

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 19th December, 2022

Pronounced on: 05th January, 2023

+ BAIL APPLN. 991/2022
JUMAH KHAN

..... Petitioner

Through: Mr. Shiv Chopra, Ms. Aadhya
Khanna and Mr. Nikhil
Srivastava, Advocates

versus

THE STATE GOVT. OF NCT OF DELHI Respondent

Through: Mr. Narinder Jit Singh Bajwa,
APP for the State along with Mr.
Shivesh Kaushik, Advocate.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. By this petition, the petitioner is seeking regular bail in FIR No. 26 of 2014, registered at PS Special Cell under Sections 21/29 NDPS Act.

2. The facts as per the FIR are that pursuant to an information received on 23rd June 2014, that Afghan nationals residing at Lajpat Nagar, Arhar colony and other places in Delhi were running a macro-drug cartel, informants were deployed at various places to identify these drug traffickers. Based upon subsequent specific information that there would be a collection of consignment of drugs opposite Oberoi Hotel flyover, Delhi, and pursuant to information being conveyed to the ACP, a raid was directed to be conducted. The information was lodged *vide*

DD No. 15 at 2.45 p.m. and submitted before the Inspector in charge in compliance with Section 42 NDPS Act. Subsequently, when the reading team reached the spot, opposite Oberoi Hotel flyover, they found a private Maruti car parked on Lodi Road near Amir Khushro Park. One person came on foot from the park along with a black and grey colour bag and stood near a streetlight pole and was identified by the informer as Jumah Khan, a resident of Afghanistan (the petitioner herein). Later another person came who was identified by the informer as Arif Ali, a resident of Rajasthan. Both started talking to each other and the raiding party advanced and apprehended them. After due compliance of Section 50 NDPS Act, search of Arif Ali revealed a transparent polythene parcel containing heroin of about 50g. Subsequently, the petitioner was also searched and his black grey handbag was found having 72 capsules of heroin, found to be weighed 682g. Both the petitioner and Arif Ali were implicated for offences punishable under Sections 21/29 NDPS Act and a *rukka* was sent for registration of the case. During the investigation, samples were deposited at FSL Rohini and the expert opined that it was heroin. Charge-sheet was filed before the learned Trial Court on 10th December 2014. The supplementary charge sheets were filed on 21st July 2016 and 19th April 2018 (*despite subsequently after the charges had been framed*) and charges were framed in July 2015.

3. The learned counsel for the petitioner contended that the petitioner had been in custody since 23rd June 2014, and had been in custody as an undertrial for about 8 years and 5 months. This was also evident from the Nominal Roll on record of this Court. The learned counsel further contended that the trial was still to conclude and prosecution witnesses were yet to be examined, and therefore there was no guarantee of an expedited conclusion of the trial. In the meantime, the petitioner had

already suffered 8½ years of incarceration, which was more than half the sentence that could be visited on the petitioner assuming that he would be convicted. Considering it was a commercial quantity of heroin, the minimum sentence that would be visited on the petitioner would be 10 years and a fine of 1 lakh. The learned counsel for the petitioner, in support of the plea of bail on the grounds of delay in trial and a long period of incarceration, relied on *inter alia* the following decisions of the Hon'ble Supreme Court and this Court:

Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731; ***Manoj Kumar Singh v. The State of West Bengal***, SLP (Crl) No. 4711-4712/2020 *vide* order dated 06.10.2021; ***Anil Kumar v. State***, 2022 SCC OnLine Del 778; ***Gurmito v. CBI***, 2022 SCC OnLine Del 2316; ***Thana Singh v. Central Bureau of Narcotics***, (2013) 2 SCC 603 and ***Rakesh Kumar Bhola v. Directorate of Revenue***, 2022 SCC OnLine Del 3502.

4. Responding to the contentions raised by the counsel for the petitioner, the learned APP stated that the prosecution was not at fault for the delay in trial and the charges having been framed, the petitioner could not get the benefit of section 37 NDPS Act considering the facts of the case. The learned APP also adverted to the decision by the Hon'ble Supreme Court in ***Narcotics Control Bureau v Mohit Agarwal***, (2022) SCC OnLine SC 891 in support of their submissions.

