



2024: DHC: 4530



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 23.04.2024
Pronounced on: 31.05.2024

+ **CRL.M.C. 371/2022 & CRL.M.A. 1678/2022**

ROHIT Petitioner

Through: Mr.Sumit Sharma, Adv.

versus

STATE OF N.C.T. OF Delhi Respondent

Through: Ms.Priyanka Dalal, APP with
SI Dinesh Joshi.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') seeking setting aside of the Order dated 07.01.2022 (hereinafter referred to as the 'Impugned Order') of the learned Special Judge (NDPS), New Delhi District, Patiala House Courts, New Delhi (hereinafter referred to as the 'Trial Court'), passed in the FIR No.117/2021 registered at Police Station: Special Cell, Delhi under Sections 21/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'NDPS Act'), dismissing the application filed by the petitioner under Section 439 of the Cr.P.C.; the petitioner further seeks grant of regular Bail in the said FIR.



Case of the Prosecution:

2. It is the case of the prosecution that on 02.05.2021, specific information was received that one Altaf @ Mehrajuddin Darji was going to deliver a consignment of contraband, at around 08:00-08:15 P.M., somewhere in the area of Zakir Nagar, Delhi. It is alleged that acting upon the said information, a raiding party was formed, and a trap was laid. It is alleged that in the said raid, Altaf @ Mehrajuddin Darji, was arrested and 4.500 Kilograms of contraband was recovered from his possession.

3. It is stated that during the investigation, based on the disclosure statement of the said accused Altaf @ Mehrajuddin Darji, another raid was conducted by the investigating agency, and on 03.05.2021, co-accused, namely, Abid Hussain Sultan, was apprehended and 12 Kilograms of contraband was recovered from his flat situated at Vinoba Puri, Delhi.

4. It is stated that, subsequently, based on the disclosure statement of Abid Hussain Sultan, the co-accused, namely, Hashmat Mohammadi, was arrested on 04.05.2021, and on checking the glovebox/dickey of his two-wheeler, 5.04 Kilograms of contraband was recovered from him as well.

5. It is further alleged that during the course of the interrogation, Hashmat revealed that one of the sources of the contraband was Kasim, that is, his brother, and Haji. It is alleged that both Kasim and Haji are based in Afghanistan. It is further stated that Hashmat also disclosed that a contraband factory was running in Zakir Nagar, Delhi. It is alleged that based on the said information, a raid was conducted



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at a house situated in Batla House, Okhla, Delhi, and a clandestine facility, being run under a residential cover, was unearthed, and a total of 29.50 Kilograms of contraband along with other articles used for reconstitution of contraband, such as big aluminum containers, buckets, gunny bags soaked in chemical, distillers, etc., were recovered. It is alleged that the said premises belonged to co-accused Tifal Naukhej @ Tifley, who was arrested on 06.05.2021 while already being in Rohini Jail in FIR No.117/2019 registered at Police Station: Special Cell under Sections 21 and 29 of the NDPS Act.

6. It is further alleged that during the course of further investigation, on the basis of secret information, another person namely, Abdullah Najibullah @ Nabi was apprehended on 09.05.2021, and 3.20 Kilograms of contraband was recovered from him as well.

7. It is alleged that on 14.05.2021, based on the disclosures of one of the accused, namely, Abdullah Najibullah @ Nabi, the involvement of four other persons namely, Rohit, that is the petitioner herein, Ashish @ Ashu, Rudra and Ajay was revealed. It is alleged that Abdullah Najibullah @ Nabi further disclosed that the main person of the Haryana syndicate in relation to the above case was a person named Rohit, that is, the petitioner herein, who was on the run and was trying to abscond from the police. It is alleged that, thereafter, it was found that the petitioner has been arrested in FIR No.62/2021 registered at Police Station: R.K. Puram, Delhi under Sections 115/120-B of the Indian Penal Code, 1860 (in short, 'IPC') and Section 25 of the Arms Act, 1959.



