

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) CRM-M-19936 of 2021 (O&M)

...

Dilbagh Khan
.....Petitioner

vs.

State of Punjab
.....Respondent

2) CRM-M-29929 of 2019 (O&M)

...

Rajinder Kumar
.....Petitioner

vs.

State of Punjab
.....Respondent

3) CRM-M-34436 of 2019 (O&M)

...

Jaila Khan
.....Petitioner

vs.

State of Punjab
.....Respondent

4) CRM-M-21427 of 2020 (O&M)

...

Satpal Dass @ Sattu
.....Petitioner

vs.

State of Punjab
.....Respondent

Date of decision :-3.9.2021

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. H.P.S. Ishar, Advocate for the petitioner
(CRM-M-19936-2021)

Mr. P.S. Ahluwalia, Advocate and
Mr. H.S. Randhawa, Advocate for the petitioner
(CRM-M-29929-2019).

Mr. Jasraj Singh, Advocate
for the petitioner (CRM-M-34436-2019).

Mr.A.K. Walia, Advocate
for the petitioner (CRM-M-21427-2020).

Mr. J.S. Ghuman, Deputy Advocate General, Punjab

...

H. S. Madaan, J.

Case taken up through video conferencing.

1. Vide this order of mine, I intend to dispose of four petitions, bearing CRM-M-19936-2021, titled as 'Dilbagh Khan vs. State of Punjab', filed by petitioner - Dilbagh Khan, for grant of regular bail, whereas CRM-M-29929-2020, titled as 'Rajinder Kumar vs. State of Punjab', CRM-M-34436-2019, titled as 'Jaila Khan vs. State of Punjab'; CRM-M-21427-2020, titled as 'Satpal Dass @ Sattu vs. State of Punjab', filed by the petitioners - Rajinder Kumar, Jaila Khan and Satpal Dass @ Sattu, respectively, for grant of pre-arrest bail; all of them being accused in case FIR No. 93 dated 3.6.2019, for offences under Sections 15, 29 of NDPS Act, 1989 (Section 29 of the NDPS Act, added later on), registered at Police Station Sadar Sangrur, District Sangrur.

2. Briefly stated, the facts of the case, as per the prosecution story are that on 3.6.2019, a Police Party led by ASI Surinder Singh, while being present at Bus stand village Kheri, Police Station Sadar, Sangrur, received a secret information at about 6.10 P.M. that Dilbagh Khan s/o Bansai Khan r/o village Kheri, was in a habit of selling poppy husk in his car bearing registration No. PB-13-BB-4993, make Swift Dezire, by bringing it from outside and on that day also, he was to bring poppy husk in his car taking it to village Kheri. Finding the information to be reliable, ASI Surinder Singh sent a ruqqa to the Police Station, on the basis of which formal FIR was registered. Some more police personnel were summoned to the spot. A picket was laid on Link Road leading from Kularan to Kheri within the revenue limits of village Kheri. In the meanwhile, a Swift car, white in colour was spotted coming from the side of village Kular Khurd. It was intercepted and the person driving the car disclosed his name as Dilbagh Khan s/o Bansai Khan r/o village Kheri, P.S. Sadar, Sangrur. The car was searched as per rules, in the presence of DSP, Sub-division Sangrur, who had been summoned to the spot. The search of the car revealed that 4 plastic bags were being carried in the Dicky of the car and 2 plastic bags were there on the rear seat of the car. All the 6 bags were found to contain poppy husk. 4 plastic bags in the dicky were found to contain poppy husk weighing 30 kgs each, whereas the two bags placed on the rear seat of the car were found to contain 40 kgs each of poppy husk. The total recovery being 200 kgs of poppy husk. The recovered contraband

was taken into possession and thereafter samples were drawn therefrom in the presence of JMIC. Dilbagh Khan - accused was arrested in this case. On return to the Police Station, the accused Dilbagh Khan was put in the lock up, where as the case property was deposited in the Malkhana.

