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Pramod Ganpat Wankhede and Another Vs State of Maharashtra

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Feb. 22, 2002

Acts Referred: Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) â€" Section 19, 20, 24, 27, 27A

Citation: (2002) BomCR(Cri) 583 : (2002) 3 BOMLR 182 : (2002) CriLJ 4835 : (2002) 83 ECC 529 : (2002) 2 MhLj 547

Hon'ble Judges: P.S. Brahme, J; J.N. Patel, J

Bench: Division Bench

Advocate: V.M. Deshpande, as Amicus curiae, for the Appellant; T.B. Mirza, Assistant Public Prosecutor, for the Respondent

Judgement

P.S. Brahme, J.
Heard Shri V. M. Deshpande, learned advocate for the applicants appointed as amicus curiae and Shri T. B. Mirza,

learned A. P. P. for respondent- State.

2. This matter has come up before us as a reference from the learned Single Judge (Shri Mhase, J.) by his order passed on 24-6-1997 to answer

the question formulated by him as under:

Whether the provisions of Section 37(1)(b) of the N.D.P.S. Act are not attracted in the matters of bail applications filed by the accused when the

offence punishable under the N.D.P.S. Act is with the imprisonment which may extent to a period of five years?

3. The factual matrix which gave rise to a controversy on account of two conflicting judgments in respect of interpretation of Section 20(b)(i) and

Section 37(l)(b) which is stated as follows :

According to the prosecution case, the Assistant Police Inspector, Yavatmal on 18-2-1997, accosted one Fiat Car bearing No. MHR - 3840

came from Pandharkawda Road and when search was taken four bags containing Ganja were found. The total quantity of Ganja found with the

applicants and other accused was one quintal and 640 grams. Therefore, offence under Sections 20 and 29 of the Narcotic Drugs and

Psychotropic Substances Act, 1985 (hereinafter referred to as ""the Act"") was registered. After the charge sheet was filed, applicants filed Misc.

Criminal Application No. 57/1997 for bail in the Trial Court. Learned Additional Sessions Judge, Yavatmal, rejected the bail application, by order

dated 26th May, 1997. Therefore, the applicants filed present application in this Court for bail u/s 439 of Criminal Procedure Code. As the

contraband article found with the applicants was Ganja the provisions of Section 20(b)(i) of the Act would apply and under this section prior to

amendment the punishment which was provided for was of rigorous imprisonment for a term which may extend to five years and shall be liable to

pay fine which may extend to Rs 50,000/-. It was common ground that in respect of the offences under the Act the provisions contained in Section

37 regulated and dealt with the question of grant of bail to the accused, who has committed or alleged to have committed the offence under the

Act. For appreciating the rival contentions, it is appropriate to refer to Sections 20 and 37 of the Act which read thus :

Section 20 : Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder:

(a) not relevant

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-States or uses cannabis,

Shall be punishable

(i) Where such contravention relates to ganja or the cultivation of cannabis plant, with rigorous imprisonment for a term which may extend to five

years and shall also be liable to fine which may extend to fifty thousand rupees;

Section 37(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 a term of imprisonment of five years or more under this Act shall be released on bail or on his

own bond unless -

(i) the Public Proctor 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 Subsection (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.

4. Before the learned Single Judge, on behalf of the applicants it was submitted that the offences which are punishable with a term of imprisonment

of 5 years or more, are only covered u/s 37 and the offences which are punishable with a term which may extend to five years are not covered u/s

37 of the Act. In order to substantiate their contention reliance has been placed on the decision in the matter of Gafur Yusuf Shaikh v. Inspector of

Police Akluj Police Station reported in 1997(1) Learned Judgment 705 wherein it was observed by the then learned Single Judge (Datar, J.) that

the provisions of Section 37 of the Act are not attracted in a case of offence u/s 20(b) of the N.D.P.S. Act, as the sentence prescribed for the said

offence is not more than five years.

