



CRA-D-226-2023 (O&M) & connected cases

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

5 & 6 (4 cases)

**CRA-D-226-2023 (O&M)
Reserved on: 05.07.2024
Pronounced on: 12.07.2024**

Gursant Singh

...Appellant

Versus

State through National Investigation Agency

...Respondent

With

CRA-D-467-2023

Manpreet Singh @ Mann

...Appellant

Versus

National Investigation Agency

...Respondent

With

CRA-D-539-2023

Hilal Ahmed Shergoji @ Hilal Ahmed Wagay @ Hilal Ahmad

...Appellant

Versus

National Investigation Agency

...Respondent

And



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CRA-D-1399-2023 (O&M)

Bikram Singh @ Bikramjit Singh @ Vicky

...Appellant

Versus

National Investigation Agency

...Respondent

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA,
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: - Ms. G.K. Mann, Senior Advocate with
Ms. Simrat Kaur, Advocate,
Mr. Anmol Jeevan Singh Gill, Advocate and
Mr. Gursharan Singh, Advocate for the appellant
(in CRA-D-226-2023)

Mr. Keshavam Chaudhary, Advocate and
Mr. Sajal Bansal, Advocate for the appellant
(in CRA-D-467-2023)

Mr. R.S. Bains, Senior Advocate with
Mr. Anmoldeep Singh, Advocate and
Mr. Amarjeet, Advocate for the appellant
(in CRA-D-539-2023)

Mr. Hitesh Verma, Advocate for the appellant
(in CRA-D-1399-2023)

Mr. Sukhdeep Singh Sandhu, Special Prosecutor
for National Investigating Agency

Mr. Salil Sabhlok, Senior Deputy Advocate General, Punjab

JAGMOHAN BANSAL, J.

1. By this order, we are going to adjudicate question of release of four persons on regular bail who are languishing in the dungeon for last four years.

At the outset, we deem it appropriate to notice remarkable words of two Judge Bench of Supreme Court in a recent judgment dated 03.07.2024 passed in *Javed Gulam Nabi Shaikh v. State of Maharashtra and another*,

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Criminal Appeal No.2787 of 2024. Hon'ble Bench has observed that *criminals are not born out but made. The human potential in everyone is good so never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. Over a period of time, the Trial Courts and High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.*

2. By this common order, above captioned four appeals which are arising out of same FIR/R.C. as well as police report under Section 173 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') are hereby adjudicated. The appellants are seeking setting aside of orders passed by learned Special Judge and further regular bail in a case bearing RC No.23/2020/NIA/DLI dated 08.05.2020.

3. The appellants filed applications seeking regular bail before learned Special Judge, NIA, Punjab, SAS Nagar, Mohali who vide impugned orders dated 27.01.2023, 09.03.2023, 23.02.2023 and 18.04.2023 dismissed applications of present appellants and in terms of Section 21 of National Investigation Agency Act, 2008, the appellants have preferred present appeals before this Court. All the appellants are accused in same police report, however, allegations against all the appellants are different and different set of provisions of Indian Penal Code (for short 'IPC'), Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and Unlawful Activities (Prevention) Act, 1967 (for short 'UAPA') have been invoked.

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4. On 25.04.2020, Amarnath Inspector, Police Station Sadar, Amritsar received an information that one Hilal Ahmed Shergojari S/o Abdul Samad who is an active member of Hizb-ul-Mujahideen and a close accomplice of Riyaz Ahmed Naikoo, Area Commander of Hizb-ul-Mujahideen, District Pulwama, is present with his accomplice to collect funds on a truck bearing Registration No. JK-03-F-2261.

5. On the basis aforesaid information, an FIR was registered under Sections 10, 11, 13, 17, 18, 20, 21 of UAPA. A police team arrested Hilal Ahmed Shergojari along with ₹29 Lakhs. The Government of India, Ministry of Home Affairs, CTCR Division vide order dated 06.05.2020 directed National Investigation Agency (for short 'NIA') to register a case and take up investigation. Pursuant to direction dated 06.05.2020 of Government of India, the respondent-NIA re-registered afore-stated information as RC under different Sections of UAPA and initiated investigation.

