

Darshan Patil

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 3062 OF 2021

RANJIT LAXMAN TANPURE ..APPLICANT
VS.
INTELLIGENCE OFFICER AND ANR. ..RESPONDENT

**WITH
BAIL APPLICATION NO. 3917 OF 2021**

MANJEET SINGH CHILOTRA ..APPLICANT
VS.
INTELLIGENCE OFFICER DIRECTORATE
OF REVENUE INTELLIGENCE MUMBAI
ZONAL UNIT AND ANR. ..RESPONDENT

Mr. A.P. Mundargi, Senior Advocate i/b. Mr. Mandar Goswami
a/w Ms. Megha Bajoria for the applicant in BA 3917/2021.
Mr. Mandar Goswami a/w Ms. Megha Bajoria for the
applicant in BA 3062/2021
Mr. N.B. Patil, APP for State.
Ms. Rujuta Thakker a/w Mr. R. Mujumdar and Ms. Mansi
Naik for the respondent-DRI in both applications.

CORAM : M. S. KARNIK, J.
RESERVED ON : DECEMBER 1, 2022
PRONOUNCED ON : DECEMBER 6, 2022

P.C. :

1. These are applications for bail filed by the applicant -
Ranjit Laxman Tanpure in Bail Application No. 3062 of 2021
and applicant – Manjeet Singh Chilotra in Bail Application
No. 3917 of 2021, in connection with DRI F. No.

DRI/MZU/C/INT-117/2016, registered with DRI Mumbai, for the offence punishable under sections 8(c), 22(C), 23(C), 27(A) and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereafter 'NDPS Act', for short). The applicants filed these bail applications on the ground of long incarceration in custody and as the possibility of the trial commencing any time soon and concluding in the near future is remote. The applications are decided by a common order.

2. The applicant – Ranjit Laxman Tanpure came to be arrested on 07/04/2017 by the officers of the DRI and since then he is in judicial custody. It is the case of the prosecution that Ranjit was arrested pursuant to the recording of the statement of the co-accused namely Manjeet. In all 10 accused are implicated. Since the date of registration of First Information Report, 7 accused have been granted bail.

3. On the basis of the information/intelligence dated 21/11/2016 was conveyed by the officer of the Directorate of Revenue Intelligence Ludhiana to DRI Mumbai that a

huge quantity of the Psychotropic Substances viz. Alprazolm, Zoldipam, Diazepam etc. in addition to Tramadol, soma etc. covered under the provisions of NDPS Act, are illegally exported by one of the applicant – Manjeet, a resident of Mira Road, Mumbai. Based on the said information, the residential and office cum godown premises of applicant – Manjeet was searched from 21/11/2016 to 23/11/2016 and a total quantity of 16,72,238 tablets containing Psychotropic Substance was seized. The value of the seized tablets was assessed at Rs. 55,55,567/-. The statements of the arrested accused came to be recorded under section 67 of the NDPS Act. The accused narrated their role and admitted their guilt. The said statements were retracted later on. The statement of applicant – Ranjit was recorded on 06/07/2017 and the applicant was arrested on 07/04/2017. The charge-sheet was filed before the Special Court, Thane on 18/05/2017.

4. Learned senior advocate Shri Mundargi submitted that the present bail application is being pressed only on the ground of long incarceration. According to him, assuming a

huge quantity is found from the possession of the Manjeet, it needs to be considered that he is in custody for more than 5 years and 6 months and there is no possibility of the trial commencing. The applicant - Manjeet deserves to be released on bail on the touchstone of Article 21 of the Constitution of India. So far as the applicant – Ranjit, i.e. original accused no. 8, is concerned, nothing was found from his possession and he is claiming parity with accused no. 10 – Rajaram who has been released on bail. Mr. Mundargi submitted that the applicant – Manjeet cannot be incarcerated for an indefinite period. Although the charge has been framed on 12/07/2019, there is no progress in the trial, nor any of the witnesses examined. According to him, the prosecution is relying upon several statements of the witnesses and the list includes about 130 witnesses. The trial is not delayed at the instance of the applicant. According to him, prolonging the custody for an indefinite period is violative of Article 21 of the Constitution of India. Learned senior advocate Mr. Mundargi relied upon following decisions in support of the submissions :-