5. It would be apposite before addressing the contentions of the parties to first advert to various decisions which have been referred to and others which are relevant in this context. For ease of reference, relevant extracts from each of these decisions are also supplied as under.

5.1 *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India*, (1994) 6 SCC 73. Dealing with a petition under Article 32 of the Constitution of India by the Supreme Court Legal Aid Society regarding delay in disposal of cases under the NDPS Act and its impact on undertrials, the Hon'ble Supreme Court passed the following directions for cases in which accused are in jail and trials were delayed, on the anvil of Article 21 and 14 of the Constitution of India, notwithstanding Section 37 of the NDPS Act:

“15. ...We, therefore, direct as under:

(i) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount.

(ii) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for like amount.

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

(iv) Where an undertrial accused is charged for the commission of an offence punishable under Sections 31 and

31-A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order.

The directives in clauses (i), (ii) and (iii) above shall be subject to the following general conditions:

(i) The undertrial accused entitled to be released on bail shall deposit his passport with the learned Judge of the Special Court concerned and if he does not hold a passport he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. In the latter case the learned Special Judge will, if he has reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the undertrial accused;

(ii) the undertrial accused shall on being released on bail present himself at the police station which has prosecuted him at least once in a month in the case of those covered under clause (i), once in a fortnight in the case of those covered under clause (ii) and once in a week in the case of those covered by clause (iii), unless leave of absence is obtained in advance from the Special Judge concerned;

(iii) the benefit of the direction in clauses (ii) and (iii) shall not be available to those accused persons who are, in the opinion of the learned Special Judge, for reasons to be stated in writing, likely to tamper with evidence or influence the prosecution witnesses;

(iv) in the case of undertrial accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner-accused belongs, that the said accused shall not leave the country and shall appear before the Special Court as and when required;

(v) the undertrial accused shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special Judge;

(vi) the undertrial accused may furnish bail by depositing cash equal to the bail amount;

(vii) *the Special Judge will be at liberty to cancel bail if any of the above conditions are violated or a case for cancellation of bail is otherwise made out; and*
 (viii) *after the release of the undertrial accused pursuant to this order, the cases of those undertrials who have not been released and are in jail will be accorded priority and the Special Court will proceed with them as provided in Section 309 of the Code.”*

(emphasis supplied)

5.2 In ***Thana Singh v. Central Bureau of Narcotics***, (2013) 2 SCC 590, the Hon’ble Supreme Court noted that trial in NDPS cases took exceptional time due to unavailability of prosecution witnesses which are usually officers of various different agencies:

“12. The Narcotics Control Board also pointed out that since operations for prevention of crimes related to narcotic drugs and substances demands coordination of several different agencies viz. Central Bureau of Narcotics (CBN), Narcotics Control Bureau (NCB), Department of Revenue Intelligence (DRI), Department of Customs and Central Excise, State Law Enforcement Agency, State Excise Agency to name a few, procuring attendance of different officers of these agencies becomes difficult. On the completion of investigation for instance, investigating officers return to their parent organisations and are thus, often unavailable as prosecution witnesses. In the light of the recording of such official evidence, we direct the courts concerned to make most of Section 293 of the Code of Criminal Procedure, 1973 and save time by taking evidence from official witnesses in the form of affidavits.”

5.3 Further in ***Thana Singh v. Central Bureau of Narcotics***, (2013) 2 SCC 603, the Hon’ble Supreme Court again noted that:

“4. Time and again, this Court has emphasised the need for speedy trial, particularly when the release of an undertrial on bail is restricted under the provisions of the statute, like in the present case under Section 37 of the NDPS Act. While considering the question of grant of bail to an accused facing trial under the NDPS Act in Supreme Court

Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India [(1994) 6 SCC 731 : 1995 SCC (Cri) 39] this Court had observed that though some amount of deprivation of personal liberty cannot be avoided in such cases, but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 of the Constitution would receive a jolt. It was further observed that after the accused person has suffered imprisonment, which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21. We regret to note that despite it all, there has not been visible improvement on this front.

