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

% ***Reserved on: 14th October 2024***
Pronounced on: 2nd December 2024

\+ **BAIL APPLN. 3303/2024**

AMRITPAL SINGH .....Petitioner

Through: Mr. M.L. Yadav, Mr. Harish Chand, and Mr. Anant Chittoria.

versus

NATIONAL INVESTIGATION AGENCY .....Respondents

Through: Ms. Silpa Singh, SPP for NIA with Mr. Vanshaj Tyagi, Adv. with Dy. SP Pankaj Aggarwal, C/O.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

BAIL APPLN. 3303/2024

1. This bail petition has been filed seeking regular bail in RC-35/2022/NIA/DLI, P.S. NIA, Delhi ('**RC**'). Supplementary chargesheet has been filed under Sections 8(c)/21(c)/23(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**'). Petitioner has been in custody since 15th December 2023.

2. The case of the prosecution is that on 22nd April 2022, a consignment of 'licorice roots' (*mulethi*), arrived at the Integrated Check

Post ('**ICP**'), Atari, Amritsar, Punjab. Upon scanning the said consignment, suspicious materials were found in the licorice roots, subsequently, the entire consignment was thoroughly checked. Resultantly, 102.136 Kgs *heroin* was seized on 24th April 2022 and 0.648 Kgs was recovered on 26th April 2022.

3. The consignment was imported by M/s Shree Balaji Trading Co., with its registered office at Dwarka, New Delhi. The proprietor of the said firm is, one Vipin Mittal, who has been arrayed as accused No. 1 in the said RC.

4. The consignment was imported from Afghanistan, through M/s Alem Nazir Ahmad Qani (accused No. 4), who in turn had designated a 'notifying party', M/s Al Fadi Foodstuff Trading LLC, United Arab Emirates ('**UAE**'), to receive funds for the said consignment.

5. On 20th October 2022, a total of Rs. 1 Crore 34 Lakhs was seized from the residence of the petitioner. The petitioner runs the following businesses:

- M/s Sandhu Tour and Travels
- S.P. Tour and Travels
- S.P. Open Sky Pvt. Ltd.

In addition to the aforesaid, petitioner also runs a money transfer business @1% commission, for the said purpose, petitioner operates the following franchisees:

- Western Union
- Moneygram
- Spice Money

- HDFC Business

The Investigation

As per the prosecution, the following emerged from the investigation and forms part of the charge sheet:

6. Office premises of one, Vipin Mittal, was searched on 23rd April 2022, by Custom officials and various electronic devices were seized. He was subsequently arrested on 24th April 2022. Thereafter,Asif Abdudallah, proprietor of M/s Best Trading Company, was arrested on 6th May 2022.

7. On 29th July 2022, F. No. 11011/66/2022/NIA was issued by the Ministry of Home Affairs, GOI, pursuant to which, the RC was registered by the National Investigation Agency ('**NIA**') u/s 120B of the Indian Penal Code, 1860, ('**IPC**'), Sections 17, 18 and 22A of the Unlawful Activities (Prevention) Act, 1967, ('**UAPA**') and Sections 23/8(c) of the NDPS Act.

8. Basis contents of digital devices of accused, between, Vipin Mittal, Razi Haider Zaidi (accused No. 2), Shahid Ahmed (accused No. 3), and Nazir Ahmad Qani (accused No. 4), a conspiracy was established, for smuggling *heroin* to India, from Afghanistan. Consequently, a charge sheet dated 16thDecember 2022 was filed before the NIA Special Court, New Delhi.

9. The present petitioner was arrayed as accused No. 6 under the supplementary charge sheet, dated 7th June 2024, along with Athar Saeed (accused No. 5), Harwinder Singh @Shoshi Pannu @Harpreet (accused No. 7), Deepak Khurana (accused No. 8), Tahseem @Tahseen@Mota

Shamli (accused No. 9), Avtar Singh (accused No. 10) and Ahmad Farid @Farid Zamani (accused No. 11).