8. It is stated that the petitioner was arrested on 04.10.2021 in the present FIR, and during the course of interrogation, he revealed that he had kept a huge quantity of contraband (*Heroin*) in his rented house at Village Lalu Khedi, Muzaffar Nagar, Uttar Pradesh. It is alleged that a raid was conducted at his house on 09.10.2021, and during the raid, 3 Kilograms of the contraband was recovered at his instance from the said place. The prosecution alleges that the petitioner is the main culprit/mastermind of the entire racket/syndicate that has been unearthed.

Proceedings before the Learned Trial Court:

9. The charge-sheet in the present FIR has been filed before the learned Trial Court on 30.10.2021, and a supplementary charge-sheet along with the results of the FSL report with regard to the contraband recovered from the petitioner, has also been filed on 03.02.2022.

10. In between, the petitioner had filed an application before the learned Trial Court under Section 439 of the Cr.P.C. seeking grant of Bail along with a plea that the petitioner is entitled to be released on Default Bail under Section 167(2) of the Cr.P.C.. The learned Trial Court by the Impugned Order has been pleased to dismiss the said application filed by the petitioner.

Submissions of the Learned Counsel for the Petitioner:

11. The learned counsel for the petitioner, at the outset, submits that the petitioner has been facing incarceration in the present case since 04.10.2021, and has only been implicated in the present case based on the alleged disclosure statement of the co-accused Abdullah Najibullah @ Nabi. He submits that said disclosure statement cannot



be relied upon as the same is undated and the statement which allegedly disclosed about the petitioner was only a supplementary statement; the first/main statement of the said co-accused Nabi did not even mention the name of the petitioner or his involvement in the present case. He submits that the said disclosure statements, even otherwise, cannot be relied upon in view of Section 25 of the Indian Evidence Act, 1872.

12. He submits that the other persons named by co-accused Abdullah Najibullah @ Nabi, namely, Ashish @ Ashu, Rudra, and Ajay Agarwat @ Goldi were later released/discharged in the present case, considering the application filed by the prosecution before the learned Trial Court to release the said co-accused person due to lack of evidence. He submits that the prosecution has not been able to justify as to why the other co-accused who were also apprehended based on the disclosure statement of Abdullah Najibullah @ Nabi were let off, thereby casting grave doubt on the story of the prosecution.

13. He submits that the prosecution has not found any corroborative evidence that could link the petitioner with the co-accused Abdullah Najibullah @ Nabi or any other co-accused in the present case.

14. He submits that the petitioner has not made any disclosure with regard to the village Lalu Khedi, Uttar Pradesh in the disclosure statement filed by the prosecution along with the charge-sheet, which is, even otherwise, not to be read against the petitioner as the same does not contain any date or signatures of any independent witnesses. He submits that the prosecution alleges that there is a separate disclosure statement of the petitioner in this regard, however, the said



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statement also does not bear any date and signatures of independent witnesses and, the same not being a part of the chargesheet, also cannot be read against the petitioner. He submits that, even otherwise, the signatures of the petitioner on both the disclosure statements are different, and this can be seen from the naked eye.

15. He submits that the alleged seizure memo dated 09.10.2021 prepared in relation to the alleged raid that was conducted at Village Lalu Khedi, Uttar Pradesh, allegedly on the instance of the petitioner, does not bear the signatures of the petitioner and, therefore, cannot be read against him.

16. He submits that the co-accused is alleged to have disclosed the name of the petitioner in his alleged disclosure statement on 14.05.2021, however, no action was taken thereon till 04.10.2021. He submits that in the meantime, on 24.09.2021, an application to interrogate the petitioner in Tihar Jail, where he was lodged in relation to FIR No. 62/2021, was filed. He submits that the learned Trial Court *vide* its Order dated 24.09.2021 granted the permission to interrogate the petitioner on 25.09.2021 at Tihar Jail premises and arrest him in the present case, if required. He submits that, however, still no action was taken against the petitioner till 04.10.2021, when another application for interrogating the petitioner in jail was filed.