5. Bearing in mind these observations and having regard to the fact that in the present case the appellant has been in custody for more than 12 years and seemingly there being no prospect of the conclusion of trial in the near future, we are of the opinion that it is a fit case where he deserves to be admitted to bail forthwith.”

(emphasis supplied)

5.4 In *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713 the Hon’ble Supreme Court affirmed the decision in *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India* (*supra*) and held that statutory restrictions *per se* do not oust the ability of constitutional courts to grant bail on grounds of violation of Part III of the Constitution of India. In context of the NDPS Act is stated:

“19. 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 Act. Unlike the NDPS Act 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 precondition under UAPA. Instead, Section 43-D(5) of the 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 absconson, etc.”

5.5 The Hon’ble Supreme Court in **Manoj Kumar Singh v. The State of West Bengal**, SLP (Crl) No. 4711-4712/2020 vide order dated 06.10.2021 followed the directives in **Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India** (*supra*) and granted bail.

“...It is alleged that the petitioners Manoj Kumar Singh (A-3) and Sanjay Singh (A-7) alongwith seven others were transporting 9310 Kgs of Ganja in the carrier truck which was escorted by a white coloured Maruti Gypsy. A Gypsy and a truck were intercepted and the material were recovered from the truck. It is also alleged that accused were dressed in Army Uniform and were carrying firearms with them. On the aforesaid allegations, the complaint was registered on 30.01.2014.

Mainly it is the case of the petitioners that by this time they have completed more than seven years in judicial custody and in view of the judgment of this Court in the case of “Supreme Court Legal Aid Committee Representing Undertrial Prisoners Vs. Union of India & Ors.” reported in (1994) 6 SCC 731, they are entitled for grant of bail, as they have served more than five years under the judicial custody...”

5.6 More recently in **Satender Kumar Antil v. CBI**, (2022) 10 SCC 51, the Hon’ble Supreme Court while dealing with issues of bail and undertrials, adverted to Section 436A CrPC stated as under:

“64. Under this provision, when a person has undergone detention for a period extending to one-half of the maximum period of imprisonment specified for that offence, he shall be released by the court on his personal bond with or without sureties. The word “shall” clearly denotes the mandatory compliance of this provision. We do feel that there is not even a need for a bail application in a case of this nature particularly when the reasons for delay are not

attributable against the accused. We are also conscious of the fact that while taking a decision the Public Prosecutor is to be heard, and the court, if it is of the view that there is a need for continued detention longer than one-half of the said period, has to do so. However, such an exercise of power is expected to be undertaken sparingly being an exception to the general rule. Once again, we have to reiterate that "bail is the rule and jail is an exception" coupled with the principle governing the presumption of innocence. We have no doubt in our mind that this provision is a substantive one, facilitating liberty, being the core intendment of Article 21..."

(emphasis supplied)

Further dealing with various categories of cases, the Hon'ble Supreme Court dealt with *inter alia* cases under special acts including NDPS as Category C and stated as under:

"86. Now we shall come to Category C. We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code."

(emphasis supplied)

5.7 The High Court of Calcutta *In Re: Sanawar Ali*, 2020 SCC OnLine Cal 3261 has followed the directives in *Supreme Court Legal*

Aid Committee (Representing Undertrial Prisoners) v. Union of India
(*supra*) and granted bail.

“13. In light of the aforesaid discussion, we are of the view that the directives in Supreme Court Legal Aid Committee (Supra) applies with full force to the facts of this case and the petitioner ought to be released on bail on the score of inordinate delay in trial infracting his fundamental rights under Articles 14 and 21 of the Constitution.”

(emphasis supplied)

5.8 This Court in ***Anil Kumar v. State***, 2022 SCC OnLine Del 778 took the view that the directives in ***Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India*** (*supra*) were not meant to apply as a one-time measure as was being contended by the State on the basis of para 16 of that judgement. This Court held instead that these directives would apply as a one-time measure in all cases in which the accused persons were in jail and their trials had been delayed.

