



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Bail Cancellation Application No. 159/2022

State Of Rajasthan, Through Public Prosecutor Rajasthan

-----Petitioner

Versus

Shyam Sundar Mundara Son Of Champalal Mundara, Resident Of
Krishna Vihar, B.k. Kaul Nagar, Ajmer

-----Respondent

S.B. Criminal Bail Cancellation Application No. 165/2022

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-----Respondent

For Petitioner(s)	:	Mr. G. S. Rathore, GA cum AAG with Mr. Santosh Singh Rathore Mr. Lokendra, Addl. S. P
For Respondent(s)	:	Mr. S. S. Hora with Mr. Niraj Pal Singh Yadav

HON'BLE MR. JUSTICE SAMEER JAIN
Order

Reportable

Reserved on: **29/05/2023**

Pronounced on: **02/06/2023**

1. With due consent of both the sides, the instant batch of bail cancellation applications, arising from analogous factual matrices, is taken up for final disposal.
2. The instant bail cancellation application is filed for cancellation of bail granted under Section 439 Cr.P.C. to the





accused-respondent vide order dated 26.08.2021 in Criminal Misc. Case No. 716/2021 titled as Shyam Sundar Mundara vs. State of Rajasthan. Furthermore, by way of the present application, a challenge is also made to the order dated 27.09.2021 passed in Case No. 778/2021, whereby the application for bail cancellation preferred by the State against the aforesaid order dated 26.08.2021 was dismissed.



SUBMISSIONS OF THE APPLICANT-STATE

3. Learned Additional Advocate General, Mr. Ghanshyam S. Rathore, appearing on behalf of the State, has submitted that the impugned orders(s) dated 26.08.2021 and 27.09.2021, have been passed in blatant ignorance of material considerations and the settled position of law, and therefore, being wholly perverse, are liable to be quashed and set aside. It has been submitted that there is sufficient evidence to infer direct and indirect involvement of the accused-respondent in the commission of the offence(s) registered under Sections 8/22 and 8/29 of the N.D.P.S. Act, 1985. In particular, learned AAG has prayed for the cancellation of the bail so granted to the accused-respondent, on the following grounds:

(a) That a substantially large/commercial quantity of prohibited substances/narcotic drugs and psychotropic contrabands were recovered from the constructive possession of the accused-respondent, including;



(i) Tramadol Hydrochloride, in the form of capsules and injections, for which the commercial quantity as prescribed under Entry 238 ZH of the Schedule under the NDPS Act is 250gm.

(ii) Alprazolam, for which the commercial quantity as prescribed under Entry 178 of the Schedule under NDPS Act is 100gm.]

(b) That the learned Special Judge NDPS Act, while passing the impugned order(s) dated 26.08.2021 and 27.09.202 did not deal with the fetter contained under Section 37 of the NDPS Act, as per which, before granting bail to the accused under the said Act, a *prima facie* satisfaction has to be recorded that the accused was not involved in the commission of the crime, as alleged. Having not done so, the learned Special Judge has committed an error of law as well as fact.

(c) That the impugned order(s) dated 26.08.2021 and 27.09.2021 were passed at a pre-mature stage, whilst substantial investigation in the matter was still pending. In this regard, it was illustrated that the charge-sheet in the matter was filed in November, 2021, whereas the bail order was passed considerably before.

(d) That the drugs so recovered, as mentioned herein-above, were not only in a markedly larger quantity as against the commercial quantity prescribed for the same, but they cumulatively weighed approximately 3645 kg. (inclusive of the recovery in all the FIRs) and their corresponding market value stood at crores of rupees.

(e) That the learned Special Judge failed to appreciate the 'Disclosure Statements' statements tendered by the co-accused under Section 27 of the Evidence Act, including those tendered by Sheikh Sajid and Kamal Deep Morya, whereby specific roles have been attributed to the





accused-respondent for the transportation as well as illicit/clandestine procurement of the prohibited substances.

(f) That the learned Special Judge failed to appreciate the recovered 'Rent Agreement' by way of the information provided under Section 27 of the Evidence Act, from the accused-respondent i.e. Shyam Sundar Mundra, of Welcome Pharma, upon which the signature of the accused-respondent as a witness is reflected.

