

GAHC010185842024



2024:GAU-AS:11342

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./2732/2024

JITUL ALI
S/O YASIN ALI, VILL- JAIGURU AMINGAON, P.O.-AMINGAON, P.S.-
CHANGSARI, DIST- KAMRUP (ASSAM), PIN-781031

VERSUS

UNION OF INDIA
REPRESENTED BY N.C.B.

Advocate for the Petitioner : MR. K N CHOUDHURY, MR H DAS, MS. T SOM

Advocate for the Respondent : SC, NCB,

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

For the petitioner	: Mr. K.N. Choudhury, Sr. Advocate.
	: Ms. T. Som, Mr. H. Das, Mr. B. Das,
	Advocates.
For respondent	: Mr. S. C. Keyal, Standing Counsel, NCB
Date of hearing	: 07.11.2024.
Date of judgment	: 20.11.2024.

JUDGMENT AND ORDER

(CAV)

Heard Mr. K.N. Choudhury, senior advocate, assisted by Ms. T. Som, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned standing counsel for the Narcotics Control Bureau (NCB for short).

2) The petitioner, who was arrested on 19.12.2022 in connection with NDPS Case No. 23/2023 (arising out of NCB Crime No. 24/2022) under section 21(c) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act for short), has prayed for bail under section 439 of the Cr.P.C.

3) This application was filed on 27.09.2024, and by this time Criminal Procedure Code has been repealed. Nonetheless, this application is treated as one under section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS for short).

4) On 16.12.2022, pursuant to receipt of secret information, the personnel of Narcotics Control Bureau (NCB for short) have seized 153.2 kgs. of ganja (cannabis), 179 gms. of Methamphetamine tablets, 1.020 kgs. of brown sugar suspected to be heroin and 16 bottles of Anrex- CP codeine at House No. B/71, Railway East Colony, Amingaon, Kamrup.

5) During such time, other two accused persons, namely, Jitul Ali (i.e. petitioner) and Atiqur Rahman arrived at the place in their Innova car bearing registration no. AS-01-FA-2699 and a pistol was recovered from their possession from the dashboard of the said car.

6) Accordingly, FIR was lodged on 16.12.2022 and NCB Crime No.24/2022 was registered under section 8(C) read with section 20(b)(ii)(C), 21(c), 22(c) and 29 of the NDPS Act. Accordingly, the petitioner was arrested.

7) On conclusion of investigation, the NCB, through its Intelligence Officer, had submitted a complaint before the Court of the learned Special Judge- cum- District and Sessions Judge, Kamrup (R), Amingaon. On receipt of CDR/CAF and chemical examination report, a Supplementary Complaint along with documents was submitted by the NCB in the said case on 11.10.2023.

8) The learned senior counsel for the petitioner has submitted that a previous bail application of the petitioner, being B.A. 4258/2023, was rejected by this Court by order dated 26.06.2024. Accordingly, it is projected that this is the second bail application of the petitioner before this Court.

9) The learned senior counsel for the petitioner has submitted that although the initial complaint petition against the petitioner was submitted on 14.06.2023, but in the absence of chemical examination report, the complaint must be treated to be incomplete and as such the petitioner has become entitled to default bail.

10) In this regard, it is submitted that a complaint in NDPS case without being accompanied with a chemical examination report has been held to be incomplete complaint. Accordingly, the petitioner is entitled to default bail under section 173(2) of the Cr.P.C. as the complaint was not filed within the stipulated period of 180 (one hundred and eighty) days. In support of his contention, the learned Senior Counsel for the petitioner has relied on the case of *Mohd. Arbaz & Ors. v. State of NCT of Delhi*, SLP (Crl.) No (s). 8164-8166/2021, decided by the Supreme Court of India on 13.12.2021.

11) Moreover, it has been submitted that twelve witnesses are named in the final complaint out of which only three witnesses have been examined as on 03.11.2024. Hence, it was submitted that there was no chance of an early

conclusion of trial. Accordingly, it is submitted that as the petitioner has spent 692 days in custody as on 07.11.2024, he may be enlarged on bail.