3. Accused Dilbagh Khan was interrogated, during the course of which, he suffered a disclosure statement that at the time of elections, he had brought one quintal of poppy husk from Rajinder s/o Muni Ram r/o Ward No. 23, Indra Colony, Tohana (Haryana) and the poppy husk was supplied by him to Jaila Khan s/o Maghar Khan r/o Mirja Patti, Namol and Satpal Dass @ Sattu s/o Bhajan Dass r/o Maino Patti, Namol and the recovered poppy husk, was to be supplied to Jaila Khan and Satpal Dass @ Sattu. In that way Rajinder, Jaila Khan and Satpal Dass @ Sattu, were nominated in this case, on 6.6.2019. Offence under Section 29 of the NDPS Act, was added.

4. Thereafter, such persons, so nominated, namely, Rajinder Kumar, Jaila Khan and Satpal Dass @ Sattu - apprehending their arrest had approached the Court of Sessions at Sangrur, craving for grant of pre-arrest bail, but their prayer was rejected by the Court of Sessions at Sangrur. As such they have knocked at the door of this Court, praying for grant of similar relief, which request is being opposed by the State counsel.

5. Similarly, accused – Dilbgah Khan had approached the Court of Sessions at Sangrur, for grant of regular bail. However, his request same was declined by the Court of Judge, Special Court,

Sangrur, vide order dated 10.2.2020. Thereafter, he had approached this Court, on earlier occasions, seeking regular bail as well as interim bail. His first petition for regular bail bearing CRM-M-16117-2020 was withdrawn by him on 22.9.2020, whereas the second petition bearing CRM-M-6788-2021 for interim bail was also not accepted, vide order dated 22.2.2021. The instant petition bearing CRM-M-19936-2021 is the third one, craving for regular bail, which is being opposed by the State counsel.

6. I have heard learned counsel for the petitioner(s), learned State counsel, besides going through the record.

7. To begin with the discussion, it would be proper to see the aim/object of enactment of the Narcotics Drugs and Psychotropic Substances Act, 1985, which is as follows:

An Act to consolidate and amend the law relating to narcotic drugs to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances [to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances] and for matters connected therewith.

8. The purpose of bringing in such enactment was to make an effort to check the increasing menace of drug trafficking and drug abuse in our society. Stringent punishment has been introduced for

drug trafficking especially amounting to large quantity termed as commercial quantity in the Act. The purpose of enactment was laudable but sadly enough the Act has met with limited success in checking drug trafficking and drug abuse. The main reason for it is laxity in the implementation. Various factors are responsible for that. Firstly, the drug trafficking is a very lucrative business involving a lot of easy money. The drug smugglers, many a times, are having political patronage in running the racket. This politician-smuggler nexus is very difficult to break because they complement each other inasmuch as the politicians require easy money and muscle power for their political aims, which the drug smugglers are more than willing to provide. In return, they seek political patronage so that their nefarious activities go unchecked and without hindrance. The political patronage provided to drug traffickers means that the law enforcement agencies especially the police of the region under pressure from political bosses turn blind eye to activities of drug smugglers.

9. In several cases, the police is hand in glove with such element and rather facilitate the drug trafficking instead of putting a check thereon. The end result is that drug peddling is flourishing day by day instead of being brought under control.

10. Many a times, the police carries out investigation in such a manner that many omissions are made deliberately so that the drug peddlers, who are caught and sent up to face trial can earn acquittal taking advantage of the lacunae and loopholes intentionally and

consciously left in the investigation. That results in failure to properly and strictly implement the various provisions of the Act.

11. An other important link in the enforcement machinery is the prosecution agency. On several occasions, the prosecutors for some extraneous consideration deliberately and at times on account of lack of proper training and scientific knowledge do not present the case of prosecution in a proper and effective manner. While the drug smugglers liberally using their ill-gotten drug money engage best legal brains to defend them, who leave no stone unturned to look for infirmities and shortcomings in the case of prosecution, highlight the same and are often successful in getting relief for their clients from the Courts.

