

In the High Court of Punjab and Haryana at Chandigarh

IOIN-CRM-M-21788-2022 IN
CRM-M No. 21788 of 2022
Reserved on: 30.8.2024
Date of Decision: 10.9.2024

Samdarsh Kumar @ Joseph

.....Petitioner

Versus

State of U.T., Chandigarh

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Aashish Chopra, Senior Advocate (Amicus Curiae)
assisted by Mr. Gagandeep Singh, Advocate.

Mr. Rajeev Anand, Addl. APP for U.T., Chandigarh.

SURESHWAR THAKUR, J.

1. The present reference becomes generated from the order pronounced by this Court on 1.12.2022 upon CRM-M-21788-2022, whereby given the therein recovery of commercial quantity of the psychotropic substance concerned, from the alleged conscious and exclusive possession of the accused, thereby upon, the twin conditions prescribed in Section 37(1)(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), provisions whereof become extracted hereinafter, rather becoming declared to become not satisfied. Resultantly, vide order (supra), the bail petition (supra) became dismissed.

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless--

(i) the Public Prosecutor has been given an opportunity to

oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

2. Be that as it may, as discernible from a reading of the order (supra), qua therein an allusion becoming made to a verdict rendered by the Apex Court in case titled as ***Dheeren Kumar Jaina versus Union of India*** in Criminal Appeal No. 965 of 2021, and, in case titled as ***Nitish Adhikary @ Bapan versus The State of West Bengal***, to which SLP (Criminal) No. 5769-2022 becomes assigned, wherein, the Apex Court even when the twin conditions (supra) became not satisfied, but for lack of expeditious trial being made by the learned trial Judge concerned, upon, the charge relating to the accused allegedly consciously and exclusively possessing the commercial quantity of the prohibited contraband, thus granted the craved for indulgence of bail to the bail applicant therein.

3. Be that as it may, since the facts relating to the order made on the bail petition (supra), rather revealed that the trial entered against the petitioner was nearing completion, therebys the learned Coordinate Bench, thus chose to not place reliance upon the verdict (supra) but yet proceeded to make an order for expeditious conclusion of the trial. Therefore, the question of law which is required to be answered relates to -

(a) Whether upon non-satisfaction of the twin conditions (supra), as engrafted in Section 37(1)(b)(ii) of the NDPS Act, especially when despite the makings of seizure of commercial quantity of the narcotic drug(s) and psychotropic substance(s) rather from the alleged conscious and exclusive possession of the accused, whether therebys the accused is entitled to the

indulgence of bail ?

(b) Whether the prolonged delay in the conclusion of trial entered upon the accused charged for allegedly consciously and exclusively possessing the commercial quantity of the relevant narcotic drug(s) and psychotropic substance(s), thus relieves the rigour of the said bar ?

(c) Whether the judgment made by the Apex Court (supra), and, also the subsequently made verdicts whereby for want of expeditious conclusion of trial being made in respect of the accused (supra), thus indulgence of bail became granted, does require rigorous application theretos, even when the facts and circumstances of the relevant case, thus unfold that there is a likelihood of early completion of trial, or when a further direction can be passed that the said trial be concluded at the earliest, and/or thereby whether the mandate made by the Apex Court in the verdict (supra) rather can be eased ?

4. The Apex Court in the relevant paragraphs of a verdict rendered in case titled as ***Union of India through Narcotic Control Bureau, Lucknow versus Md. Nawaz Khan*** reported in ***(2021) 10 SC 100***, has held as under:-

“20. Section 37 of the NDPS Act regulates the grant of bail in cases involving offences under the NDPS Act. Section 37 reads as follows:

“(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

21. Under Section [37\(1\)\(b\)\(ii\)](#), the limitations on the grant of bail for offences punishable under Sections [19](#), [24](#) or [27A](#) and also for offences involving a commercial quantity are :

(i) The Prosecutor must be given an opportunity to oppose the application for bail; and

(ii) There must exist 'reasonable grounds to believe' that (a) the person is not guilty of such an offence; and (b) he is not likely to commit any offence while on bail.

22. The standard prescribed for the grant of bail is 'reasonable ground to believe' that the person is not guilty of the offence. Interpreting the standard of 'reasonable grounds to believe', a two-judge Bench of this Court in Shiv Shanker Kesari (supra), held that:

"7. The expression used in Section [37\(1\)\(b\)\(ii\)](#) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word "reasonable".