12) In support of his submission, the following cases have been cited, viz., (i) *Shariful Islam @ Sharif v. State of West Bengal*, 2022 SCC Online 2069, (ii) *In the matter of: Idul Miya*, 2024 SCC Online Cal 9109, (iii) *Abdul Mannan Ali v. State of Assam*, B.A 610/2024, decided by coordinate Bench of this Court on 18.07.2024. Moreover, the learned senior counsel for the petitioner has also submitted a written submission on behalf of the petitioner.

13) Per contra, the learned standing counsel for the respondent has submitted that on 17.12.2022, the seizure of contraband Narcotics Drugs and Psychotropic Substances was made along with a Fortuner car from the possession of Monirul Islam. During such time, other two accused persons, namely, Jitul Ali (petitioner) and Atiqur Rahman arrived at the place in their Innova car bearing registration no. AS-01-FA-2699 and a pistol was recovered from the possession seized from the dashboard of the said car. It was submitted that the NCB personnel had recorded the statement of the petitioner and Monirul Islam on 17.12.2022 and 18.12.2022 and they admitted to be trafficking contraband drugs for monetary benefit.

14) It is further submitted that the seized pistol was an LLMA Cal. 32 and the Innova car recovered from the petitioner and Atiqur Rahman was having fake number plate. Later on, it was revealed that the Innova car was registered as NL-01-CA-0194 and its theft was registered on 16.12.2022 with the Dilai P.S. It is also submitted that investigation revealed that the petitioner had made 46 (forty six) mobile phone calls to Monirul Islam, in whose house contraband drugs were seized and moreover, the petitioner had made 26 (twenty six) mobile phone calls to Atiqur Rahman.

15) To counter the case cited by the learned senior counsel for the petitioner, it was submitted that in the case of *Mohd. Arbaz (supra)*, the Supreme Court of India had merely recorded the submission of the learned counsel for the petitioner that the Investigating Agency has failed to file police report u/s 173(2) of the Cr.P.C. within the stipulated period of 180 (one hundred and eighty) days, which cannot be read as the decision of the Court.

16) It has also been submitted that after the final complaint was filed on 14.06.2023, charges were framed on 06.11.2023 and the first date of evidence was fixed on 04.12.2023 and on that date the examination- in-chief of PW-1 was recorded but he could not be cross-examined as the counsel for the accused took time and the cross-examination of PW-1 was completed on 11.01.2024. Thereafter on 08.02.2024, the recording of evidence of PW-2 (from the FSL) was deferred on the prayer made by the defence counsel and the cross-examination of PW-2 was completed on 01.04.2024. Thereafter, the examination- in-chief of PW-3 was recorded on 23.10.2024. Accordingly, it is submitted that the accused persons have also contributed to the delay in the progress on the trial.

17) Opposing the prayer for bail, the learned standing counsel for the NCB has relied on the following cases, viz., (i) *State of Himachal Pradesh v. Trilok Chand & Anr.*, (2018) 2 SCC 342, (ii) *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Anr.*, (2005) 0 Supreme(SC) 104, (iii) *Adrish Khan v. Union of India*, B.A 962/2024, decided by this Co-ordinate Bench of this Court on 14.05.2024, (iv) *Amad Uddin Tapadar v. The State of Assam*, B.A 1242/2024 decided on 28.04.2024, (v) *Vanlalruati v. Union of India*, CrI. Appeal No.21/2022, decided on 28.06.2024. The learned standing counsel for the SCB has also submitted his written submissions on behalf of the respondent.

18) Considered the material available on record. It may be stated that the scanned copy of the case records of B.A 4258/2023 were called for, where the scanned copy of the records of Trial Court were called and while considering this bail application, the said record has also been perused. Also considered the oral and written submissions made by the learned senior counsel for the petitioner as well as the learned standing counsel for the respondent. Also carefully perused the cases cited by both sides at the Bar.

19) To sum up, the following points have been raised by the learned senior counsel for the petitioner:-

- a. Delay in conclusion of trial and long incarceration in judicial custody would entitle the petitioner to bail.
- b. The rigours of section 37 of the NDPS Act is not required to be met before granting bail.
- c. The non-submission of report of the FSL/ Chemical Examiner has entitled the petitioner to default bail.

20) The order sheet of the learned Trial Court reveals that the accused persons have also contributed to the delay in the progress of the trial.

21) Point no.(a) raised by the learned senior counsel for the petitioner is taken up first.