(g) That a bare perusal of the FIR reveals that the matter involves chance/accidental recovery of the prohibited substances, therefore, provisions of Section 42 of the NDPS Act cannot be attracted. In this regard, it was also submitted that the concerned Investigation Officer had also clearly mentioned the grounds for the non-compliance of Section 42 of the NDPS Act.

(h) That the upon a bare perusal of the FIR, charge-sheet as well as the statements tendered under Section 27 of the Evidence Act as well as those given by the co-accused under Section 164 of the Cr.P.C., who were allegedly involved in the commission of the offence in question, being in the capacity of employees of the accused-respondent as well transporters of the prohibited substances, a *prima facie* nexus is established between the aforesaid individuals who ran a circuit of prohibited substances/narcotic drugs and psychotropic contrabands, wherein the mastermind and instrumental figure was the respondent-accused.

4. Mr. Ghanshyam S. Rathore, AAG also contended that by the very virtue of grant of bail to the accused-respondent by impugned order dated 26.08.2021, the fair and unencumbered



investigation in the matter has been vitiated and/or prejudiced. In support of the said contention, it was submitted that after the grant of the said bail, the Investigation Officers in the present case, on account of certain malafides on their part, failed to conduct the investigation in a fair manner, which is illustrated by the fact that vide order dated 18.04.2022, the first Investigation Officer appointed in the matter was moved from Ajmer Range to Jodhpur Range. Thereafter, the subsequent officer so appointed, Ms. Divya Mittal, Addl. S.P. SOG, Ajmer was made an accused under Section 59 of the NDPS Act in pursuance of FIR No. 183/2021, on the ground that in spite of sanction to arrest the co-accused Sunil Nandwani, Owner- Himalayan Meditech Pvt. Ltd., the above-mentioned officer-Ms. Divya Mittal did not carry out the arrest and that too, without furnishing any justifiable grounds for the same. It was also brought to the attention of the Court that the Ms. Divya Mittal is presently suspended from the Department. Thus relying upon the submissions made herein-above, which are supported by way of an appropriate affidavit, learned AAG submitted that if the bail so granted to the accused-respondent is permitted to be sustained and not interfered with, then the factum of interference with the just and fair investigation cannot be ruled out. Therefore, it was prayed that the impugned orders dated 26.08.2021 and 27.09.2021 deserve to be quashed and set aside and the bail granted to the accused-respondent should be cancelled, in order to ensure unencumbered and just investigation in the matter.



5. Conclusively, learned AAG placed reliance upon the dictum of the Apex Court in State of **Kerala & Ors. vs. Rajesh & Ors.: (2020) 12 SCC 122, NCB vs. Mohit Agarwal: (2022) SCC Online SC 1891** and **SLP (Cri.) No. 2351/2023** titled as **Union of India vs. Ajay Kumar @ Pappu** as well as a judgement of a Coordinate Bench of this Court in **S.B. Cr. Misc. Bail Application No. 20010/2021** titled as **Kaluram vs. State of Rajasthan**.

SUBMISSIONS OF THE ACCUSED-RESPONDENT

6. *Per contra*, learned counsel appearing on behalf of the accused-respondent, Mr. S.S. Hora, has raised a preliminary objection qua the filing of the present bail cancellation applications. Learned counsel argued that the learned Special Judge allowed the bail application of the respondent-accused on 26.08.2021. Thereafter, the bail cancellation application filed by the State was dismissed by the Special Judge on 27.09.2021. Subsequently, the present bail cancellation applications were filed by the State on 26.08.2022 and 27.08.2022, after a period of one year from the date of passing of the impugned orders. In support of the said argument qua delay, learned counsel relied upon the dictum of the Apex Court as held in **(1981) 3 SCC 671** titled as **Kadra Pehadiya & Ors. vs. State of Bihar** and **(2021) 10 SCC 789** titled as **Union of India vs. Jitendra**. It was conclusively argued that once the respondent has been enlarged on bail and thereafter, has been duly complying with the conditions imposed by the court vide order dated 26.08.2021, then the said bail order should be maintained, especially under the light of Article 21 of the Constitution of India. Thus, relying upon the aforesaid, as well as the gross delay in filing of the bail cancellation applications, learned counsel



for the accused-respondent has prayed for the dismissal of the present bail cancellations applications.