- i) **Supreme Court Legal Aid Committee
Representing Undertrial Prisoners Vs. Union of
India and Another.**¹
- ii) **Ugochukwu Duke Vs. State of Goa, thr. I.O.,
Anjuna Police Station and Another**²
- iii) **Sajid Yusuf Electricwalla Vs. The State of
Maharashtra**³
- iv) **Atul Aggarwal Vs. Directorate of Revenue
Intelligence**⁴
- v) **Pravid Dilip Waghela Vs. State of
Maharashtra**⁵
- vi) **Rohit Nejkar Vs. Intelligence Officer and
Anr.**⁶
- vii) **Gopal Krishna Patra @ Gopal Rusma Vs.
Union of India**⁷
- viii) **Anil Kumar Vs State**⁸

1(1995) 4 SCC 695

22022 SCC OnLine Bom 370

3Bail Application No. 3076 of 2021 (Bombay High Court)

4Bail Application No. 2477 of 2021 (Delhi High Court)

5Bail Application No. 523 of 2022 (Bombay High Court)

6Bail Application No. 3823 of 2021 (Bombay High Court)

7Criminal Appeal No. 1169 of 2022 (Supreme Court of India)

82022 SCC OnLine Del 778

ix) **Baba Fakruddin Sheikh @ Fakru Vs. The State (NCT of Delhi)**⁹

x) **Ejike Jonas Orji Vs. Narcotics Control Bureau**¹⁰

xi) **Sachin Atmaram Vartak Vs. The State of Maharashtra**¹¹

xii) **Abdul Hannan Rizwani Vs. State of Maharashtra**¹²

5. Learned counsel for DRI, Ms. Rujuta Thakkar, opposed the application. It is submitted that an unusually large quantity of contraband was seized from the applicants. It is submitted that in respect of the matters covered by the provisions of NDPS Act, if a huge quantity of contraband is seized, a balance has to be struck as even the interest of the society has to be taken into consideration. The right of the accused for speedy trial cannot outweigh the larger public interest considering the serious nature of the offence. Pointing out the materials on record, she submits that the

⁹Special Leave to Appeal (Crl.) No(s). 13 of 2022 (Supreme Court of India)

¹⁰Bail Application No. 997 of 2022 (Delhi High Court)

¹¹Bail Application No. 430 of 2021 (Bombay High Court)

¹²Bail Application No. 877 of 2022 (Bombay High Court)

applicant – Manjeet was a part of a well organized syndicate who along with other accused was systematically exporting the contraband of huge quantities. She submits that propensity of the applicants' involvement in these nefarious activities is writ large from the documents on record and therefore, the mere ground of long incarceration is not enough to seek bail. She submits that though the list of witnesses indicated is around 130, however, on instructions it is stated that not more than 30 to 40 witnesses will be examined. She submits that in such case, the trial could be expedited. She invited my attention to the provisions of section 436A of the Code of Criminal Procedure, 1973 (hereafter 'Cr.P.C.', for short) to submit that even the law mandates that the person who has undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence, he shall be released by the Court on his personal bond; in her submission, meaning thereby that as the maximum punishment prescribed for the offence being 20 years under the NDPS Act, the applicants can apply for bail on the ground of

prolonged incarceration only after the applicants have undergone minimum 10 years of imprisonment. It is further submitted that even in respect of bail on the ground of long incarceration, the applicants cannot avoid the rigors of section 37 of the NDPS Act. In her submission, the materials on record are adequate to demonstrate that the applicants are guilty of such offence. Learned counsel relied upon the following decisions in support of her submissions :-