"7. ... In Stroud's Judicial Dictionary, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word 'reasonable'. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy."

(See Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar [(1987) 4 SCC 497] (SCC p. 504, para 7) and Gujarat Water Supply and Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd. [(1989) 1 SCC 532]

[...]

10. The word "reasonable" signifies "in accordance with reason". In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd. [(2003) 6 SCC 315]

11. The court while considering the application for bail with reference to Section [37](#) of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that

the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty."

(emphasis supplied)

23. *Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed.*

24. *In the present case, the High Court while granting bail to the respondent adverted to two circumstances, namely (i) absence of recovery of the contraband from the possession of the respondent and (ii) the wrong name in the endorsement of translation of the statement under Section 67 of the NDPS Act.*

25. *We shall deal with each of these circumstances in turn. The respondent has been accused of an offence under Section 8 of the NDPS Act, which is punishable under Sections 21, 27A, 29, 60(3) of the said Act. Section 8 of the Act prohibits a person from possessing any narcotic drug or psychotropic substance. The concept of possession recurs in Sections 20 to 22, which provide for punishment for offences under the Act. In Madan Lal and Another v. State of Himachal Pradesh, (2003) 7 SCC 465 this Court held that*

"19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.

20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.

21. It is highlighted that unless the possession was coupled with the requisite mental element i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

22. The expression "possession" is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja [(1979) 4 SCC 274 : 1979 SCC (Cri) 1038 : AIR 1980 SC 52] to work out a completely logical and precise definition of "possession" uniform[ly] applicable to all situations in the context of all statutes.

23. The word "conscious" means awareness about a particular fact. It is a state of mind which is deliberate or intended.

x x x x

26. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles."

26. What amounts to "conscious possession" was also considered in *Dharampal Singh v. State of Punjab*, (2010) 9 SCC 608, where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In *Mohan Lal v. State of Rajasthan*, (2015) 6 SCC 222, this Court also observed that the term "possession" could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this knowledge.

27. We have referred to the above precedents to reiterate the governing principles. At this stage of the proceedings, it needs only to be clarified that the trial is to take place in this Court where evidence will be adduced.

28. As regards the finding of the High Court regarding absence of recovery of the contraband from the possession of the respondent, we note that in *Union of India v. Rattan Mallik*, (2009) 2 SCC 624, a two-judge Bench of this Court cancelled the bail of an accused and reversed the finding of the High Court, which had held that as the contraband (heroin) was recovered from a specially made cavity above the cabin of a truck, no contraband was found in the 'possession' of the accused. The Court observed that merely making a finding on the possession of the contraband did not fulfil the parameters of Section 37(1)(b) and there was non-application of mind by the High Court.

29. In line with the decision of this Court in *Rattan Mallik (supra)*, we are of the view that a finding of the absence of possession of the contraband on the person of the respondent by the High Court in the impugned order does not absolve it of the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act.

30. With regard to the statement under Section 67 of the NDPS Act, the High Court has placed abundant reliance on the inclusion of Mohd. Arif Khan's name in place of the respondent's name in the endorsement of translation on the statement of the respondent. In *Tofan Singh (supra)*, a three judge Bench of this Court held that a statement under Section 67 of the NDPS Act is inadmissible. The ASG submitted that independent of the statement, there are valid reasons to deny bail on the basis of the material which has emerged at this stage.

31. Another submission that has been raised by the counsel for the respondent both before the High Court and this Court is that due to non-compliance of the procedural requirement under Section 42 of the NDPS Act[20*], the respondent should be granted bail. Section 42 provides that on the receipt of information of the commission of an offence under the statute, the officer will have to write down the information and send it to a superior officer with 72 hours. It has been submitted by the respondent that though the information was received by the Zonal Director, the information was put down in writing by an officer who was a part of the team constituted on the receipt of the information. The written information was then sent to the Zonal Director. This Court in *Karnail Singh v. State of Haryana*, (2009) 8 SCC 539 held that though the writing down of information on the receipt of it should normally precede the search and seizure by the officer, in exceptional circumstances that warrant immediate and expedient action, the information shall be written down later along with the reason for the delay:

["42. Power of entry, search, seizure and arrest without warrant or authorisation: (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act [..];

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior."]

