

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-205-2021

Date of Decision: 4.10.2024

Tariq Ahmad Lone

..... Appellant(s)

Versus

National Investigation Agency

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MS. JUSTICE SUKHVINDER KAUR

Present: Mr. Veneet Sharma, Advocate
for appellant.

Mr. Sukhdeep Singh Sandhu, NIA Special Prosecutor
for respondent-NIA.

LISA GILL, J.

CRM-43233-2021

There is a delay of 14 days in filing of this appeal.

Admittedly, applicant/appellant is in custody and he has nothing to gain by delay in filing of appeal. It is considered just and expedient to hear appeal and decide the same on merits rather than dismiss the same on technical considerations of delay.

Keeping in view the facts and circumstances of the case, delay of 14 days in filing of appeal is condoned.

Application is accordingly disposed of.

CRA-D-205-2021

1. Prayer in this appeal is for setting aside order dated 11.02.2021, passed by Special Judge, NIA, Punjab, SAS Nagar (Mohali) wherein appellant's prayer for bail pending trial in RC No.18/2019/NIA/DLI dated

24.07.2019 under Section 120-B, 121A, 122 of IPC, Sections 17, 18, 18-B, 20 of Unlawful Activities (Prevention) Act (for short 'UA(P) Act'), and 32(B)(e) of NDPS ACT, FIR No.08 dated 29.06.2019, Custom Commissionerate, Amritsar, has been declined.

2. Brief facts as per prosecution version are that a Pakistani truck bearing no.C-1704 having a permit dated 26.06.2019, issued by Pakistan Customs, entered Indian territory at about 5:40 P.M. on 26.06.2019. Driver of truck, one Asif Raja offloaded 600 polypropylene bags of consignment declared as light pink rock salt granules at godown no.3A of Central Warehousing Corporation. This consignment was imported by Gurbinder Singh of M/s. Kanishk Enterprises from Pakistan and exported by M/s. Global Vision Impex. Consignment, after appraisal was examined on 29.06.2019, upon which suspicious whitish substance was found in one of polypropylene bags. Entire consignment was examined, out of which 16 of polypropylene bags were found to contain the whitish colored powder/granules which was suspected to contain narcotic substance that is heroin. After following due procedures 532 kilogram heroin and 52 kilogram mixed narcotics having the cost of about ₹2700 crores in international market was seized by the Custom Department. Gurbinder Singh in his statement dated 30.06.2019 disclosed that consignment was to be delivered to Tariq Ahmad Lone, present appellant and in his statement dated 01.07.2019, Gurbinder Singh stated that truck bearing registration no.PB-46-M-8096 was to be used for transportation of rock salt consignment. During investigation, a conspiracy to smuggle narcotics into India via ICP, Attari, Amritsar was discovered. Keeping in view the nature and gravity of offence, NIA was directed vide order dated 23.07.2019, passed by Ministry of Home

Affairs, CTCR Division, North Block, to take over investigation of case, upon which RC No.18/2019/NIA/DLI dated 24.07.2019, under Section 120-B, 121A, 122 of IPC, Sections 17, 18, 18-B, 20 of Unlawful Activities (Prevention) Act (for short 'UA(P) Act'), and 32(B)(e) of NDPS ACT was registered. Gurbinder Singh and present appellant Tariq Ahmad Lone were arrested by the Department of Custom. In the investigation by NIA, it was further revealed that consignment of narcotics in question, concealed in rock salt was one amongst a series of six other such consignments. It was found that Farookh Lone (maternal uncle of present appellant) and Sahil in Pakistan sent the contraband alongwith money for import duty as well as purchase price of the goods purported to be rock salt. Payment of consignments was made by present appellant, who received money from Sahil and Farookh Lone through Hawala channel in which co-accused Amit Gambhir played a key-role. Truck in question was found to be the same which was used for transportation of rock salt consignment and delivery to the godown at Ram Tirth Road, Amritsar, which was operated by Ranjit Singh and Iqbal Singh, though neither of these two were known to the trade of rock salt. Owner of truck (Indian truck No.PB-46M-8096 used to transport the consignment to abovesaid godown) was Jasbir Singh and its driver Nirbhail Singh.