- I) **Sapan Mondal Vs. Narcotics Control Bureau**¹³
- ii) **Anuj Kumar Upadhyay Vs. State NCT of Delhi**¹⁴
- iii) **Union of India (NCB) ETC. Vs. Khalil Uddin ETC**¹⁵

6. Heard. So far as the applicant – Ranjit in BA No. 3062 of 2021 is concerned, the materials on record indicate that the search conducted by the officers of Ludhiana on 27/04/2017 revealed that the laptop containing images of

13C.R.M. No. 7715 of 2021 (Calcutta High Court)

14Bail Application No. 1150 of 2022 (Delhi High Court)

15Criminal Appeal No(s). 1841-1842/2022 (Supreme Court of India)

Alprazolam tablets and other medicines, prepared by M/s Kelwin Healthcare, Haridwar by its firm M/s Kelvin Pharma was found. Ranjit was not found in conscious possession of the tablets. According to DRI, there was enough material to link the main accused Manjeet with Ranjit. So far the applicant – Manjeet in BA No. 3917 of 2021 is concerned, a large quantity of tablets was found in his possession.

7. Without multiplying the authorities relied by the learned counsel, on which reliance is placed, at the outset I may refer to the decision of this Court in **Rohit Nejkar** (supra) who is a co-accused no. 10 in this C.R. Rohit has since been released on bail on the ground of long incarceration as he was in custody for the period of 5 years. In paragraph no. 31, as regards the progress of the trial this Court observed thus :-

"31. The charge has been framed in the present case on 12th July, 2019. Thereafter, no witnesses have been examined. This Court had called for the report from the trial Court about the status of the trial. The report dated 21st April, 2022 submitted to this Court, wherein it is stated that the charge was framed on 12th July, 2019 vide Exhibit 134. On account of lock-down, the applications filed by the accused etc. the trial could not be proceeded. The learned

counsel for Respondents submitted on instructions that, although there is list of about 130 witnesses, the prosecution may examine about 35 to 40 witnesses. Assuming that the prosecution intends to examine such number of witnesses, even there is not clear as to when the trial would come to an end. There is nothing on record to indicate that the applicant had delayed the trial. He is in custody for a period of about 5 years. There was no recovery of Psychotropic Substance from Applicant, hence, case for grant of bail is made out."

The position remains the same even today except for a brief spell of 6 months when this Court had stayed further proceedings in the trial at the instance of a co-accused. There is nothing to indicate that the trial is protracted at the instance of the applicants. In fact, the applicants have nothing to gain by protracting the trial as they are in custody. Even after the stay was vacated, there has been no progress in the trial. As indicated earlier, though the prosecution has relied upon a list of 130 witnesses, learned counsel for the respondent submitted that the prosecution intends to examine 30 to 40 witnesses. This by itself is a large number. The resultant position is that the trial is not likely to be concluded any time in the near future.

8. Having observed thus, let me examine the rival

contentions, as regards the grant of bail on the ground of long incarceration. It is not in dispute that the applicants are in custody for more than 5 years and 6 months. So far the contention of the learned counsel for DRI that the rigors of section 37 of the NDPS Act will apply even if the bail is sought on the ground of prolonged custody, this aspect has been dealt with by this Court in **Rohit Nejkar** (supra) in paragraph nos. 23 to 29. Paragraph nos. 23 to 29 which has a bearing on the controversy read thus :-

"23. Although it is not necessary to go deep into the restrictions like Section 37 of NDPS Act, Section 20(8) of TADA Act and Section 21(4) of MCOC act, since the right to speedy trial is supreme, it is required to be noted that above provisions carrying embargo for grant of bail under TADA Act, NDPS Act and MCOC Act are pari materia. It is true there is distinction qua UAPA act. However, that should not be hurdle in granting bail on the ground of infringement of Article 21 of Constitution of India. No decision has been brought to notice of the Court wherein bail has been refused by Supreme Court, in spite of accused being in prolonged custody on the basis of such restrictions. It is also pertinent to refer to extent to which such rigours can be interpreted while granting bail. In the case of Ranjitsingh Sharma Vs. State of Maharashtra and another 2005-ALL.MR (Cri)-1538-(SC), it is observed in quoted paragraphs as follows :

"28. Section 21 provides for modified application of certain provisions of the Code of Criminal Procedure, sub-section (4) whereof is as under :

(4) Notwithstanding anything contained in the

Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless -

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and

(b) 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."