6. The respondent after completing investigation, filed police report (NIA has titled it as 'charge-sheet') against different persons alleging commission of crime punishable under different Sections of IPC, NDPS and UAPA. The respondent further filed supplementary charge sheet dated 05.01.2020 against few more persons who are alleged to have committed crime punishable under different Sections of IPC, NDPS and UAPA. As per original charge sheet and supplementary charge sheet, there are 11 accused identified as A-1 to A-11. The present appeals seeking regular bail have been filed by Gursant Singh @ Gora @ Gajni (A-9), Manpreet Singh @ Mann (A-

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14), Hilal Ahmad Shergoji @ Hilal Ahmad Wagay @ Hilal Ahmad (A-1) and Bikram Singh @ Bikramjit Singh @ Vicky (A-2)

7. The respondent-NIA filed police report in 2020, however, charges came to be framed by order dated 16.05.2024 that too after interim order dated 26.04.2024 passed by this Court, noticing that applications for discharge were pending since 02.12.2021.

8. As per the charge sheet dated 16.05.2024, the particulars of appellants vis-à-vis alleged charges are as follow:-

| Sr.No. | Name of Accused | Charges under Sections | Period of custody |
|--------|-----------------------|---|--------------------------|
| A-9 | Gursant Singh | 120-B, 201, 419 & 471 of IPC; 21 read with 8, 27A & 29 of NDPS Act; and 17, 18 and 20 of UAPA | Almost 4 years |
| A-14 | Manpreet Singh @ Mann | 120-B of IPC; 21(c), 27A & 29 of NDPS Act; and 25 & 29 of Arms Act | 3 years 4 months 19 days |
| A-1 | Hilal Ahmed | 120-B of IPC; 17, 18, 20, 38 & 40 of UAPA | 4 years 2 months |
| A-2 | Bikramjit Singh | 120-B of IPC; 21 read with 8, 25, 27, 27A & 29 of NDPS Act; and 17, 18 & 20 of UAPA | 4 years 2 months |

Role of the Appellants:

9. The Trial Court in the charge sheet has discussed role and outcome of investigation of all the accused. The role attributed to the appellants is reproduced as below: -

Common allegations/charges

The appellants entered into a criminal conspiracy to smuggle and to do trading of heroin in India and to generate the proceeds of heroin and

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further to channelize/transfer the said proceeds to the proscribed terrorist organization namely Hizb-ul-Mujahideen. Thus, they committed offences punishable under different Sections of NDPS Act, UAPA and 120-B of IPC.

A-9 (Gursant Singh @ Gola @ Gajni)

He has concealed Fortuner car bearing registration No.PB-02-CJ-4496 which was used for transportation of smuggled heroin/drug proceeds. He has destroyed all phones/communication devices. He flushed heroin which was in his possession through commode of his washroom. He fraudulently and dishonestly procured fake/forged Aadhaar Cards, PAN Cards and Driving Licenses. Thus, he committed offences punishable under Sections 201, 419, 471 of IPC.

He smuggled heroin from Pakistan into India and raised funds by selling the smuggled heroin. He transferred sale proceeds of heroin to proscribed terrorist organization. Thus, he has committed offences punishable under Sections 17, 18 and 20 of UAPA.

A14- (Manpreet Singh @ Mann)

He purchased, possessed and did trading of heroin and on 04.02.2021 was in possession of heroin which was recovered from his rental residence. He was found in possession of 130 live cartridges of 9mm made in Pakistan Ordinance Factory, thus, he committed offence punishable under Sections 5 and 25 of Arms Act, 1959.

A-1 (Hilal Ahmed Shergoji @ Hilal Ahmed Wagay @ Hilal Ahmad)

He was a member of Hizb-ul-Mujahideen, a proscribed terrorist organization. He remained associated with operations of said organization

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along with Riyaz Ahmad Naikoo (since deceased) with intent to operate terrorist activities in India. He smuggled heroin from Pakistan into India and raised funds by selling the smuggled heroin, transferred sale proceeds of heroin to proscribed terrorist organization. Thus, committed offences punishable under Sections 17, 18, 20, 38 and 40 of UAPA.

