

**(1988) 07 DEL CK 0039**

**In the Delhi High Court**

**Case No :** Criminal Miscellaneous (Main) Appeal No"s. 1317 and 1321 of 1987

Rajinder Gautam

APPELLANT

Vs

State (Delhi Administration) and Another <BR> Jyotin Vyas  
Vs State (Delhi Administration) and Another

RESPONDENT

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**Date of Decision :** 04-07-1988

**Acts Referred:**

**Citation :** (1988) 15 DRJ 253

**Hon'ble Judges :** P.K. Bahri, J

**Bench :** Single Bench

**Advocate :** D.C. Mathur, D.K. Mathur, J.S. Arora and G.S. Nayar, for the Appellant;

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## **Judgement**

P.K. Bahri, J.

(1) These are two petitions by different accused seeking bail u/s 439 of the Code of Criminal Procedure. The petitioners accused have been arrested for offences under Sections 22 and 29 of the Narcotic Drugs & Psychotropic Substances Act (hereinafter referred to as "the Act"). Various legal questions have been raised in these bail petitions as to the powers of the officers of the Narcotic Control Bureau set up by the Central Government under the provisions of the Act, whether such officers are to be deemed to be police officers and any statements made by the accused to such officers u/s 67 of the Act are hit by the provisions of Section 25 of the Indian Evidence Act or not and what is the procedure which has to be followed for holding the investigation of the offences under the Act by such officers and whether all the provisions of the Code of Criminal Procedure are applicable to the offences being investigated by the officers of the said Bureau or whether an F.I.R. u/s 154 of the Code of Criminal Procedure and challan u/s 173 of the Act are liable to be filed or not, or whether such officers investigating the offences are entitled to file a complaint before the Magistrate u/s 190(a) or Section 190(c) of the Code of Criminal Procedure. All these questions have been referred for decision by a larger bench in some other cases and I am told that

the cases are to come up for hearing before a Division Bench in the month of July. Elaborate arguments were addressed before me also on these points by counsel for the petitioners but it would not be appropriate for this Court to express any view on these legal questions which are to be now decided by a Division Bench of this Court. So, without expressing any view on these points. I take up the case of Rajinder Gautam at first for deciding his bail application on merits" .Cr. M. (M) NO. 1321/87

(2) Counsel for the petitioner has vehemently argued that bail should be the norm and refusal of norm should be the exception and unless it is shown that a particular accused is liable to abscond or tamper with the evidence such an accused should be granted bail. The Principles which have to be kept in view for granting bail in non-bailable offences are almost now settled by different judgments of the Supreme Court. It is not necessary to refer to all the cases. I may note down the observations given by the Supreme Court in *State v. Jaspal Singh Gill* 1984 L.J. 1211. It was held by the Supreme Court after taking notice of provision on judgments on the subject that the Court before granting bail in cases involving non-bailable offences, where particularly the trial has not yet commenced should take into consideration various matters such as the nature and seriousness of the offence the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interest of the public or the State and similar other considerations. It cannot be, indeed, disputed that the offences under the Act are very serious and grave as the trafficking in drugs mentioned in the Act have devastating effect on the society overall. There cannot be any two opinions that if persons indulging in such offences under the Act are caught, they have to be dealt with severally if offences are brought home to such accused. The Legislature has provided for very stern sentences for the persons found guilty of such offences. So, overall interest of the society do require that persons who are apprehended committing such offences under the Act should not be granted bail normally. So, it cannot be argued with any sense of rationality that grant of bail should be the norm in respect of the offences covered by the present statute ; rather in respect of the offences covered by this statute the bail should not be normally granted because release of such accused indulging in such nefarious activities like dealing in such drugs and other substances which have deleterious effect on the health of the society should not be allowed to remain enlarged once they are caught doing such offences.

(3) As far as merits of the case are concerned, the house of the accused was searched on August 18, 1987, and a number of documents were recovered which on the face of it made it clear, prima facie, that this accused has been dealing in prohibited drugs in a large scale. Thus, recovery of documents by itself is sufficient to show the involvement of this accused in offences covered by Sections 22 & 29 of the Act. Even if the retracted confessional statement of the accused recorded by the officer of the Bureau which implicates the accused for

commission of the said offences is presently ignored, even then there is sufficient material in the shape of documents recovered from the house of the accused to link the accused with the commission of the said offences, prima facie. Hence, on merits, this accused does not deserve bail. However, I will keep his petition pending for bail till the decision is given by the Division Bench on the legal questions which stand referred to the larger bench. Adjourned to August 22, 1988. Cr. M. (M) NO. 1317/87

(4) Now taking up the case of Jyotin Vyas, the facts show that 25 kgs of Methaqualone powder was recovered from the house of this accused. This huge recovery from the house of the accused is sufficient to show that prima facie, this accused has committed the offence u/s 22 & 29 of the Act. Even though the confessional statement of this accused which he has retracted later on is ignored, even then there is sufficient evidence collected by the respondent showing the implication of this accused, prima facie, for commission of said heinous offence. Hence, on merits this accused does not deserve bail. However, in respect of the legal questions, his bail matter would be considered after decision is given by the Division Bench. Adjourned to August 22, 1988.