10. The prosecution has alleged the following roles to the various accused:

Accused Person	Role Alleged
Shahid Ahmed @Qazi Abdul Wadood (accused No. 3),	Mastermind
Nazir Ahmed Qani (accused No. 4)	Supplied *heroin* from Afghanistan.
Vipin Mittal (accused No. 1) Razi Haider Zaidi (accused No. 2)	Receiving*heroin* in India.
Amritpal Singh (Petitioner) Athar Saeed (accused no. 5) Ahmad Farid @Farid Zamani (accused no. 11)	*Hawala* transactions. Arranged sums, for advance payments towards *heroin* consignments, to be sent to Nazir Ahmed Qani, in Afghanistan

Other accused persons along with various unknown associates, were responsible for circulating *heroin* within the country.

11. It was alleged that the drug syndicate was formed by Shahid Ahmed in 2011, while he was lodged in Amritsar Jail, in a DRI matter (F.No.855(1)ASR/2011) Shahid Ahmed first came into contact with Athar Saeed in 2006-2007 when Shahid Ahmed used to work in a

bookshop. The two accused were subsequently reunited in Amritsar Jail, when Athar Saeed was arrested for collecting *hawala transactions*.

12. Shahid Ahmed introduced Athar Saeed to his drug smuggling network, which he was managing from inside the jail premises and got acquainted, Athar Saeed, with his associates, Razi Haider Zaidi, Deepak Khurana, Tahseem and Harwinder Singh.

13. M/s QSA Fashion, Daryaganj, a dummy company, was started by Shahid Ahmed and Athar Saeed, upon their release from jail. The said firm was allegedly started, with a view to legalize the proceeds of illegal drug trade.

14. It is at this stage that the petitioner comes into the picture. In March 2019, upon the directions of Shahid Ahmed, Athar Saeed met the petitioner. Athar Saeed informed the petitioner that he is a trader of ladies garments and runs a shop in partnership with Shahid Ahmed, by the name of M/s QSA Fashion.

15. In August 2019, Athar Saeed along with Harwinder Singh, visited the petitioner's firm, to get transferred, Rs. 10 lacs, to Dubai. Subsequently, Athar Saeed disclosed to the petitioner, that the money being transferred is collected through sale of drugs, and he was handling the drug money on instructions of Shahid Ahmed.

16. Between July 2019 to December 2021, the petitioner transferred funds to the following entities. The funds were delivered to petitioner, for transfer, by Harwinder Singh on the instructions of Athar Saeed and Shahid Ahmed:

- Razi Haider Zaidi

- Shahid Ahmed
- M/s R.H. Advertising (proprietor, Razi Haider Zaidi)
- M/s QSA Fashion (proprietor, Shahid Ahmed)

17. Two consignments of rugs and Bitumen were imported by Shahid Ahmed, Razi Haider Zaidi, and Athar Saeed to ascertain whether the same were subjected to thorough scrutiny by the customs. The invoice pertaining to the said import, was recovered from the residence of Athar Saeed and also from the mobile device Razi Haider Zaidi.

18. Subsequently, several consignments of legitimate products such as licorice roots, pomegranate juice etc., laced with *heroin,* were sent by Shahid Ahmed in connivance with Athar Saeed and others. WhatsApp data of Azeem Ahmed (Brother of Shahid Ahmed) establishes that funds derived out of said consignment were being managed by the following persons:

- Athar Saeed
- Razi Haider Zaidi
- Tahseem

19. In October 2021, Shahid Ahmed with Athar Saeed, planned to import the consignment, which is the subject matter of the present petition. Upon the directions of Shahid Ahmed, Athar Saeed went to meet the petitioner in Mahipalpur, Delhi. In his pointing out proceedings, Athar Saeed, pointed to the place where he met the petitioner. Subsequently, the petitioner travelled to Dubai from 31st October 2021 to 4th November 2021 and met Shahid Ahmed on 1st November 2021. During petitioner's meetings with Athar Saeed in Mahipalpur and with

Shahid Ahmed in Dubai, he was convinced to assist in the illegal smuggling of the *heroin* consignment at hand.

20. Upon directions of Shahid Ahmed, Athar Saeed proceeded to find a suitable *hawala* operator to transfer advance funds for the said consignment, and met with one Dev Singh, owner of Samir Medicos, in Bhogal, Delhi. In February 2022, Shahid Ahmed sent a messenger to Athar Saeed, the said messenger carried with him, an amount of 20 lakhs and a currency note, on which, details of Nazir Ahmed Qani, had been written. Shahid Ahmed directed Athar Saeed to transfer 34 lakhs to Nazir Ahmed Qani, as advance payment for the said consignment. Balance 14 lakhs were delivered to Athar Saeed for transfer to Nazir Ahmed Qani, by Harwinder Singh.