5. However, learned A.P.P. brought to the notice of the learned Judge a decision of the Single Judge of this court reported in Chhotu Vs. State of

Maharashtra , wherein it is held that for the offence u/s 20(b)(i), the provisions of Section 37 of the Act are attracted. The learned Judge observed

in paragraph 7 and 9 as under:

7. Once the Legislature intended to bring curbs on the bail provisions by making them more stringent, it was imperative that a clear-cut distinction

was made in case of the offences. The Act envisages number of offences which also include some minor offences. Therefore, the Legislature had to

create a distinguishing line clearly demarcating the offences which would be brought into the cover of Section 37 and the other ones which would

not be so covered. It is only in respect of the serious offences that Section 37 is being sought to be applied. The seriousness of the offences has

been made apparent from the punishment prescribed for those offences. It is, therefore, that the legislature has brought into existence the

distinguishing line; the distinguishing line being the offences which are punishable with five years and more and the other offences, meaning thereby

the other offences in which the punishment of 5 years cannot be given. If we look at the language Section 37(1)(b) of the Act, it is clear that it

intends to classify and bring into existence two categories, the first category being the offences in which the punishment for five years of

imprisonment and more can be given and the other category being all the other offences in which the sentence of five years" imprisonment cannot

be given. The intimation of five years, therefore, appears to be deliberate. The plain meaning of the language would, therefore, be that all such

offences in which a punishment of five years or more can be granted are covered under the language, of Section 37(1)(b) and such other offences

in which such punishment cannot be granted would not be so covered and such offences would be covered by the ordinary and general provisions

of Criminal Procedure Code regarding the bail."" ""9. Shri Madkholkar further submitted that the words term of imprisonment extended upto five

years" would not cover five years. This submission is also incorrect for the same reason. u/s 20(b)(i), if the accused can be legally convicted for a

term which may extend to five years, it would naturally include the maximum punishment also. After all the words five years used in Section 20(b)

(i) show the last limit of imprisonment which could be awarded by the Court. If under that section the punishment of five years could be awarded,

then it has to be undoubtedly come within the umbrella of Section 37(1)(b) to form one of the distinct categories as has been shown earlier.

Thus, learned Single Judge (Mhase J.) found that it would be improper to keep on record two conflicting views of Single Judges. If both the

judgments, conflicting as they are, were to remain in the field, a very anomalous position would arise, as to interpretation of the provisions u/s 37(1)

(b) of the Act. Therefore, learned Single Judge thought it proper to constitute a Division Bench or a Larger Bench to consider and resolve the

controversy arising out of two conflicting judgments. That is how the matter is before us, on reference.

6. Mr. Deshpande, learned counsel submitted that in the matter of grant of bail to the accused charged for the offence under the Act it is

exclusively controlled by the provisions contained u/s 37 of the Act. In that the power of the High Court u/s 439 of Criminal Procedure Code to

grant bail is also subject to the limitations placed u/s 37 of the Act. He placed reliance on the decision of the Apex Court in Narcotics Control

Bureau Vs. Kishan Lal and others, . The Apex Court observed as under:

Section 37 as amended starts with a non obstante Clause stating that Notwithstanding anything contained in the Code of Criminal Procedure,

1973 no person accused of an offence prescribed therein shall be released on bail unless the conditions contained therein were satisfied. The

NDPS Act is a special enactment and as already noted it was enacted with a view to make stringent provisions for the control and regulation of

operations relating to narcotic drugs and psychotropic substances. That being the underlying object and particularly when the provisions of Section

37 of NDPS Act are in negative terms limiting the scope of the applicability of the provisions of Criminal Procedure Code regarding bail, in our

view, it cannot be held that the High Court"s powers to grant bail u/s 439, Criminal Procedure Code are not subject to the limitation mentioned u/s

37 of the NDPS Act. The non obstante Clause with which the section starts should be given due meaning and clearly it is intended to restrict the

powers to grant bail. In case of inconsistency between section 439 Criminal Procedure Code and Section 37 of the NDPS Act, Section 37

prevails. The provisions of Section 4, Criminal Procedure Code also make it clear that when there is a special enactment in force, relating to the

manner of investigation, enquiry or otherwise dealing with such offences, the other powers under Criminal Procedure Code should be subject to

such special enactment. In interpreting the scope of such a statute the dominant purpose underlying the statute has to be borne in mind.

Consequently the power to grant bail under any of the provisions of Criminal Procedure Code should necessarily subject to the conditions

mentioned in Section 37 of the NDPS Act.

6A. It is therefore, very clear in our mind that the non-obstante Clause with which the section starts is intended to restrict the powers to grant bail

and therefore the powers to grant bail u/s 439 of Criminal Procedure Code the High Court is vested with are subject to the limitations placed u/s

37 of the Act.