A-2 (Bikram Singh @ Bikramjit Singh @ Vicky)

He knowingly used his premises for concealing and trading of heroin. He became drug addict. He possessed and consumed heroin and other narcotic drugs. Thus, he committed an offence punishable under Section 25 read with Section 27 of NDPS Act.

He smuggled heroin from Pakistan into India and raised funds by selling the smuggled heroin. He transferred sale proceeds of heroin to proscribed terrorist organization. Thus, committed offences punishable under Sections 17, 18 and 20 of UAPA.

10. From the perusal of charge sheet, it is evident that there is no charge of commission of offence punishable under UAPA against Manpreet Singh (A-14) and all other three appellants are accused of commission of offence punishable under UAPA. Hilal Ahmad (A-1) is not charged with commission of offence punishable under NDPS Act.

Contention of the Appellants:

11. Learned counsel for the appellants submit that almost all appellants are in custody for almost 4 years. This Court vide order dated 12.10.2022 has granted concession of regular bail to co-accused Maninder

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Singh @ Mani, Ranjit Singh @ Jeetu and Jaswant Singh @ Jassa but had dismissed the bail application of Gursant Singh (A-9) and vide order dated 15.02.2023 granted bail to Gurjant Singh. There are 209 prosecution witnesses and till date only one witness fully and two partially have been examined. The appellants cannot be kept in custody for indefinite period. There is no possibility of conclusion of trial in near future. The denial of bail to appellants amounts to violation of their fundamental right of life and liberty guaranteed by Article 21 of Constitution of India.

11.1 Learned senior counsel for Gursant Singh (A-9) submits that there is a bald allegation that appellant on 25.4.2020 collected ₹1.14 Crores and delivered it to A-2 and A-3. There is not even of a single penny recovery from the appellant which shows that allegation of collection and further delivery of ₹1.14 Crores is as vague and bald as could be. On 25.04.2020, there was complete lockdown in the country, thus, it was beyond imagination to freely move and collect such a huge amount from someone and deliver it to another. There is no recovery of heroin whereas there are allegations that appellant got delivery of 2 kgs of heroin from A-2 in December' 2019 and made payment of ₹26 Lakhs to A-2 in lieu of 2 Kgs of heroin. There is allegation of minting money by smuggling/selling of heroin and purchasing property whereas neither respondent has attached alleged properties during investigation nor there is documentary evidence regarding ownership of property in favour of appellant or his wife. During the intervening period i.e. dismissal of first appeal and filing of present appeal, the appellant has been acquitted vide judgment dated 27.03.2023 passed by the Trial Court in FIR

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No.412 dated 06.12.2004. He was further discharged vide order dated 07.07.2022 in FIR No.28 dated 18.04.2015. Thus, the appellant out of four criminal cases, in three has already been acquitted or discharged and is on bail in fourth case, and therefore, there is change of circumstances for filing the second bail application.

11.2 Learned counsel for Manpreet Singh (A-14) submits that there is no charge of commission of offence punishable under UAPA. The appellant was implicated in four FIRs, however, he is on bail in all the cases. He has not been convicted in any case. He cannot be denied concession of bail on the ground that more criminal cases are pending against him especially when he has already undergone incarceration of more than 3 years and 4 months. There is alleged recovery of cartridges from his possession, however, there is no recovery of pistol or other firearm.

11.3 Learned senior counsel for Hilal Ahmad (A-1) submits that a person cannot be subjected to rigor of UAPA just because he is member of a proscribed organization. There is no evidence of activities by appellant for and on behalf of proscribed organization. He has not been charged for commission of an offence punishable under NDPS Act even though entire case of prosecution is that all the accused made a cartel to sell heroin and generated proceeds for the activities of a banned organization.

11.4 Learned counsel for Bikram Singh (A-2) submits that there is alleged recovery of ₹10 Lakhs and 1 Kg heroin. The appellant has already

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undergone incarceration of 4 years and 2 months and he cannot be kept in custody for indefinite period.

