

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

**CRA-D-217-2021 (O&M)
Reserved on : 27.09.2022
Pronounced on :12.10.2022**

Maninder Singh @ Mani

..... Appellant

Versus

National Investigation Agency

..... Respondent

2. CRA-D-81-2021 (O&M)

Ranjit Singh @ Jitu @ Giani

..... Appellant

Versus

National Investigation Agency

..... Respondent

3. CRA-D-124-2022 (O&M)

Jaswant Singh @ Jassa

..... Appellant

Versus

National Investigation Agency

..... Respondent

4 CRA-D-247-DB-2022 (O&M)

Gursant Singh

..... Appellant

Versus

State through National Investigation Agency

..... Respondent

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

Present:- Mr. Hitesh Verma, Advocate,
for the appellant (in CRA-D-217 of 2021).

Mr. Veneet Sharma, Advocate,
for the appellant (in CRA-D-81 of 2021).

Ms. G.K. Mann, Senior Advocate with
Mr. A.P.S.Mann, Advocate
for the appellant (in CRA-D-247-DB of 2022).

Mr. Ankit Grewal, Advocate for the appellant
(in CRA-D-124-2022).

Mr. Sukhdeep Singh Sandhu, Advocate
for the respondent-NIA.

Mr. Navneet Singh, Sr. DAG, Punjab.

JAGMOHAN BANSAL, J.

By this order four appeals bearing numbers CRA-D-217 & 81 of 2021 and CRA-D-247 & 124 of 2022, which are arising from same FIR/R.C. as well as challan, are hereby adjudicated.

The appellants are seeking setting aside of orders passed by Learned Special Judge and further seeking regular bail in a case bearing RC No.23/2020/NIA/DLI dated 08.05.2020. The appellants filed applications seeking regular bail before learned Special Judge, NIA, Punjab, SAS Nagar, Mohali who vide impugned order dismissed applications of present appellants and in terms of Section 21 of National Investigation Agency Act, 2008, appellants have preferred present appeals before this Court.

All the appellants are accused in same challan, however, allegations against all the appellants are different and different set of provisions of Indian Penal Code (for short 'IPC'), Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and Unlawful

Activities (Prevention) Act, 1967 (for short 'UAPA') have been invoked.

Brief Facts:

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

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

The respondent after completing investigation, filed police report (hereinafter called as "challan" though NIA has filed as 'charge-sheet') against different persons alleging commission of crime punishable under different Sections of IPC, NDPS and UAPA. The respondent further filed supplementary challan dated 05.01.2020 against few more persons who are alleged to have committed crime punishable under different Sections of IPC, NDPS and UAPA. As per original challan and supplementary challan, there are 11 accused who are identified as A-1 to A-11. The present appeals seeking regular bail have been filed by Maninder Singh @ Mani (A-3),

Ranjit Singh @ Jitu @ Giani (A-4), Jaswant Singh @ Jassa (A-5) and Gursant Singh @ Gora @ Gajni (A-9).

As per the challan and other documents on record, the particulars of appellant vis a vis alleged offences are as follows:-

Sr. No.	Name accused	of Case No. & Date	Under Section
A-3	Maninder Singh @ Mani	RC No.23/2020/NIA/DLI dated 08.05.2020 (arising out of FIR No. 135 of 25.04.2020)	120-B, 489-C of IPC, Sections 25, 27A and 29 of NDPS Act and Sections 18 and 20 of UAPA
A-4	Ranjit Singh @ Jitu @ Giani	RC No.23/2020/NIA/DLI dated 08.05.2020 (arising out of FIR No. 135 of 25.04.2020)	120-B of IPC and Sections 8, 12, 21, 23, 24, 25, 27A, 29, of NDPS Act, Sections 18, 20 of UAPA
A-9	Gursant Singh	RC No.23/2020/NIA/DLI dated 08.05.2020 (arising out of FIR No. 135 of 25.04.2020)	120-B, 419, 471, 201 of IPC, Sections 21, 27A, 29 of NDPS Act, Sections 17, 18, 20 of UAPA
A-5	Jaswant Singh @ Jassa	RC No. 23/ 2020/ NIA/ DLI dated 08.05.2020 (arising out of FIR No. 135 of 25.04.2020)	120-B of IPC, Sections 8 read with 21 and 29 of NDPS Act and Section 20 of UAPA

Role of the Appellants:

The respondent in the challan and supplementary challan has discussed role and outcome of investigation of all the appellants. The role

attributed in challan to each appellant is reproduced as below :-

A-3 (Maninder Singh @ Mani) (Challan dated 20.10.2020)

Maninder Singh @ Mani (A-3) is a close associate of his brother Bikram Singh @ Bikramjit Singh @ Vicky (A-2) to whom he used to assist in counting the proceeds of heroin, making packets of the money and distribution of money. He was arrested with A-2 on 05.05.2020 from Amritsar in the instant case.

Investigation has established that A-3, brother of A-2 was involved in smuggling and sale of heroin with Ranjit Singh @ Ranjeet @ Rana @ Cheetah (A-6) and Iqbal Singh @ Shera (A-10). A-3 also worked closely with A-2 and used to meet A-6, Gagandeep Singh @ Gagan @ Jarmanjit Singh @ Nona (A-7) and Sarwan Singh (A-11). A-2 were involved in smuggling of heroin with A-6, A-7, A-10 and A-11.

A-3 used to voluntarily assist A-2 in collection of money from smugglers after delivery of consignment of heroin and used to count it in their house, make bundles of money by wrapping it in newspaper with tape for further distribution as per direction of A-6 and A-10. A-3 actively and voluntarily participated in all illegal acts of A-2 to facilitate smuggling of heroin and collection of proceeds.

As per direction of A-2; A-3 voluntarily collected one lakh from unknown associate towards proceeds of heroin and handed it over to A-2. A-3 also accompanied his brother A-2 on a red scooty to a location near Satyanand College (Holy City) Amritsar as directed by A-10 and collected Rs. 1.14 Crores from an unknown car driver.

A-3 also assisted A-2 on 22/23 April' 2020 in counting cash around Rs. 41 lakhs, then wrapped Rs. 29 lakhs Indian currency in

newspapers with tape which A-2 took on his red color activa scooter to hand it over to someone as per direction of A-10. Investigation established that as per direction of A-10, on 24/25 April 2020, A-3 along with A-2 went to deliver Rs. 1.14 Crores to associate of A-10 namely Gursant Singh A-9. A-3 identified the photographs of both A-10 and A-9 who were associates in illicit business of heroin during Photo Identification Parade.