“11. It is the contention of the learned Counsel for the Petitioner that as the Petitioner herein has been accused of offences punishable under Sections 20/29 of the NDPS Act and has been in custody for almost eight years till date, he is squarely covered by the aforementioned judgment and is entitled to be released. This has been opposed by the learned APP who relies upon paragraph 16 of the judgment to state that the directions were intended to operate as a one-time measure for the case therein and were not intended to apply to all subsequent cases of a like nature. For ease of comprehension, the said paragraph is as under:

*“16. We may state that the above are intended to operate as **one-time directions** for cases in which the accused persons are in jail and their trials are delayed. They are not intended to interfere with the Special Court's power to grant bail under Section 37 of the Act. The Special Court will be free to exercise*

that power keeping in view the complaint of inordinate delay in the disposal of the pending cases. The Special Court will, notwithstanding the directions, be free to cancel bail if the accused is found to be misusing it and grounds for cancellation of bail exist. Lastly, we grant liberty to apply in case of any difficulty in the implementation of this order.”
(emphasis supplied)

12. *A bare perusal of paragraph 16 indicates to this Court that the directions were not meant to be employed as one-time directions in the said case, but were meant to apply as a one-time measure in all cases in which the accused persons were in jail and their trials had been delayed. The intention of paragraph 16 was to convey that despite the absence or presence of delay in trial in a case, the Special Court was still free to exercise its power to grant bail under Section 37 of the NDPS Act. Furthermore, if the Special Court also retained the power to cancel bail if the accused was found to be misusing the same. The directions were certainly not, as the learned APP has submitted, meant to only apply in the case therein, but were directions that were to be followed by Courts in all cases pertaining to NDPS wherein the accused had been subjected to prolonged delay in their trials.”*

This decision was challenged before the Hon’ble Supreme Court in ***State v. Anil Kumar @ Nillu***, SLP (Crl.) Diary No. 25615/2022 and the SLP was dismissed *vide* order dated 14.10.2022.

Further in this case this Court had granted bail where 2.210 kg of *charas/hashish* was recovered and the accused had been in custody for almost eight years. This Court held:

“16. *Therefore, fair, just and reasonable procedure is implicit in Article 21 and it creates a right in the accused to be tried speedily. This Court has consistently observed that while Courts must remain cognizant of the deleterious impact of drugs on society, it is also important to keep in mind that deprivation of personal liberty without the assurance of speedy trial contravenes the principles*

enshrined in our Constitution. In the instant case, the Petitioner has been incarcerated for almost eight years now, i.e. since 27.03.2014, for an offence that is punishable with a minimum imprisonment of ten years. This is an egregious violation of an accused's right to personal liberty and right to speedy trial as, in the off-chance that the Petitioner is acquitted, it would entail an irretrievable loss of eight years of his life that cannot be compensated. Whether or not the Petitioner played an active role in the commission of the offence of drug trafficking and supply is a matter of trial and cannot justify the prolonged incarceration of the Petitioner.

17. In light of the above, applying the law that has been laid down by the Supreme Court in *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India* (supra) and flowing from Section 37 of the NDPS Act which governs the powers pertaining to grant of bail, this Court is of the opinion that the instant case is fit for grant of bail...”

(emphasis supplied)

5.9 This Court in ***Gurmito v. CBI***, 2022 SCC OnLine Del 2316 also followed the directives in ***Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India*** (supra) and granted bail.

“9. According to me, and also the interpretation of a coordinate bench of this Court, the Hon'ble Supreme Court in para 16 of the *Supreme Court Legal Aid Committee (supra)* directed that in cases where accused persons are in jail and their trials are delayed inordinately they may be released on bail where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, and they have been in jail for not less than five years. It was not a one-time measure in the facts of that case, but was meant to apply as one-time measure in all cases where the undertrials are in jail and the conclusion of their trial is nowhere in sight.

10. In para 16 the Hon'ble Supreme Court further directed that the observations made hereinabove are not intended to interfere with Special Courts power to grant bail u/s 37 of the Act meaning thereby that the Special Courts u/s 37 can grant bail notwithstanding the above conditions i.e. the Special Courts are at liberty to grant bail even prior to having undergone half of the minimum sentence. The Hon'ble Supreme Court further in para 16 has also indicated that the Special Courts are always free to cancel the bail if the accused is found to be misusing the liberty of bail."