45. The Act is deterrent in nature. It provides for deterrent punishment. It envisages three to ten years of imprisonment and may extend to life imprisonment. Death penalty can also be imposed if somebody commits a murder. Similarly, fines ranging between three to ten lakhs can be imposed.

46. Presumption of innocence is a human right (See *Narendra Singh and another Vs. State of MP* (2004) 10-SCC-699:2004 ALL MR (Cri) 2557 (SC). Para 31). Article 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. Sub-section (4) of Section 21 must be interpreted keeping in view the aforementioned salutary principles. Giving an opportunity to the public prosecutor to oppose an application for release of an accused appears to be reasonable restriction but Clause (b) of sub-section (4) of Section 21 must be given a proper meaning.

47. Does this statute require that before a person is released on bail, the Court, albeit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the Court to record such a finding? Would there be any machinery available to the Court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?

48. Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on records only for grant of bail and for no other purpose.

49. We are furthermore of the opinion that

the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the Court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organized crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The Court may in a situation of this nature keep in mind broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.

55. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the Court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the Legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed

that the Court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in future must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence."

24. Thus, embargo under the provisions of Special Acts shall not be an impediment in grant of bail by this Court on the ground of incarceration of accused in custody for a long time, more particularly in the light of various decisions of Supreme Court.

25. The Division Bench in a recent decision delivered in Criminal Appeal No.389 of 2020 in the case of NIA Vs. Areeb Ejaz Majeed(supra) has dealt with a similar issue. The respondent therein was prosecuted by NIA under the provisions of UAPA Act. He was arrested on 29th November 2014. He had preferred applications for bail which were rejected. Subsequently he was granted bail by NIA Court. While passing the order granting bail the Special Court proceeded on two aspects, firstly that the pace of the trial was slow and there was likelihood that there was long time for examining the remaining witnesses. The NIA Court concluded that since law laid down by Hon'ble Supreme Court in Shaheen Welfare Association (supra) apply in favour of accused, the bail application should be granted on the aspect of the matter. The other aspect which was considered by the NIA Court was that the witnesses were examined before the said Court and prima facie case is not made out. The Court, therefore, held that even taking recourse to Section 43-D(5) of NIA Act, the accused is entitled to be released on bail. Other decisions of the Supreme Court were placed for consideration before the Court. The accused was in

custody for a period of six years. About 107 witnesses were remained to be examined. The NIA Court considered the decisions in the case of Union of India Vs. K.A.Najeeb (supra) and Shaheen Welfare Association (supra). Bail was granted on the ground that accused is in jail for six years and also on the basis of evidence adduced before Trial Court. Previous applications were rejected on merits and only on the basis of evidence which was recorded subsequently the NIA Court came to the conclusion with regards to the prima facie case against accused when the accusations had rendered twice by rejecting previous applications for bail. The Division Bench accepted the contention of appellant that in view of previous rejection of bail application, on the basis of evidence recorded by the Court, the Court could not have granted bail on merits. The Division Bench also observed that case of the accused on second aspect of the matter appears to be on firm footing. In paragraph 29 it is observed as follows :

"29. There is no dispute about the fact that right to fair and speedy trial is a right recognized under Article 21 of the Constitution of India. The Hon'ble Supreme Court and various High Courts including this High Court have consistently held that under trials cannot be allowed to languish for years together in jail while the trial proceeds at the snail's pace. If ultimately the accused are found to be not guilty, the number of years, months and days spent by such accused as under trials in jail, can never be given back to them and this is certainly a violation of their valuable right under Article 21 of the Constitution of India. Therefore, right to speedy trial has been recognized and reaffirmed consistently by the judgments of the superior courts."