Investigation also revealed that A-3 was not only acquainted with the co-accused but also personally knew all the local associates of A-2. A-3 had attended several WhatsApp calls of A-10 as per direction of A-2, whose number was saved in contact list of A-3.

A-3 was arrested with his brother A-2 when they were trying to escape from Amritsar. During investigation A-3 disclosed about concealing of money which was collected by selling of heroin, in their house. Upon disclosure of A-3, total amount Rs.12,25,000, was recovered U/S 27 of Indian Evidence Act, 1972 and further seized by following proper procedure.

A-3 being a student and have no source of income effected the huge seizure established the role of A-2 and A-3 in instant crime. When that currency was being deposited in bank for safe custody, currency amounting to Rs. 6410/- was found to be fake and of zero value. Report received from Nasik printing press has established that currency is fake.

Investigation also established that A-2 used to open the packets of heroin in the bed room on the bed of his house and videography of said event was done for further forwarding it to co-accused/associate A-6 and A-10. The bed-sheet over which A-2 used to place his packets of currency was with A-3 in jail, and the same has been recovered u/s 27 of Indian Evidence Act from jail at instance of A-3.

A-3 voluntarily pointed out 05 locations in Amritsar related to crime in presence of independent witnesses and after completion of pointing out, photography was also done and memorandum was reduced in writing.

During investigation, 03 DVRs of CCTV camera were seized on production which contains suspected movement of A-2 and A-3 during delivery of drug/terror proceeds. Seized DVRs have been sent to CFSL, Chandigarh for forensic examination and extraction of data/footage for further analysis. Report of which was still awaited.

A-4 (Ranjit Singh @ Jitu @Giani Challan dated 20.10.2020)

Investigation further led to arrest of A-4 who was an associate of A-2 and A-6. A-4 after completion of class 10th, got engaged in agricultural work with his father and later went to Malaysia. In 2008, he came back to India and was engaged with father in agriculture work as well as used to assist him in running a Karyana Store. In year 2014, A-4 along with his one relative namely Ajitpal Singh, s/o Balbir Singh, r/o Bharowal, Amritsar, Punjab and Satender Pal Singh, r/o Moga, was arrested by Punjab Police in Tarn Taran with total 500 gm (190 gms heroin recovered from A-4) and an FIR No. 347/2014 City PS, Tarn Taran was registered u/s 21/29 NDPS Act. A-4 was in Amritsar Central Jail for 3 months.

As A-4 was from border area of Gurdaspur so, when A-4 was in jail with A-6 in 2014 they entered in criminal conspiracy to start smuggling of drugs from Pakistan and further sell it in Punjab and other parts of country. Whenever A-6 used to come on parole he used to meet A-4 for furthering the conspiracy and once also he took A-2 along. In January/February 2020, A-2 went to the shop of A-4 in his XUV car bearing registration number PB-02 AW- 0019 and took the delivery of 1 KG heroin

on direction of A-6. This is corroborated technically through Call Details Record. Investigation established that A-4 has smuggled and sold heroin to different people in his village and has pushed them into addiction. He invested illicit proceeds in buying huge property. A-4 who was already in touch with Pakistani smugglers/terrorists across the border and on their direction he was looking for suitable place from where they can smuggle heroin in India through his associate A-5 (An audio also recovered from phone of A-4 where unknown person is elaborating the location near Indo-Pak Border for smuggling). During search by Punjab Police on a search warrant, they have also recovered a mobile phone from his shop that he was using for unlawful activities. As per FIR of 2014, at that time also he and his associate were in possession of a Pakistani SIM.

During the investigation it has been established that A-4 was deeply involved in smuggling of heroin from Pakistan and earned huge money and purchased many plots in the name of his wife and relatives. Property related documents which were purchased by Amarjeet Kaur, distant relative of accused A-4 namely in the year 2015 were seized on production.

A-5 (Jaswant Singh @ Jassa Challan dated 20.10.2020)

Investigation led to arrest of accused A-5 who was a close associate of A-4. His phone along with other articles was seized. During the investigation, it emerged that in the month of March' 2020 one Amarjit Singh @ Sabba, who is distant cousin of A-5, asked him to carry out reconnaissance of a place near village Rosse Fakima on Indo-Pak border for smuggling of heroin from Pakistan. Through Sabba he got in touch with A-4 from a foreign number +974XXXX3780, who motivated and allured him for some handsome amount after the completion of the task. A-5 did the task as

guided by Sabba and A-4 and shared the feedback through audio clips with A-4. A-5 voluntarily led and guided the team to places where he conducted reconnaissance of international border for smuggling through pointing out memorandum.

During investigation A-5 revealed that Amarjit Singh @ Sabba is his relative and close associate of A-4. As per direction of A-4, Amarjit Singh @ Sabba further convinced A-5 to carry out recce at Indo-Pak border and further sent audio clip of said recce. During examination Sabba did not disclose the facts and deleted the data from his mobile phone. His mobile phone was seized and further sent to forensic lab for extraction of deleted data in the interest of investigation.

During analysis of CFSL report it emerged that A-5 was in touch with many foreign and fake/virtual numbers and an audio clip of carrying out reconnaissance of border area also recovered. As per supplementary challan dated 5.1.2021, A-5 is an accused of commission of offences under Section 120-B of IPC, Section 8 read with Section 21 and 29 of NDPS Act and Section 20 of UAPA. As per report received from concerned police station through SSP of concerned District, A-5 was involved in FIR No. 81 of 2019 dated 21.7.2019 registered at Police Station Sadar, Gurdaspur under Sections 148, 149, 307 of IPC.

A-9 (Gursant Singh @ Gola @ Gajni- Supplementary Challan dated 5.1.2021)

During the investigation, accused A-9 was arrested on 10.07.2020 and was remanded in Police custody. During investigation the role of Gursant Singh @ Gora @ Gajni (A-9) emerged as member of the terrorist gang and close associate of A-10. He used to collect heroin and

funds as per directions of A-10.

During investigation, it surfaced that, he was into smuggling business for more than fifteen years. In the year 2004, A-9 met one Amrik Singh (32 yrs), r/o - Pattran, Patiala at his brother Gurpratap Singh's office in Pattran who used to collect tax/vat on the commercial items on contractual basis hired by Government. Amrik was local of Pattran who used to visit his brother's office very often and gradually became good friend of A-9.