"35. [...] (c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of subsections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not

recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001."

32. Further, it was held that the issue of whether there was compliance of the procedure laid down under Section 42 of the NDPS Act is a question of fact. The decision in *Karnail Singh (supra)* was recently followed by this Court in *Boota Singh v. State of Haryana, 2021 SCC OnLine SC 324*.

33. In the complaint that was filed on 16 October 2019 it is alleged that at about 1400 hours on 26 March 2019, information was received that between 1500-1700 hours on the same day, the three accused persons would be reaching Uttar Pradesh. The complaint states that the information was immediately reduced to writing. Therefore, the contention that Section 42 of the NDPS Act was not complied with is *prima facie* misplaced. The question is one that should be raised in the course of the trial.

34. The following circumstances are crucial to assessing whether the High Court has correctly evaluated the application for bail, having regard to the provisions of Section 37:

34.1 The respondent was travelling in the vehicle all the way from Dimapur in Nagaland to Rampur in Uttar Pradesh with the co-accused;

34.2 The complaint notes that the CDR analysis of the mobile number used by the respondent indicates that the respondent was in regular touch with the other accused persons who were known to him;

34.3 The quantity of contraband found in the vehicle is of a commercial quantity; and

34.4 The contraband was concealed in the vehicle in which the respondent was travelling with the co-accused.

35. The impugned order of the High Court, apart from observing that no contraband was found from the personal search of the respondent has ignored the above circumstances. The High Court has merely observed that

"10. In view of the above, the twin conditions contained under Section 37(1)(b) of the NDPS Act stand satisfied. This Court is of the view that if there is reasonable ground, the applicant is entitled to be released on bail."

36. The High Court has clearly overlooked crucial requirements and glossed over the circumstances which were material to the issue

as to whether a case for the grant of bail was established. In failing to do so, the order of the High Court becomes unsustainable. Moreover, it has emerged, during the course of the hearing that after the respondent was enlarged on bail he has consistently remained away from the criminal trial resulting in the issuance of a non-bailable warrant against him. The High Court ought to have given due weight to the seriousness and gravity of the crime which it has failed to do.

37. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court dated 1 October 2020 in *Mohd. Nawaz Khan v. Union of India*.

38. The application for bail filed by the respondent shall stand dismissed. The respondent shall accordingly surrender forthwith. Pending application(s) if any, stand disposed of.”

5. In a verdict rendered by the Apex Court in case titled as ***State of Kerala and others versus Rajesh and others***, reported in **(2020) 12 Supreme Court Cases 122**, it has been held as under:-

“18. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under NDPS Act. In *Union of India v. Ram Samujh and Ors.* 1999(4) RCR (Criminal) 93 : 1999(9) SCC 429, it has been elaborated as under:-

“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in *Durand Didier v. Chief Secy., Union Territory of Goa* [1989(2) RCR (Criminal) 505 : (1990) 1 SCC 95] as under:

24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective

provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended."

19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to 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. If either of these two conditions is not satisfied, the ban for granting bail operates.

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 sufficient 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."

6. In the verdicts (supra), it becomes explicitly propounded, that the twin conditions enshrined in the statutory provisions (supra), and, as relate to (i) whether there are reasonable grounds to believe that the accused has not committed an offence, and (ii) that whether he is likely to commit the offence while on bail, thus are required to be satisfied from the evidence existing on record before the Court concerned. Imperatively also before

indulgence of bail being granted to the accused concerned, thus the Public Prosecutor but has to be imperatively assigned an opportunity to oppose the application for regular bail. Emphasizingly upon apposite objective satisfaction being made vis-a-vis the apposite twin conditions, but only after an incisive scrutiny of the relevant records becoming embarked upon, therebys, thus upon the said scrutinized records, but candidly demonstrating that the twin conditions (supra) rather do become favourably satisfied qua the accused. Therefore, only in the event of the twin conditions (supra) becoming satisfied, thereupon, even in respect of the accused allegedly consciously and exclusively possessing the commercial quantity of narcotic drug(s) and psychotropic substance(s), thus may become assigned the craved for indulgence qua his being released on regular bail. In sequel, therebys the rigour of the statutory bar created against the accused concerned, who allegedly consciously and exclusively possesses the commercial quantity of any narcotic drug(s) and psychotropic substance(s), thus becomes eased.