In paragraph 31 the Division Bench has observed that :

"In cases where the accused are facing charges under special Acts like UAPA Act, parameters for grant of bail are more stringent as a consequence of which the under trials in such cases remain in custody while the trials are pending. This is because they are accused in serious and heinous offences and their rights are required to be balanced with the

rights of the society and citizens at large. The Courts then are required to perform a balancing act, so as to ensure that a golden mean is reached between the rights of the individual and those of the society at large.”

In paragraph 32 the Court then referred to the decision of Supreme Court in the case of Shaheen Welfare Association(supra) wherein it was held that long time taken by courts in disposal of the cases would justify invoking Article 21 of Constitution of India to issue directions to release the undertrials on bail. By analyzing the facts of the case and considering the fact that accused was in custody for a substantial period of time, it was held that it cannot be said that the NIA Court committed an error in granting bail to the accused. The Court did not distinguish the order granting bail on the basis that the effect of rigours under Section 43-D(5) of UAPA Act is lesser than other Special Laws.

26. In the case of Union of India Vs. K.A.Najeeb (supra), the Supreme Court has considered the stringent conditions for grant of bail under Section 43-D(5) of UAPA Act. In the said case the accused was in custody for the offences under UAPA Act. In the case of The NIA Vs. Areeb Ejaz Majeed (supra), the accused was tried for the offences under UAPA Act. In both the cases, the accused was granted bail by High Court and NIA Court on the ground that accused was in custody without trial for long period of time, which affected his right under Article 21 of Constitution of India. Both the orders were confirmed by the Appellate Courts.

27. In the case of Supreme Court Legal Aid Committee (supra),the Court had directed proviso for grant of bail that benefit of direction in clause (ii) and (iii) shall not be available to those persons who are in the opinion of the Trial Court for the reasons to be stated in writing likely to tamper with evidence or influence the prosecution witnesses. In the case of Shaheen Welfare Association(supra), it was cautioned that bail can be granted unless Court

comes to conclusion that their antecedents are such that releasing them may be harmful to the lives of complainant, family members of complainant or witnesses. In the case of Hussainara Khatoon, it was observed that sympathy for undertrials who are in jail for long terms on account of pendency of cases, has to be balanced having regard to impact of crime. The Division Bench of this Court, in the case of NIA Vs. Areeb Majeed has observed that in cases under Special Acts, parameters for grant of bail are more stringent and they remain in custody. The courts are required to perform balancing act, so as to reach a golden mean in between the rights of an individual and those of society at large. The court has to look into those aspects while granting bail even on the ground that the undertrial is in prolonged custody.

28. This Court in the case of Sachin Vartak V/s. State of Maharashtra considered various decisions and granted bail on the ground that the Applicant was in custody for about five years. He was prosecuted for offence under NDPS Act. In another order passed by this Court in the case of Sajid Electricwalla (supra) bail was granted to accused, facing prosecution under NDPS Act on the ground that he was in custody for about seven years.

29. The Supreme Court in the case of Tapan Das V/s. Union of India decided on 7th October, 2021 [SLP (CRI) No.5617/2021] granted bail to accused considering the fact that accused was in custody around 4 years and there is no likelihood of completion of trial in the near future. In the case of Dadu alias Tulsidas V/s. State of Maharashtra (2000) 5 SCC 437. The apex Court was considering the constitutional validity of Section 32-A of NDPS Act. The Court held that said provision is unconstitutional to the extent that it takes away right of the Court to suspend sentence of a person, who are convicted. The apex Court however held that, the rigors of Section 37 would be required to be considered while suspending sentence and grant of bail. In the case of Man Singh V/s. Union of India 2009 Cr. LJ 3042, the Apex Court referred to discussion in the case of Dadu

Alias Tulsidas (supra) and considering the fact that appellant therein had undergone sentence of about Seven years, suspended sentence and granted bail. Although these decisions are relating to suspension of sentence and grant of bail, reference is made since inspite of rigor of Section 37 of NDPS Act, apex Court granted relief. In the case of Union of India V/s. Rattan Mallik (supra) the apex Court had observed that, while granting bail, restriction under Section 37 of the NDPS Act cannot be ignored. The bail granted by High Court was sought to be cancelled. The impugned order of bail was not granted by High Court on the ground that accused was in prolonged custody but on merits."