Contention of the NIA/Respondent:

12. Learned counsel for respondent-NIA opposing the appeal vigorously contended that there are serious allegations against the appellants and as per Section 43D of UAPA and 37 of NDPS Act, the appellants cannot be released on bail. The custody period of appellants is immaterial and Supreme Court in *Rajesh Ranjan Yadav alias Pappu Yadav v. DBI through its Director, (2007) 1 SCC 70* and different Single Benches of this Court have declined bail even though there was long incarceration. A three Judge Bench of Supreme Court in *Narcotics Control Bureau v. Mohit Aggarwal, 2022 SCC Online SC 891* has held that factors namely length of custody, the charge sheet having been filed and trial having commenced by itself are no considerations that can be treated as persuasive grounds for grant of bail. As per judgment of the Supreme Court in *Mamta v. State of Delhi 2021 SCC OnLine Del 4570* bail should not be granted unless crucial witnesses are examined. The appellants are involved in other cases indicating that their antecedents are doubtful and if they are released at this stage, they may further involve in same kind of activities. The release of appellants would cause danger to stability, integrity and economic health of the country. The appellant does not deserve leniency and bail on the basis of Article 21 of the Constitution of India should not be granted.

13. We have heard learned counsels for the parties and perused the record with their able assistance.

**Judicial Pronouncement/Binding Precedent:**

14. Before advertng with the facts of present case as well as entitlement of appellant to bail, it is inevitable to notice judicial pronouncements of Supreme Court especially in view of the fact that allegations against the appellants are under NDPS Act and UAPA which are stringent provisions.

A two Judge bench of the Supreme Court in *Sanjay Chandra v. CBI, (2012) 1 SCC 40* after noticing plethora of judicial precedents on the question of bail has held that bail cannot be denied merely on the ground that alleged offence is an economic offence. The Court has further held that nature of the charge may be relevant but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. The Court has held:

“39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds : the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the



seriousness of the charge and the severity of the punishment should be taken into consideration.

40. *The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.*

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45. *In Bihar Fodder Scam (Laloo Prasad case [Laloo Prasad v. State of Jharkhand, (2002) 9 SCC 372]) this Court, taking into consideration the seriousness of the charges alleged and the maximum sentence of imprisonment that could be imposed including the fact that the appellants were in jail for a period of more than six months as on the date of passing of the order, was of the view that the further detention of the appellants as pretrial prisoners would not serve any purpose.*

46. *We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent*

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conditions in order to allay the apprehension expressed by CBI.”

A three Judge Bench of Supreme Court in ***Mohit Aggarwal*** (*supra*) has held:

“12. The expression “reasonable grounds” has come up for discussion in several rulings of this Court. In “Collector of Customs, New Delhi v. Ahmadaliev Nodira”, a decision rendered by a Three Judges Bench of this Court, it has been held thus :-

“7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are in themselves to justify satisfaction that the accused is not guilty of the alleged offence.”

13. The expression “reasonable ground” came up for discussion in “State of Kerala and others Vs. Rajesh and others” and this Court has observed as below:



20. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."

14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been

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charged with and he is unlikely to commit an offence under the Act while on bail.”

A three Judge Bench of Supreme Court in ***Union of India v. A.K. Najeeb 2021 (3) SCC 713*** has held:

“12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) which too have somewhat rigorous conditions for grant of bail, this Court in *Paramjit Singh v. State (NCT of Delhi)* [*Paramjit Singh v. State (NCT of Delhi)*, (1999) 9 SCC 252 : 1999 SCC (Cri) 1156] , *Babba v. State of Maharashtra* [*Babba v. State of Maharashtra*, (2005) 11 SCC 569 : (2006) 2 SCC (Cri) 118] and *Umarmia v. State of Gujarat* [*Umarmia v. State of Gujarat*, (2017) 2 SCC 731 : (2017) 2 SCC (Cri) 114] enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

13. We may also refer to the orders enlarging similarly-situated accused under UAPA passed by this Court in *Angela Harish Sontakke v. State of Maharashtra* [*Angela Harish Sontakke v. State of Maharashtra*, (2021) 3 SCC 723] . That was also a case under Sections 10, 13, 17, 18, 18-A, 18-B, 20, 21, 38, 39 and 40(2) of the UAPA. This Court in its earnest effort to draw balance between the seriousness of the charges with the period of custody suffered and the likely period within which the trial could be expected to be completed took note of the five years' incarceration and over 200 witnesses left to be examined, and thus granted bail to the accused notwithstanding Section 43-D(5) of the UAPA. Similarly, in *Sagar Tatyaram Gorkhe v. State of Maharashtra* [*Sagar Tatyaram Gorkhe v.*

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State of Maharashtra, (2021) 3 SCC 725] , an accused under UAPA was enlarged for he had been in jail for four years and there were over 147 witnesses still unexamined.