7. In addition to the preliminary objection raised herein-above, learned counsel for the accused-respondent also argued for the dismissal of the present applications on merits. Mr. S.S. Hora submitted that:

(a) That a total of four FIR's have been registered against the accused-respondent, wherein he has been enlarged on bail in all the matters. It was also clarified that the FIRs so registered against the accused-respondent pertained to the same transactions and had a common narrative, in addition to a common set of co-accused and multiple common witnesses. Learned counsel submitted that despite the aforesaid, the applicant-State has sought cancellation only qua the FIRs lodged against the accused-respondent in Ajmer, whereby he was enlarged on bail vide order dated 26.08.2021 and not the order granting bail to the accused-respondent by this Hon'ble Court qua the FIR lodged in Jaipur i.e. Misc. Bail Application No. 5657/2022. Therefore, in this background, it was argued that the applicant-State has adopted the arbitrary pick & choose mechanism to prefer the cancellation applications, despite all the alleged offences arising from a common transaction. Hence, on this ground alone, the present cancellation applications are liable to be dismissed.

(b) That there was an admitted non-compliance of Section 42 of the NDPS Act, on part of the investigation authorities, at the time of search and seizure of the premises from where the contraband was recovered.

(c) That no direct recovery of the prohibited substances/contraband was effected from the accused-respondent.



(d) That reliance cannot be placed on the statements recorded under Section 67 of the NDPS Act, by the investigation officer and accordingly, the same are not admissible evidence, being barred by the provisions of Section 25 of the Indian Evidence Act. In this regard, reliance was placed upon the dictum of the Apex Court in **Tofan Singh vs. State of T.N.** reported in **(2021) 4 SCC 1**.

(e) That the learned Special Judge, while granting bail to the accused-respondent, drew a *prima facie* satisfaction regarding the non-involvement of the accused-respondent in the commission of the offence, thereby, duly complying with the parameters as laid under Section 37 of the NDPS Act. In this regard, reliance was placed upon the dictum of the Apex Court in **Mohd. Muslim @ Hussain vs. State (NCT of Delhi)** reported in **(2023) SCC Online SC 352**.

8. Therefore, learned counsel conclusively argued that the learned Special Judge has passed a well-reasoned order, whereby he has considered all the material stipulations, as discussed herein-above. Hence, the present bail cancellation applications are liable to be dismissed in light of Article 21 of the Constitution of India read with the provisions of Section 439 Cr.P.C. and Section 37 of the NDPS Act. Lastly, in support of his contentions, learned counsel for the accused-respondent also placed reliance upon the judgments of the Apex Court in **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra** reported in **(2005) 5 SCC 294** and **Vijay Madanlal Choudhary and Others vs. Union of India and Ors** reported in **(2022) SCC Online SC 929**, which



deal with the similar subject matter wherein provisions *pari materia* to Section 37 of the NDPS Act were involved.

DISCUSSIONS AND FINDINGS

9. Heard the arguments advanced by learned counsel for both the sides, scanned the evidence on record and perused the judgments cited at Bar.

10. Prior to methodically addressing the grounds raised in the present bail cancellation application, this Court deems it appropriate to re-iterate the settled position of the law on the subject matter of bail cancellation.

11. The Hon'ble Apex Court in **Neeru Yadav vs. State of U.P.** reported in **(2014) 16 SCC 508**, has held that:

"We have referred to certain principles to be kept in mind while granting bail, as has been laid down by this Court from time to time. It is well settled in law that cancellation of bail after it is granted because the Accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal or perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of grant of such bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court."

12. Similarly, the Hon'ble Apex Court while dealing with the subject matter of bail cancellation in **Y vs. State of Rajasthan** reported in **AIR 2022 SC 1910**, held that:



"It is worth noting that what is being considered in this case relates to whether the High Court has exercised the discretionary power under Section 439 of Code of Criminal Procedure in granting bail appropriately. Such an assessment is different from deciding whether circumstances subsequent to the grant of bail have made it necessary to cancel the same. The first situation requires the Court to analyse whether the order granting bail was illegal, perverse, unjustified or arbitrary. On the other hand, an application for cancellation of bail looks at whether the supervening circumstances have occurred warranting cancellation."

13. Having taken note of the settled position of the law on the subject matter as mentioned herein-above, this Court also deems it fit to briefly analyse Section 37 of the NDPS Act, which is the instrumental legal provision on the subject matter of bail for offences registered under the said Act. For ready reference, Section 37 of the NDPS Act is reproduced herein-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 27-A 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."