22) At the outset it is deemed appropriate to refer to the provisions of Section 479 of the BNSS, 2023, which is quoted below:

479. Maximum period for which undertrial prisoner can be detained.- (1)
Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to

one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on bail:

Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law:

Provided further that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail bond instead of his bond:

Provided also that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.- In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

(2) Notwithstanding anything in sub-section (1), and subject to the third proviso thereof, where an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court.

(3) The Superintendent of jail, where the accused person is detained, on completion of one-half or one-third of the period mentioned in sub-section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under sub-section (1) for the release of such person on bail.

23) In this case, the learned Trial Court had framed and explained charges to the accused under sections 8(c), 20(b)(ii)(C), 21(c), 22(c) and 29 of the NDPS Act, by order dated 06.11.2023. The punishment prescribed under the said sections is not less than 10 (ten) years but which may extend to 20 (twenty) years and shall also be liable to fine which shall not be less than Rs.1.00 Lakh but which may extend to Rs.2.00 Lakh.

24) In the said context, we may refer to the relevant observation of the Supreme Court of India in the case of *Satender Kumar Antil v. Central Bureau of investigation*, AIR 2022 SC 3386, which is quoted below:

“Where undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an under-trial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.”

25) With all due respect to the decision in the case *Shariful Islam @ Sharif (supra)*, cited by the learned senior counsel for the petitioner, as pointed out by the learned standing counsel for the respondent, it is seen that the law laid down by the Supreme Court of India in the case of *Satender Kumar Antil (supra)* was not diluted and/or discussed. Hence, as principles of law was not laid down in the case of *Shariful Islam @ Sharif (supra)* and *Mohd. Arbaz and Ors. (supra)*, the Court is of the considered view that those are cases where bail was granted on the basis of the facts of those cases.

26) The learned senior counsel for the petitioner has submitted that as right to speedy trial is one of facets of Article 21 of the Constitution of India, and delay in completion of trial would entitle the petitioner for bail. In the said context, it has been already been mentioned herein before that charges were framed and explained by the learned trial court by order dated 06.11.2023, and therefore, the accused persons had contributed to the delay in the progress of the trial. Under such circumstances, it would be appropriate to refer to the case of *Niranjan Hemchandra Sashittal & Anr. v. State of Maharashtra, (2013) 0 Supreme (SC) 252*. Paragraphs 18 to 21, thereof, are quoted below:

18. *At this stage, we think it apposite to advert to another aspect which is sometimes highlighted. It is quite common that a contention is canvassed in certain cases that unless there is a speedy trial, the concept of fair trial is totally crucified. Recently, in Mohd. Hussain @ Julfikar Ali v. State (Government of NCT of Delhi), (2012) 9 SCC 408, a three-Judge Bench, after referring to the pronouncements in P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578: (2002) 0 Supreme(SC) 499, Zahira Habibulla H. Shekh and another v. State of Gujarat and*

others, (2004) 4 SCC 158, Satyajit Banerjee & Ors. v. State of West Bengal & Ors., (2005) 1 SCC 115, pointed out the subtle distinction between the two in the following manner:-

“40 “Speedy trial” and “fair trial” to a person accused of a crime are integral part of Article 21. There is, however, qualitative difference between the right to speedy trial and the accused’s right of fair trial. Unlike the accused’s right of fair trial, deprivation of the right to speedy trial does not per se prejudice the accused in defending himself. The right to speedy trial is in its very nature relative. It depends upon diverse circumstances. Each case of delay in conclusion of a criminal trial has to be seen in the facts and circumstances of such case. Mere lapse of several years since the commencement of prosecution by itself may not justify the discontinuance of prosecution or dismissal of indictment. The factors concerning the accused’s right to speedy trial have to be weighed vis-à-vis the impact of the crime on society and the confidence of the people in judicial system. Speedy trial secures rights to an accused but it does not preclude the rights of public justice. The nature and gravity of crime, persons involved, social impact and societal needs must be weighed along with the right of the accused to speedy trial and if the balance tilts in favour of the former the long delay in conclusion of criminal trial should not operate against the continuation of prosecution and if the right of the accused in the facts and circumstances of the case and exigencies of situation tilts the balance in his favour, the prosecution may be brought to an end.”
[Emphasis added]