(emphasis supplied)

5.10 Bail was also granted by this Court in **Sarvan Kumar v. State (NCT of Delhi)**, 2022 SCC OnLine Del 2079 where 21 kgs of ganja was recovered and the accused had remained in custody for more than seven years and 11 out of 24 witnesses were examined.

"12. The rigors of Section 37 of the NDPS Act would thus not come in the way while dealing with a bail application moved by an undertrial who has remained in custody for more than half of the minimum sentence prescribed."

(emphasis supplied)

5.11 Bail was also granted by this Court in **Ejike Jonas Orji v. Narcotics Control Bureau**, 2022 SCC OnLine Del 1770 where 265 grams of heroin was recovered and the accused had remained in custody for almost 8 years and 14 out of 20 witnesses were examined.

"25. For the reasons aforesaid, as the applicant has been in custody for eight years already, six PWs are yet to be examined, and on the consideration of the various factors noted above, including the provision of Section 37 of the Act, as interpreted in the above judgments of the Supreme Court and this Court, I am of the view that the applicant is entitled to be released on bail."

5.12 This Court, more recently, in **Rakesh Kumar Bhola v. Directorate of Revenue**, 2022 SCC OnLine Del 3502 where 275 kg of Pseudoephedrine Hydrochloride had been fraudulently diverted and the accused had remained in custody for more than six years and 9 out of 53 witnesses were examined, granted bail and noted that:

“18. The rigors of Section 37 of the NDPS Act would thus not come in the way while dealing with an application for bail moved by an undertrial prisoner who has remained in custody for more than half of the minimum sentence prescribed.”

5.13 The State relied upon a decision of the Hon’ble Supreme Court denying bail in **Narcotics Control Bureau v. Mohit Aggarwal**, 2022 SCC OnLine SC 891 where 6.64 lakhs tablets of different psychotropic substances including Tramadol weighing around 328.82 Kgs and other psychotropic substances were recovered and the accused had remained in custody for a period of 1 year 3 months. The Hon’ble Supreme Court observed:

“18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”

(emphasis supplied)

5.14 Also in **Narcotics Control Bureau v. Kishan Lal**, (1991) 1 SCC 705, as relied upon by the State, the Hon’ble Supreme Court held:

“6. Section 37 as amended starts with a non-obstante clause stating that notwithstanding anything contained in the Code of Criminal Procedure, 1973 no person accused of an offence prescribed therein shall be released on bail unless the conditions contained therein were satisfied. The NDPS Act is a special enactment and as already noted it was enacted with a view to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances. That being the underlying object and particularly when the provisions of Section 37 of NDPS Act are in negative terms limiting the scope of the applicability of the provisions of CrPC regarding bail, in our view, it cannot be held that the High Court's powers to grant bail under Section 439 CrPC are not subject to the limitation mentioned under Section 37 of NDPS Act. The non-obstante clause with which the section starts should be given its due meaning and clearly it is intended to restrict the powers to grant bail. In case of inconsistency between Section 439 CrPC and Section 37 of the NDPS Act, Section 37 prevails...

...As already noted, Section 37 of the NDPS Act starts with a non-obstante clause stating that notwithstanding anything contained in the Code of Criminal Procedure, 1973 no person accused of an offence prescribed therein shall be released on bail unless the conditions contained therein are satisfied. Consequently the power to grant bail under any of the provisions of CrPC should necessarily be subject to the conditions mentioned in Section 37 of the NDPS Act.”

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(emphasis supplied)

6. What can be culled out and is evident from these decisions listed above is that the Hon'ble Supreme Court has in 1994 in ***Supreme Court Legal Aid Committee*** (*supra*) enunciated certain principles/directives which *inter alia* provide that if an undertrial is charged for an offence under the NDPS Act punishable and the trial is delayed and the accused has already undergone almost half of the sentence prescribed (or the minimum if there is a range provided) then he should be entitled for