7. The apposite objective satisfaction being made vis-a-vis the twin conditions (supra), thus at the instance of the accused becomes engendered from seriousness of offence punishable under the NDPS Act, and, also from the necessity to curb the menace of drug-trafficking in the country.

8. The hereinabove underlined expressions, as occur in the ***Union of India through Narcotic Control Bureau***'s case (supra) candidly expound the connotation of the statutory coinage "reasonable grounds". The connotation to be assigned to the said statutory coinage is stated therein to be more than prima facie, besides connotes a substantial probable cause for believing, that the accused is not guilty of the alleged offence charged, and,

thus the reasonable belief contemplated in the provisions is required to be pointing to a situation of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence charged.

9. Though, it has been also stated therein, that though it would be unreasonable to expect the assigning of an exact definition of the word 'reasonable'. "Reason" is stated therein to be varying in its conclusions according to the idiosyncrasy of the individual and the times and circumstances in which he thinks. Therefore, as such the signification to be assigned to the word 'reasonable', has been stated to be a question of fact but depending upon the facts and circumstances in the situation. However, it has been stated therein, that while the Courts decide the satisfaction being meted to the twin conditions (supra), they are not called upon to record a finding of not guilty but the satisfaction made in favour of the accused rather is limited or confined to the question of releasing the accused on bail.

10. Furthermore, in the hereinabove underlined expressions, as occur in paragraphs sub-para No. 19, 20, 21, 22, 23 and 26 of paragraph 25 in ***Union of India through Narcotic Control Bureau's*** case (supra), it becomes abundantly clarified that possession is to be coupled with the requisite mental element i.e. conscious possession and not mere custody without awareness of the nature of such possession, is the requisite penal ingredient for thus concluding, that the accused concerned, was allegedly consciously and exclusively possessing the commercial quantity of the relevant narcotic drug(s) and psychotropic substance(s). In short, the word 'conscious' has been described to be awareness about a particular fact and it is a state of mind which is deliberate or intended. The above underlined

expressions, as exist in the paragraphs (supra), thus do earmark the level of scrutiny as is required to be made by the Courts while making a conclusion whether the accused has favourably proven the twin conditions (supra), or qua the said twin conditions becoming prima facie proven by the prosecution to be satisfied against him.

11. Be that as it may, the necessity of statutory compliances being made by the Public Prosecutor vis-a-vis the provisions embodied in Section 42 of the NDPS Act, becomes also highlighted in the verdict (supra). The absence of strict compliances being made to the apposite mandatory statutory provisions but obviously prima facie makes the accused to become entitled to claim the indulgence of bail, irrespective of the fact that from his purported conscious and exclusive possession, thus takes place the relevant seizure of the commercial quantity of the relevant narcotic drug(s) and psychotropic substance(s).

12. To the similar effect are the judgments rendered by the Apex Court in case titled as (i) ***Customs, New Delhi versus Ahmadalieva Nodira*** reported in ***2004(2) RCR (Criminal) 192***, (ii) ***Narcotics Control Bureau versus Dilip Prahlhad Namade***, reported in ***(2004) 3 SCC 549***, and, (iii) ***Union of India and another versus Sanjeev V. Dheshpande*** reported in ***2014(13) SCC 1***. The relevant paragraphs of the verdicts supra are extracted hereinafter.

“(i) Customs, New Delhi versus Ahmadalieva Nodira reported in 2004(2) RCR (Criminal) 192

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 the present accused-respondent is concerned, are (1) 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 for 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 sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case at hand the High Court seems to have completely overlooked the underlying object of Section 37. It did not take note of the confessional statement recorded under Section 67 of the Act. Description Serial No. 43 of the Schedule which reads as follows has not been kept in view.

<i>Sr. No.</i>	<i>International non-proprietary</i>	<i>Other non-proprietary</i>	<i>Chemical name</i>
43	Diazepam		7-Choloro-1, 3-dihydro-1-methyl-5-phenyl-2II-1 4-benzondiazepin-2-one

In addition, the report of the Central Revenue Control Laboratory was brought to the notice of the High Court. The same was lightly brushed aside without any justifiable reason.