3. It is the case of prosecution that present is a case of Narco Terrorism having National and International ramifications. On the basis of investigation conducted by NIA, charge-sheet was presented against 11 persons with the accused Gurbinder Singh having died. The persons against whom charge-sheet under Section 120-B IPC and Sections 17, 18 and 20 of

UA(P) Act and Sections 8 read with 21, 23, 12 read with 24, 29 of NDPS

Act was presented, are as under:-

1.	Tariq Ahmad Lone	J&K	(A-2)
2.	Jasbir Singh		(A-3)
3.	Nirbhail Singh		(A-4)
4.	Sandeep Kaur		(A-5)
5.	Ajay Gupta		(A-6)
6.	Ranjeet Singh @ Rana		(A-7)
7.	Iqbal Singh		(A-8)
8.	Farookh Lone	PAKISTAN	(A-9)
9.	Sahil	AFGHANISTAN	(A-10)
10.	Sohaib Noor	PAKISTAN	(A-11)
11.	Amir Noor	PAKISTAN	(A-12)

4. The following firms were also proceeded against:-

12.	M/s. Kanish Enterprises Pvt. Ltd.		(A-13)
13.	M/s. Gupta Fast Forwarders		(A-14)
14.	M/s. Global Vision Impex	PAKISTAN	(A-15)
15.	M/s. Aimex General Trading Company	PAKISTAN	(A-16)

5. Supplementary challan/charge-sheet was filed against Amit Gambhir and Ranjit Singh @ Cheeta on 28.05.2020 and 13.08.2020, respectively. Further investigation was stated to be ongoing.

6. Appellant filed application seeking bail pending trial in above mentioned case before learned Special Judge, which was dismissed vide impugned order dated 11.02.2021 while holding that keeping in view the serious nature of allegations and gravity of offence no ground is made out to

grant concession of bail to appellant. Aggrieved therefrom present appeal has been filed by appellant.

7. Learned counsel for appellant vehemently argued that learned Special Judge has grossly erred in declining concession of bail pending trial to appellant. It is submitted that appellant is not involved in any other criminal case and is in fact a peace loving citizen of the country carrying on his business in a proper manner. Merely because he has family members in Pakistan with whom he is in touch, cannot lead to an inference that he is involved in smuggling of heroin or Narco Terrorism. It was further argued that evidence on record till date as reflected in the challan/charge sheet, does not indicate conscious possession of appellant over narcotics in question or his involvement in commission of offences as alleged. Learned counsel for appellant vehemently argued that consignment in which narcotics were found, was got released by M/s. Kanishk Enterprises, whose proprietor was Gurbinder Singh (since deceased) and not Ajay Gupta in whose account money is stated to have deposited by appellant. It was further submitted that no palpable or admissible evidence has been set forth by prosecution to indicate that appellant was involved in trafficking of narcotics. Learned counsel for appellant further submitted that appellant has been in custody for five years but even charge has not been framed till date. 299 witnesses have been listed by prosecution. Appellant cannot be kept in custody endlessly in this manner. Reference is made to judgment of Hon'ble the Supreme Court in *Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another*, 2024(3) RCR (Criminal) 494, to submit that appellant is entitled to concession of bail pending trial keeping in view long incarceration as an under trial itself. The rigours of Section 37 of NDPS Act would be negated

by prolonged incarceration and inordinate delay. In this regard reference was made by learned counsel for appellant to the decision of Hon'ble the Supreme Court in ***Satender Kumar Antil Vs. Central Bureau of Investigation***, (2022)10 SCC 51. Co-accused Jasbir Singh, Nirbhail Singh, Sandeep Kaur and Ajay Gupta, it is stated have been afforded concession of bail. Case of appellant is not on a very different footing, therefore, he too should be afforded concession of bail pending trial. Learned counsel also referred to judgment of Hon'ble the Supreme Court in ***Jalaluddin Khan Vs. Union of India***, 2024(4) RCR (Criminal) 100, to submit that bail is the rule and jail the exception, therefore, present appeal, it was prayed, should be allowed.

8. Learned counsel for respondent has opposed this appeal while submitting that there is sufficient evidence on record to indicate culpability of appellant. It was submitted that appellant was well entrenched in illegal activities as has been alleged. Co-accused Farookh Ahmad Lone i.e. maternal uncle of appellant, it is stated, was originally a resident of Kashmir. He ex-filtrated to Pakistan in 1990 to engage in militant activities and is since settled in Pakistan. Appellant is admittedly on good terms with his maternal uncle and had even visited Pakistan as per his own statement recorded under Section 108 of Customs Act and stayed there for twenty days. Despite maternal uncle having a house of his own, appellant and maternal uncle stayed in a hotel. Evidence as collected showed that appellant was the main link between members of terrorist gang based in Pakistan and other co-accused of Punjab region, who were part of entire conspiracy. A group of accused-exporters of Pakistan used to send heroin in the garb of importing rock salt and other group of accused i.e. the importers in India at

