

CRA-D-432-2022(O&M)

Sr.No.216

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

CRA-D-432-2022(O&M)

Reserved: 25.01.2023

Date of Decision:15.02.2023

Gurjant SinghAppellants

versus

National Investigation Agency
.....Respondents

CORAM: Hon'ble Mr. Justice G.S.Sandhawalia
Hon'ble Ms. Justice Harpreet Kaur Jeewan

Present: Mr. Baldev Singh Maan, Advocate
for the appellants.

Mr. S.S.Sandhu, Special Prosecutor,
for the respondent-NIA.

Harpreet Kaur Jeewan, J.

1. Present appeal under Section 21(4) of the National Investigation Act, 2008 (hereinafter referred to as "the Act") has been filed by the appellant-Gurjant Singh whereby challenge to the order dated 17.02.2022 passed by learned Special Judge, NIA, S.A.S.Nagar, Mohali, vide which bail application of the appellant was dismissed in FIR RC No.23/2020/NIA/DLI dated 08.05.2020 registered under Section 10, 11, 13, 17, 18, 20 & 21 of UA(P) Act, 1967 (later on added Sections 120B, 419, 471, 489C IPC and

Sections 21, 23, 24, 25, 27A, 29, 31 of NDPS Act, at Police Station NIA, Delhi has been raised.

2. Prosecution case in brief is that on 25.04.2020 a secret information was received by Amar Nath, Inspector, Police Station Sadar, Amritsar that one Hilal Ahmed Shergojri who is an active member of a banned terrorist organization Hizbul Mujahideen (HM) and is a close associate of Riyaz Ahmed Naikoo A-13, who had come to Amritsar to collect funds on a truck bearing No.JK03-F-2261. That further on the directions of A-13 Riyaz Ahmed Naikoo, A-1 Hilal Ahmed has received money from an unknown person which will be used for carrying out terrorist activities and for disturbing peace in India and he has planned to go back to Kashmir on the same day. On the basis of the said information FIR No.135 dated 25.04.2020 was registered under Sections 10, 11, 13, 17, 18, 20 & 21 of Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "UAPA") and police party was able to arrest A-1 Hilal Ahmed Shergojri along with Rs.29 Lacs cash in his possession. Thereafter, investigation was conducted by NIA and the case was re-registered as RC-23/2020/NIA/DLI of 2020 dated 08.05.2020 registered under Sections 10, 11, 13, 17, 18, 20 & 21 of UA(P) Act. During the course of investigation 11 persons were arrested and as per prosecution the accused were part of the deep rooted conspiracy hatched by smuggler/terrorist based in Pakistan in association with smugglers based in Punjab who had found a terrorist gang to smuggle heroin into the country and then transmit the illicit proceed

thereof to Kashmir for use by the terrorist belonging to the banned terrorist Organisation Hizbul Mujahideen (HM). The alleged conspiracies were to threaten the unity, integrity, security of India by generating illicit funds through the sale of heroin and further sending these funds to Kashmir to promote terrorist activities and to Pakistan through Hawala channel.

2.1 Bail application filed by the appellant was dismissed by the Special Judge, NIA, Punjab S.A.S.Nagar(Mohali) vide order dated 17.02.2022 by observing that during the investigation 9 accused persons including the appellant were arrested. As per the prosecution, during the investigation, it has come on record that arrested persons were part of a deep rooted conspiracy hatched by smugglers/terrorist based in Pakistan in association with the smugglers based in Punjab and they are transporting the illicit proceeds of the heroin sold in India to Kashmir based terrorists of an organization namely Hizbul Mujahideen (HM) to further their unlawful activities. It was also observed that appellant-Gurjant Singh was a member of a terrorist gang and associated with accused Bikram Singh @ Bikramjit Singh @ Vicky (A-2) and accused Sarwan Singh (A-11). The accused Bikram Singh (A-2) used to supply heroin to appellant-Gurjant Singh @Sunny @ Ashish Gattu (A-15) who further used to sell heroin locally to collect the proceeds for Bikram Singh @ Vicky (A-2). It was also observed that Bikram Singh (A-2) also used to help them in arranging transportation and in buying luxury cars and there was likelihood of his absconding and

influencing the witnesses appearing in the case as he is released on bail.