12. As far as judiciary is concerned, when a case comes up before a Court either in the form of an application for bail or for remand or a trial, much depends upon how the case is presented by the prosecutor and how the prosecutor meets with the pleas put forward by the defence counsel. Nevertheless at times some Courts do show misplaced sympathy for the accused, which rather proves to be counter productive. When a person accused of committing heinous crime of indulging in drug trafficking is granted bail liberally at times ignoring the mandatory provisions of law like bar of Section 37 of the Act, that is so done keeping in view the right of life and liberty of such accused, however forgetting in the process the ramifications and implications of grant of liberal bails. A drug peddler, who gets bail promptly keeps little respect for law knowing that even if he is

caught again, he would soon come out of custody one way or the other. That encourages and emboldens him to continue indulging in drug trafficking, which imperils lives of several innocent persons, who are made to take to drug consumption and drug abuse by easy availability of drugs and narcotics. In that way being considerate towards such drug trafficker, a danger to the society is being created. We have to keep in mind the far reaching social consequences of drug consumption. Initially young persons take to drug consumption just for a small time excitement and for thrill. However, later on it becomes a habit, which is very difficult to leave. Even small dose of drug comes at a high price. A drug addict cannot perform normal work on account of effect of drugs on his body and health and rather becomes a useless idle human being. But such person requires money to fulfill vice of drug consumption. That money is arranged by begging, borrowing or committing thefts. Such drug addict does not hesitate to commit heinous crime so as to arrange money for buying dose of drug. At times near relatives are also assaulted and even murdered so as to take away their money and other valuables. The drug addicts do not hesitate to sell away their properties also. If family members of drug addict get him married in a hope that it may have soothing effect upon him and take him away from drugs, which mostly does not happen. The marriage fails giving rise to matrimonial dispute and in many cases separation of spouses. The family has to spend money in litigation also. For the purpose of arranging money for purchase of drugs and on account of litigation involving drug

addicts, huge properties are squandered away, rich people turn to paupers. This is all due to drug addiction. The need of hour is that the various organs of the State responsible for implementation of the act must act cohesively with a zeal to control the menace of drugs without succumbing to any temptation or pressure from any quarter howsoever powerful or influential that may be taking a firm and strict view in the manner without showing undue leniency to the criminals indulging in drug trafficking.

13. At times there have been instances of police planting drugs upon innocent persons as per asking of their political bosses and on some occasions of its own, to extract money from those persons. The police officials indulging in such wrongful activities need to be dealt with an iron hand and punished suitably so that such instances get minimized and innocent people do not suffer in the process. But at the same time treating every case under NDPS Act to be shrouded by suspicion and plantation by the police is not proper especially in cases of heavy recovery. Ordinarily police cannot possibly plant bagfuls of narcotics and drugs upon an innocent person since a small quantity of contraband can result in involvement under the provisions of NDPS Act. Thus in cases of heavy recovery, the presumption of false implication should be drawn with due care and caution.

14. The Legislature in its wisdom has introduced Section 37 of the NDPS Act making grant of bail in certain eventualities to be quite stringent, which include punishment for embezzlement of

opium by cultivator under Section 29, punishment for external dealings in narcotic drugs and psychotropic substances in contravention of Section 12 under Section 24 of the Act; punishment for financing illicit traffic and harbouring offenders under Section 27-A and also for offences involving commercial quantity. This provision is mandatory. However, at times the same is not taken into consideration while granting pre-arrest and regular bails to the accused. Granting of bail ignoring this mandatory provision is improper and uncalled for. Sometimes an attempt is made to overcome this bar of Section 37 of the Act by citing reason of long incarceration, which in many cases is for a few months and in rare cases for a few years. It cannot be lost sight of that after arrest of the accused challan is required to be filed in the Court maximum within a period of 180 days, though it can be extended in certain cases in terms of Section 36-A of the Act and the maximum punishment provided in case of contravention involving commercial quantity is with rigorous imprisonment extending up to 20 years and fine, which may extend up to Rs.2 lakhs. That means ordinarily a challan is required to be filed within 180 days, say six months and if it is not so filed, the accused becomes entitled to get bail by default in terms of Section 167(2) Cr.P.C. Keeping in view the seriousness of the crime, which carries imprisonment up to 20 years and fine of up to Rs.2 lakhs, the accused manage to get bail within a period of less than 6 months in some cases and a little more in other cases, when the period spent by the accused in jail is quite on lower side as compared

to the maximum punishment provided. However time spent by an accused in jail does not dilute or nullify the bar and this section applies with full force in all the four eventualities provided under the provision. It has to be taken note of that drug peddling is a social crime, which needs to be curbed with an iron hand. Any organ of the enforcement mechanism not ensuring due implementation of the provisions should realize that the drug consumption and drug abuse in the region is increasing rapidly especially among the youth and poor section of the society and if strong measures are not taken to control it then it may reach the doorsteps of those very persons by engulfing their family members including young children and then they may not get any opportunity to repent even.