During the month of August' 2004, Amrik Singh met A-9 and they went in Toyota Qualis car of Amrik Singh to someone's house in Pattran and collected 300 kg of "Phukki" (Poppy straw), a kind of drug. While returning, their vehicle collided with a truck. Local police recovered poppy straw from their vehicle and took cognizance. As it was a major accident, A-9 remained admitted in "Amar Hospital" for 3 months. After being discharged from the hospital, A-9 was arrested by Pattran Police under NDPS Act. After getting bail in the case, he absconded in the case.

In the year 2017-2018, A-9 met one Sukhbir Singh (28 yrs), r/o Havellian, P.S. Sarai Amanat Khan, Tarn Taran, Punjab, in the market of Amritsar University and became friends. A-9 used to talk to Sukhbir Singh from his mobile number. Once A-9 visited Sukhbir's house in Havellian, where A-9 met Iqbal Singh @ Shera (A-10), younger brother of Sukhbir Singh, who was already into heroin smuggling.

Gursant (A-9) was active, smart and rich and had experience in drugs smuggling and trafficking as he was already booked twice in different cases by Punjab Police and became A-10's close friend. Later on Iqbal Shera A-10 made him part of terrorist gang and A-9 become important member of that criminal conspiracy also. A-9 used to collect heroin and proceeds of

heroin from a particular person at a particular point and hand it over to other persons at different locations as directed by A-10. As per disclosure of A-2, A-9 has many times collected consignments of heroin and cash from him from near Kiwi hospital in Amritsar for further distribution on the direction of Iqbal Singh @ Shera.

After A-10 absconded in 532 kgs heroin case A-9 again got in touch with A-10 through A-10's brother Sukhbir Singh. A-9 was handed over a special phone with fake virtual number for communication with A-10. It was exclusively used for talking to A-10. The purpose of handing over the phone was to take instructions related to smuggling of heroin and collection of proceeds from A-10 and do the needful as directed by him.

On 24th April' 2020, A-10 made WhatsApp call to A-9 from unknown foreign mobile numbers & asked him to collect money from a person near "Palah Sahib Gurudwara" at Amritsar, and further deliver the same to a person at Batala, Amritsar (Pathankot Bypass). A-9 readily agreed for doing the task, but told him that he won't be able to go to Batala for delivery. On 25th April 2020, in order to further their conspiracy, Gursant Singh (A-9) went to Gurdwara Pallah Sahib in his white colored Fortuner car PB- 02CJ-4496 collected money Rs. 1.14 crores from A-2 and A-3. His movement is corroborated technically as well as on the basis of DVR analysis of CCTV footage recovered from the cameras installed at Viva Medical Store/Path Lab, Palah Sahib Road, Amritsar (Latitude 31.67 196 & Longitude 74.83817) and at the residence of Shri Gaurav Mahajan r/o Guru Amardas Avenue, Ajnala Road, Amritsar (Latitude 31.66466 & Longitude 74.83749) marked as DV-1 and DV-3 respectively. However, CCTV footages are forwarded to CFSL, Chandigarh for forensic examination.

After collection of the aforesaid drug money, A-9 made a whatsapp call from his fake virtual number to A-10, who directed him to go to "Batala Bypass" and hand over the money to a truck driver (Sardar with beard and round turban) with truck parked near "Doon Public School". As instructed by A-10, A-9 went to "Batala Bypass" near Doon Public School and delivered the money as directed. During investigation it revealed that after the registration of instant case Sukhbir Singh, brother of A-10 came to Patti and informed A-9 that, Fortuner car of A-9 has been traced out by the police for delivering of proceeds of heroin to truck driver on Batala By pass. A-9 in planned way handed over the keys of Fortuner car to Sukhbir in order to hide it from getting traced. After that in order to erase all evidences he broke all his phones and destroyed all the evidences which could relate him in any way with crime and conspiracy. Since then, A-9 was evading police arrest. As Investigating officers were continuously questioning the other associates of accused he quietly surrendered himself in court in a old case in which he was absconding and was arrested in instant case on 10.07.2020.

Investigation revealed that, in second week of December, 2019, as per direction of A-10, A-2 collected 3 kgs of heroin from Holy City Gate, near Attari Bye Pass, Amritsar in the evening. On the same evening A-2 kept 1 kg with him and on the same evening around 8 pm, delivered 2kg of heroin to A-9 near Kiwi Hospital at Ajnala Road, who came in Volkswagen Polo car on the direction of A-10. Then within a week A-9 made the payment of Rs. 26 lacs in lieu of 2kg of drugs to A-2 near Kiwi Hospital who again came in polo car.

Investigation revealed that A-9 earned lot of money from smuggling/selling of heroin with the association of A-10 and other co-

accused persons. He invested that illicit proceeds in purchasing one house in 300 Sq. yards of Land at Guntala Village, PS -Ranjit Avenue, Amritsar for 32 Lakhs. He purchased a 150 Sq. yards plot in Aerocity, Mohali. He had also planned to construct a hotel in Patti, Tarn Taran. He invested in luxury cars like Audi, Fortuner, Innova etc. for which payments were always made in cash. such cars were used for transporting heroin and illicit proceeds of heroin from one place to other place.

Investigation revealed that A-9 was a part of big network of smuggling of heroin from Pakistan smugglers/terrorists into India and channelizing the drug proceeds through Hawala to Pakistan and to terrorists in Kashmir to carry out terror activities. A-9 used to visit Delhi NCR on regular basis in his luxury cars for delivery of heroin consignment and delivery of drug money. During investigation accused Gursant Singh was taken to CFSL, New Delhi in police custody for Psychoanalysis test and Layered Voice Analysis test on 26.11.2020. The Layered Voice analysis report & Forensic Psychological Assessment Report established and corroborated the facts and his larger role in the criminal conspiracy.

Investigation established that accused Gursant Singh (A-9) apart from getting involved in collection, distribution and selling of heroin and collection and distribution of proceeds of heroin to unknown associates of A-10, had fraudulently or dishonestly managed Aadhar Card in the name of Lovedeep Singh Bajwa and used it as his genuine identity card. Hence related documents were seized during investigation.

Investigation has also established that Gursant Singh (A-9) had fraudulently/dishonestly procured another Aadhar card in the name of Gurpreet Singh and he had also procured one PAN card no. FGKPS5807N in

the name of Gurpreet Singh S/o Bhagwan Singh R/o H.No. 10, Ward No. 39, Gumtala, Amritsar and used it as his genuine government document and on the basis of forged documents, he opened bank account in HDFC Bank, Gumtala, Amritsar and had filed Income-tax return.