8. In the aforesaid background, this does not appear to be a case where it could be reasonably believed that the accused was not guilty of the alleged offence. Therefore, the grant of bail to the accused was not called for. The impugned order granting bail is set aside and the bail granted is cancelled. The accused-respondent is directed to surrender to custody forthwith. Additionally it shall be open to the Trial Court to issue notice to the surety and in case the accused does not surrender to custody, as directed, to pass appropriate orders so far as the surety and the amount of security are concerned. It is made clear that no final opinion on the merit of the case has been expressed in this judgment, and whatever has been stated is the background of Section 37 of the Act for the purpose of bail.

The appeal is allowed.”

(ii) Narcotics Control Bureau versus Dilip Prahlhad Namade, reported in (2004) 3 SCC 549

9. 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 the present accused-respondent is concerned, are (1) 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 for 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 sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence and he is not likely to commit any offence while on bail. This nature of embargo seems to have been envisaged keeping in view the deleterious nature of the offence, necessitates of public interest and the normal tendencies of the persons involved in such network to pursue their activities with greater vigour and make hay when, at large. In the case at hand the High Court seems to have completely overlooked the underlying object of Section 37 and transgressed the limitations statutorily imposed in allowing bail. It did not take note of the confessional statement recorded under Section 67 of the Act.

10. A bare reading of the impugned judgment shows that the scope and ambit of Section 37 of the Narcotic Drugs and Psychotropic Substances Act was not kept in view by the High Court. Mere non-compliance of the order passed for supply of copies, if any, cannot as in the instant case entitle an accused to get bail notwithstanding prohibitions contained in Section 37.

11. The circumstances under which the bail can be granted in the background of Section 37 have been indicated above. The case is not one to which the exceptions provided in Section 37 can be applied.

12. Coming to the plea regarding long passage of time it is to be noted that the two orders passed by this Court in SLP (Crl.) Nos. 1136/2002 and 434/2003 referred to above do not lay down any principle of law of invariable nature to be universally applied. Furthermore, disposal of SLP against a judgment of the High Court does not mean that the said judgment is affirmed by such dismissal. The order passed in any SLP at threshold without detailed reasons does not constitute any declaration of law or constitute a binding precedent. (See *Union of India and others v. Jaipal Singh*, 2003(7) Supreme 676). This court cannot and does not reverse or modify the decree or order appealed against while deciding the petition for special leave to appeal and that too when the SLP was being dismissed. What is impugned before this Court can be reversed or modified only after granting leave and then assuming appellate jurisdiction over it. If the order impugned before this Court cannot

be reversed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage (see Kunhayammed and others v. State of Kerala and another, 2000(6) SCC 359 and Sri Ramnik Vallabhdas Madvane and others v. Taraben Pravinlal Madhvani, 2003(8) Supreme 208).

13. The inevitable conclusion is that the judgment has no legal sanction. We, therefore, set aside the impugned judgment of the High Court granting bail to the respondent.

The respondent-accused is directed to surrender to custody forthwith.”

(iii) Union of India and another versus Sanjeev V. Dheshpande reported in 2014(13) SCC 1

30. On examination of the scheme of Rules 53 to 63 which appear in Chapter VI, we are of the opinion that Rule 53[12] reiterates an aspect of the larger prohibition contained in Section 8(c) i.e., the prohibition of import into and export out of India of the narcotic drugs and psychotropic substances specified in Schedule-I to the Rules. The proviso thereto however enables the import into and export out of India on the basis of an import certificate or export authorisation issued under the provisions of Chapter VI. The subsequent Rules stipulate the conditions subject to which and the procedure to be followed by which some of the narcotic drugs and psychotropic substances could be imported into India or exported out of India. For example, opium is a narcotic drug by definition under Section 2(xiv) of the Act whose export and import is prohibited under Section 8(c). But Rule 54[13]* authorizes the import of opium by Government opium factory. The construction such as the one placed on Rule 53 in Rajesh Kumar Gupta's case would in our opinion be wholly against the settled canons of statutory interpretation that the subordinate legislation cannot make stipulation contrary to the parent Act.*

**[12] 53. General prohibition - Subject to the other provisions of this Chapter, the import into and export out of India of the narcotic drugs and psychotropic substances specified in Schedule I is prohibited.*

Provided that nothing in this rule shall apply in case the drug substance is imported into or exported out of India subject to an import certificate or export authorisation issued under the provision of this Chapter and for the purpose mentioned in Chapter VIIA.