9. In paragraph no. 30 of the decision in **Rohit Nejkar** (supra), His Lordship observed that this Court has to perform a balancing act. The sympathy for undertrials who are in custody has to be balanced with gravity/magnitude of crime, likelihood of threat to witnesses. The analysis may be based on facts of each case. Taking a cue from these observations, learned counsel for the DRI submitted that an unusually large quantity of contraband seized from the applicant is a good ground to deny bail to the applicant, even if the bail is applied for on the ground of prolonged custody, having regard to the gravity/magnitude of the crime. Once this Court has discussed in detail the parameters for grant of bail in the context of prolonged

custody after referring to the decisions of the Hon'ble Supreme Court, there is really no reason for me to dilate any further on this issue.

10. However, a brief reference to some of the decisions relied upon would be useful. In the case of **Ugochukwu Duke** (supra) the learned Single Judge of this Court granted bail to the accused who was found to have dealt in commercial quantity for which minimum sentence that could be imposed is imprisonment for the period of 10 years. Relying on the law laid down in the case of **Supreme Court Legal Aid Committee Representing Undertrial Prisoners Vs. Union of India and Another** (supra), this Court granted bail after taking into consideration that the applicant therein was behind bars for the period which was more than the minimum sentence which can be imposed upon him. It is pertinent to note that in **Ugochukwu Duke** (supra) this Court in paragraph no. 8 has observed thus :-

"8. Even if proceedings in the trial, according to the learned Public prosecutor, are towards the fag end, there cannot be any dispute about the fact that the applicant has remained behind bars for more

than six and half years and the minimum sentence that can be imposed even upon his conviction is 10 years. Hence, applying the directions in the aforesaid judgment of the Supreme Court, the applicant has made out a case for grant of bail, subject to conditions."

11. In the case of **Sajid Yusuf Electricwalla** (supra) the applicant was involved in manufacturing the drug (MD), 100 Kilograms of of drug (MD) which was in the process of manufacturing was seized. The applicant was in custody for over 7 years and 6 months. It was observed that as the minimum sentence of imprisonment for the offence punishable is 10 years, on this ground alone (custody of 7 years and 6 months) the applicant was granted bail.

12. In **Atul Aggarwal Vs. Directorate of Revenue Intelligence** (supra) the Delhi High Court was concerned with a case where the contraband recovered was to the tune of 151.980 Kilograms of Ketamine which is commercial quantity. In paragraph nos. 11 and 12 it is observed thus :-

"11. In the instant case, the quantity of contraband recovered is 151.980 kgs of ketamine, which is a commercial quantity. In *Gurdev Singh v. State of Punjab*, (2021) 6 SCC 558, the Supreme Court had discussed the deleterious impact of narcotic drugs on society, and how the menace of drug addiction did not only have the ability of destroying

the life of just one individual, but how it could destroy the lives of generations to come. Therefore, the consequences of dealing of drugs and drug abuse can be experienced across the board, from causing economic issues to societal disintegration. The purpose of enacting the NDPS Act was to curb this menace, and this purpose must be borne in mind while considering the grant of bail pertaining to the NDPS Act.

12. However, it is also pertinent to note that the Petitioner herein was arrested on 20.07.2012. It has been nine years since he has been in custody. While remaining conscious of the fact that the gambit of drug trafficking must be deterred with stringent punishments, and that those who indulge in such nefarious activities do not deserve any sympathy, Courts must also not ignore the plight of the undertrials who remain languishing in jails as their trials are delayed with no end in sight. Deprivation of personal liberty without the assurance of speedy trial contravenes the principles enshrined in our Constitution under Article 21, and is, therefore, unconstitutional to its very core. In such cases, in absence of the pronouncement of conviction, the process itself becomes the punishment. Nine years cannot be said to be a short period of time."