15. In the present case, the petitioners have been booked for offences under Sections 15 and 29 of the NDPS Act. Section 15 of the NDPS Act, provides punishment for contravention in relation to poppy straw, clause (c) providing that where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees. In this case the recovery amounts to commercial quantity and Bar of Section 37 of the NDPS Act, clearly comes into play.

16. Section 29 of the NDPS Act, deals with Punishment for abetment and criminal conspiracy, which provides that [\(1\)](#) Whoever abets, or is a party to a criminal conspiracy to commit an offence

punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code, be punishable with the punishment provided for the offence.

17. For ready reference, Section 37 of the NDPS Act, is reproduced as under :-

“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 2[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.]

18. Chapter V of the Code of Criminal Procedure, 1973, deals with arrest of persons. Under this Chapter appear Sections 41 and 41A, which provide that :-

Section 41 – When police may arrest without warrant

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person,-

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:-

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary,-

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing.

(ba) against whom credible information has been received that he has committed a

cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence; or

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonable suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been

concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under Sub-Section (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

2. Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a

warrant or order of a Magistrate.

Section 41A – Notice of appearance before police officer

(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer

may subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.]]”

19. On behalf of petitioners, the arguments have mainly being advanced by Mr.P.S. Ahluwalia, Advocate, which have been adopted by the other counsel representing other petitioners.

Mr. P.S. Ahluwalia, learned counsel for the petitioner(s) has contended that personal liberty of an individual is paramount, since it is guaranteed by the Constitution of India under Article 21 and it should not be interfered with in a light manner. In support of such contention, he has referred to the following judgments :-

(i) Sushila Aggarwal and others vs. State (NCT of Delhi)

and another 2020 (1) RCR (Criminal) 833;

(ii) Siddharam Satlingappa Mhetre vs. State of

Maharashtra and others 2011 (1) SCC 694;

(iii) Gurbaksh Singh Sibbia etc. vs. The State of Punjab

1980 AIR (SC) 1632 and

(iv) Gurbaksh Singh Sibbia vs. State of Punjab 1978 AIR

(Punjab) 1.

20. There cannot be any dispute with the plea that the Constitution of India guarantees right of personal liberty, providing that no person shall be deprived of his life and liberty except as per procedure established by law. A person can certainly enjoy such fundamental right as long as he does not indulge in any act, which

infringes upon and amounts to violation of such fundamental rights of other persons and does not move to wrong side of law. If an act of a person gives rise to danger to the peace and tranquillity of the society, then such right can certainly be curtailed. A criminal indulging in heinous crime, cannot claim to be released on anticipatory bail/regular bail, stating that he is entitled to the same in accordance with Article 21 of the Constitution of India. For enjoying such right and protection, the act and conduct of a person should be clear and clean and not shady and doubtful, by getting involved in criminal activities, posing danger to the general public.

21. One more judgment relied upon by learned counsel for the petitioners was **Tofan Singh vs. State of Tamil Nadu (SC) Law Finder Doc. ID # 1757610** . However, this judgment is not of much help to the case of the petitioners- accused, on account of different facts and circumstances and the context in which such observations had been made. In the said judgment, it was observed that NDPS Act has to be construed in backdrop of Article 20 (3) and Article 21; that fundamental rights contained in such Articles are given pride of place in Constitution, which cannot be suspended even in emergency. Therefore, the interpretation of statute like NDPS Act, needs to be in conformity and in tune with spirit of broad fundamental rights, as such the statement recorded under Section 67 of the NDPS Act, cannot be used as confessional statement in trial of offence under the said Act. There cannot be any dispute with such proposition of law.

However, the bone of contention in this case is not statement under

Section 67 of the Act. Furthermore, this judgment categorically deals with value to be attached to confession made before police officer, while determining criminal liability of the accused during trial and does not relate to statement made by an accused, incriminating a co-accused, while deciding entitlement of such accused so nominated to grant of pre-arrest bail. Therefore, such judgment is not of any help to the petitioners in this case.