17. The learned counsel for the petitioner submits that the rent agreement dated 01.12.2020 between the petitioner and one Amarpal, relied upon by the prosecution to link the petitioner herein to the recovery made in Village Lalu Khedi, Uttar Pradesh is fabricated and does not belong to the petitioner. He submits that the verification



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report of the Investigating Officer dated 07.12.2023 *qua* the said rent agreement, *inter alia*, stated that the stamp paper of the rent agreement has not been found mentioned in the register/records of the Notary, thereby casting a grave doubt on the case of the prosecution. He submits that the said Rent Agreement has been filed only along with the second supplementary charge-sheet filed on 06.06.2023 and there is no explanation for this delay.

18. He submits that there is also a delay in complying with Section 52A of the NDPS Act. Placing reliance on the judgment of the Supreme Court in *Surender Kumar v. CBN* (Order dated 28.11.2023 in SLP (Criminal) 12566/2023); and of this Court in *Gurpreet Singh v. State of NCT of Delhi*, Neutral Citation No. 2024:DHC:796; *Sandeep @ Chiku v. State (NCT of Delhi)*, Neutral Citation No. 2024:DHC:528, he submits that the prosecution has not filed any link evidence to show as to in what condition the case property was kept and taken out to be presented before the learned Metropolitan Magistrate on 25.10.2021, whereas the seizure is of 09.10.2021. He submits that therefore, the possibility of tampering cannot be ruled out.

19. He submits that the petitioner has also moved an application before the learned Metropolitan Magistrate seeking directions for conducting a judicial inquiry regarding the planting of false recovery upon the accused, however, no such directions have been passed till date.

20. He submits that the prosecution has filed the first main charge-sheet, without the FSL Report, only on 30.10.2021, and no cognizance



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was taken by the learned Trial Court till 06.06.2022. He submits that the FSL report was filed by the prosecution only on 04.03.2022 with the first supplementary charge-sheet. Placing reliance on the orders/judgments of the Supreme Court in ***Pankaj Gupta v. Narcotics Control Bureau*** (Order dated 04.12.2023 in SLP(Criminal) 12200/2023); ***Divyas Bardewa v. Narcotics Control Bureau*** 2023 SCC OnLine SC 742; and ***Mohd. Arbaz & Anr. v. State of NCT of Delhi***, 2021 SCC OnLine SC 3397, and an Order dated 10.02.2023 of this Court in Crl.Rev.P. 135/2023 titled ***Gurjeet Singh v. State of NCT of Delhi***, he submits that the petitioner is entitled to seek the benefit of Statutory Bail under Section 167(2) of the Cr.P.C. on this ground. He also places reliance on the judgment of the Bombay High Court in ***Sunil Vasantrao Phulbande & Anr. v. State of Maharashtra***, 2002 SCC OnLine Bom 153, and of the Punjab and Haryana High Court in ***Ajit Singh & Anr. v. State of Punjab***, 2018 SCC OnLine P&H 6941 in support of his submissions.

21. Placing reliance on the judgments of the Supreme Court in ***Rabi Prakash v. State of Odisha***, 2023 SCC OnLine SC 1109 and ***Mohd. Muslim @ Hussain v. State (NCT of Delhi)***, 2023 SCC OnLine SC 352, he submits that a long period of incarceration is a violation of the fundamental rights of the petitioner. He submits that the trial is likely to take a considerable amount of time as there are almost thirty-seven witnesses to be examined and the petitioner has already faced incarceration for a period of around two years and three months, with even charges being not framed.



