.1 to 3 are in custody since 23.06.2023. In respect of a accused No.1 there is some material to connect him to the voluntary statement made by him that he had booked the consignment/parcel through telegram with Swapnil Joshi and the payment was made for the booking by accused No.2 from his crypto currency account, at the instance of accused No 1. Since accused No.1 had booked the consignment, it cannot be said he did not know about the content of the consignment/parcel. However, there is no material to prima-facie show that accused Nos.2 and 3 knew that consignment/parcel contained narcotic drugs/psychotropic substance. In the absence of such a material when the major portion of investigation insofar

as accused Nos.2 and 3 are concerned is complete, I am of the view that their detention in custody is not required. More so for the reason that their future prospects is likely to be seriously affected and hampered if they are detained in custody. Accused Nos.2 and 3 are youngsters who have recently completed their engineering and accused No.3 is now pursuing his higher studies at Bengaluru. The Courts are required to be sensitive to this aspect of the matter and a reasoned approach is required having regard the facts and circumstances of each case. Under these circumstances, I am of the considered view that the prayer of accused No.1 for grant of bail at this stage is required to be rejected and the prayer of a accused Nos.2 and 3 for grant of regular bail is required to be allowed.

29. Crl.P.No.7344/2023 filed by accused No.1 is ***dismissed***. Crl.P.No.7039/2023 & Crl.P.No.6853/2023 filed by accused Nos.2 and 3 are ***allowed***. Accused Nos.2 & 3 are directed to be enlarged on bail in NCB Crime No.48/1/24/2023, registered by NCB, Bengaluru Zonal limit, Bengaluru for the offence punishable under

Section 8(c) R/w Section 22(c), 27, 27(A), 28, 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 subject to the following conditions:

a) Accused Nos.2 & 3 shall execute personal bond for a sum of Rs.2,00,000/- (Rupees Two lakhs only) each with one surety for the likesum, to the satisfaction of the jurisdictional Court;

b) Accused Nos.2 & 3 shall appear regularly on all the dates of hearing before the Trial Court unless the Trial Court exempts their appearance for valid reasons;

c) Accused No.2 & 3 shall not directly or indirectly threaten or tamper with the prosecution witnesses;

d) Accused Nos.2 & 3 shall not leave the jurisdiction of the Trial Court without permission of the said Court until the case registered against them is disposed off.

e) Accused Nos.2 and 3 shall not involve themselves in similar offence in future.

f) Accused Nos.2 and 3 shall appear before the Investigating Officer as and when called upon for the purpose of investigation till the final report/charge sheet is filed.

Sd/-
JUDGE

NMS