Contention of the Appellants:

Learned counsel for A-3 contended that as per challan, a sum of Rs.12,25,000/- was recovered under Section 27 of the Indian Evidence Act, 1872. The aforesaid amount was recovered from the residence of appellant on 05.05.2020. The aforesaid amount was kept at residence because marriage of his sister was to be solemnized on 05.06.2020. The money was arranged by elder brother of appellant who is also one of the accused in present FIR. He was a student and he had not arranged the aforesaid amount. The police recovered Rs.20 lakhs from his brother who is identified as A-2 in the present challan. The police just to implicate appellant has shown recovery of Rs.12.25 lakhs in the hands of appellant, whereas alleged amount formed part of recovery from his brother. As per para 17.7.4 of challan, appellant along with his brother as per direction of A-10 on 24/25.04.2020, went to deliver Rs.1.14 crores to associate of A-10 namely Gursant Singh-A-9. There was complete lock down on 24/25.04.2020, thus, there was no possibility of movement of appellant on 24/25.04.2020. This fact itself demolishes entire case of respondent and proves that respondent has wrongly implicated the appellant. The respondent has conducted investigation qua marriage of sister of appellant and it has been established that marriage was fixed for 05.06.2020, however, family of groom on account of arrest of appellant and his brother severed their ties with the family of appellant. There is no recovery of narcotic drugs or property from

the appellant and he is in custody since the date of arrest i.e. 05.05.2020, thus, he deserves to be released on bail.

Learned counsel for A-4 contended that appellant is a shop keeper and as per challan, he has earned huge money and purchased many plots in the names of his wife and relatives. The respondent under UAPA as well NDPS Act has power to attach property during the course of investigation. The registration of offence under NDPS Act is sufficient for the registration of an offence under PMLA because NDPS offence is a predicate offence. The respondent could attach property under UAPA and NDPS Act, however, not even a single property has been attached which indicates that allegations made by respondent are bald and without any foundation. The appellant was implicated in FIR No. 347 of 2014 at Police Station Tarn Taran under Sections 21/29 of NDPS Act, however, he was acquitted and released just after three months. There is allegation that A-2 collected 1 kg heroin from appellant A-4 in January/February 2020 whereas there is recovery even not of single gram. There is just vague allegation that in the month of January/February' 2020 appellant had delivered 1kg heroin to A-2.

Counsel for A-5 contended that there is no recovery of cash, property or narcotic drugs from the appellant. The sole allegation against the appellant is that at the behest of Amarjit Singh @ Sabba, he has carried out recce at Indo-Pak Border and further sent audio clip of said recce to Amarjit Singh @ Sabba. Further allegation is that appellant was in touch with many foreign and fake/virtual numbers. The appellant in the original challan was subjected to offence under Sections 120-B IPC and 29 of NDPS Act, however, Section 8 read with 21 of NDPS Act and 20 of UAPA were

added without any basis in supplementary challan. Section 120-B of IPC as well Section 29 of NDPS Act postulates offence of abetment. The appellant is in custody since 07.05.2020 and till date even charges have not been framed. In the absence of recovery or attachment of cash property or narcotic drugs, it is unjustified and arbitrary to keep the appellant in custody and it amounts to violation of fundamental right of liberty guaranteed by Article 21 of the Constitution of India.

Learned counsel for A-9 submitted that appellant was arrested on 10.7.2020 and since then is in custody. There is allegation that appellant was involved in other cases whereas he had already been acquitted or released on bail in those cases. There is a bald allegation that appellant on 25.4.2020 collected Rs. 1.14 Crores and delivered it to A-2 and A-3. There is recovery not even of single penny from the appellant which shows that allegation of collection and further delivery of Rs. 1.14 Crores is as vague and bald as could be. On 25.4.2020, there was complete lock down in the country, thus, it was beyond imagination to freely move and collect such a huge amount from some one and deliver it to another. He further contended that places alleged by respondent are in city Amritsar where it was impossible to move on 24/25.4.2020. There is no recovery of heroin whereas there are allegations that appellant got delivery of 2kgs of heroin from A-2 in December' 2019 and made payment of Rs. 26 lakhs to A-2 in lieu of 2 kgs of heroin. There is allegation of minting money by smuggling/selling of heroin and purchasing property whereas neither respondent has attached alleged properties during investigation nor there is documentary evidence regarding ownership of property in favour of appellant or his wife.

Contention of the NIA/Respondent:

Learned counsel for respondent-NIA opposing all the appeals

vigourously contended that there are serious allegations against all the appellants and as per Section 43D of UAPA and 37 of NDPS Act, the appellants are not liable to be released on bail. The custody period of appellants is immaterial and Hon'ble Suprme Court in **Rajesh Ranjan Yadav alias Pappu Yadav vs. DBI through its Director (2007) 1 SCC 70** and different Single Benches of this Court have declined bail even though there was long incarceration. A three Judge Bench of Hon'ble Supreme Court in **Narcotics Control Bureau vs. Mohit Aggarwal 2022 SCC Online SC 891** has held that factors namely length of custody, the charge sheet has been filed and trial has commenced by themselves are no consideration that can be treated as persuasive grounds for grant of bail. With respect to averment of appellants that charges are not framed as NIA has filed an application under Section 44 of UAPA, contended that appellants have filed applications seeking discharge, thus, there is no fault on the part of prosecuting agency. Till date, no material witness has been examined and as per statement of protected witnesses, there is substantial evidence against appellants which linked them to alleged crime. As per judgment of the Hon'ble Supreme Court in **Mamta vs. State of Delhi 2021 SCC OnLine Del 4570** bail should not be granted unless crucial witnesses are examined. The appellants are involved in other cases which indicates that their antecedents are doubtful and if they are released at this stage, they may further involve in same kind of activities. The release of appellants would cause danger to stability, integrity and economic health of the country. The appellants do not deserve leniency and bail on the basis of Article 21 of the Constitution of India should not be granted.

Judicial Pronouncement/Binding Precedent:

Before advertng with the facts of present case as well as

entitlement of appellants to bail, it is inevitable to notice judicial pronouncements of Hon'ble Supreme Court especially in view of the fact that allegations against appellants are under NDPS Act and UAPA which are stringent provisions.