7. Mr. Deshpande, then placed reliance on the decision of the Apex Court in Maktool Singh Vs. State of Punjab, -Respondent to support his

contention that the limitations provided u/s 37 of the Act are in addition to the limitations under the Code of Criminal Procedure, 1973 or any other

law for the time being in force, on granting bail. In fact the decision of the Apex Court was on interpretation of Section 32(A) of the Act. The

question involved was whether the provisions contained in Section 32(A) of the Act has taken away the powers of the court to suspend a sentence

passed on persons convicted of offences under the Act. The Apex Court has held that Section 32-A of the Act has taken away the powers of the

High Court to suspend the sentence passed on a person convicted under the Act (except Section 27) either during pendency of any appeal or

otherwise. Similarly, the power of the Government under Sections 432, 433 and 434 of the Criminal Procedure Code have also been taken away.

Section 32-A would have an overriding effect with regard to the powers of suspension, commutation and remission provided under the Criminal

Procedure Code. Considering the possible fall out of the view, namely that if High Courts have no power to suspend sentence under any

contingency its consequence would be that long duration of pendency of appeal would result in serious miscarriage of justice in many cases.

8. It is found that the Apex Court while dealing with the provisions contained in Section 32-A of the Act referred to the provisions contained u/s

37 of the Act and in that context the Apex Court has observed that by Section 37 except offences under Sections 26, 27 for all other offences the

court"s power to release an accused on bail during the period before conviction has been drastically curtailed. Therefore, if the position was thus,

even before a Trial Court completes adjudication, the position regarding bail cannot be more liberal and lighter after the Trial Court finds him guilty

of the offences on completion of the adjudication. The Apex Court further observed that any other interpretation would lead to the consequence

that the powers of the Court to release an accused on bail during pre-conviction is rigorous while it will be liberal during post-conviction period.

The parliament could never have intended such a consequence to take place.

9. Mr. Deshpande, given much emphasis on these observations of the Apex Court, submitted that the Apex Court has ruled out that except

offences under Sections 26, 27 for all other offences the court''s power to release the accused on bail has been drastically curtailed by Section 37

of the Act. Therefore, the offence u/s 20(1)(b) of the Act comes within the scope of restriction or curtailment on bail under the provisions of

Section 37 of the Act.

10. Mr. Deshpande, however, did not hesitate in pointing out the subsequent decision of the Apex Court in 2000 Criminal Law Journal Page 4619

Dadu alias Tulsidas etc. Petitioners v. State of Maharashtra - Respondents, wherein the earlier decision in Maktulsingh''s case (supra) to the extent

of interpretation and the scope of Section 32(A) has been overruled. The Apex Court has held that Section 32(A) of the Act which says that no

sentence awarded under N.D.P.S. Act shall be suspended or remitted or commuted does not in any way affect the powers of the authorities to

grant parole. Parole does not amount to the suspension, remission or commutation of sentences which could be withheld under the garb of section

31-A of the N.D.P.S. Act. Notwithstanding the provisions of the Section 32-A, a convict is entitled to parole, subject, however, to the conditions

governing the grant of it under the statute, if any, or the Jail Manual or the Government Instructions. But then the Apex Court has maintained the

interpretation of Section 37 and its scope in curtailing the relief of grant of bail to the accused who are charged with the offence under the Act.

Therefore, the legal position as laid by the Apex Court in Maktulsing''s case as to the curtailment of bail envisaged u/s 37 of the Act remained

undisturbed.

11. Mr. Deshpande, then placed reliance on the decision of the Apex Court rendered in 2001 Criminal Law Journal W82, Intelligence Officer,

Narcotics C. Bureau, Appellant v. Sambhu Sonkar and another, Respondents which squarely deals with the controversy that is presently posed

before us. In that case the respondents who were accused, for offence punishable u/s 20(b)(i) of the Act, were released on bail by the High Court

holding that the restriction imposed by Section 37 of the N.D.P.S. Act, 1985 would not be applicable as the maximum imprisonment for the

offence punishable u/s 20(b)(i) is five years. The Apex Court while setting aside the order passed by the High Court granting bail, observed that

the only offence exempted from the purview of the aforesaid rigorous of the bail provisions contained u/s 37 of the Act are those under Sections

26 and 27 of the Act. The former is punishable upto a maximum imprisonment for three years and the latter upto a maximum imprisonment for one

year. For all other offences the Court''s power to release an accused on bail during the period before, conviction has been thus drastically curtailed

by providing that if the Public Prosecutor opposes the bail application, no accused shall be released on bail, unless the Court is satisfied that there

are reasonable grounds for believing that he is not guilty of such offence. The Apex Court further observed that except Section 20(b)(i) there is no

provision which prescribes that imprisonment may extend to five years. For the offence punishable under said section, in appropriate cases, Court

may impose maximum punishment of five years. Therefore, there is no reason to exclude the said Clause from the operation of Section 37. The

Apex Court therefore, observed that it would be difficult to accept the contention of the learned counsel for the respondent that the liberal

interpretation given by the High Court to Section 37 is justified as it affects personal liberty of a person - citizen who is yet to be tried. The Apex

Court observed that the Act has provided stringent provision for the control and regulation of operations relating to Narcotic Drugs and

Psychotropic Substances and matters connected therewith. For granting of bail, in the statements of Objects and Reasons for introducing bill No.