being released on bail subject to conditions. Directive (iii), for example, provides that where minimum imprisonment of ten years and a minimum fine of Rupees one lakh is prescribed, such an undertrial shall be released on bail if he has been in jail for not less than five years on the condition that he furnishes bail in the sum of Rupees one lakh with two sureties for like amount. This principle is further buttressed by another decision of the Hon'ble Supreme Court in *Satender Kumar Antil* (*supra*) where it was held when dealing with cases of category 'C' (Special Acts) that provisions contained in Sections 436A Cr.P.C. would apply to Special Acts as well in the absence of any specific provision. It was specifically stated by the Hon'ble Supreme Court that "*the rigor as provided under section 37 NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person*". The jurisprudential crux of this principle being enunciated by the Hon'ble Supreme Court is that "*bail is the rule and jail is an exception*" and that there is a principle of presumption of innocence, the core intendment being Article 21 of the Constitution of India which guarantees right to personal liberty and right to speedy trial. In this context, the decisions in *Kishan Lal* (*supra*) of the Hon'ble Supreme Court would not have relevance since the principles enunciated in *Supreme Court Legal Aid Committee* (*supra*) and endorsed in *Satender Kumar Antil* (*supra*) would hold ground. These principles have been followed *inter alia* by this Court in *Gurmito v. CBI* (*supra*), *Anil Kumar v. State* (*supra*), *Sarvan Kumar v. State* (*supra*), *Ejike Jonas Orji v. Narcotics Control Bureau* (*supra*).

7. Adverting now to the decision by the Hon'ble Supreme Court in *Mohit Aggarwal* (*supra*) where it was held that that the length of custody in itself cannot be a persuasive ground for relief under Section

37 NDPS Act, It is noticed on a reading of the decision of the Hon'ble Supreme Court in ***Mohit Aggarwal (supra)*** that the facts in the case involved an extremely huge amount of 6.64 lakhs tablets of different psychotropic substances including Tramadol weighing around 328.82 Kgs and other psychotropic substances and the accused had remained in custody for a period of 1 year 3 months. It is evident that the facts in ***Mohit Aggarwal (supra)*** did not involve a case of NDPS accused in custody for at least half the minimum sentence prescribed for the offence and therefore, the Hon'ble Supreme Court in that decision did not traverse through the principles enunciated in the decision of ***Supreme Court Legal Aid Committee (supra)***. Nor did it have the benefit of the decision of the Hon'ble Supreme Court in ***Satender Kumar Antil (supra)*** which had been pronounced 8 days prior. The decision in ***Mohit Aggarwal (supra)*** was limited to the appreciation of the merits of the case in rubric of Section 37 NDPS Act for the purpose of dealing with application of bail.

8. In the facts of this case, it is evident that the petitioner was allegedly found in possession of 682 grams of heroin for which he is charged. This being a commercial quantity would invite a minimum sentence of 10 years and a fine of 1 lakh rupees extendable to 20 years and a fine of 2 lakh rupees. However, without adverting to the merits of the matter, it is evident that the petitioner has spent more than half period of the minimum sentence of 10 years and the trial is expected to take more time and not conclude in the near future, therefore, the principles enunciated by the Hon'ble Supreme Court will directly apply to the facts in this case and would entitle the petitioner to bail subject to certain conditions.

9. Consequently, the petitioner is directed to be released on bail on his furnishing a personal bond in the sum of Rs. 1,00,000/- with two sureties of the like amount subject to the satisfaction of the Learned Trial Court, further subject to the following conditions:

- i) Petitioner will not leave the country without prior permission of the Learned Trial Court and will deposit his passport with the Learned Trial Court. The learned Trial Court shall also requisition a certificate of assurance from the Embassy/High Commission of Afghanistan, the country to which the petitioner belongs, that the petitioner shall not leave the country and shall appear before the learned Trial Court as and when required. The petitioner shall not leave the NCT of Delhi without prior permission of the learned Trial Court.
- ii) Petitioner shall provide his address to the Learned Trial Court by way of an affidavit and revise the same in the event of any change in residential address.
- iii) Petitioner shall appear before the Learned Trial Court as and when the matter is taken up for hearing.
- iv) Petitioner shall provide all his mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned. The mobile location shall be kept on at all times.
- v) Petitioner shall report to the IO once every week unless leave of absence is obtained from the Ld. Trial Court.
- vi) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.

Needless to state that any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

10. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

11. Accordingly, the petition is disposed of. All pending applications, if any, are rendered infructuous.

ANISH DAYAL, J

JANUARY 05, 2023/RK