Submissions of the learned APP:

22. It is submitted by the learned APP that the petitioner herein is the mastermind/main person controlling the supply in the whole syndicate/racket. She submits that the same is corroborated by the statements of the co-accused Abdullah Najibullah @ Nabi as also the other co-accused persons. She submits that in their disclosure statements, the person who is handling the drug network in the State of Haryana is stated to be the petitioner. She submits that the said submissions have been corroborated by the recovery of a commercial quantity of the contraband (*Heroin*) at the instance of the petitioner from village Lalu Khedi, Muzaffarnagar, Uttar Pradesh. She submits that as the commercial quantity of the contraband is recovered at the instance of the petitioner, the rigours of Section 37 of the NDPS Act would apply to the facts of the present case, and the learned Trial Court has, therefore, rightly rejected the Bail Application filed by the petitioner.

23. She submits that the raid conducted at the alleged rented house of the petitioner, at the instance of the petitioner, cannot be faulted inasmuch as the said raid was conducted before an independent witness, namely Sh. Rajkumar, a resident of the said village. She submits that the said house has been found to be rented by the petitioner himself. She submits that the statement of owner Amarpal and the witnesses have also been recorded in this regard and all these persons have been cited as witnesses in the trial.

24. She submits that the inquiry conducted by the Investigating Officer *qua* the rent agreement revealed that the petitioner herein has



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also made a fake Aadhaar Card and Passport in the name of Sunil Kumar Sharma to escape the country, which proves his habit of forging documents in order to misguide the investigating agencies. She submits that, therefore, if the petitioner is enlarged on Bail, there is a high risk of the petitioner fleeing from the process of Court.

25. She submits that, after the recovery of contraband/Heroin, the contraband was produced before learned Metropolitan Magistrate, Patiala House Courts, New Delhi for compliance of the provisions under Section 52A of the NDPS Act and, thereafter, the samples so collected were forwarded to FSL for an expert opinion. Placing reliance on the judgment of this Court in *Somdutt Singh @Shivam v. Narcotics Control Bureau*, Neutral Citation no. 2023:DHC:8550, she submits that even otherwise, no time duration has been prescribed for filing the application under Section 52A of the NDPS Act, and the said provision is directory in nature and, therefore, the same cannot be the sole ground for the petitioner to be released on Bail.

26. As far as the prayer for default bail is concerned, she submits that once the charge-sheet is filed, even though beyond the period of 60/90/180 days, if the accused has not applied for default Bail before the filing of the charge-sheet, the right to claim default bail gets extinguished. In support, she places reliance on the judgments of the Supreme Court in *M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence*, (2021) 2 SCC 485, *Judgebir Singh @ Jasbir Singh & Ors. v. National Investigation Agency*, 2023 SCC OnLine SC 543 and *Central Bureau of Investigation v. Kapil Wadhwan & Anr.*, (2024) 3 SCC 734.



27. She submits that merely because the FSL report was not filed along with the charge-sheet, as it was awaited, will not make the charge-sheet incomplete or entitle the accused to claim default bail. In support, she places reliance on the judgment in *Kapil Wadhwan* (Supra) and of this Court in *Ruslamm Petrov Metodiev v. State of NCT of Delhi* Neutral Citation No.2024:DHC:527.

28. Placing reliance on *Kapil Wadhwan* (Supra), she submits that mere delay in taking cognizance will also not entitle the accused to seek default bail.

29. She submits that, therefore, no infirmity can be found in the Order passed by the learned Trial Court rejecting the Bail application of the petitioner herein.

Analysis & Findings:

30. I have considered the submissions made by the learned counsels for the parties.

Rigours of Section 37 of the NDPS Act:

31. This Court is cognizant of the provision and the restrictions on the grant of bail to an accused facing trial for an Offence under Sections 19, 24, or 27A of the NDPS Act, or for an Offence involving a commercial quantity of the contraband imposed by Section 37(1)(b) of the NDPS Act.