125/1988 (Act 2/1989) the following passage has been stated :--

Even though the major offences are non-bailable by virtue of the level of punishment on technical grounds, drug offenders were being released on

bail. In the light of certain difficulties faced in the enforcement of the N.D.P.S. Act 1985 the need to amend the law to further strengthen it, has

been felt.

Therefore, considering the legislative intention of curbing the practice of giving bail on technical grounds in a crime which adversely affects the entire

society including lives of number of persons and the object of making stringent provisions for control of illicit traffic in narcotic drugs and

psychotropic substances, there is no reason to accept the construction of the section which its language can hardly bear.

12. Learned Counsel Mr. Deshpande placed reliance on a recent decision of the Apex Court rendered in State of Madhya Pradesh Vs. Kajad, ,

wherein the Apex Court referring to the earlier decision in Intelligence Officer Narcotic Control Bureau v. Sambhu Sonkar (supra) has held that the

accused cannot be released on bail in offences punishable for a term of imprisonment of 5 years or more in view of the restriction embodied u/s 37

of the N.D.P.S. Act. The accused not to be released unless there, are reasonable grounds to believe that he is not guilty of the offence. In that case

it was found that the earlier application for bail was rejected. The Apex Court in that context observed that bait cannot be granted particularly in

view of the rejection of the earlier bail application. Since the second application was without mentioning the change in circumstance and as such it

was deemed to be reviewed, which is not permissible. The Apex Court cancelled bail granted by the High Court.

13. The legal position regarding entitlement of bail for offences under the Act as envisaged in Section 37 of the Act is very much clear in our mind.

The limitation on granting of bail specified in Clause (b) of Sub-section (1) of Section 37 are in addition to the limitations under the Code of

Criminal Procedure. The scheme of Section 37 reveals that the exercise of the power to grant bail by the Special Judge is not only subject to the

limitations contained u/s 439 of Criminal Procedure Code, but it is also subject to the limitations placed by Section 37 which commences with non-

obstante Clause. That is why the sub-clause, (b) of Sub-section (i) of Section 37 begins with words ""No person accused of offence punishable for

a term of imprisonment of five years or more under this Act shall be released on bail or on his own bond"", the operative part of the said section is

in the negative in the enlargement of bail of any person accused of the offences. Under the Act unless two conditions are satisfied, the first

condition is that the prosecution must be given an opportunity (o 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. It goes without saying that if either of these two conditions is not satisfied,

the ban for granting bail operates. It is also obvious that as per the mandate of Section 37, no person accused of an offence punishable for a term

of imprisonment of five years or more under this Act shall be released on bail unless the conditions mentioned in Sub-clause (i) and (ii) of Clause

(b) are satisfied. The preconditions for application of Clause (b) would be that the offence is punishable for a term of imprisonment of 5 years or

more. Plain reading of the above said Clause makes it clear that in case where the person is accused of offence punishable for a term of

imprisonment of five years, then he cannot be released unless the conditions mentioned therein are satisfied. In case of offence punishable u/s 20(b)

(i) maximum punishment is for a term of imprisonment of 5 years and fine which may extend to Rs. 50,000/-. There is no justification to hold that

maximum term of punishment is to be excluded for the purpose of interpretation and Section 37 would not cover in its fold offence punishable u/s

20(b)(i) of the Act. The limitation of five years, appears to be deliberate. All such offences in which a punishment of five years or more can be

granted come within the sweep of Section 37(i)(b) of the Act and other offences for which such punishment cannot be granted would not be

covered and therefore would not come within the ambit of clog u/s 37(i)(b) of the Act. In case of offence u/s 20(b)(i) when the punishment

prescribed is of five years the court can impose punishment of five years i.e. the maximum punishment which the court can impose. If that is so,

then the requirement u/s 37(1)(b) of the Act, which requires punishment of R.I. of five years or more, is satisfied. Therefore, offence u/s 20(b)(i)

under the said Act, squarely comes within the purview of Section 37(1)(b) of the Act. In other words, there is no logic in saying that the offence u/s

20(b)(i) would not come in the folds of Section 37(1)(b) merely because the maximum punishment provided u/s 20(b)(i) is upto 5 years of rigorous

imprisonment. Therefore, there is no justifiable reason to hold that the maximum term of imprisonment is to be excluded for the purpose of

interpretation and Section 37 would not cover in its fold the offences punishable u/s 20(b)(i) of the Act.