2.3 After completion of the investigation challan was presented through Special Judge, NIA, S.A.S.Nagar, Mohali.

3 Learned counsel for the appellant has submitted that the appellant was not named in the FIR and he has been only nominated on the basis of disclosure statement of the co-accused. Nothing incriminating has been recovered from the appellant and there is no recovery, whatsoever in terms of any intoxicant, money or arms or any other material which could connect the appellant with any other terrorist organisation. No specific terrorist act has been attributed to him. It was further submitted that the appellant was in custody since 04.07.2021. The trial is going to take a sufficient time and even from the material collected by the prosecution it can be safely inferred that the accusations against the appellant are not even *prima facie* true. No case under UA(P), NDPS Act or Section 120-B IPC is made out against the appellant.

4. Learned counsel for the appellant vehemently submits that co-accused Maninder Singh @ Mani (A-3), Ranjit Singh @ Jeetu @ Giani and Jaswant Singh @ Jassa have already been granted bail as per order dated 12.10.2022 passed by this Court. On the ground of parity the appellant is also entitled to bail.

5. Detailed reply was filed by NIA and the learned counsel appearing for NIA submits that during investigation it was revealed that all the accused were part of deep rooted conspiracy hatched by

terrorists based in Pakistan in association with the terrorists based in India and appellant (A-15) is a member of the said gang. The terrorist gang took up the task to smuggle heroin into India from Pakistan and then distributing, selling and transporting the illicit proceeds of the heroin to Kashmir based terrorist organisation HM. It was submitted that during the investigation it has been established that appellant-Gurjant Singh (A-15) was a close accomplice to Bikram Singh @ Bikramjit Singh @ Vicky (A-2), Iqbal Singh @ Shera (A-10), Maninder Singh @ Mani (A-3) and Sarwan Singh (A-11). Appellant was involved in smuggling/selling of heroin locally in Amritsar city and nearby areas, which he used to procure from Bikram Singh @ Bikramjit Singh @ Vicky (A-2) for the same. It was further submitted that appellant was also part of a larger criminal conspiracy and used to collect heroin from Bikram Singh @ Bikramjit Singh @ Vicky (A-2). He has collected these consignments of heroin several times from him and handed over the proceeds of heroin to him. These proceeds were channelized to Kashmir to provide financial support for terror activities of banned terrorist organisation HM. It was further submitted that appellant was arrested on 04.07.2021 and thereafter, apart from identification of the photographs of his associates he voluntarily led the NIA team and pointed out the places where he received the heroin from Bikram Singh (A-2) at Sandhu Footwear, Amritsar whose owner is accused Ranjit Singh @ Ranjeet @ Rana @ Cheetah (A-6). During investigation, it also emerged that appellant also helped A-2 and A-

11 in purchase of vehicles from local dealers. Apart from this, 4 other criminal cases under various provisions of NDPS Act were already registered against the appellant. There is every possibility of running away of the appellant in case he is released on bail and to also threaten the prosecution witnesses.

6. Copy of the 3rd Supplementary Charge-sheet in N/A case no.23/2020/NIA/DC dated 08.05.2020 which was presented against the appellant under Section 173 Cr.P.C has been placed on record as Annexure 3, reveals the role attributed to the appellant:-

***“Role, activities and offences established against
accused Gurjant Singh @ Sunny @ Ashish Gattu
(A-15)***

During investigation it emerged that accused Gurjant Singh @ Sunny @ Ashish Gattu (A-15) was member of a terrorist gang & associated with accused Bikram Singh @ Bikramjit Singh @ Vicky (A-2) and accused Sarwan Singh (A-11). Accused Bikram Singh @ Bikarmjit Singh @ Vicky (A-2) used to supply Heroin to accused Gurjant Singh @ Sunny @ Ashish Gattu (A-15) who further used to sell heroin locally and collect the proceeds for Bikram Singh @ Vicky (A-2). He also used to help them in arranging transportation and in buying luxury cars. Role of Gurjant Singh @ Sunny @ Ashish Gattu (A-15) has emerged as a smuggler of

heroin and an important member of the terrorist gang.”