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17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

15. As noticed in the opening paragraph, a two Judge Bench of Supreme Court in ***Javed Gulam Nabi Shaikh (supra)*** has adverted with a petition seeking regular bail in a case registered by NIA. In that case, the appellant/accused was arrested on 09.02.2020 by Mumbai Police. 1193 Indian currency notes of the demonization of ₹2,000/- were recovered from him. Investigation was taken over by NIA and case was registered under UAPA. The Court noticed the fact that accused is in custody for last four years, charges have not been framed and there are not less than 80 witnesses. The Court considering these facts held that if the State or any prosecuting agency including the Court concerned has no wherewithal to provide or protect the

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fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that crime committed is serious. With these findings, the Court ordered to release the appellant/accused on bail.

16. From the reading of above-cited judgments, it is quite evident that a person accused of commission of an offence under NDPS Act or UAPA cannot be enlarged on bail in a mechanical or routine manner.

17. While adjudicating appeal seeking bail, in view of mandate of stringent conditions of bail, judicial precedents qua normal offences and serious offences, Court has to find out:

- (i) Whether there are reasonable grounds to believe that accused is not guilty of offence and reasonable grounds means “something more than *prima facie* grounds”?
- (ii) There should be probable causes for believing that the accused is not guilty of alleged offence.
- (iii) Compliance of twin conditions contemplated by Section 43D of UAPA and 37 of NDPS is mandatory.
- (iv) What is length of custody, what is stage of trial and to what extent right of personal liberty guaranteed by article 21, in view of nature of allegations can be curtailed?
- (v) Whether accused is likely to be involved in same activities as alleged in the challan?

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- (vi) Whether presence of accused during trial would be available or there is possibility of flee from justice on the part of accused?
- (vii) What is likelihood of tampering of evidence and undue pressure on the witnesses?
- (viii) What is possibility of conviction?
- (ix) How far interest of public at large would be jeopardized.

18. In the charge sheet, the appellants [except Manpreet Singh @ Mann (A-14) are subjected to provisions of UAPA apart from NDPS Act. Though different provisions of UAPA have been invoked yet we *prime facie* find that appellants [except Hilal Ahmad (A-1)] before us are primarily accused of commission of offence punishable under the NDPS Act. The appellants as per allegations were involved in sale/purchase of drugs and for the said purpose, they came in the contact of those persons who in turn were in contact of persons involved in criminal activities including terrorist activities.

19. The appellants have been charge-sheeted under different provisions of IPC, NDPS Act and UAPA. The allegations of commission of offence punishable under IPC are not of serious nature, however, allegations of commission of offence punishable under NDPS Act and UAPA are serious. The provisions qua bail under NDPS Act as well UAPA are very strict. As per Section 37 of NDPS Act and 43 of UAPA, bail can be granted subject to compliance of twin conditions.

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20. There is no recovery of narcotic drugs from appellants except Bikramjit Singh (A-2), though, there are serious allegations that they transported or collected or delivered huge quantity of heroin and proceeds of crime from one place to another place. There is no attachment of property though there are allegations that they have made properties out of proceeds of crime. The respondent under UAPA as well NDPS Act has failed to attach properties derived from proceeds of crime. The appellants except Hilal Ahmad (A-1) are residents of State of Punjab and having family.

The prime evidence against appellants is call details record and oral statements of protected witnesses. It would not be just and fair to comment upon statements of protected witnesses which are neither part of record nor have been supplied to appellants. At this stage i.e. while adjudicating upon the plea of the appellants seeking bail, it would be unfair to place heavy reliance upon those statements.

21. Three of the appellants are in custody for 4 years. There are total 209 prosecution witnesses as per list of prosecution witnesses, 86 material evidence as per list of material evidence and 188 documents as per list of documents. Without blaming anyone, it is apt to notice that learned Special Judge has framed charges on 16.05.2024 and that too after strict observations dated 26.04.2024 of this Court. There would be no gainsaid to the factum that in the present facts and available infrastructure, there is abysmally low possibility of conclusion of trial even in coming many years.