32. To consider whether the petitioner has been able to make out a case for grant of Bail, keeping in view the above stringent test, it is important to note that the name of the petitioner has been allegedly disclosed by the co-accused, Abdullah Najibullah @ Nabi, who has not disclosed about the petitioner in his first disclosure statement but



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only in the second/subsequent disclosure statement allegedly made on 14.05.2021. He is alleged to have disclosed the involvement of two other persons, namely, Ashish @ Ashu, and Rudra, who are stated to have not been arrayed as accused in the charge-sheet due to a lack of evidence against them.

33. Though the co-accused is alleged to have disclosed the identity of the petitioner on 14.05.2021, he was not apprehended until 04.10.2021. In between, the prosecution is alleged to have filed an application dated 24.09.2021 seeking permission to interrogate the petitioner in jail where he was lodged in relation to FIR No. 62/2021. In spite of such permission being granted by the learned Trial Court on 24.09.2021, still, no efforts were made to arrest the petitioner in the present case.

34. Apart from the above, the alleged disclosure statement of the co-accused, which in any case would be inadmissible in the absence of corroborative evidence, the prosecution has not shown any link between the said co-accused and the petitioner in the form of any CDR, Chats, or any other transactions. In view of the judgment of the Supreme Court in *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1, not much reliance can be placed on the alleged disclosure statement of the co-accused.

35. As far as the alleged recovery from the premises at village Lalu Khedi, Uttar Pradesh is concerned, though the petitioner is alleged to have disclosed the said place from where the recovery of contraband was made, the seizure report does not bear his signatures. There is also no allegation that the petitioner refused to sign the said seizure report.



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36. As noted hereinabove, there is a considerable time-lag between the knowledge of the prosecution about the involvement of the petitioner in the said offence, that is, on 14.05.2021, and his interrogation/custody on 04.10.2021. Therefore, the plea of the petitioner that, in between, there was enough opportunity to plant the contraband on the petitioner, cannot be easily brushed aside.

37. There is also a lack of evidence and serious doubt on what has been presented by the prosecution linking the petitioner with the premises at village Lalu Khedi, Uttar Pradesh, from where the contraband is alleged to have been recovered. The case of the prosecution hinges on the alleged Rent Agreement of the said premises. However, the petitioner states that in the verification report, it has been reported that the notary of the said Rent Agreement denies having notarized the same; the Stamp Paper on which it is made is reported to have been stolen; and in any case, the same would be required to be proved in the trial on appreciation of evidence. Suffice it to say, for the present, that the petitioner has been able to cast sufficient doubt on the case of the prosecution to, at least, meet the test laid down under Section 37 of the NDPS Act.

38. The petitioner has been in custody for a period of more than two years; till date, even charges have not been framed by the learned Trial Court against the petitioner; arguments on the point of charge are stated to be partially heard by the learned Trial Court; the prosecution has cited thirty-seven witnesses. Therefore, there is no likelihood of the trial concluding any time soon, if a charge is framed against the petitioner.



39. In **Rabi Prakash** (Supra), the Supreme Court has held that prolonged incarceration of a person militates the most precious fundamental right guaranteed under Article 21 of the Constitution of India and, therefore, the conditional liberty overrides the statutory restriction contained in Section 37(1)(b)(ii) of the NDPS Act. I may quote from the judgment as under:

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

40. In **Mohd. Muslim** (Supra), the Supreme Court, considering the application filed by the accused therein for being released on bail, observed as under: -

“12. This court has to, therefore, consider the appellant's claim for bail, within the framework of the NDPS Act, especially Section 37. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, this court made certain crucial observations, which have a bearing on the present case while dealing with denial of bail to those accused of offences under the NDPS Act:



“On account of the strict language of the said provision very few persons accused of certain offences under the Act could secure bail. Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution. We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh v. State of Punjab [(1994) 3 SCC 569]. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak [(1992) 1 SCC 225], release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of



deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters.”