19. *It is to be kept in mind that on one hand, the right of the accused is to have a speedy trial and on the other, the quashment of the indictment or the acquittal or refusal for sending the matter for re- trial has to be weighed, regard being had to the impact of the crime on the society and the confidence of the people in the judicial system. There cannot be a mechanical approach. From the principles laid down in many an authority of this Court, it is clear as crystal that no time limit can be stipulated for disposal of the criminal trial. The delay caused has to be weighed on the factual score, regard being had to the nature of the offence and the concept of social justice and the cry of the collective. In the case at hand, the appellant has been charge-sheeted under the Prevention of Corruption Act, 1988 for disproportionate assets. The said Act has a purpose to serve. The Parliament intended to eradicate corruption and provide deterrent punishment when criminal culpability is proven. The intendment of the legislature has an immense social relevance. In the present day scenario, corruption has been treated to have the potentiality of corroding the marrows of the economy. There are cases where the amount is small and in certain cases, it is extremely high. The gravity of*

the offence in such a case, in our considered opinion, is not to be adjudged on the bedrock of the quantum of bribe. An attitude to abuse the official position to extend favour in lieu of benefit is a crime against the collective and an anathema to the basic tenet of democracy, for it erodes the faith of the people in the system. It creates an incurable concavity in the Rule of Law. Be it noted, system of good governance is founded on collective faith in the institutions. If corruptions are allowed to continue by giving allowance to quash the proceedings in corruption cases solely because of delay without scrutinizing other relevant factors, a time may come when the unscrupulous people would foster and garner the tendency to pave the path of anarchism.

20. *It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality. Therefore, the relief for quashing of a trial under the 1988 Act has to be considered in the above backdrop.*

21. *It is perceivable that delay has occurred due to dilatory tactics adopted by the accused, laxity on the part of the prosecution and faults on the part of the system, i.e., to keep the court vacant. It is also interesting to note that though there was no order directing stay of the proceedings before the trial court, yet at the instance of the accused, adjournments were sought. After the High Court clarified the position, the accused, by exhibition of inherent proclivity, sought adjournment and filed miscellaneous applications for prolonging the trial, possibly harbouring the notion that asking for adjournment is a right of the accused and filing applications is his unexceptional legal right. When we say so, we may not be understood to have said that the accused is debarred in law to file applications, but when delay is caused on the said score, he cannot advance a plea that the delay in trial has caused colossal hardship and agony warranting quashment of the entire criminal proceeding. In the present case, as has been stated earlier, the accused, as alleged, had acquired assets worth Rs.33.44 lacs. The value of the said amount at the time of launching of the prosecution has to be kept in mind. It can be stated with absolute assurance that the tendency to abuse the official position has spread like an epidemic and has shown its propensity making the collective to believe that unless bribe is given, the work may not be done. To put it differently, giving bribe, whether in cash or in kind, may become the "mantra" of the people. We may*

hasten to add, some citizens do protest but the said protest may not inspire others to follow the path of sacredness of boldness and sacrosanctity of courage. Many may try to deviate. This deviation is against the social and national interest. Thus, we are disposed to think that the balance to continue the proceeding against the accused-appellants tilts in favour of the prosecution and, hence, we are not inclined to exercise the jurisdiction under Article 32 of the Constitution to quash the proceedings. However, the learned Special Judge is directed to dispose of the trial by the end of December, 2013 positively.

27) The Court is inclined to take note of the observations of the Supreme Court of India in the case of *Hira Singh & Anr. v. Union of India & Anr.*, (2020) 0 Supreme(SC) 320, decided by a 3-Judge Bench, which is extracted below:-