7. Regarding the past criminal antecedents of the appellant it was submitted that four other FIRs under NDPS Act have been registered against the appellant in District Amritsar.

8. We have considered the aforesaid submissions. We are presently only considering the bail matter and keeping in mind the provision of Section 45(D)(5) of the UAPA, it has to be seen whether accusation against the appellant is *prima facie* true. Undoubtedly, bail proceedings under special enactment will have to be viewed as distinct and courts are duty bound to refuse the bail where the suspect is *prima facie* believed to be guilty. We are also conscious of the fact that the charges levelled against the appellant are grave. However, in view of the submissions made by learned counsel for the appellant and learned counsel for NIA a passing reference is required to be made to the facts and circumstances collected during investigation in this case and the antecedents of the appellant.

9. Perusal of the report under Section 173 Cr.P.C which was submitted in the Court in the shape of 3rd Supplementary Charge-Sheet indicate that the only allegation against the appellant is that he used to collect heroin from accused Bikram Singh @ Bikramjit Singh @ Vicky (A-2), sell the same locally in Amritsar and around and returned the proceeds to his co-accused A-2. Apart from this it has been alleged that he used to help his co-accused Bikram Singh (A-2) and Sarwan Singh (A-11) in buying luxury cars.

At the time when the appellant was arrested and even thereafter, no recovery has been effected from him. Neither the recovery of heroin nor recovery of any weapon or any other incriminating material has also been effected from him. There are no allegations against him that he has direct links with the co-accused Hilal Ahmed Shergojri (A-1) who is an active member of the banned terrorist organisation, HM who was arrested by the police along with Rs.29 lacs cash in his possession. It is yet to be proved during trial as to whether the appellant is a member of any banned terrorist organisation. It is also a matter of trial as to whether the appellant has direct links with the banned terrorist organisation HM or with its active member Hilal Ahmed A-1. It is also a matter of evidence as to whether the appellant is a part of any conspiracy which the banned terrorist organisations are alleged to be hatching by way of supply of heroin in India and using its sale proceeds for illegal activities in Pakistan.

10. Investigation is already complete, and Challan has already been presented in the Court and the appellant is facing trial but not yet been charge sheeted. The conclusion of the trial is going to take a long time, as there are 209 prosecution witnesses.

11. The co-accused of the appellant namely Maninder Singh @ Mani (A-3), Ranjit Singh @ Jeetu @ Giani and Jaswant Singh @ Jassa have been granted the concession of bail vide order dated 12.10.2022, in CRA-D-217 of 2021.

12. So far as the other cases registered against the appellant are concerned, learned counsel for the appellant has placed on record

the details of the said cases by way of filing CRM No.49963 of 2022 wherein it has been informed that FIR No.189 dated 13.09.2017 at Police Station Cantonment, Amritsar is regarding the recovery of 10 gms of heroin whereas FIR No.239 dated 17.06.2016 at Police Station Civil Lines, Amritsar and FIR No.109 dated 09.10.2013 at Police Station Islamadad, Amritsar are pertaining to the alleged recoveries of 4 gms of heroin and FIR No.121 dated 15.06.2020 at Police Station Chheharta, Amritsar is regarding the alleged recovery of 50 grams of heroin. Appellant has already been granted bail in FIR No.121 whereas he has been acquitted in FIR NO.189 and has been sentenced to 21 days and fine in FIR No.239 and there are no allegations regarding huge quantities or commercial quantities of intoxicants whatsoever, recovered from the appellant.