A three Judge Bench of Hon'ble Supreme Court in **Joginder Kumar Vs. State of U.P. & Others (1994) 4 Supreme Court Cases 260** has extensively deliberated with power of enforcement agencies to arrest, actual need of arrest and personal liberty of the accused. The Apex Court has noticed report of the Royal Commission on criminal procedure as well third report of National Police Commission. The Apex Court has dealt with these reports in Para 19 & 20 which read as under:

“19. The Royal Commission suggested restrictions on the power of arrest on the basis of the “necessity of (sic) principle”. The two main objectives of this principle are that police can exercise powers only in those cases in which it was genuinely necessary to enable them to execute their duty to prevent the commission of offences, to investigate crime. The Royal Commission was of the view that such restrictions would diminish the use of arrest and produce more uniform use of powers. The Royal Commission Report on Criminal Procedure — Sir Cyril Philips at p. 45 said:

“... we recommend that detention upon arrest for an offence should continue only on one or more of the following criteria:

- (a) the person's unwillingness to identify himself so that a summons may be served upon him;*
- (b) the need to prevent the continuation or repetition of that offence;*
- (c) the need to protect the arrested person*

himself or other persons or property;

(d) the need to secure or preserve evidence of or relating to that offence or to obtain such evidence from the suspect by questioning him; and

(e) the likelihood of the person failing to appear at court to answer any charge made against him.”

The Royal Commission in the abovesaid report at p. 46 also suggested:

“To help to reduce the use of arrest we would also propose the introduction here of a scheme that is used in Ontario enabling a police officer to issue what is called an appearance notice. That procedure can be used to obtain attendance at the police station without resorting to arrest provided a power to arrest exists, for example to be fingerprinted or to participate in an identification parade. It could also be extended to attendance for interview at a time convenient both to the suspect and to the police officer investigating the case”

20. *In India, Third Report of the National Police Commission at p. 32 also suggested:*

“An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken

victims.

(ii) The accused is likely to abscond and evade the processes of law.

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines”

The above guidelines are merely the incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that

no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do.”

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

39. *Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds : the primary ground is that the offence alleged against the accused persons is very serious*

involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

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

45. *In Bihar Fodder Scam(Laloo Prasad case[Laloo Prasad v.State of Jharkhand, (2002) 9 SCC 372]) this Court, taking into consideration the seriousness of the charges alleged and the maximum sentence of imprisonment that could be imposed including the fact that the appellants were in jail for a period of more than*

six months as on the date of passing of the order, was of the view that the further detention of the appellants as pretrial prisoners would not serve any purpose.

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

A two Judge Bench of Hon'ble Supreme Court in **Arnab Manoranjan Goswami Vs. State of Maharashtra & Ors. 2020 SCC OnLine SC 964** while hearing petition seeking bail has dealt with question of jurisdiction of High Court under Article 226 of the Constitution and Section 482 of Cr.P.C. The Court has further dealt with question of human liberty and role of Courts. The Court has observed:

70. *More than four decades ago, in a celebrated judgment in State of Rajasthan v. Balchand.State of Rajasthan v. Balchand, (1977) 4 SCC 308: 1977 SCC (Cri) 594. , Krishna Iyer, J. pithily reminded us that the basic rule of our criminal justice system is “bail, not jail”.These words of Krishna Iyer, J. are not isolated silos in our jurisprudence, but have been consistently followed in judgments of this Court for decades. Some of these judgments are : State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2) and Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri)*

26 : (2012) 2 SCC (L&S) 397. . *The High Courts and courts in the district judiciary of India must enforce this principle in practice, and not forego that duty, leaving this Court to intervene at all times. We must in particular also emphasise the role of the district judiciary, which provides the first point of interface to the citizen. Our district judiciary is wrongly referred to as the “subordinate judiciary”. It may be subordinate in hierarchy but it is not subordinate in terms of its importance in the lives of citizens or in terms of the duty to render justice to them. High Courts get burdened when courts of first instance decline to grant anticipatory bail or bail in deserving cases. This continues in the Supreme Court as well, when High Courts do not grant bail or anticipatory bail in cases falling within the parameters of the law. The consequence for those who suffer incarceration are serious. Common citizens without the means or resources to move the High Courts or this Court languish as undertrials. Courts must be alive to the situation as it prevails on the ground—in the jails and police stations where human dignity has no protector. As Judges, we would do well to remind ourselves that it is through the instrumentality of bail that our criminal justice system's primordial interest in preserving the presumption of innocence finds its most eloquent expression. The remedy of bail is the “solemn expression of the humaneness of the justice system”. Arghya Sengupta and Ritvika Sharma, ‘Saharashri and the Supremes’, (The Wire, 23-6-2015) available at <<https://thewire.in/economy/saharashri-and-the-supremes>>. Tasked as we are with the primary responsibility of preserving the liberty of all citizens, we cannot countenance an approach that has the consequence of applying this basic rule in an inverted*

form. We have given expression to our anguish in a case where a citizen has approached this Court. We have done so in order to reiterate principles which must govern countless other faces whose voices should not go unheard.

72. The data on NJDG is available in the public realm. NJDG is a valuable resource for all High Courts to monitor the pendency and disposal of cases, including criminal cases. For Chief Justices of the High Courts, the information which is available is capable of being utilised as a valuable instrument to promote access to justice, particularly in matters concerning liberty. The Chief Justices of every High Court should in their administrative capacities utilise the ICT tools which are placed at their disposal in ensuring that access to justice is democratized and equitably allocated. Liberty is not a gift for the few. Administrative Judges in charge of districts must also use the facility to engage with the district judiciary and monitor pendency. As the data on NJDG makes clear, there is a pressing need for courts across the judicial hierarchy in India to remedy the institutional problem of bail applications not being heard and disposed of with expedition. Every court in our country would do well to remember Lord Denning's powerful invocation in the first Hamlyn Lecture, titled "Freedom under the Law". Sir Alfred Denning, "Freedom under the Law", the Hamlyn Lectures, First Series, available at <https://socialsciences.exeter.ac.uk/media/universityofexeterschoolofhumanitiesandsocialsciences/law/pdfs/Freedom_Under_the_Law_1.pdf>. :

"Whenever one of the Judges takes seat, there is one application which by long tradition has priority over all others. The counsel has but to say, 'My Lord, I have an application which concerns the liberty of the subject',

and forthwith the Judge will put all other matters aside and hear it....”

It is our earnest hope that our courts will exhibit acute awareness to the need to expand the footprint of liberty and use our approach as a decision-making yardstick for future cases involving the grant of bail.”