8.5. The problem of drug addicts is international and the mafia is working throughout the world. It is a crime against the society and it has to be dealt with iron hands. Use of drugs by the young people in India has increased. The drugs are being used for weakening of the nation. During the British regime control was kept on the traffic of dangerous drugs by enforcing the Opium Act, 1857. The Opium Act, 1875 and the Dangerous Drugs Act, 1930. However, with the passage of time and the development in the field of illicit drug traffic and during abuse at national and international level, many deficiencies in the existing laws have come to notice. Therefore, in order to remove such deficiencies and difficulties, there was urgent need for the enactment of a comprehensive legislation on Narcotics Drugs and Psychotropic Substances, which led to enactment of NDPS Act. As observed herein above, the Act is a special law and has a laudable purpose to serve and is intended to combat the menace otherwise bent upon destroying the public health and national health. The guilty must be in and the innocent ones must be out. The punishment part in drug trafficking is an important one but its preventive part is more important. Therefore, prevention of illicit traffic in Narcotics Drugs and Psychotropic Substances Act, 1988 came to be introduced. The aim was to prevent illicit traffic rather than punish after the offence was committed. Therefore, the Courts will have to safeguard the life and liberty of the innocent persons. Therefore, the provisions of NDPS Act are required to be interpreted keeping in mind the object and purpose of NDPS Act; impact on the society as a whole and the Act is required to be interpreted literally and not liberally which may ultimately frustrate the object, purpose and preamble of the Act. Therefore, the interpretation of the relevant provisions of the statute canvassed on behalf of the accused and

the intervener that quantity of neutral substance(s) is not to be taken into consideration and it is only actual content of the weight of the offending drug, which is relevant for the purpose of determining whether it would constitute "small quantity or commercial quantity", cannot be accepted.

28) Thus, the Court is of the considered opinion that offence of dealing with, transporting of Drugs and Narcotics Substances and drug peddling, which has the tendency to adversely affect the society and destroy the future of the youth of the Country, must also be treated to be a separate class of offence.

29) In the case of *P. Ramachandra Rao (supra)*, a 7- Judge Bench of the Supreme Court of India had held as follows:-

29. *For all the foregoing reasons, we are of the opinion that in Common Cause case (I) (as modified in Common Cause (II) and Raj Deo Sharma (I) and (II), the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:-*

(1) The dictum in A.R. Antulay's case is correct and still holds the field.

(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A.R. Antulay's case, adequately take care of right to speedy trial. We uphold and re-affirm the said propositions.

(3) The guidelines laid down in A.R. Antulay's case are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied like a strait-jacket formula. Their applicability would depend on the fact-situation of each case. It is difficult to foresee all situations and no generalization can be made.

(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause Case (I), Raj Deo Sharma case (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or

proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay's case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time limits cannot and will not by themselves be treated by any Court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.

(5) The Criminal Courts should exercise their available powers, such as those under Sections 309, 311 and 258 of Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial judge can prove to be better protector of such right than any guidelines. In appropriate cases jurisdiction of High Court under Section 482 of Cr.P.C. and Articles 226 and 227 of Constitution can be invoked seeking appropriate relief or suitable directions.

(6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary-quantitatively and qualitatively-by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act.

30) We may also refer to the decision of the Supreme Court of India in the case of *Tarun Kumar v. Assistant Director, Directorate of Enforcement*, (2023) 0 Supreme(SC) 1163, wherein the Supreme Court of India, in the context of Prevention of Money Laundering Act, has observed as follows:-

20. *It is also difficult to countenance the submission of learned Counsel Mr. Luthra that the investigation qua the appellant is complete and the trial of the cases likely to take long time. According to him the appellant ought not to be incarcerated indefinitely merely because the investigation is kept open with regard to the other accused. In this regard, it may be noted that the appellant has not been able to overcome the threshold stipulations contemplated in Section 45 namely he has failed to prima facie prove that he is not guilty of the alleged offence and is not likely to commit any offence while on bail. It cannot be gainsaid that the burden of proof lies on the accused for the purpose of the condition set out in the Section 45 that he is not guilty of such offence. Of course, such discharge of burden could be on the probabilities, nonetheless in the instant case there being sufficient material on record adduced by the respondent showing the thick involvement of the appellant in the alleged offence of money laundering*

under Section 3 of the said Act, the Court is not inclined to grant bail to the appellant.