14. It is seen that Section 37 would cover in its fold the offence punishable u/s 20(b)(i). The provisions empowering the court to impose the

punishment can be divided into four parts namely :-- (1) Less than 5 years, (2) upto 5 years, (3) more than 5 years and (4) providing death

penalty. Sections 26, 27 and 32 provide for imprisonment for a term which may be less than 5 years. Section 25(a) provides for imprisonment may

extend upto 10 years. The other Sections namely Sections 15, 16, 17, 18, 19, 20(b)(ii), 21, 22, 23, 24 and 25 provide that punishment shall not

be ""for a term less than 10 years"". Except Section 20(b)(i) there is no provision which prescribes for punishment which may extend to 5 years. For

the offences punishable in the said section in any appropriate court may impose maximum punishment of five years. Therefore, there is no reason to

exclude said Clause from the operation of Section 37.

15. We may also refer to the legislative object in making stringent provisions under the Act. The legislature has provided stringent provisions for the

control and regulation of operation relating to Narcotic Drugs and Psychotropic Substances and matters connected therewith. In the statements of

objects and reasons for introducing bill 125 of 1988 (Act II of 1989) the following passage has been stated :

Even though the major offences are non bailable by virtue of the level of punishment on technical grounds, drug offenders were being released on

bail. In the light of certain difficulties faced in the enforcement of the N.D.P.S. Act 1985 the need to amend the law to further strengthen it, has

been felt.

16. Therefore, it is very difficult to accept that the liberal interpretation is justified as it affects personal liberty of citizen who is yet to be tried. In

our view considering the legislative intent of curbing the practice of giving bail on technical ground in a crime which adversely affects entire society

including the lives of numbers of persons and object of making stringent provisions for control of illicit traffic in Narcotic Drugs and Psychotropic

substances, there is no reason to accept the construction of the section which its language can hardly bear. Therefore, the court has no discretion in

granting bail in case of offence u/s 20(b)(i) of the Act in view of the statutory mandate provided u/s 37 of the Act. The view taken by the learned

Single Judge (Shri Sirpurkar J) in 1995(1) Mh.LJ. 223 (supra) that offence u/s 20(b)(i) of the Act which prescribed punishment upto five years

comes within the umbrella of Section 37(1)(b) of the Act, stands to the reason and is in consistence with decisions of the Apex Court in 2007

Cri.LJ. 4240 and Intelligence Officer, Narcotics C. Bureau Vs. Sambhu Sonkar and Another, so as a corollary to this we have no hesitation in

saying that the view liken by the learned Single Judge (Datar, J.) in 1997 (1) Learned Judgments 705 Gaffur Yusuf Shaikh v. Inspector of Police,

Akluj Police Station, does not hold good. In our opinion having regard to the quantum of punishment prescribed for offence u/s 20(b)(i) i.e.

rigorous imprisonment upto 5 years, falls under the ambit of restriction or curtailment in granting of bail as provided u/s 37(1)(b) of the Act. That is

the law laid down by the Apex Court in the recent decisions referred to above. Therefore, we are fortified in our view by the decisions rendered

by the Apex Court and for that reason we answer the question under reference in the negative. We therefore hold that the provisions of Section

37(1)(b) of the N.D.P.S. Act in respect of bail are attracted when offence under the Act is punishable with rigorous imprisonment which may

extend to five years.

17. We have answered the question under reference in the matter placed before, thereby the chapter of reference is over. However, the matter

does not attain finality as Sections 20 and 37 of the N.D.P.S. Act have gone radical changes as a result of amendment brought by section 17 of the

N.D.P.S. (Amendment) Act, 2001 with effect from 1-10-2001. As a result of legislative changes the area of application of Section 37 vis-a-vis the

restriction on granting bail is also changed. We therefore thought it apt to clarify legal position in respect of the application of provisions of Section

37 as amended. We therefore reproduce the Section 37 as it stood before the amendment as also the amended section in juxta-position in order to

appreciate the radical change brought about:

Section 37(l)b)

Before Amendment After amendment

37(1)(b) 37(l)(b)