A three Judge Bench of Hon'ble Supreme Court in ***Narcotics***

Control Bureau vs. Mohit Aggarwal 2022 SCC Online SC 891, has held:

12. The expression “reasonable grounds” has come up for discussion in several rulings of this Court. In “[Collector of Customs, New Delhi v. Ahmadalieva Nodira](#)”⁵, a decision rendered by a Three Judges Bench of this Court, it has been held thus :-

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

of the alleged offence.” [emphasis added]

13. The expression “reasonable ground” came up for discussion in “State of Kerala and others Vs. Rajesh and others” 6 and this Court has observed as below:

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

A three Judge Bench of Hon'ble Supreme Court in **P. Chidambaram vs. Central Bureau of Investigation (2020) 13 SCC 337** held as under:

21. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:-

(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations

(vide Prahlad Singh Bhati v. NCT, Delhi and another (2001) 4 SCC 280).

22. There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner. At this stage itself, it is necessary for us to indicate that we are unable to accept the contention of the learned Solicitor General that “flight risk” of economic offenders should be looked at as a national phenomenon and be dealt with in that manner merely because certain other offenders have flown out of the country. The same cannot, in our view, be put in a straight-jacket formula so as to deny bail to the one who is before the Court, due to the conduct of other offenders, if the person under consideration is otherwise entitled to bail on the merits of his own case. Hence, in our view, such consideration including as to “flight risk” is to be made on individual basis being uninfluenced by the unconnected cases, more so, when the personal liberty is involved.”

A two Judge Bench of Hon'ble Supreme Court in **Prahlad Singh Bhati v. NCT, Delhi** (SCC pp. 284-85, para 8) has held:-

“8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of [the] evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of

the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words 'reasonable grounds for believing' instead of 'the evidence' which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage to have the evidence establishing the guilt of the accused beyond reasonable doubt."

A three Judge Bench of Hon'ble Supreme Court in **Union of**

India Vs. A.K. Najeer 2021 (3) SCC 713 has held:

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

thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

13. We may also refer to the orders enlarging similarly-situated accused under UAPA passed by this Court in Angela Harish Sontakke v. State of Maharashtra [Angela Harish Sontakke v. State of Maharashtra, (2021) 3 SCC 723] . That was also a case under Sections 10, 13, 17, 18, 18-A, 18-B, 20, 21, 38, 39 and 40(2) of the UAPA. This Court in its earnest effort to draw balance between the seriousness of the charges with the period of custody suffered and the likely period within which the trial could be expected to be completed took note of the five years' incarceration and over 200 witnesses left to be examined, and thus granted bail to the accused notwithstanding Section 43-D(5) of the UAPA. Similarly, in Sagar Tatyaram Gorkhe v. State of Maharashtra [Sagar Tatyaram Gorkhe v. State of Maharashtra, (2021) 3 SCC 725] , an accused under UAPA was enlarged for he had been in jail for four years and there were over 147 witnesses still unexamined.

17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such

provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

A three Judge Bench of Hon'ble Supreme Court in ***Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and another (2005) 5 SCC 294*** has held:

“ 38. 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....”

44. 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 futuro 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.

45. *It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.*

46. *The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in Sub-section (4) of [Section 21](#) of the Act, the Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the Court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.”*

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

While adjudicating appeals seeking bail, in view of mandate of stringent conditions of bail, judicial precedents qua normal offences and serious offences, court has to find out:

- (i) Whether there are reasonable grounds to believe that accused are not guilty of offence and reasonable grounds means “something more than prima facie grounds”
- (ii) There should be probable causes for believing that the accused is not guilty of alleged offence.
- (iii) Compliance of twin conditions contemplated by Section 43D of UAPA and 37 of NDPS is mandatory.
- (iv) What is length of custody, what is stage of trial and to what extent right of personal liberty guaranteed by article 21, in view of nature of allegations can be curtailed.
- (v) Whether accused are likely to be involved in same activities as alleged in challan.
- (vi) Whether presence of accused during trial would be available or there is possibility of flee from justice on the part of accused.
- (vii) What is likelihood of tampering of evidence and undue pressure on witnesses.
- (viii) What is possibility of conviction.
- (ix) How far interest of public at large would be jeopardised.

Findings & Conclusion:

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

In the challan, the appellants are subjected to provisions of UAPA apart from NDPS Act. Though different provisions of UAPA have been invoked yet we prime facie find that accused i.e. appellants before us are primarily accused of commission of offence punishable under the NDPS Act. The appellants as per allegations were involved in sale/purchase of drugs and for the said purpose, they came in the contact of those persons who in turn were in contact of persons involved in criminal activities including terrorist activities.

The appellants have been challaned under different provisions of IPC, NDPS Act and UAPA. The allegations of commission of offence punishable under IPC are not much serious, however, allegations of commission of offence punishable under NDPS Act and UAPA are serious. The provisions qua bail under NDPS Act as well UAPA are very strict. As per Section 37 of NDPS Act and 43 of UAPA, bail can be granted subject to compliance of twin conditions. For the sake of convenience, different provisions of NDPS Act and UAPA which are relevant for adjudication of the present appeals are reproduced as below:-

Sections 21, 24, 25, 27A, 37 and 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985

21. Punishment for contravention in relation to manufactured drugs and preparations.-- Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured

drug shall be punishable,

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(c) 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:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

24. Punishment for external dealings in narcotic drugs and psychotropic substances in contravention of section 12.--

Whoever engages in or controls any trade whereby a narcotic drug or a psychotropic substance is obtained outside India and supplied to any person outside India without the previous authorisation of the Central Government or otherwise than in accordance with the conditions (if any) of such authorisation granted under section 12, shall be punishable 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 may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

25. Punishment for allowing premises, etc., to be used for commission of an offence.--*Whoever, being the owner or occupier or having the control or use of any house, room,*

enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.

27A. Punishment for financing illicit traffic and harbouring offenders.--Whoever indulges in financing, directly or indirectly, any of the activities specified in sub-clauses (i) to (v) of clause (viii) of section 2 or harbours any person engaged in any of the aforementioned activities, shall be punishable 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:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

29. Punishment for abetment and criminal conspiracy.--

(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 (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which

(a) would constitute an offence if committed within India;

or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.

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.]

Sections 17, 18 and 20 of The Unlawful Activities (Prevention) Act, 1967

17 Punishment for raising funds for terrorist act. —

Whoever, in India or in a foreign country, directly or indirectly, raises or collects funds or provides funds to any person or persons or attempts to provide funds to any person or persons, knowing that such funds are likely to be used by such person or persons to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

18. Punishment for conspiracy, etc.—*Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for*

a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

20. Punishment for being member of terrorist gang or organisation.—Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.”