21. *The apprehension of the learned counsel for the appellant that the trial is likely to take long time and the appellant would be incarcerated for indefinite period, is also not well founded in view of the observations made by this Court in case of Vijay Madanlal Choudhary & Ors. v. Union of India & Ors., 2022 SCC OnLine 929. On the application of Section 436A of the Code of Criminal Procedure, 1973, it has been categorically held therein that:-*

“419. Section 436A of the 1973 Code, is a wholesome beneficial provision, which is for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely specifies the outer limits within which the trial is expected to be concluded, failing which, the accused ought not to be detained further. Indeed, Section 436A of the 1973 Code also contemplates that the relief under this provision cannot be granted mechanically. It is still within the discretion of the Court, unlike the default bail under Section 167 of the 1973 Code. Under Section 436A of the 1973 Code, however, the Court is required to consider the relief on case-to-case basis. As the proviso therein itself recognises that, in a given case, the detention can be continued by the Court even longer than one-half of the period, for which, reasons are to be recorded by it in writing and also by imposing such terms and conditions so as to ensure that after release, the accused makes himself/herself available for expeditious completion of the trial.”

31) From the materials available on record, it is revealed that in this case a huge seizure of commercial quantity of contraband Narcotics Drugs and Psychotropic Substances was made. Apart from cannabis and methamphetamine tablets, 1.020 kg of suspected heroin was seized. The said substance has tested positive for heroin. Therefore, while considering the prayer for bail, the court is unable to record that the petitioner is not guilty of committing the offence which is a requirement of the Provisions of Section 37 of the NDPS Act.

32) In the said context, it would be relevant to refer to the case of *Mohd. Muslim @ Hussain v. State (NCT of Delhi)*, S.L.P.(Crl.) No. 915/2023, decided by 2- Judge Bench and reported in (2023) 0 Supreme(SC) 289. In the

said case, the Supreme Court of India had referred to the case of *Union of India v. Rattan Malik*, (2009) 2 SCC 624: (2009) 0 Supreme(SC) 95. Paragraphs 14, 15 and 16 as extracted from the citation of (2009) 0 Supreme(SC) 95 is quoted below:-

14. *We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court is not called upon to record a finding of 'not guilty'. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail.*

15. *Bearing in mind the above broad principles, we may now consider the merits of the present appeal. It is evident from the afore-extracted paragraph that the circumstances which have weighed with the learned Judge to conclude that it was a fit case for grant of bail are: (i) that nothing has been found from the possession of the respondent; (ii) he is in jail for the last three years and (iii) that there is no chance of his appeal being heard within a period of seven years. In our opinion, the stated circumstances may be relevant for grant of bail in matters arising out of conviction under the Indian Penal Code, 1860 etc. but are not sufficient to satisfy the mandatory requirements as stipulated in sub-clause (b) of sub-section (1) of Section 37 of the NDPS Act. Merely because, according to the Ld. Judge, nothing was found from the possession of the respondent, it could not be said at this stage that the respondent was not guilty of the offences for which he had been charged and convicted. We find no substance in the argument of learned counsel for the respondent that the observation of the learned Judge to the effect that "nothing has been found from his possession" by itself shows application of mind by the Ld. Judge tantamounting to "satisfaction" within the meaning of the said provision. It seems that the provisions of the NDPS Act and more particularly Section 37 were not brought to the notice of the learned Judge.*

16. *Thus, in our opinion, the impugned order having been passed ignoring the mandatory requirements of Section 37 of the NDPS Act, it cannot be sustained. Accordingly, the appeal is allowed and the matter is remitted back to the High Court for fresh consideration of the application filed by the respondent for suspension of sentence and for granting of bail, keeping in view the parameters of*

Section 37 of the NDPS Act, enumerated above. We further direct that the bail application shall be taken up for consideration only after the respondent surrenders to custody. The respondent is directed to surrender to custody within two weeks of the date of this order, failing which the High Court will take appropriate steps for his arrest.

33) In this case, the learned standing counsel for the respondent has been able to *prima facie* satisfy the Court that there are materials in the final complaint to suggest that the petitioner along with two other co-accused were caught with conscious possession of the commercial quantity of contraband and the petitioner is suspected to be one of the kingpins involved in the transportation of commercial quantity of contraband drugs in the State.

34) In the said context, reference can also be made to the decision of the Supreme Court of India in the case of *Gurwinder Singh v. State of Punjab & Anr., (2024) 0 Supreme(SC) 104*. In the said case, the appellant, therein, was arrested was under Unlawful Activities (Prevention) Act, 1967. In the said case, the prayer for bail was rejected as it was a case of serious offence and moreover the legal requirement was to consider the provisions of section 43(D) (5) of the said Act and accordingly, it was held that delay in trial pertaining to grave offence cannot be used for granting bail.