13. Regarding the bar against the grant of bail under Section 43D(5) of the UA(P) Act, It has been observed by the Hon'ble Supreme Court of India in the case of ***Union of India vs. K.A.Najeeb, 2021(2) RCR (Criminal) 145***, that presence of statutory restrictions like 43D(5) of the UA(P) Act *per se* does not oust ability of Constitutional Courts to grant bail on ground of violation of Part III of the Constitution. The observation by the Hon'ble Supreme Court are as under:-

“13. 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 (“NDPS”) which too have somewhat rigorous conditions for grant of bail, this

Court in *Paramjit Singh v. State (NCT of Delhi)*⁷, *Babba alias Shankar Raghuman Rohida v. State of Maharashtra* and *Umarmia alias Mamumia v. State of Gujarat*⁹ 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.

14. We may also refer to the orders enlarging similarly situated accused under the UAPA passed by this Court in *Angela Harish Sontakke v. State of Maharashtra*¹⁰. That was also a case under Sections 10, 13, 17, 18, 18A, 18B, 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 UAPA. Similarly, in [Sagar Tatyaram Gorkhe v. State of Maharashtra](#)¹¹, an accused under the UAPA was enlarged for he had been in jail for four years and there were over 147 witnesses still unexamined.

15. The facts of the instant case are more egregious than these two abovementioned instances. Not only has the respondent been in jail for much more than five years, but there are 276 witnesses left to be examined. Charges have been framed only on 27.11.2020. Still further, two opportunities were given to the appellant-NIA who has shown no inclination to screen its endless list of witnesses. It also deserves mention that of the thirteen coaccused who have been convicted, none

have been given a sentence of more than eight years' rigorous imprisonment. It can therefore be legitimately expected that if found guilty, the respondent too would receive a sentence within the same ballpark. Given that two third of such incarceration is already complete, it appears that the respondent has already paid heavily for his acts of fleeing from justice.

16. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court [Legal Aid Committee Representing Undertrial Prisoners v. Union of India](#)¹², it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.

17. As regard to the judgment in [NIA v. Zahoor Ahmad Shah Watali](#) (supra), cited by learned ASG, we find that it dealt with an entirely different factual matrix. In that case, the High Court had re appreciated the entire evidence on record to overturn the Special Court's conclusion of their being a prima facie case of conviction and concomitant rejection of bail. The High Court had practically conducted a mini trial and determined admissibility of certain evidences, which

exceeded the limited scope of a bail petition. This not only was beyond the statutory mandate of a prima facie assessment under [Section 43D\(5\)](#), but it was premature and possibly would have prejudiced the trial itself. It was in these circumstances that this Court intervened and cancelled the bail.

18. It is thus clear to us that the presence of statutory restrictions like [Section 43D \(5\)](#) of UAPA per se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like [Section 43D \(5\)](#) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

19. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have out rightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence

of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.

20. Yet another reason which persuades us to enlarge the Respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS. Unlike the NDPS where the competent Court needs to be satisfied that *prima facie* the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such pre-condition under the UAPA. Instead, Section 43-D(5) of UAPA merely provides another possible ground for the competent Court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion etc.”

14. Keeping in view the allegations against the appellant and the fact that he is in custody for about 19 months w.e.f 04.07.2021, it is a fit case where he is to be released on bail during trial and even on the ground of parity with his co-accused who have already been granted bail vide order dated 12.10.2022. Hence, the appellant is entitled to grant of concession of bail.

15. Consequently, the present appeal is allowed and he is directed to be released on bail subject to following conditions:-

- i) Furnish bond with two sureties to the satisfaction of the trial court.
- ii) The Appellant shall surrender his passport in the trial court, if he is holding the same with him.
- iii) The Appellant shall appear before trial court on each and every date unless exempted by court.

- iv) The Appellant shall appear before Investigating Officer as and when summoned.
- v) The Appellant 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 Appellant shall not involve in any criminal activity and if during the pendency of trial, he is found involved in commission of any offence punishable under NDPS Act or UA(P) Act, the prosecuting agency would be free to approach this court for recalling this order and cancellation of his bail.
- vii) The Appellant shall not sell, transfer or in any other manner create third party right over their immovable property.

(G.S.Sandhawalia)
Judge

(Harpreet Kaur Jeewan)
Judge

15.02.2023
ShivaniKaushik

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