No person accused of offence l(b) No person accused of offences

punishable for a term of imprisonment of punishable for u/s 19 or section 27A and

5 years or more under this Aci shall be also for offence offences involving

released on bail or on his own bond commercial quantity or more under this

Act shall be released on bail or on his

own bond;

20(b)(i) 20(b)(i)

When such contravention relates to Where such contravention relates to

Ganja or cultivation of cannabis plant, clause (a) with R.J. for a term which may

with R..1. for a term which may expend extend to ten years, and shall also be

to five years and shall also be liable to liable to fine which may extend to one

fine which may extend to fifty thousand lakh rupees; and

rupees :

20(b)(ii) 20(b)(ii)

When such contravention relates to Where such contravention relates to sub-

cannabis other than Ganja with R.I. for a clause (b) : (A) and involves small

term which shall not be less than ten quantity with R.I. for a term which may

years, which may extend to twenty years extend to 6 months or with fine...

and shall also be liable to fine which shall

not be less than one lakh rupees and (B) and involves quantity lesser than

which may extend to two lakh rupees : commercial quantity, with

imprisonment for a term which may

extend to ten years and with fine....

(C) And involves commercial quantity

with R.1. for a term which shall nor be

less than ten years which may extend to

twenty years, and shall also be liable to

fine.....

18. We have already found that the grant of bail in respect of the offences under the Act, is subject to the conditions u/s 37 of the Act. As per the

provisions of Section 37 as it stood before the amendments, no bail could be granted if the person is involved in commission of the offences under

the Act which is punishable with R.I. for five years or more. That means the restriction on granting bail was dependent on the quantum of sentence

prescribed for the offence under the Act. But under the amended provisions u/s 37 of the Act a person accused of an offence punishable for

offence u/s 19 or Section 24 or Section 27A and also for offences involving commercial quantity or more under this Act shall not be released on

bail. This clearly shows that under the amended provision the restriction on granting bail is dependent on specific offences under the Act and also

involvement of a contraband article of commercial quantity or more under this Act. That is a drastic change brought about and it was with the

object to liberalise bail provisions in respect of certain offences.

19. This appears to be in consonance with amended provisions u/s 20 of the Act. As pointed out earlier in Clause (b)(i) in case of contravention

relating to Clause (a) the punishment provided for is that of R.I. for a term which may extend to ten years. In the light of amended provisions of

Section 37 of the Act, so far as contravention relating to cultivation of cannabis plant is concerned, no bail could be claimed by the accused, if the

contraband article is of commercial quantity or more. Similarly, when contravention relates to sub-clause (b) relating to contraband which involves

commercial quantity under (C) no bail could be granted having regard to the amended provisions of Section 37 of the Act. But, the contraband

article involves small quantity for which under (A) punishment prescribed is of R.I. for a term which may extend to six months or with fine, that will

not come in the folds of Section 37 of the Act. Similarly, if the contraband article found to be involving quantity lesser than commercial quantity but

greater than small quantity, as Sub-clause (B) it may not be under the cover of amended Section 37 of the Act. Thus, it will be seen that the rigour

of Section 37 placing restriction on granting bail, has been liberal making it dependent on the quantity of the contraband article found in possession

of the offender. The Judges who are specially empowered for trying the offences under the Act, have to bear in mind this legislative change in the

Act and also a consequent effect of it on application for provisions u/s 37 of the Act in relation to grant of bail to the person accused of the

offences under the Act. The Judges should note that the bar for granting bail in respect of the offences under the Act is made dependent on specific

offences, enumerated in amended Section 37 of the Act and involvement of commercial quantity or more of the contraband article.

20. Before parting with the judgment we find it appropriate to place on record our words of appreciation for the commendable job done by

learned Counsel Shri Deshpande who was appointed as amicus curiae by us, by projecting a wide screen focusing on the full profiles of the subject

with his usual felicity and also for placing before us the legal position very fairly. We are beholden to him.

21. Having regard to the importance of the legal question involved in the matter and the legislative changes in the Act with which the Judges are

concerned and dealing with the matter under the Act, we direct the registry to circulate the copies of this judgment to the Special Judges and the

Lower Courts in the State. This matter be placed before the Single Judge for disposal.

22. In the result, for the reasons stated above we answer the question under reference in the negative. We hold that the provisions of Section 37 of

the Act are attracted in respect of bail when an offence under the Act is punishable with R.I. which may extend to five years. The matter under

reference be placed before the appropriate bench for disposal.