**[13] 54. Import of opium, etc. - The import of -*

(i) opium, concentrate of poppy straw, and

(ii) morphine, codeine, thebaine, and their salts is prohibited save by the Government Opium Factory;

Provided that nothing in this rule shall apply to import of morphine, codeine, thebaine and their salts by manufacturers notified by the Government, for use in manufacture of products to be exported or to imports of small quantities of morphine, codeine and thebaine and their salts not exceeding a total of 1 kilogram during a calendar year for analytical purposes by an importer, after following the procedure under rule 55 and subject to such conditions as may be specified in the import certificate issued in Form No. 4A.

31. Chapter VII deals with psychotropic substances. No doubt Rule 64[14] once again purports to prohibit various operations other than import into or export out of India in psychotropic substances specified in Schedule-I for the obvious reason that import and export operations are already covered by Rule 53. Rule 65 authorizes the manufacture of psychotropic substances other than those specified in Schedule-I to the Rules subject to and in accordance with the conditions of a licence granted under the 1945 Rules. The rule also provides for various other incidental matters. Rule 65A prohibits the sale, purchase, consumption or use of any psychotropic substances except in accordance with the 1945 Rules.

[14] Rule 64. General Prohibition.No person shall manufacture, possess, transport, import inter-State, export inter-State, sell, purchase, consume or use any of the psychotropic substances specified in Schedule-I.

32. Rule 66 prohibits any person from having in possession any psychotropic substance even for any of the purposes authorised under the 1945 Rules unless the person in possession of such a psychotropic substance is lawfully authorised to possess such substance for any of the purposes mentioned under the 1985 Rules. Persons who are authorised under the 1985 Rules, and the quantities of the material such persons are authorised to possess, are specified under Rule 66(2). They are -

(1) any research institution or a hospital or dispensary maintained or supported by Government etc. - Rule 66(2).

(2) individuals where such possession is needed for personal medical use subject of course to the limits and conditions specified - the two provisos to Rule 66(2).

33. Rule 66 reads as follows

Rule 66. Possession, etc., of psychotropic substances.(1) No person shall possess any psychotropic substance for any of the purposes covered by the 1945 Rules, unless he is lawfully authorised to possess such substance for any of the said purposes under these rules.

(2) Notwithstanding anything contained in sub-rule (1), any research institution or a hospital or dispensary maintained or supported by Government or local body or by charity or voluntary subscription, which is not authorised to possess any psychotropic substance under the 1945 Rules, or any person who is not so authorised under the 1945 Rules, may possess a reasonable quantity of such substance as may be necessary for their genuine scientific requirements, or both for such period as is deemed necessary by the said research institution or, as the case may be, the said hospital or dispensary or person:

Provided that where such psychotropic substance is in possession of an individual for his personal medical use the quantity thereof shall not exceed one hundred dosage units at a time:

Provided further than an individual may possess the quantity of exceeding one hundred dosage units at a time but not exceeding three hundred dosage units at a time for his personal long term medical use if specifically prescribed by a Registered Medical Practitioner.

(3) *The research institution, hospital and dispensary referred to in sub-rule (2) shall maintain proper accounts and records in relation to the purchase and consumption of the psychotropic substance in their possession.*

34. *On the above analysis of the provisions of chapters VI and VII of the 1985 Rules, we are of the opinion, both these Chapters contain Rules permitting and regulating the import and export of narcotic drugs and psychotropic substances other than those specified in the Schedule-I to the 1985 Rules subject to various conditions and procedure stipulated in Chapter VI. Whereas Chapter VII deals exclusively with various other aspects of dealing in psychotropic substances and the conditions subject to which such dealing in is permitted. We are of the opinion that both Rules 53 and 64 are really in the nature of exception to the general scheme of Chapters VI and VII respectively containing a list of narcotic drugs and psychotropic substances which cannot be dealt in any manner notwithstanding the other provisions of these two chapters. We are of the clear opinion that neither Rule 53 nor Rule 64 is a source of authority for prohibiting the DEALING IN narcotic drugs and psychotropic substances, the source is Section 8. Rajesh Kumar Gupta's case in our view is wrongly decided.*