22. The next argument advanced by learned counsel for the petitioner(s) was that when a person is named in the disclosure statement of co-accused, such statement cannot be given much value and it cannot be taken as incriminating evidence against the person so nominated, showing his involvement in the crime and merely on the basis of such disclosure statement, the concession of pre-arrest bail/regular bail cannot be denied. In support of his such contentions, he has referred to various judgments i.e. :-

(i) *Surinder Kumar Khanna vs. Intelligence Officer Directorate of Revenue Intelligence 2018 (3) RCR (Criminal) 954;*

(ii) *Monu vs. State of Haryana, in CRM-M-14613-2020 decided on 10.6.2020, by this Court;*

(iii) *Amrik Singh vs. State of Punjab, in CRM-M-32596-2020 decided on 17.11.2020, by this Court;*

(iv) *Sant Lal vs. State of Haryana, (Punjab and Haryana) Law Finder Doc. Id # 1410009;*

(v) *Paras Mal Lodha vs. Assistant Director, Directorate of*

enforcement (Delhi) Law Finder Doc. Id # 983904;

(vi)*Ismail Khan and others vs. State of M.P. and others, (Madhya Pradesh) (Indore Bench) Law Finder Doc. Id # 1490446;*

(vii)*Pancho vs. State of Haryana, 2011(4) RCR (Criminal) 665*

(viii)*Afzalkhan @ Bahu Murtuzakhan Pathan vs. State of Gujarat 2007 (3) RCR (Criminal) 247;* and

(ix)*Jayendra Saraswathi Swamigal vs. State of Tamil Nadu 2005 (1) RCR (Criminal) 629*

23. However, I do not find myself in agreement with the learned counsel on this point. Various provisions of Indian Evidence Act deal with the confessions. Section 24 provides that a confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise. This provision does not find any application here. Section 25 provides that no confession made to a police officer, shall be proved as against a person accused of any offence. This provision is also not applicable to the facts of the present case. Section 26 provides that confession by accused while in custody of police is not to be proved against him. Section 27 provides that as to how much of information received from accused may be proved. Section 28 dilates that a confession made after removal of impression caused by inducement, threat or promise is relevant. Whereas, Section 29 provides that confession otherwise

relevant is not to become irrelevant because of promise of secrecy, etc. The provision which is relevant to the present case is Section 30, which for ready reference, is reproduced as under :-

“30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.—When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. 1[Explanation.—“Offence”, as used in this section, includes the abetment of, or attempt to commit the offence.] ”

24. Though this provision deals with weightage to be given to the confession at the time of trial, but then while considering the case for grant of pre-arrest bail/regular bail, it can certainly be taken into consideration, to find out as to whether there appears to be any connection of the accused with the crime and providing lead in the investigation. After an FIR is registered with regard to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure, 1973, the investigation in the case starts - as to how the crime was committed; the persons directly involved therein; the persons who might have abetted the commission of crime; whether

the crime was committed as a result of conspiracy, if so, the persons who had taken part therein; whether the crime was committed on account of some abetment, if so, by whom, etc. Under Section 156 of the Code, the Police Officer has got power to investigate a cognizable offence. The purpose of holding investigation is to unfold the story and to find out how the crime was committed; to find out the manner of commission of crime; whatsoever evidence the Investigating officer can collect in relation thereto, as scrutinize such evidence may or may not be legally admissible. But if it provides a definite clue and helps the investigating agency, in furtherance of investigation so as to reach a definite conclusion, it can certainly be not ignored and discarded, merely because said evidence cannot be taken into consideration being not legally admissible. Then whether a person is required to be arrested in criminal case or not is to be seen by the Investigating Officer in light of Section 41 and Section 41-A of the Code of Criminal Procedure, 1973 referred to in para No.18 of the order earlier.

25. Here, statement of co-accused, nominating another persons being partner in the crime with maker of the statement, is relevant and admissible piece of evidence, though such evidence may not be sufficient for basing conviction of an accused and the Court may ask for further corroboration or rather insist for independent evidence being available on record in that regard. But then, that is for the reason that though for determining criminal liability of the accused during trial, since as per principles of criminal jurisprudence,

prevalent in our country, the prosecution is required to prove its charge against the accused beyond a shadow of reasonable doubt and benefit of doubt goes to the accused. Such statement under Section 30 of the Indian Evidence Act, may not, by itself be sufficient to slap criminal liability upon the co-accused, so nominated. But then it cannot be termed as inadmissible and irrelevant evidence. Rather such evidence is admissible in terms of Section 30 of the Indian Evidence Act.