13. When provisions of law curtail the right of an to secure bail, and correspondingly fetter judicial discretion (like Section 37 of the NDPS Act, in the present case), this court has upheld them for conflating two competing values, i.e., the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest - as observed in Vaman Narain Ghiya v. State of Rajasthan (“the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal....”). They are, at the same time, upheld on the condition that the trial is concluded expeditiously. The Constitution Bench in Kartar Singh v. State of Punjab made observations to this effect. In Shaheen Welfare Association v. Union of India again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly. The court said that Parliamentary intervention is based on:

“a conscious decision has been taken by the legislature to sacrifice to some extent, the personal liberty of an



undertrial accused for the sake of protecting the community and the nation against terrorist and disruptive activities or other activities harmful to society, it is all the more necessary that investigation of such crimes is done efficiently and an adequate number of Designated Courts are set up to bring to book persons accused of such serious crimes. This is the only way in which society can be protected against harmful activities. This would also ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods.”

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19. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is “not guilty of such offence” and that he is not likely to commit any offence while on bail. What is meant by “not guilty” when all the evidence is not before the court? It can only be a prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In



cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused cooperating with the investigation, not fleeing from justice : even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws - be balanced against the public interest.

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). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wreaked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

23. The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in A Convict Prisoner v. Staten as

"a radical transformation" whereby the prisoner: "loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."



24. *There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal"(also see Donald Clemmer's „The Prison Community" published in 1940). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata : immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."*

41. In ***Badsha SK. v. The State of West Bengal*** (Order dated 13.09.2023 passed in Special Leave Petition (Crl.) 9715/2023), the accused therein had been in custody for more than two years and four months with the trial yet to begin. The Court therefore, released the accused on bail.

42. Similarly, in ***Man Mandal & Anr. v. The State of West Bengal*** (Special Leave Petition (Crl.) 8656/2023 decided on 14.09.2023), the accused therein had been in custody for almost two years and the Court found that the trial is not likely to be taken up for hearing in the immediate near future. The accused was, therefore, released on bail.

43. In ***Dheeraj Kumar Shukla v. State of U.P.***, 2023 SCC OnLine SC 918, the Supreme Court again released the accused therein on bail, observing as under:-

"3. It appears that some of the occupants of the „Honda City" Car including Praveen



Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.”

44. In ***Gurpreet Singh v State of NCT of Delhi***, Neutral Citation No.2024:DHC:796, this Court has considered the effect of delay in trial, observing as under:-

“16. In addition to the above, only 2 (two) out of 22 witnesses have been examined by the prosecution, and that too partially, though more than three and a half years have passed since the arrest of the applicant. It may be true that the reason for the delay in the conclusion of the trial may be for various factors, may be not even attributable to the prosecution, like Covid 19 pandemic and restricted function of the Courts, however, as long as they are not attributable to the applicant/accused, in my view, the applicant would be entitled to protection of his liberty under Article 21 of the Constitution of India. Delay in trial would, therefore, be one of the consideration that would weigh with the Court while considering as application filed by the accused for being released on bail.”

45. Though the petitioner is stated to be named as an accused in other FIRs, none of them relate to an Offence under NDPS Act. The Nominal Roll also indicates that for two of the said FIRs, the petitioner stands acquitted while for the other two, he is enlarged on



Bail. Therefore, from the material on record, *prima facie*, it cannot be said that if released on bail, the petitioner will indulge in a similar offence.

Section 52A Non-Compliance:

46. Though in view of the above, it is not necessary to consider the plea of the petitioner of delay in compliance with Section 52A of the NDPS Act and the claim to default bail, I would still consider the same, as substantial arguments were made on these issues by both the parties.

47. The learned counsel for the petitioner has submitted that though the contraband is alleged to have been recovered on 09.10.2021, it was produced before the learned Metropolitan Magistrate only on 25.10.2021, that is, after a considerable delay. He has submitted that the chain of custody of the contraband allegedly recovered has also not been mentioned in the charge-sheet.