35) Accordingly, in light of the discussions on the point no. (a), the Court is inclined to hold that despite being in custody for about 692 days, since the order of remand, and despite the fact that time estimated time by when the trial may be over cannot be said at this premature stage, the petitioner is not yet become entitled to be enlarged on bail.

36) The point no. (b) is taken up now.

37) In the present case, the contraband substances recovered are of commercial quantity and therefore, the petitioner will have to satisfy the twin requirement of section 37 of the NDPS Act. Unless the twin requirements are fulfilled, the petitioner will not be entitled to be allowed to go on bail. In the said context, we have refer to the decision of the Supreme Court of India in the case of *Union of India v. Ajay Kumar Singh @ Pappu, (2023) 0 Supreme(SC) 285*. Paragraphs 14 to 17 thereof are quoted below:-

14. *This apart, it is noticed that the High Court, in passing the impugned order of bail, had lost sight of Section 37 of the NDPS Act, which, inter-alia, provides that no person accused of an offence involving commercial quantity shall be released on bail unless the twin conditions laid down therein are satisfied, namely (i) the public prosecutor has been given an opportunity to oppose the bail application and (ii) the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any such offence while on bail.*

15. *For the sake of convenience Section 37(1) is reproduced herein-below:*

37. Offences to be cognizable and non-bailable:

(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.

(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."

16. *In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.*

17. *The quantity of "ganja" recovered is admittedly of commercial quantity. The High Court has not recorded any finding that the respondent-accused is not prima-facie guilty of the offence alleged and that he is not likely to commit the same offence when enlarged on bail rather his antecedents are indicative that he is a regular offender. In the absence of recording of such satisfaction by the court, we are of the opinion that the High Court manifestly erred in enlarging the respondent-accused on bail.*

38) In the case of *Narcotics Control Bureau v. Mohit Aggarwal*, AIR 2022 SC 3444, a 3-Judge Bench of the Supreme Court of India had observed as follows:-

11. *It is evident from a plain reading of the non-obstante clause inserted in sub-section (1) and the conditions imposed in sub-section (2) of Section 37 that there are certain restrictions placed on the power of the Court when granting bail to a person accused of having committed an offence under the NDPS Act. Not only are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be factored in. The conditions imposed in sub-section (1) of Section 37 is that (i) the Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offence while on bail.*

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, (2004) 3 SCC 549 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 sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [emphasis added]

13. *The expression 'reasonable ground' came up for discussion in State of Kerala & Ors. v. Rajesh and others, (2020) 12 SCC 122 and this Court has observed as below:*

13. 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." [emphasis added]

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

* * *

17. Even dehors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were

subsequently retracted by them, the other circumstantial evidence brought on record by the appellant-NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by the submission made by learned counsel for the respondent and the observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage.

39) Thus, in light of the discussions above, in respect of the point no. (b), it is held that before the petitioner can be enlarged on bail, he will have to satisfy the twin requirement of section 37 of the NDPS Act, which he has not been able to.

40) The point no. (c) is taken up now.

41) In the case of *Central Bureau of Investigation v. Kapil Wadhawan & Anr. 2024 INSC 57: (2024) 0 Supreme (SC) 72*, the Supreme Court of India has held that the right of default bail under section 167(2) Cr.P.C. is not only a statutory right but is a right that flows from Article 21 of the Constitution of India, which has been held to be an indefeasible right, nonetheless it has further been held that it is enforceable only prior to filing of charge-sheet and does not survive or remain enforceable on charge-sheet being filed, if already not availed of. It is further held that once the charge-sheet is filed, question of grant of bail has to be considered and decided only with reference to the merits of the case under provisions relating to grant of bail to the accused after filing of charge-sheet.