26. The plea taken that such type of statement is immaterial at the time of granting bail cannot be accepted. As already observed, if a person gets named being participant in the crime alongwith the accused, who had made statement before the police, then it has to been seen whether the person so nominated, had actually participated in the crime. The chapter cannot be closed merely for the reason that there is no other evidence available on the record to corroborate the alleged involvement of the person so nominated. The Court is to keep in view the ground reality that police of the region is not much trained in scientific investigation and furthermore necessary resources and infrastructure for collecting other evidence by scientific means like call details, CCTV footage, lifting of finger prints from the spot and their comparison with finger prints of culprits etc. are limited. Custodial interrogation is much more effective and productive since no person of average intelligence, who is under the protective umbrella of pre-arrest bail, would utter even a single word, which may be read against him subsequently and

which may go to connect him with the crime. He may come up with a straight face and say that he is not involved in any criminal activity. It is only when a person is put to the custodial interrogation, which is definitely more elicitation oriented, helping the Investigating Agency in digging out the information, with which further progress in the investigation can be made. If custodial interrogation is denied to the Investigating Agency, accepting the plea that statement of co-accused is not admissible, that would hamper the investigation and not allow the Investigating Agency to connect further probe and reach definite conclusion with regard to involvement of various other persons in the crime, in this case, say drug trafficking.

27. It has been noticed that only small time carriers are caught by the police. Persons running the drug rackets are careful enough not to carry contraband themselves, rather they use poor persons most of them are drug addicts, for the purpose of transportation of the drugs and delivery to the consumers. When some carrier gets caught and takes name of the supplier, such supplier by engaging best legal minds by taking advantage of loopholes in the system manage to escape denying their involvement in drug peddling coming up with a plea that statement of co-accused is inadmissible in evidence against them. Such type of pleas are accepted many a times resultantly it becomes next to impossible to trace the hierarchy in the drug racket and except for small time carriers, the persons actively involved in the drug racket, the suppliers and the controller at the top do not even get identified or

detected. When on a few occasions investigating agency tries to make little progress in the investigation by going a step further towards the culprits after interrogation of the carrier, proceedings in most of the cases come to halt there since such persons manage to escape custodial interrogation and arrest by getting pre-arrest bails. Although when they join investigation couched in comparative safety of pre-arrest bail, they simply deny their involvement in the racket. The investigating agency cannot do much in the matter. It is normal human nature not to say anything, which may harm that person. No person of average intelligence involved in drug trafficking would admit his involvement what to talk of providing further lead about the persons from whom he had been procuring the contraband and the persons to whom he had been supplying, the money earned from such activities and the investment thereof etc. The custodial interrogation definitely extracts more information but with investigating agency getting little opportunity to have custodial interrogation of the supplier and other persons connected with drug trafficking, police cannot reach the big fish running the drug racket.

28. The value of custodial interrogation has been detailed in various judgments by the Apex Court.

In judgment *P. Chidambaram Versus Directorate of Enforcement* passed in Criminal Appeal No.1340 of 2019 arising out of SLP(Crl.) No.7523 of 2019 Hon'ble Apex Court in para Nos.60, 63, 67, 69, 70 and 81 observed as under:

60. *The investigation of a cognizable offence and*

the various stages thereon including the interrogation of the accused is exclusively reserved for the investigating agency whose powers are unfettered so long as the investigating officer exercises his investigating powers well within the provisions of the law and the legal bounds. In exercise of its inherent power under Section 482 Cr.P.C., the Court can interfere and issue appropriate direction only when the Court is convinced that the power of the investigating officer is exercised mala fide or where there is abuse of power and non-compliance of the provisions of Code of Criminal Procedure. However, this power of invoking inherent jurisdiction to issue direction and interfering with the investigation is exercised only in rare cases where there is abuse of process or non-compliance of the provisions of Criminal Procedure Code.