the behest of appellant used to import consignment. Another group of accused used to collect consignment from importers' godowns and generate the drug money for routing it to Dubai with the intent to commit a terrorist act or any act preparatory to the same. It was further submitted that sufficient number of persons were tried to be placed in the middle to create the facade of deniability but evidence collected from retrieved data of digital devices clearly indicates that appellant was deeply entrenched in entire network and closely connected with other members of terrorist gang. Learned counsel submitted that CDR analysis and retrieved data from mobile phones of appellant demonstrated the conspiracy between terrorist gang in Pakistan and India. As per investigation and evidence so unearthed A-9 (maternal uncle of appellant) revealed to appellant that entire consignment of narcotic belonged to A-10 Sahil, an Afghan settled in Pakistan. Appellant started communicating directly with A-10 who informed that he exported through A-15 and A-16. It is further established that on the directions of appellant, one of his associates namely Parvinder Singh @ Bittu in May, 2019 had received Hawala amount through one of the associates of co-accused Amit Gambhir and further deposited the amount in the bank account of appellant from which a part thereof was transferred by appellant in the account of co-accused Ajay Gupta for payment of custom duty and other miscellaneous expenses for import of rock salt. He further submitted that said consignment was one of the series of six consignments from Pakistan to India in which narcotics were sent. Learned counsel submitted that investigation also revealed that similar transaction of rock salt had occurred in the month of May, 2019. Gurbinder Singh co-accused had imported these goods at the asking of appellant from M/s. Aimex General

Trading Company in Pakistan. Copious reference was made to the invoices etc. as detailed in affidavit 28.06.2024 of Mr. Naveen Chandra, Deputy Superintendent of Police, National Investigating Agency filed on behalf of respondent. It was further submitted that payments for consignments are most peculiar indicating true intent of crime. When a consignment is sent, appellant would receive a message or a call from co-accused Sohaib Noor from Pakistan, who would then send money to appellant through Hawala channels. Appellant would deposit money in his bank account and thereafter make payment to Gurbinder Singh and Ranjeet Singh @ Rana, who in turn would deposit the same for custom duties and other charges through formal banking channels thereby completing the cycle by disguising it as legitimate trade. Learned counsel for respondent also referred to the evidence as collected against appellant detailed in para 08 of affidavit dated 28.06.2024 and attached alongwith as Annexure A1 to A10 i.e. copy of tax invoice and deposit slips, statement of Gurbinder Singh, Ajay Gupta and appellant recorded under Section 108 of Customs Act, 1962, statements of Deepak Kansara, Gurpratap Singh @ Love, Parwinder Singh @ Bittu, recorded under Section 161 Cr.P.C., besides account statement of appellant as well as extraction details of digital devices seized from appellant Ajay Gupta, Gurbinder Singh and Farookh Lone. It was thus prayed that this appeal being devoid of any merit should be dismissed.

9. Heard learned counsel for parties at length and have carefully scrutinized the file with their able assistance.

10. It is the case of prosecution that 532 kilogram heroin alongwith 52 kilogram mixed narcotics were recovered on 26.06.2019 at International

Check Post, Attari, Amritsar, during examination of consignment of light pink rock salt granules, imported by Gurbinder Singh, proprietor of M/s. Kanish Enterprises Pvt. Ltd., Amritsar. On his statement, present appellant was nominated as co-accused. Investigation of the matter was handed over to NIA. It is the case of prosecution that during investigation, present appellant was established to be deeply entrenched in trafficking of narcotics and was enmeshed in a web of Narco-terror across international borders. As per investigation, consignment of narcotics in question was one of the series of six other consignments. Role of appellant found by the Investigating Agency is duly stated in para 06 of affidavit dated 28.06.2024. Evidence collected during investigation is further detailed in para 08 of affidavit dated 28.06.2024. Same are not being reproduced for the sake of brevity. We have carefully perused and scrutinized the same including inter connectivity chart showing call details between appellant and other co-accused beside statement of present appellant as well as statements of co-accused and others, which are mentioned in foregoing paras.

11. In the given factual matrix, it is not possible after a *prima facie* consideration of material before us to record our satisfaction that appellant is not guilty or is unlikely to commit an offence while on bail or not tamper with evidence or influence witnesses. It is pertinent to note that grant of bail pending trial to co-accused namely Jasbir Singh, Nirbhail Singh, Sandeep Kaur and Ajay Gupta is of no avail to appellant. Role attributed to each of said co-accused is different whereas appellant as per prosecution version is one of the main perpetrators of offence in question. Co-accused Sandeep Kaur is alleged to have taken money from another co-accused Ranjeet Singh