Findings qua all the appellants:

In the appeals under consideration, the common thread running through all the appeals is that there is no recovery of narcotic drugs from appellants, though, there are serious allegations that they collected or delivered huge quantity of heroin from one place to another place. There is no attachment of property though there are allegations that they have made properties out of proceeds of crime. The respondent under UAPA as well NDPS Act has failed to attach properties derived from commission of offence. The appellants are resident of State of Punjab and they are having their family staying in State of Punjab.

The prime evidence against appellants is call details record and oral statements of protected witnesses. It would not be just and fair to comment upon statements of protected witnesses which are not supplied to appellants, however, shown to us at the time of arguments. At this stage i.e. while adjudicating plea of the appellants seeking bail, it would be unfair to place heavy reliance upon these statements.

Appellants are in custody for the last 2½ years. There are total 209 prosecution witnesses as per list of prosecution witnesses, 86 material evidence as per list of material evidence and 188 documents as per list of

documents. Without blaming anyone, learned Special Judge in 2½ years has failed to frame charges and trial is pending at the stage of adjudication of application under Section 44 of UAPA. There is allegation of collection of cash and delivery thereof during April' 2020 when the entire country was facing complete lock down. It seems difficult to believe that appellants during lock down were able to freely move especially in a big city i.e. Amritsar .

There are three layers of accused i.e. (i) first layer: members of HM who are involved in anti-nation terrorist activities (ii) second layer: persons who are in touch with members of HM and (iii) third layer: who are in touch with second layer of accused and involved in activities relating to drugs.

Recently, a coordinate bench of this court in **Bikram Singh Majithia Vs State of Punjab (CRM-M-21391-2022 decided on 10.08.2022)** has granted bail where period of custody of accused was about 6 months, petitioner was alleged to have committed offences punishable under Sections 25, 27A and 29 of NDPS Act. The coordinate bench has granted bail after noticing judicial precedents relating to bail in case of allegation of commission of offence punishable under NDPS Act and factual matrix.

Similarly, a Coordinate Bench of this Court, consisting one of us (G.S. Sandhawalia J) in **Amarjeet Singh @ Amar Singh vs. National Investigation Agency (CRA-D- 226 of 2021)** had allowed the appeal and ordered to release appellant on bail. In the said case, the appellant was accused of commission of offence punishable under IPC and Explosive Substances Act, 1908 and matter was investigated by NIA. The court noticed

that there is custody of 2 years and 4 months, trial is not likely to conclude and further found that accusation is not prima facie true. The case of NIA was based upon call details record (CDR) of appellant.

The appellants herein are slapped with different provisions of UAPA apart from IPC and NDPS. Identical twin stringent conditions of bail are prescribed under both UAPA and NDPS, with slight difference that under UAPA findings qua possibility of involvement of accused in similar offence while on bail, is not required to be recorded. In the present case, UAPA is invoked against appellants, however, we prime facie find that appellants before us are not guilty of commission of offence under UAPA, though other accused like A-1, 11 and 13 who are members of HM may be.

Keeping in mind above common facts and figures, there is need to examine role of each individual and adjudicate their appeals.

A-3 (Maninder Singh @ Mani):

There is seizure of cash of Rs. 12,25,000/- from A-3 who has contended that the cash was collected by his brother and it was meant for marriage of their sister. There is further allegation that he has assisted his brother A-2 and a sum of Rs. 20 lakhs was recovered from him-A2 who was in direct contact with prime accused i.e. A-1 and A-10. The sum and substance of allegations against A-3 is confined to assisting his brother A-2 who has not preferred any proceedings seeking bail, before us yet.

The respondent had verified the fact that engagement of sister of A-3 took place and it was snapped on account of arrest of A-3 and his brother A-2. The appellant is brother of A-2 against whom there are quite serious allegations. From the reading of allegations against A-2, it transpires that being younger brother he might have or have not assisted his brother,

however, he does not seem to be prima facie directly involved in the commission of offence punishable under UAPA & NDPS Act. The extent and nature of involvement is a debatable issue and would be adjudicated during the course of trial which till date has not commenced due to non-framing of charges. There is neither allegation nor any argument that appellant was in direct contact of main culprits. The appellant is not involved in any other offence and he was a student at the time of arrest and there is no recovery of drugs from him. Sections 25, 27A and 29 of NDPS have been invoked against appellant. Section 27A is applicable to a person who indulges in financing or harbours any person engaged in financing. From the allegations and investigation, we find that even as per Respondent, the appellant assisted his brother who is involved in sale/purchase of heroin. Thus prima facie Section 27A is not applicable. Section 25 is applicable for allowing premises to be used for commission of an offence. The appellant as per investigation was staying with his father and other family members and he was a student, thus prima facie there is no occasion for the appellant to allow use of premises for commission of an offence. Section 29 is applicable for abetment of an offence and this section is out of rigour of Section 37. There is no seizure of alleged heroin and there are just oral evidences collected in the form of statements. Thus, there are reasonable grounds to believe that appellant was not involved in commission of an offence involving commercial quantity. In view of nature of allegations, absence of recovery of drugs, arrest of elder brother with cash coupled with allegations against him (A-2), stage of trial, custody period, absence of previous history etc., we deem it inappropriate to keep the appellant in the dungeon for further period. There are reasonable grounds to believe that appellant is not

prima facie involved in commission of an offence which attracts rigour of Section 37 of NDPS Act. It would be in the interest of justice, fairness and compliance of article 21 of Constitution of India, if appellant at this stage is emancipated on bail.

A-4 (Ranjit Singh @ Jitu @Giani:

There is allegation that he had collected/delivered heroin and minted money from the sale proceeds thereof whereas neither there is recovery of heroin from the appellant nor even a single property owned by him or his family members had been attached. In FIR No. 347 of 2014, as noted in challan, he had remained in custody for three months.

The appellant was a shop keeper and staying in Punjab with his family members. There are allegations of involvement in sale/purchase of drugs and disposal of sale proceeds thereof, however not even single property or single gm. of drug has been recovered from his possession. The respondent inspite of specific powers has failed to attach properties which are alleged to be made from illegal activities. There is allegation of involvement in FIR No. 347 dated 14.9.2014 under Section 21 NDPS Act, however, as pointed out by Ld. Counsel, appellant was released within 3 months and he vide judgment dated 14.2.2020 has been acquitted by Judge, Special Court, Taran Taran. Thus, registration of FIR 347 in 2014 cannot be a ground to hold that appellant was previously involved in the commission of offence punishable under the NDPS Act and that he does not deserve concession of bail.