63. Investigation into crimes is the prerogative of the police and excepting in rare cases, the judiciary should keep out all the areas of investigation. In State of Bihar and another v. P.P. Sharma, IAS and another 1992 Supp. (1) 222, it was held that “The investigating officer is an arm of the law and plays a pivotal role in the dispensation of criminal justice

and maintenance of law and order.Enough power is therefore given to the police officer in the area of investigating process and granting them the court latitude to exercise its discretionary power to make a successful investigation...”. In Dukhishyam Benupani, Asstt. [Director, Enforcement Directorate \(FERA\) v. Arun Kumar Bajoria](#) (1998) 1 SCC 52, this Court held that “.....it is not the function of the court to monitor investigation processes so long as such investigation does not transgress any provision of law. It must be left to the investigating agency to decide the venue, the timings and the questions and the manner of putting such questions to persons involved in such offences. A blanket order fully insulating a person from arrest would make his interrogation a mere ritual.”

67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to

the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.

69. *Article 21 of the Constitution of India states that no person shall be deprived of his life or personal liberty except according to procedure prescribed by law. However, the power conferred by Article 21 of the Constitution of India is not unfettered and is qualified by the later part of the Article i.e. "...except according to a procedure prescribed by law." In State of M.P. and another v. Ram Kishna Balothia and another (1995) 3 SCC 221, the Supreme Court held that the right of anticipatory bail is not a part of Article 21 of the Constitution of India and held as under:-*

"7.We find it difficult to accept the contention

that [Section 438](#) of the Code of Criminal Procedure is an integral part of [Article 21](#). In the first place, there was no provision similar to [Section 438](#) in the old [Criminal Procedure Code](#). The Law Commission in its 41st Report recommended introduction of a provision for grant of anticipatory bail. It observed: “We agree that this would be a useful advantage. Though we must add that it is in very exceptional cases that such power should be exercised.” In the light of this recommendation, [Section 438](#) was incorporated, for the first time, in [the Criminal Procedure Code](#) of 1973. Looking to the cautious recommendation of the Law Commission, the power to grant anticipatory bail is conferred only on a Court of Session or the High Court. Also, anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of [Article 21](#) of the Constitution. And its non-application to a certain special category of offences cannot be considered as violative of [Article 21](#).” [underlining added]

70. We are conscious of the fact that the legislative intent behind the introduction of [Section 438](#)

Cr.P.C. is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under [Article 21](#) of the Constitution of India.

81. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been

collected by the respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.”

29. In judgment **Jai Prakash Singh Versus State of Bihar and another etc., 2012(2) RCR(Criminal)251**, it was observed that neither anticipatory bail nor regular bail can be granted as a matter of rule and the anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. While dealing with parameters to be considered while considering application for anticipatory bail as laid down in 2011(1) RCR(Crl.) 126 were reiterated as follows:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made.

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence.

(iii) The possibility of the applicant to flee from justice.

(iv) The possibility of the accused's likelihood to repeat similar or the other offences.

(v) Where the accusations have been made only with the object of injuring or humiliating the

applicant by arresting him or her.

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

(vii) The courts must evaluate the entire available material against the accused very carefully.

The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of [sections 34](#) and [149](#) of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern.

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused.

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant.

(x) Frivolity in prosecution should always be

considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

(xi) The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.

(xii) The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

30. In this case custodial interrogation of the petitioners is very much necessary for complete and effective investigation and if the same is denied to the investigating agency, that would leave many loose ends, gaps and lacuna in the investigation, adversely affecting the same, which is un-called for.

31. In case of **State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268**, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation

orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful information.

32. The bar of Section 37 of the NDPS Act comes into play in this case since the recovery of two quintal of poppy husk is very huge quantity which comes within definition of commercial quantity.

33. An important thing to be seen in this case is in the form of past criminal records of the petitioners.

With respect to petitioner Dilbagh Khan, who is seeking regular bail, as per the custody certificate filed by the State counsel, is involved in two more cases under NDPS Act i.e. FIR No.383 dated 7.7.2016, P.S. Ratia, District Fatehabad, which is pending trial and in FIR No.210 dated 4.12.2017, under Sections 15 NDPS Act and 61 of Punjab Excise Act, in which he has been convicted. That clearly points out towards his involvement in the drug peddling.