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22. There is allegation of collection of cash and delivery thereof during April' 2020 when the entire country was facing complete lockdown. It seems difficult to believe that appellant Gursant Singh (A-9) during lockdown was able to freely move especially in a big city i.e. Amritsar.

23. The appellants herein have been slapped with different provisions of UAPA apart from IPC and NDPS. Identical twin stringent conditions of bail are prescribed under both UAPA and NDPS, with slight difference that under UAPA findings qua possibility of involvement of accused in similar offence while on bail, is not required to be recorded. In the present case, UAPA is invoked against appellants except Manpreet Singh @ Mann (A-14), however, we *prime facie* find that appellants before us except Hilal Ahmad (A-1) are not guilty of commission of offence under UAPA.

24. Gursant Singh (A-9) and Manpreet Singh @ Mann (A-14) are involved in other criminal cases. They are on bail and have not been convicted in any case. It is a settled position of law that bail application cannot be rejected on the ground of involvement in other criminal cases even though this factor needs to be considered.

25. This Court vide order dated 12.10.2022 has granted concession of regular bail to co-accused Maninder Singh @ Mani, Ranjit Singh @ Jeetu and Jaswant Singh @ Jassa and vide order dated 15.02.2023 to Gurjant Singh. A period of more than one and half year has elapsed from the date of granting bail to co-accused. On the ground of parity, the appellants also deserve concession of bail.

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26. Before parting with the judgment, we would hasten to add that Constitutional Courts are assigned role of *sentinel qui vive* for the protection of fundamental rights guaranteed by Chapter III of the Constitution of India. Article 22 permits detention which is a worse form of deprivation of personal liberty, however, there are safeguards in the form of Constitution of Advisory Board, maximum tenure of detention etc. TADA, MISA and COFEPOSA are different enactments which permit detention without trial. The intention of detention is to snap live link of detenu from his associates. Under Criminal Procedure Code, there are different Sections like 167(2), 309 (2), 436 A, 437 (6) which prescribe outer limit for detention. These provisions of Cr.P.C. simply reiterate rights guaranteed by Articles 21 & 22 of Constitution of India.

Section 37(1)(b)(ii) of NDPS Act, while postulating that accused is not likely to commit any offence while on bail, reiterates the object of preventive detention i.e. snapping of link of detenu with his associates.

In the case in hand, the appellants to whom bail is hereby granted are in the judicial custody for almost 4 years which is sufficient period to snap link of appellants with their associates. Thus, there is compliance of intent and purport of Section 37 of NDPS Act.

27. In view of our above findings, all the above captioned appeals are hereby allowed and appellants are directed to be released on bail subject to following conditions besides furnishing of bail bond to the satisfaction of Trial Court:

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- i) Furnish bond of ₹10 lakh with two sureties of ₹10 lakh each;
- ii) They shall surrender their passports in the Trial Court, if they are holding these and are still with them;
- iii) They shall appear before Trial Court on each and every date unless exempted by Court;
- iv) They shall appear before Investigating Officer as and when summoned;
- v) They shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or who is cited as witness;
- vi) They shall not involve in any criminal activity and if during the pendency of trial, they are found involved in commission of any offence punishable under NDPS Act or UAPA, the prosecuting agency would be free to approach this court for recalling this order and cancellation of their bail;
- vii) They shall not sell, transfer or in any other manner create third party right over their immovable property;
- viii) They shall furnish undertaking to the effect that in case of their absence, Trial Court may proceed with trial and they shall not claim re-examination of any witness.

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The opinion expressed by us is confined to and limited for the determination of appeals seeking bail and it, in any manner, shall not affect the merits of the trial pending before Special Judge, SAS Nagar, Mohali.

28. The Trial Court while releasing the appellants on bail would be free to impose additional conditions qua Hilal Ahmad because he does not belong to State of Punjab.

29. Pending application(s), if any, shall also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

12.07.2024

Mohit Kumar

Whether speaking/reasoned

Yes

Whether reportable

Yes