14. It is analysed that Section 37 of the NDPS Act holds that a Court can grant bail to an accused only if it is satisfied that there are reasonable grounds for believing that he is not guilty of the offence and that he is not likely to commit any offence while on bail. However, the satisfaction so required to be drawn by the Court, must only *prima facie* based on a reasonable reading of the evidence/record before it. Reliance in this regard can also be placed upon the Apex Court judgment in **Mohd. Muslim @ Hussain (Supra)**.

15. Accordingly, it is well established that while dealing with the instant bail cancellation application, this Court must assess that whether the impugned order granting bail was illegal, perverse, unjustified or arbitrary and/or whether any supervening circumstances have occurred warranting the cancellation of the bail so granted to the accused-respondent.

16. Hence, in order to the adjudge the justifiability and the soundness of the impugned order dated 26.08.2021, we must take note of the grounds upon which the learned court below, allowed the bail application preferred by the accused-respondent. It is observed that the learned Special Judge allowed the bail application under Section 439 of Cr.P.C. on the following grounds:

- (a) That the accused-respondent had been made an accused in the matter solely on the basis of the statements tendered by the co-accused.
- (b) That no recovery had been effected from the accused-respondent.
- (c) That the recovery so made during search and seizure, was in the form of medicines and not narcotic or psychotropic substances.



(d) That the place from where the recovery had been made was not under the possession of the respondent.

(e) That there were no antecedents reflected against the accused-respondent, apart from those forming part of the present transaction of offences.

17. Furthermore, by way of the impugned order dated 27.09.2021 whereby the application for bail cancellation preferred by the State against the aforesaid order dated 26.08.2021 was dismissed, similar reasons as stated herein-above were relied upon by the learned Special Judge.

18. Thus, in light of the discussions made herein-above qua the settled position of the law on the subject of bail cancellation, especially qua an offence committed under the provisions of the NDPS Act, read with the twin requirements as imposed by Section 37 of the said Act, this Court deems it fit to hold that the impugned order dated 26.08.2021 was passed in an unjustified and perverse manner, and the same is not sound in light of Section 37 of the NDPS Act, as no *prima facie* satisfaction could have been drawn by the learned Special Judge qua the accused-respondent being not guilty of the offence as alleged against him or his involvement therein. In support of the said view, the following findings/observations are noteworthy:

18/1. That the learned Special Judge, while passing the impugned orders dated 26.08.2021 and 27.09.2021, has nowhere recorded any finding qua the contraband so recovered during the search and seizure to be of a substantial commercial quantity. Rather, the factum of the recovery being of a commercial quantity was undeniably ascertainable from a bare perusal of the FIR as well as the incidental record of the case before the court below. Thus, the aforesaid non-consideration



raises serious doubts regarding the purported satisfaction drawn by the learned Special Judge regarding the innocence of the accused-respondent. In this regard, reference is made to the Search and Seizure Memo prepared on 01.06.2021, relevant contents of which, are reproduced herein-under:



Tab/Cap/Inj	Drugs Name	Quantity (in piece)
Tab.	NRX Tramadol	1,44,600
Tab.	NRX Tramadol	2,40,000
Tab.	NRX Alprazolam	59,400
Tab.	NRX Alprazolam	84,000
Cap.	NRX Tramadol	3,35,700
Tab.	NRX Tramadol	39,600
Inj.	Tramadol HCL	1.92 KG
Syrup		60KG

18/2. That the learned Special Judge, while passing the impugned orders dated 26.08.2021 and 27.09.2021, has incorrectly categorized the contraband so recovered, to be in the form of medicines. An analysis of Entry Nos. 238zh and 178 of the Schedule under the NDPS Act specifically includes the aforementioned contrabands in the list of Psychotropic Substances. Thus, the finding qua the same being medicines, is erroneous and perverse especially when at the time of recovery of the contraband, no valid invoice was exhibited and the same was admittedly clandestine.