As regards petitioner/accused Jaila Khan, as per the reply filed on behalf of the State, he is shown to be involved in 8 criminal cases, as per the details below:

1. FIR No.45/2010, under Section 15 of NDPS Act, PS Sadar, Sangrur.
2. FIR No.150/2015, under Section 15 of NDPS Act, PS Patran.
3. FIR No.44/2014, under Sections 15, 18, 20, 21, 29 of NDPS Act, P.S. Cheema.
4. FIR No.05/2013, under Section 18 of NDPS Act, P.S. Longowal.

5. FIR No.155/2012, under Sections 25 of Arms Act, P.S. City, Sunam.
6. FIR No.77/2010, under Section 15 of NDPS Act, P.S. Cheema.
7. FIR No.151/2004, under Section 15 of NDPS Act, P.S. Dhanaula.
8. FIR No.394/2003, under Section 61 of Excise Act, P.S. City, Sangrur.

He is shown to be convicted in four cases under NDPS Act thereby pointing out he being a habitual drug peddler.

As far as petitioner/accused Satpal Dass @ Sattu is concerned, in terms of the reply filed n behalf of the State, he was involved in another case under NDPS Act bearing FIR No.27 dated 13.3.2014, under Section 15 of NDPS Act, P.S. Cheema. Though in that case, he was statedly acquitted. Even if it is so, the fact remains that he was booked in a NDPS Act and was challaned, though he might have been acquitted on account of any reason may be by giving him benefit of doubt etc.

34. It needs to be mentioned here that as mentioned in the written reply to the petition for grant of pre-arrest bail by Rajinder Kumar, during the course of investigation, the investigating agency found that Dilbagh Khan had provided mobile phone bearing No.6284049425 to Rajender Kumar and 98 calls were found to have been made between both of them during the period from 1.5.2019 to 3.6.2019 that goes to show connection two of them.

35. With regard to the factors to be considered while granting a regular bail, a reference may be have to judgment passed by Hon'ble Apex Court i.e. **Kalyan Chandra Sarkar Versus Rajesh Ranjan @ Pappu Yadav** passed in Criminal Appeal No.324 of 2004 arising out of SLP(Crl.) No.4774 of 2003, wherein it was observed as under:

F. Criminal Procedure Code, 1973, Sections 439 and 437 – Grant of bail – Law summed up:-

- (1) Court granting bail should exercise its discretion in a judicious manner and not as a matter of course.*
- (2) Court to indicate reasons for grant of bail – Elaborate examination of merit of case need not be undertaken.*
- (3) Any order devoid of such reasons would suffer from non-application of mind.*
- (4) Court further to consider:-*
 - (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;*
 - (b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
 - (c) Prima facie satisfaction of the Court in support of the charge.*
- (5) Accused has right to make successive applications for bail – In case where earlier bail application was rejected Court will have to specify reasons whey subsequent bail application was granted. 2002(2) RCR(Criminal) 250(SC) relied.*

Hon'ble Apex Court in judgment *State of Kerala etc. Versus Rajesh etc.*, Criminal Appeal No(s). 154-157 of 2020 arising out of SLP(Crl.) No(s). 7309-7312 of 2019 had observed in para No.21 and 22 as under:

21. 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 Cr.P.C., 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.

22. We may further like to observe that the learned Single Judge has failed to record a finding mandated under Section 37 of the NDPS Act which is a sine qua non for granting bail to the accused under the NDPS Act.

36. I do not see any reason to record satisfaction that there are reasonable grounds for believing that the petitioners are not

guilty of such offence and that they are not likely to commit any offence if released on bail. This provision is applicable both for pre-arrest bail, as well as, regular bail. The apprehension expressed by the State counsel that if granted concession of pre-arrest bail/regular bail, there is every likelihood of petitioners absconding and trying to tamper with the prosecution evidence by giving threat of inducement to the prosecution witnesses, cannot be brushed aside lightly.

37. Therefore, all the petitions are bound to fail on account of bar of Section 37 of the Act alone though there are several other facts and circumstances discussed above leading to the inference that the petitioner **Dilbagh Khan** does not deserve concession of regular bail and petitioners **Jaila Khan, Satpal Dass @ Sattu and Rajinder Kumar** do not deserve concession of pre-arrest bail.

38. As a result, all the petitions are doomed for failure and are dismissed accordingly.

3.9.2021		(H.S. Madaan)
chugh		Judge
	Whether speaking / reasoned	Yes / No
	Whether reportable	Yes / No