48. In my opinion, the said submission alone will not entitle the petitioner to be released on bail. Section 52A of the NDPS Act does not prescribe a time-limit within which the seized contraband must be produced before the learned Metropolitan Magistrate. Though there is no doubt that it must be produced before the learned Magistrate expeditiously, it would depend on the facts of each case whether the prosecution has delayed in presenting the contraband before the learned Magistrate and its effect on the case of the prosecution. There cannot be a hard and fast rule for the same. Reference in this regard can be made to the judgment of the Supreme Court in *Union of India*



v. *Mohanlal & Anr.*, (2016) 3 SCC 379, wherein it was held as under:-

“19. Mr Sinha, learned Amicus Curiae, argues that if an amendment of the Act stipulating that the samples be taken at the time of seizure is not possible, the least that ought to be done is to make it obligatory for the officer conducting the seizure to apply to the Magistrate for drawing of samples and certification, etc. without any loss of time. The officer conducting the seizure is also obliged to report the act of seizure and the making of the application to the superior officer in writing so that there is a certain amount of accountability in the entire exercise, which as at present gets neglected for a variety of reasons. There is in our opinion no manner of doubt that the seizure of the contraband must be followed by an application for drawing of samples and certification as contemplated under the Act. There is equally no doubt that the process of making any such application and resultant sampling and certification cannot be left to the whims of the officers concerned. The scheme of the Act in general and Section 52-A in particular, does not brook any delay in the matter of making of an application or the drawing of samples and certification. While we see no room for prescribing or reading a time-frame into the provision, we are of the view that an application for sampling and certification ought to be made without undue delay and the Magistrate on receipt of any such application will be expected to attend to the application and do the needful, within a reasonable period and without any undue delay or procrastination as is mandated by sub-section (3) of Section 52-A (supra). We hope and trust that the High Courts will keep a close watch on the performance of the Magistrates in this regard and through the Magistrates on the agencies that are dealing with the menace of drugs which has taken



alarming dimensions in this country partly because of the ineffective and lackadaisical enforcement of the laws and procedures and cavalier manner in which the agencies and at times Magistracy in this country addresses a problem of such serious dimensions.”

(Emphasis Supplied)

49. Relying on the judgment of Supreme Court in **Mohanlal** (supra), this Court in **Somdutt Singh @Shivam** (Supra) held as under:-

“17. It is clear from a reading of the aforesaid judgments that there is no mandatory time duration prescribed for compliance of Section 52-A of the NDPS Act. Though it is desirable that the procedure contemplated in Section 52-A of the NDPS Act be complied with at the earliest, mere delayed compliance of the same cannot be a ground for grant of bail. The applicant will have to show the prejudice caused on account of delayed compliance of Section 52-A of the NDPS Act.”

50. In the present case, it is important to note that for producing the contraband before the learned Magistrate, an application had been moved by the prosecution on 11.10.2021, that is, within two days of the alleged recovery. The reason why it was finally produced before the Magistrate only on 25.10.2021 shall have to be explained by the prosecution in the trial. Similarly, the chain of custody will also have to be established by the prosecution in the trial and cannot be pre-judged by this Court at this stage.

Default Bail:

51. I also do not find any merit in the plea of the petitioner for seeking default Bail.



52. In the present case, as noted hereinabove, the petitioner has been taken into custody on 04.10.2021. The charge-sheet, albeit without the FSL report, was filed before the learned Trial Court on 30.10.2021, that is, within the statutory period. This Court in **Ruslamm Petrov Metodiev** (Supra); **Ranbir Singh v. State**, 2024 SCC OnLine Del 204; **Arif Khan v. State (NCT of Delhi)**, 2023 SCC OnLine Del 2374; and, **Suleman v. State (NCT of Delhi)**, 2022 SCC OnLine Del 2346, has consistently held that though the FSL report has not been filed along with the charge sheet, it shall still be considered a valid charge sheet filed within the statutory period, disentitling the accused from seeking default Bail.