@ Rana and purchased a house in her name by giving false information that

this money was received from the pension of her father-in-law whereas house in question was allegedly purchased out of the proceeds of sale of heroin. Co-accused Ajay Gupta, it was found had not ordered the consignment from which recovery had been effected. Co-accused Nirbhail Singh and Jasbir Singh were granted concession of bail pending trial by a co-ordinate Bench of this Court vide decision dated 31.05.2022 while holding that it could not *prima facie* be concluded on the basis of evidence aggregated that contraband used to be transported alongwith rock salt in his truck. It was held that *prima facie* no inference could be drawn that Jasbir Singh alongwith his driver Nirbhail Singh had transported consignment of rock salt containing heroin on five previous occasions and were going to transport it for the sixth time as well but for the said consignment being intercepted by Custom Officials at Attari boarder. It is pertinent to note at this juncture that vide decision dated 31.05.2022 itself, co-ordinate Bench declined concession of bail pending trial to co-accused Amit Gambhir while observing that substantial incriminating evidence against Amit Gambhir especially in the form of documents showing his involvement in the racket had been collected. Apprehension expressed by learned counsel for respondent-NIA that in case, said accused is granted concession of bail, there is every likelihood of his absconding in the process thereby prolonging the trial and trying to tamper with prosecution evidence by threatening or inducing prosecution witnesses, found favour. It is specifically observed in said order dated 31.05.2022 that personal liberty of a citizen is indeed of great value but still the Court has to strike a balance between personal liberty viz a viz gravity and seriousness of allegations and criminal acts attributed to the accused. Bail can be declined in case release of such a person would

pose danger to the peace and tranquility in the society at large and may imperil national security and integrity.

12. In **Javed Gulam Nabi Sheikh's** case (supra), Hon'ble the Supreme Court was considering the grant of concession of bail pending trial to an accused found in possession with 1193 counterfeit Indian currency notes of the denomination of ₹2,000/-. There were no allegations of accused to be involved in Narco Terrorism.

13. In the case of **Gursant Singh Vs. State through National Investigation Agency**, in CRA-D-226-2023, decided on 12.07.2024 by a Division Bench of this Court alongwith other appeals, apart from the factum of period of custody undergone by accused as under trials, it was found that appellants/accused therein could not *prima facie* be held guilty of commission of offences in question. At this stage gainful reference can be made to judgments of Hon'ble the Supreme Court in **Union of India Vs. Shiv Shankar Kesri**, 2007(7) SCC 798, **State of Kerala and others Vs. Rajesh and others**, 2020(12) SCC 122 and **Narcotics Control Bureau Vs. Mohit Aggarwal**, 2022 AIR (SC) 3444, wherein in the context of Section 37 of NDPS Act, it has been held that expression 'reasonable grounds' mean something more than *prima facie* grounds. It contemplates substantial probable causes for believing that accused is not guilty of alleged offence. Reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that accused is not guilty of alleged offence. Such facts and circumstances do not present themselves in the instant case.

14. We also do not find merit in the argument that bail should be granted to appellant in view of long custody undergone by appellant and the stage of trial, where charge has also not been framed against the appellant and there are over 200 witnesses to be examined by the prosecution. It is a settled position that mere delay in conclusion of trial cannot in itself be a ground to grant bail. Gainful reference in this regard can be made to judgment of Hon'ble the Supreme Court in ***Gurvinder Singh Vs. State of Punjab and others***, 2024(1) RCR (Criminal) 826. It is to be noted at this juncture that learned counsel for respondent had produced the zimni orders of learned trial Court to submit that delay in trial is very much attributable to the accused themselves. Furthermore, apprehension of appellant tampering with evidence and even absconding was raised.

15. It is pertinent to note that ***Jalaluddin Khan's*** case (supra) also does not come to the aid of appellant because it is specifically observed in said judgment that it was not possible for the Court to record a conclusion that there are reasonable grounds for believing involvement of appellant therein in the commission of offences under UA(P) Act. It is duly noted therein that it was impossible to record a *prima facie* finding in this regard. However, in the present case it is not so. Material on record indicates reasonable grounds for believing *prima facie* involvement of appellant in commission of offences as alleged.

16. As discussed in the foregoing paras and in view of material on record, we are unable to record a *prima facie* satisfaction of non-involvement of appellant in commission of offences as alleged.

17. No other argument has been addressed.

18. Keeping in view facts and circumstances as above we do not find any merit in the appeal, which is accordingly dismissed. However, keeping in view the factual matrix as above, learned Special Court, NIA, Punjab at SAS Nagar (Mohali), is directed to make earnest efforts for conclusion of trial qua accused in custody at the earliest after framing of the charge.

19. It is clarified that all observations in this order are for the purpose of decision of this appeal only and shall have no bearing on the merits of the matter.

(LISA GILL)
JUDGE

4.10.2024

Sunil

(SUKHVINDER KAUR)
JUDGE

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