18/3. That the learned Special Judge, while passing the impugned orders dated 26.08.2021 and 27.09.2021, has incorrectly opined that the place from where the recovery had been made was not under the possession of the accused-respondent. In this regard, it is noted that the word 'possession' has different shades of meaning and it is quite elastic in its connotation. Possession and ownership need not always go together but the minimum requisite element which has to be satisfied is



custody or control over the goods. Therefore, upon a cumulative consideration of the facts enumerate herein-under, it is observed that the contraband so recovered were under the constructive possession of the accused-respondent, as he was *prima facie* in control of the prohibited substances/goods. The facts establishing the constructive possession are: (i) the recovered 'Rent Agreement' by way of the information provided under Section 27 of the Evidence Act, from the accused-respondent i.e. Shyam Sundar Mundra, of Welcome Pharma, upon which the signature of the accused-respondent as a witness is reflected; (ii) the 'Disclosure Statements' statements tendered by the co-accused under Section 27 of the Evidence Act, including those tendered by Sheikh Sajid and Kamal Deep Morya, whereby specific roles have been attributed to the accused-respondent for the transportation as well as illicit/ clandestine procurement of the prohibited substances and (iii) the cumulative reading of the charge-sheet as well as the statements tendered under Section 27 of the Evidence Act as well as those given by the co-accused under Section 164 of the Cr.P.C., a *prima facie* nexus is established between the aforesaid individuals wherein the central role in the commission of the entire offence has been attributed to the accused-respondent.

19. It is also noteworthy that the that the impugned order dated 26.08.2021 was passed at a pre-mature stage, whilst substantial investigation in the matter was still pending. In this regard, it was illustrated that the charge-sheet in the matter was filed in November, 2021, whereas the bail order was passed considerably before, thereby, preventing the learned Special Judge from satisfying itself regarding the *prima facie* role of the accused-respondent, without having access to relevant and/or substantial information.



20. Furthermore, the judgment cited by the learned counsel for the respondent-accused in **Tofan Singh (Supra)** qua the inadmissibility of the statements recorded under Section 67 of the NDPS Act by the investigation officer and qua the observation that the accused-respondent was only made an accused on the basis of the statements tendered by the co-accused, is distinguishable in the facts and circumstances of the present case on account of the fact that aforesaid statements were not the only grounds raised by the State against the grant of bail to the accused-respondent. There were other material objections raised by the State qua the circumstantial evidence warranting non-grant of bail to the respondent-accused in light of Section 37 of the NDPS Act. Other circumstantial evidence reflected by the State pertained to the 'Disclosure Statements' statements tendered by the co-accused under Section 27 of the Evidence Act, including those tendered by Sheikh Sajid and Kamal Deep Morya, whereby specific roles have been attributed to the accused-respondent for the transportation as well as illicit/clandestine procurement of the prohibited substances as well as the statements tendered under Section 164 of Cr.P.C. by one Ishwar Singh on 10.06.2021 reflecting the direct involvement of the respondent-accused.

21. In support of the distinction so drawn herein-above, reliance is placed upon the dictum of the Apex Court in **NCB vs. Mohit Agarwal: (2022) SCC Online SC 1891**. Relevant extract is reproduced herein-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 co-accused 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 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 disclosure 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.

17. Even dehors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant-NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by the submission made by the learned counsel for the respondent and the observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage."

22. Thus, relying upon the aforesaid, it would be pertinent to note that the learned Special Judge erred in failing to take into consideration the other circumstantial evidence, such as the 'Disclosure Statements' made under Section 27 of the Evidence Act as well as the statements recorded under Section 164 of Cr.P.C., which *prima facie* could have aided in the satisfaction of guilt of the accused-respondent under Section 37 of the NDPS Act.



23. Furthermore, it is noted that the objection raised by the learned counsel for the accused-respondent qua the delay in filing of the present bail cancellation applications on part of the applicant-State cannot be countenanced by this Court, especially in light of the affidavit submitted by the Additional Director General of Police. Vide the said affidavit, the Additional DG Police satisfied the court that the delay in filing of the present bail cancellation application was on account of procedural delay arising from communication between the IO of the present matter as well as the Sr. Law Officer, Home Gr. X Department, wherein the former was changed on multiple occasions during the subsisting period between 27.09.2021 i.e. date of rejection of the bail cancellation application by the learned Special Judge and 26.08.2022/27.08.2022 i.e. date of filing of the present applications, on account of certain *malafides* of corruption as made out under Section 59 of the NDPS Act against the officer-in-charge. Therefore, in light of the same, the objection raised qua the delay in filing of the present bail cancellation applications is not tenable.