53. Recently, the Supreme Court in **Kapil Wadhawan** (Supra) has held as under:

“23. The benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to the offender only when a charge-sheet is not filed and the investigation is kept pending against him. Once however, a charge-sheet is filed, the said right ceases. It may be noted that the right of the investigating officer to pray for further investigation in terms of sub-section (8) of Section 173 is not taken away only because a charge-sheet is filed under sub-section (2) thereof against the accused. Though ordinarily all documents relied upon by the prosecution should accompany the charge-sheet, nonetheless for some reasons, if all the documents are not filed along with the charge-sheet, that reason by itself would not invalidate or vitiate the charge-sheet. It is also well settled that the court takes cognizance of the offence and not the offender. Once from the material produced along with the charge-sheet, the court is satisfied about the commission of an offence



and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) is pending or not. The pendency of the further investigation qua the other accused or for production of some documents not available at the time of filing of charge-sheet would neither vitiate the charge-sheet, nor would it entitle the accused to claim right to get default bail on the ground that the charge-sheet was an incomplete charge-sheet or that the charge-sheet was not filed in terms of Section 173(2)CrPC.

(Emphasis Supplied)

54. Though the learned counsel for the petitioner has placed reliance on some of the Orders passed by the Supreme Court in **Pankaj Gupta** (Supra); **Divyas Bardewa** (Supra); and, **Mohd. Arbaz** (Supra), releasing the accused therein on *Interim* Bail, while the Supreme Court is considering the said issue, in my opinion, as far as this Court is concerned, it is presently bound to follow the earlier judgments of this Court on this issue, until the Supreme Court pronounces otherwise on the same. The judgment of the Bombay High Court in **Sunil Vasant Rao Phulbande** (Supra), and the Punjab and Haryana High Court in **Ajit Singh** (Supra) would, therefore, also not be binding precedents on this Court.

55. The Order of this Court in **Gurjeet Singh** (Supra) also cannot come to the support of the petitioner as the *Interim* Bail in the said Order has been granted considering the fact that the petitioner therein had been in incarceration for 1 year and 2 months and the quantity involved was intermediate quantity as per the NDPS Act and not on the contention raised by the petitioner herein.



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56. The petitioner, therefore, is not entitled to default bail.

Conclusion and Directions:

57. In view of the above discussion, in my opinion, the petitioner has been able to meet the test stipulated under Section 37(1)(b) of the NDPS Act, and the petitioner is entitled to be enlarged on Bail in the subject FIR.

58. Accordingly, the petitioner is directed to be released on Bail in FIR No. 117/2021, registered at Police Station: Special Cell, Delhi, on furnishing a personal bond in the sum of Rs.50,000/- with one local surety of the like amount to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- i. The petitioner shall surrender his passport, if any, to the Court concerned and will not leave the country without the prior permission of the learned Trial Court.
- ii. The petitioner shall provide his permanent address to the learned Trial Court. The petitioner shall also intimate the Court, by way of an affidavit, and to the IO regarding any change in his residential address.
- iii. The petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. The petitioner shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the petitioner in a working condition at all times and shall not be switched off or changed by him without prior intimation to the learned Trial Court and the IO concerned.



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- v. The petitioner shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case while being released on Bail.
- vi. The petitioner shall not indulge in any criminal activity while being released on Bail. In case the petitioner is found involved in another case of similar nature, it will be open to the prosecution to file an appropriate application seeking cancellation of his Bail in the present case as well.

59. Needless to say, any observation touching the merits of the case is purely for the purposes of deciding the question of grant of Bail and shall not be construed as an expression on the merits of the matter.

60. The petition is disposed of in the above terms.

61. A copy of this Order be sent to the Jail Superintendent for information and necessary compliance.

62. The pending application is also disposed of being rendered infructuous.

NAVIN CHAWLA, J

MAY 31, 2024/VS/AS

[Click here to check corrigendum, if any](#)