35. *In view of our conclusion, the complete analysis of the implications of Section 80[15]* of the Act is not really called for in the instant case. It is only required to be stated that essentially the Drugs & Cosmetics Act, 1940 deals with various operations of manufacture, sale, purchase etc. of drugs generally whereas Narcotic Drugs and Psychotropic Substances Act, 1985 deals with a more specific class of drugs and, therefore, a special law on the subject. Further the provisions of the Act operate in addition to the provisions of 1940 Act.*

**[15] Section 80. Application of the Drugs and Cosmetics Act, 1940 not barred. The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made thereunder.*

36. *In the light of our above conclusion the correctness of the orders impugned in all the Criminal Appeals is normally required to be considered by the Bench of appropriate strength. However, in view of the fact that most of these matters are old matters [pertaining to years 2006 to 2013], we deem it appropriate to remit all these matters to the concerned High Courts for passing of appropriate orders in the light of this judgment.*

37. *Ordered accordingly. Appeals stand disposed of."*

13. Be that as it may, the Apex Court in a verdict rendered in case titled as ***Union of India versus K.A. Najeeb*** reported in ***(2021) 3 Supreme Court Cases 713***, has made the underlined hereinafter extracted expostulation of law.

"15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also

access to justice and a speedy trial. In *Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India*, (1994) 6 SCC 731, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.

16. As regard to the judgment in *NIA v. Zahoor Ahmad Shah Watali* (supra), cited by learned ASG, we find that it dealt with an entirely different factual matrix. In that case, the High Court had reappraised the entire evidence on record to overturn the Special Court's conclusion of their being a prima facie case of conviction and concomitant rejection of bail. The High Court had practically conducted a mini-trial and determined admissibility of certain evidences, which exceeded the limited scope of a bail petition. This not only was beyond the statutory mandate of a prima facie assessment under Section 43-D(5), but it was premature and possibly would have prejudiced the trial itself. It was in these circumstances that this Court intervened and cancelled the bail.

17. It is thus clear to us that the presence of statutory restrictions like Section 43-D (5) of UAPA per-se does not oust the ability of 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, 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 UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected."

14. The expostulations of law relevant to the instant case become carried in para 17 and 18 of the verdict (supra), paras whereof become

underlined. An incisive scrutiny of the above paragraphs unfolds the factum, that irrespective of the Public Prosecutor succeeding in establishing the twin conditions rather against the bail applicant concerned, yet thereby the accused bail applicant would not per se become disentitled to the craved for indulgence of bail becoming granted to him.

15. The reason(s), as become set-forth therein, are embedded in the factum, that when the right to speedy trial is the cornerstone of Article 21 of the Constitution of India, thereby the exacting rigour of the statutory provision (supra) becomes whittled down or becomes melted. Therefore, keeping in mind the length of the period spent by the accused in custody in case (supra), and, the unlikelihood of the earliest completion of trial, thereupon, the Apex Court but irrespective of the twin conditions (supra) becoming satisfied against the accused, thus proceeded to grant the indulgence of bail to the accused-bail petitioner therein. The above line of legal philosophy emanates from the necessity to safeguard the guaranteed right of speedy trial vis-a-vis the accused, thus within the four corners of Article 21 of the Constitution of India. As such, upon emergence of evidence qua there being every likelihood of a tardy progress being made in respect of the trial entered upon qua the accused, qua a charge relating to his allegedly consciously and exclusively possessing the commercial quantity of the relevant narcotic drug(s) and psychotropic substance(s), thereupon, the bail petitioner-accused may become entitled to the indulgence of bail becoming granted to him.

16. Now the expectations of a speedy trial being made qua the accused concerned, may be thus an over expectation(s) from the trial Court(s) concerned, especially given the existence therein of a heavy docket

of subjudice cases of various genres. As such the blame is not only to be assigned to the trial Courts concerned, but any purported blame relating to delays in trials as made with respect to the above genre of cases, is also required to be vicariously shared by the prosecution as well as by the accused.