42) We may also refer to the observations made by a 4- Judge Bench of the Supreme Court of India in the case of *Tara Singh v. State, AIR 1951 SC 441*. Speaking for the Bench, Justice Vivian Bose had observed in paragraph 14

as follows:-

14. *When the police drew up their challan of 2-10-1949 and submitted it to the Court on the 3rd, they had in fact completed their investigation except for the report of the Imperial Serologist and the drawing of a sketch map of the occurrence. It is always permissible for the Magistrate to take additional evidence not set out in the challan. Therefore, the mere fact that a second challan was put in on 5th October would not necessarily vitiate the first. All that S.173(1)(a) requires is that as soon as the police investigation under Chap. 14 of the Code is complete, there should be forwarded to the Magistrate a report in the prescribed form: "Setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case." All that appears to have been done in the report of 2nd October which the police called their incomplete challan.*

43) In the case of *Central Bureau of Investigation v. R.S. Pai*, AIR 2002 SC 1644: (2002) 5 SCC 82: (2002) 0 Supreme(SC) 428, the following observation has been made by a 3-Judge Bench of the Supreme Court of India [extracted from (2002) 0 Supreme(SC) 428]:-

7. *From the aforesaid sub-sections, it is apparent that normally the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report of chargesheet, it is always open to the investigation officer to produce the same with the permission of the Court. In our view, considering the preliminary stage of prosecution and the context in which police officer is required to forward to the Magistrate, all the documents or the relevant extracts thereof on which prosecution proposes to rely, the word 'shall' used in sub-s. (5) cannot be interpreted as mandatory but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under S.173(4) of the Code of Criminal Procedure, 1898 was considered by this Court in *Narayan Rao v. The State of Andhra Pradesh* (1958 SCR 283 at 293) and it was held that the word 'shall' occurring in sub-s. 4 of S.173 and sub-s. 3 of S.207A is not mandatory but only directory. Further, the scheme of sub-s. (8)*

of S.173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to investigation. In such cases, there cannot be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained.

44) Thus, in the present case, merely because the report of the FSL/ Chemical Analyst was not available, it cannot be held that the investigation was not complete.

45) It may be stated that it was submitted at the Bar that the question as to whether a person accused of committing offences under the NDPS Act is entitled to default bail on the failure of the prosecution to furnish the report of the Forensic Science Laboratory along with the charge-sheet within the prescribed time has been referred to a larger Bench of the Supreme Court of India and if that statement made at the Bar is correct, the decision of the Supreme Court of India in the case of *Kapil Wadhawan & Anr. (supra)* would be binding upon this Court. Accordingly, with due respect to the decision of the Calcutta High Court in the case of *Idul Mia (supra)*, cannot be accepted to have a persuasive effect in connection with the case in hand.

46) Thus, in respect of the point no. (c), the Court is inclined to hold that the non-submission of the report of the FSL/ Chemical Examiner along with the initial charge-sheet would not entitle the petitioner to default bail because except for the receipt of such report, it cannot be held that the investigation was not over.

47) In the order dated 20.06.2024, passed in B.A. 4258/2023, which is the order in the previous bail application filed by the petitioner, the extent of

contraband Narcotics Drugs and Psychotropic Substances seized in the year 2024 upto 24th June, 2024 has been mentioned. Moreover, it has also been recorded in the said order about the submission made by the learned standing counsel for the respondent NCB that in view of the enormous seizure of such contraband, there is also an inadvertent delay in releasing the FSL (i.e. Chemical Examiner's Report). Therefore, the Court is compelled to observe that it is a high-time that the concerned authorities in the State as well as the various Central Government agencies should deliberate upon the issue of timely providing of FSL/ Chemical Examiner's Report or if there is any need to increase such laboratories, specifically to locate such laboratories nearest to those porous border districts from where such cases are detected and/or to examine if there is any fault in the system, as well as to explore if such examination reports can be digitally created and/or otherwise uploaded/e-mailed by the authorities in such testing laboratories to the concerned police station. These actions shall perhaps go a long way in the interest of an early trial.

48) In light of the discussions above, this bail application is rejected.

49) Before parting with the records, we put on record that although the learned standing counsel for the respondent that the petitioner was apprehended with a pistol and a stolen Innova Car with fake licence plate and it was submitted that if granted bail, the petitioner can easily vanish/ abscond and become untraceable. However, as the Court is presently dealing with the issue of bail in connection with offences committed under NDPS Act, the Court is not inclined to deal with the said submission at this juncture.

50) The Registry shall segregate the record of B.A. 4258/2023 from this bail application.

51) In view of the observations made in paragraph 47 above, the learned Standing Counsel for the NCB shall forward a downloaded copy of this order to the NCB and to the Principal Secretary to the Govt. of Assam, Home Department.

JUDGE.

Comparing Assistant