13. The Delhi High Court in **Baba Fakruddin Sheikh @ Fakru Vs. The State** vide its order dated 25/03/2021 in Bail Application No. 334 of 2021, denied the bail to the applicant on finding that the commercial quantity of the contraband has been recovered and section 37 of the NDPS Act would be attracted. The Supreme Court, however, by its order dated 16/02/2022 in **Baba Fakruddin Sheikh @**

Fakru Vs. The State (NCT of Delhi) (supra) granted bail observing thus :-

“Taking into consideration the fact that the petitioner has suffered incarceration for a period of 7 years and 6 months and more particularly the fact there is no possibility of the trial concluding in the near future, we deem it to be a fit case to grant him bail”.

14. In the light of the law laid down, prolonged incarceration with no possibility of the trial concluding would entitle the applicants herein for bail. I also do not find any substance in the contention of the learned counsel for the respondent that the applicant has to undergo a minimum 10 years of detention to claim benefit of bail on the ground of long incarceration, which in my opinion proceeds on an incorrect reading of section 436A of Cr.P.C. Section 436A deals with the situation where a maximum period of imprisonment is specified for the offence. In any case section 436A has been inserted in the Cr.P.C. by the Act of 25 of 2005 with effect from 23/06/2006 providing for a maximum period for which an undertrial prisoner can be detained.

15. I may usefully refer to the observations of Their Lordships in **Sanawar Ali vs. Union of India**¹⁶ that the directives of the Apex Court relating to bail and section 436A of Cr.P.C. operate in the same field and are supplementary to one another. To read one in derogative of the other would amount to restricting the right of undertrials to bail in case of inordinate delay in trial and would frustrate the very spirit of the aforesaid law. Having gone through the records, I do not find any special feature relating to the contributory role of the applicants in the inordinate delay in trial. The Apex Court in **Thana Singh Vs. Central Bureau of Narcotics**¹⁷ issued various directions to ensure speedy trials. **Thana Singh** (supra) quoted with approval the directives in **Supreme Court legal Aid Commiittee** (supra).

16. As observed earlier there is hardly any progress in the trial. The continued incarceration of the applicants cannot be by way of a punishment. In my opinion, by imposing stringent conditions, the applicants deserve to be released

16 C.R.M 9314 of 2020 (Calcutta High Court)

17 (2013) 2 SCC 590

on bail. Hence the following order.

ORDER

- i) The applicants - Ranjit Laxman Tanpure and Manjeet Singh Chilotra are directed to be released on bail, in connection with DRI F. No. DRI/MZU/C/INT-117/2016, registered with DRI Mumbai on executing P.R. Bond in the sum of Rs.1,00,000/- each with one or more sureties in the like amount.
- ii) The applicant – Ranjit Laxman Tanpure shall report to the DRI Mumbai, once in a month on first Monday of the every month between 11.00 am to 1.00 pm till further orders.
- iii) The applicant - Manjeet Singh Chilotra shall report to the DRI Mumbai twice in a month on the first and fifteenth day of every month between 11.00 a.m. to 1.00 p.m. till further orders.
- iv) The applicants shall attend trial Court regularly on the date of hearing of the case unless exempted by the Court for some reason.
- v) The applicant - Manjeet Singh Chilotra shall not leave Mumbai without prior permission of the Trial Court.

vi) The applicant - Ranjit Laxman Tanpure shall not leave India without prior permission of the Trial Court.

vii) The applicants shall deposit their passports with the trial Court. In the event they do not have passport, they shall file an affidavit before the trial Court while executing bail bond stating that they do not have passport/s.

viii) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

ix) On being released on bail, the applicants shall furnish their contact number and current residential address to the DRI Mumbai and shall keep them updated, if there is any change.

17. Bail applications are disposed of in the above terms.

(M. S. KARNIK, J.)