24. In addition to the findings qua the perversities in the impugned orders dated 26.08.2021 and 27.09.2021, this Court also deems it necessary to hold that certain supervening circumstances have arisen in the present matter warranting the cancellation of the bail granted to the accused-respondent on 26.08.2021.

25. In this regard, it is observed that pursuant to the grant of bail to the accused-respondent on 26.08.2021, two Investigation Officers, having charge of the matter were transferred and/or suspended by the Department, on account of initiation of proceedings against one officer, namely Divya Mittal, under Section 59 of the NDPS Act. It is observed that the aforesaid IO-Divya Mittal, while dealing with the investigation in the matter during the period subsisting between



21.01.2022 and 16.01.2023, was made an accused under Section 59 of the NDPS Act in FIR No. 183/2021, on the ground that in spite of possession of sanction to arrest one accused-Sunil Nandwani, owner of Himalayan Meditech Pvt. Ltd., Dehradun, the IO-Divya Mittal did not carry out the said arrest of the accused named above, without providing any legal cause/ground for the same. Moreover, another Investigation Officer namely, Mr. Bhura Ram, who had the charge of the investigation during the period subsisting between 12.07.2021 and 20.01.2022, was also transferred after the grant of bail to the accused-respondent.

26. Hence, considering the fact that after the accused-respondent was enlarged on bail vide order dated 26.08.2021 and thereafter, two Investigation Officers, tasked with the duty to carry out just and fair investigation in the matter, were transferred and/or made accused under Section 59 of the NDPS Act for not making the arrests of co-accused as required and permitted by way of the sanction to arrest being granted and that too without providing any reasons for the same, this Court cannot rule out the fact of tampering with the investigation by the accused-respondent, thereby, causing prejudice to the fair and speedy investigation as well as trial in the matter. Accordingly, in light of the said peculiar circumstance, the judgments cited by the learned counsel for the accused-respondent wherein bail has been granted to the accused as well as certain co-accused in FIR Nos. 197/2021, 195/2021 by Coordinate Bench of this Court, are distinguishable and correspondingly the argument advanced by the learned counsel for the accused-respondent qua the adoption of an arbitrary pick and choose mechanism to prefer the cancellation applications, by the applicant-State despite all the alleged offences arising from a common transaction, is not tenable.



CONCLUSION

27. Hence, upon a cumulative consideration of the fact that impugned orders dated 26.08.2021 and 27.09.2021 were passed without taking note of the relevant factors which should have been taken into consideration by the learned Special Judge while dealing with the application for bail; that the bail was granted to the accused-respondent based on irrelevant considerations, a perusal of which failed to reflect due compliance of Section 37 of the NDPS Act in terms of the learned Special Judge having formed a *prima facie* satisfaction qua the innocence of the accused-respondent; that the possibility of the accused-respondent tampering with the just and fair investigation of the matter cannot be ruled out, especially in light of the supervening circumstances having arisen subsequent to the grant of bail to the accused-respondent qua the recurrent change in the Investigation Officers tasked with leading the due investigation in the matter, especially amidst the additional possibility of the Investigation Officers being *prima facie* hand in glove with the accused-respondent as is reflected from a perusal of the charge-sheet issued to the erstwhile Investigation Officer Ms. Divya Mittal; that based on the observations made herein-above, no *prima facie* innocence of the accused-respondent under Section 37 is made out; that the dictum of the Apex Court in **Tofan Singh (Supra)** is not applicable in the peculiar facts and circumstances of the present case, especially on account of the other circumstantial evidence available on record including the Disclosure Statements under Section 27 of the Evidence Act and the statements tendered under Section 164 of Cr.P.C.; that the delay so caused in filing of the instant bail cancellation application was on account of certain procedural difficulties, which can be condoned in the peculiar facts and circumstances of the present case and relying upon



the dictum of the Apex Court in **Y vs. State of Rajasthan (Supra)** and **Mohit Agarwal (Supra)**, this Court deems it fit to allow the present bail cancellation applications filed by the applicant-State.

28. It is made clear that no observations made in this order shall prejudice the adjudication of the trial pending before the court below.

29. Accordingly, in light of the observations made herein-above, the instant bail cancellation applications are allowed and as a result, the impugned orders dated 26.08.2021 and 27.09.2021 are quashed and set aside and the bail so granted to the accused-respondent is cancelled.

(SAMEER JAIN),J

Pooja /133-135