17. If the heavy docket of subjudice litigations of every genre becomes the deterrent for the learned trial Judges concerned, thus ensuring the makings of expeditious trials vis-a-vis the apposite charges drawn vis-a-vis the accused, especially the one relating to the accused concerned allegedly consciously and exclusively possessing the commercial quantity of the relevant narcotic drug(s) and psychotropic substance(s). Therefore, to the considered objective mind of this Court, there is also dire necessity of making Special NDPS Courts in the States of Punjab, Haryana and in the Union Territory, Chandigarh. As such, this Court humbly requests the Hon'ble Chief Justice to take up the matters (supra), thus with the State Government(s) concerned, so that Special Courts rather for trying the NDPS offences become created in the State of Punjab, Haryana and Union Territory, Chandigarh, so that therebys there may be an expeditious conclusion of trial relating to the charges qua the accused concerned allegedly consciously and exclusively possessing the commercial quantity of the relevant narcotic drug(s) and psychotropic substance(s). Resultantly therebys, the parameters (supra) enshrined in the verdict made by the Apex Court in *Union of India through Narcotic Control Bureau, Lucknow's* case (supra) may humbly not become applicable to the relevant case. Contrarily, the underlined parameters (supra), as borne in the judgment rendered by the Apex Court in *Union of India versus K.A. Najeeb's* case

(supra) rather would require the apposite application.

18. It is also normally seen that even the accused through filing exemption applications, thus choose to delay the trial, but only for seeking the benefits of the parameters (supra) enshrined in the hereinabove underlined paragraphs, as, carried in the verdict rendered by the Apex Court in *Union of India versus K.A. Najeeb's* case (supra). To preempt the accused to ill-avail the benefit of the above underlined expostulations of law, as carried in the verdict (supra), thus a stringent duty is cast upon the learned trial Judges concerned, to discover the truth or otherwise vis-a-vis the reasons set-forth in the exemption applications filed by the accused. If the reasons set-forth in the exemption applications are found to be frivolous, thereupon the trial Judges may reject the applications, and, may proceed to make an expeditious trial vis-a-vis the cases of the instant genre.

19. Moreover, the prosecution agencies are encumbered with the necessity of ensuring that prompt service of summons becomes made upon the prosecution witnesses concerned. In case, the prosecution witnesses are promptly served, thereupon, the trial would proceed at an expeditious pace. However, even after the apposite service being made, rather the prosecution witnesses may not choose to, on the specified date appear before the learned trial Judges concerned. In the said event, the learned trial Judges concerned, may draw such processes including drawings ofailable warrants, so that, the prosecution witnesses who earlier omitted to appear before them, for theirs making their respective depositions, rather make their appearances before the learned trial Judge concerned, so that thereby occurs an expeditious conclusion of the trial. Resultantly thereby the accused may become disabled to contend that on the above parameters, the indulgence of

bail be granted to him.

20. Insofar as the official prosecution witnesses are concerned, who may be on account of transfers become positioned at stations rather much distant from the Courts wherebefore whom they are to record their depositions, therebys yet the learned trial Judges concerned, may choose to record their evidence through video conferencing but with the consent of the learned defence counsel.

21. To the considered mind of this Court, the above would ensure the makings of speedy and expeditious trials of the relevant charges being made against the accused. Moreover therebys the accuseds' may become disabled to contend, that irrespective of the twin conditions enshrined in the above extracted statutory provisions, rather thus becoming proven against them yet on account of delay in the conclusion of trial, theirs yet being entitled to seek the indulgence of bail.

22. The Courts of law are also required to while applying the above expostulations of law consider the facts of each case, inasmuch as, the imperative facts relating to the number of the prosecution witnesses and the time which would be consumed in the recording of their depositions. If the relevant status report makes echoings that given the number of the prosecution witnesses, besides the tardy time schedule set-forth for the makings of trials against the accused, therebys also the Courts concerned rather than proceeding to record a finding viz-a-vis the twin conditions becoming satisfied against the accused, thus may proceed to order for the making of an expeditious conclusion of trial, so that therebys, the Constitutional right of speedy and expeditious trial quartered within the domain of Article 21 of the Constitution of India, thus becomes endowed

upon the accused. Moreover therebys rather no decision on merits adversarial to the accused becomes made.

23. Importantly charges are to be also expeditiously drawn, as thereafters only trial opens. Therefore, derelict non-expedition in the framing of charges, thus may also bestow a well leverage in the accused to espouse for indulgence of bail, irrespective of no finding being recorded qua the twin conditions (supra) rather becoming satisfied in favour of or against the accused.

Final order

24. In view of the observations (supra), IOIN stands disposed of.

25. Reference is answered accordingly.

26. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

September 10th, 2024
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No