Sections 8 read with 21, 23, 12 read with 24, 25, 27A and 29 of NDPS have been invoked against appellant. Section 27A is applicable to a person who is indulged in financing or harbours any person engaged in

financing. From the allegations and investigation, we find that even as per Respondent, the appellant was involved in sale/purchase of heroin. Thus, prima facie Section 27A is not applicable. Section 25 is applicable for allowing premises to be used for commission of an offence. The appellant as per investigation kept heroin in his shop. He is not accused of allowing anyone to use his premises. Section 29 is applicable for abetment of an offence and this section is out of rigour of Section 37. Section 12 read with 24 is applicable where transactions take place out of country whereas appellant is charged of delivery of heroin in India. Section 8 read with 21 and 37 is applicable where commercial quantity is involved. There is no seizure of alleged heroin and there are just oral evidences in the form of statements of other persons associated with investigation. Thus, there are reasonable grounds to believe that appellant was not involved in commission of an offence involving commercial quantity. Section 23 is applicable where there is import or export of drugs. There is neither seizure nor concrete documentary evidence of import of heroin on the part of appellant from Pakistan. There are allegations of dealing with heroin imported from Pakistan but there is no allegation of import from Pakistan.

There is no recovery of property, drugs, cash and other incriminating articles proving direct involvement of the appellant in the commission of alleged offence. The appellant is in custody for last two and half years, however, charges are not still framed. There is no likelihood of conclusion of trial in near future as number of witnesses and documents forming part of challan are numerous and voluminous. Therefore, it would be in the interest of justice, if appellant at this stage, is released on bail.

A-5 Jaswant Singh @ Jassa:

In case of A-5, there are allegations that he was involved in recce at Indo-Pak Border. There is no allegation that he collected or delivered narcotic drugs or proceeds of crime to or from anyone. The allegation against this appellant is confined to recce at Indo-Pak border and Sections 120B of IPC & 29 of NDPS Act were initially invoked against him. Both Sections 120B IPC and 29 NDPS postulate abetment of commission of an offence. There is allegation of commission of an offence under Section 20 of UAPA. Section 8 read with Section 21 of NDPS Act has been added in supplementary challan. Stringent conditions of Section 37 of NDPS are applicable if a person is accused of commission of an offence punishable under Section 19 or 24 or 27A of the Act and where quantity involved is commercial. In the case of appellant, in the challan under heading 'charge', Section 8 read with Section 21 and 29 of NDPS Act have been invoked and there is no allegation of commission of an offence punishable under Sections 19 or 24 or 27A. As per Section 29, a person is liable to same punishment for abetment which is prescribed for commission of offence abetted. There is no seizure of commercial quantity of drugs. In the absence of seizure of commercial quantity or un-rebuttable documentary evidence of transactions in commercial quantity, prima facie, rigour of Section 37 of NDPS is inapplicable and appellant is in custody for almost two and half years. Thus, it would not be just, fair and equitable to keep him in further custody especially when Special Judge has not framed charges. The appellant in FIR No. 81 dated 21.7.2019 was granted concession of anticipatory bail and there is no allegation of commission of offence under NDPS Act. The registration of un-connected criminal case cannot be ground to deny bail

under NDPS Act. Therefore, the appellant deserves to be released on bail.

A-9 Gursant Singh:

There is allegation that he had made huge property from proceeds of crime and he prior to present crime was involved in the commission of similar crimes under NDPS.

The appellant in FIR No. 122 dated 18.3.2020 was released on bail noticing the fact that he had been arrested on 2.7.2020 on the basis of a disclosure statement after bringing him from Central Jail, Barnala on the basis of production warrant. He had been acquitted in FIR No. 289 of 22.12.2004 under Sections 15, 61 and 85 of the NDPS read with Sections 411, 471 and 279 IPC on 25.2.2022 (Annexure A-4). In FIR No. 28 dated 18.2.2015, he has been released on interim bail vide order dated 17.4.2015. In brief, the appellant (A-9) in one FIR has already been acquitted whereas he is on bail in other two FIRs. The appellant has previous history of commission of identical nature of offences punishable under NDPS, thus it is highly improbable to hold that appellant would not indulge in same nature of activities in future. There are further allegations against appellant that he is in contact of accused A-10 and protected witnesses have disclosed about involvement of appellant. He after getting bail absconded in FIR No. 289 dated 22.12.2004. The appellant has procured Aadhar Card and PAN Card in the name of Lovedeep Singh and Gurpreet Singh. Thus, in view of criminal antecedents especially his involvement in other NDPS cases and rigour of Section 37 of NDPS Act & 43D of UAPA, it would not be appropriate to release appellant on bail. Thus, appeal of the appellant deserves to be dismissed.

Before parting with the judgment, we would hasten to add that

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

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

In the case in hand, the appellants to whom bail is hereby granted are in the judicial custody for last 2½ years which is sufficient period to snap link of appellants with his associates. Thus, there is compliance of intent and purport of Section 37 of NDPS Act.

In view of our above findings, appeals of Maninder Singh @ Mani (CRA-D-217 of 2021), Ranjit Singh @ Jitu @ Giani (CRA-D-81-2021) and Jaswant Singh @ Jassa (CRA-D-124-2022) are hereby allowed and they are directed to be released on bail subject to following conditions:

- i) Furnish bond of Rs. 10 lakh with two sureties of Rs. 10 lakh each.
- ii) The Appellants shall surrender their passports in the trial court, if they are holding these and are still with them.

- iii) The Appellants shall appear before trial court on each and every date unless exempted by court.
- iv) The Appellants shall appear before Investigating Officer as and when summoned.
- v) The Appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or who is cited as witness.
- vi) The Appellants shall not involve in any criminal activity and if during the pendency of trial, they are found involved in commission of any offence punishable under NDPS Act or UAPA, the prosecuting agency would be free to approach this court for recalling this order and cancellation of their bail.
- vii) The Appellants shall not sell, transfer or in any other manner create third party right over their immovable property

The appeal of Gursant Singh (CRA-247-DB-2022) is hereby dismissed.

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

A copy of sealed compendium containing deposition of the protected witnesses be handed over to Mr. Sukhdeep Singh Sandhu, Advocate, for the respondent-NIA.

(G.S.SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

12.10.2022
Paramjit

Whether speaking/reasoned	Yes
Whether Reportable	Yes