21. During his pointing out proceedings, Athar Saeed pointed to the place where he with the aid of Dev Singh, transferred Rs.34 Lakhs to Afghanistan, through *hawala.* Ahmed Farid was given the said amount to be delivered to Nazir Ahmed Qani.

22. Between 10^{th} to 15^{th} April 2022, Athar Saeed was visited by another messenger from Shahid Ahmed, who carried with him, the receipt of the present consignment and the following message, handwritten in Urdu:

"*Pichhla Hisab Saaf, aage ki Peshgi Qani ko deni hai, Soshi se baat kro*"

Translation of the same, is as under:

> "*Previous account settled. Advance payment is to be made to Qani. Speak with Soshi.*"

23. Athar Saeed was not able to get in touch with Harwinder Singh @Soshi. Shahid Ahmed informed Athar Saeed that Rs. 1.5 Crores will be delivered by Harwinder Singh to the Petitioner.

24. At this stage, contraband was seized at Atari border. Subsequently, in October 2022, the residential premises of the petitioner was searched and Rs. 1.34 Crores were recovered. Recovered monies were subjected to Freezing Order No. 02/2023 dated 8th November 2023, passed by Superintendent of Police, CIO, National Investigation Agency, New Delhi, which was later confirmed by the Competent Authority and Administrator, NDPS Act, 1985, *vide* order dated 7th December 2023, passed u/s 68F(2) of the NDPS Act.

25. The *modus operandi* of the syndicate was based on use of the following social networking applications, for communication amongst the syndicate members:

- BOTIM
- Voxer
- TamTam Messenger
- Signal
- Coverme
- Groupme
- WhatsApp
- Telegram

The alleged mastermind, Shahid Ahmed, often used these applications, to communicate with Athar Saeed.

26. One Lakhbir Singh, @ Lakha @Babu, in his supplementary statement dated 6th May 2023, identified Harwinder Singh and Athar

Saeed. Lakhbir Singh stated that a sum of Rs. 10 lakhs (approx.) was transferred by the Harwinder Singh, in different installments, between 2019 to 2022. Further, Lakhbir Singh stated that while transferring funds, he regularly recorded the following details, in the diary seized on 20th October 2022:

- Depositors mobile number
- Account holder's name
- Account details of the beneficiary

27. However, such entries were not maintained for any of the transactions made by the accused persons attached to the syndicate. Lakhbir Singh stated that because of the high commission provided and explicit instructions of his boss (petitioner), he did not maintain such records.

28. He did maintain a record of financial transactions on letter pads. Lakhbir Singh further provided that in October 2022, the petitioner ordered him to provide the petitioner with all such letter pads.

29. One Tanveer Ahmed, who was lodged in Amritsar jail at the same time as Athar Saeed and Shahid Ahmed, and is stated to be a close associate of Athar Saeed, in his statement dated 27.05.2024 u/s 161 Cr.P.C, stated that in April 2022, Athar Saeed disclosed to him that Harwinder Singh has kept Rs. 1.5 Crores with the petitioner and that he was unable to contact both Harwinder Singh and petitioner.

<u>Submissions on behalf of the Petitioner</u>

30. The petitioner has time and again co-operated with the investigation, and the same is evident from his conduct. Prior to order

dated 07th December 2023, confirming the Freezing Order dated 8th November 2023, notice was served upon the petitioner on 13th November 2023, to appear before the Competent Authority and present his case. The petitioner filed a reply against the said notice, and also, appeared before the Competent Authority and explained the basis for such transactions in detail.

31. Vipin Mittal, who is similarly placed, as the present petitioner, was granted bail *vide* order dated 30th May 2023, passed by this Court in, Bail Application No. 1168/2023.

32. Petitioner has been involved basis disclosure statement of co-accused persons, and did not have knowledge of the monies being transferred by his employee, Lakhbir Singh, as per the directions of Harvinder Singh and Athar Saeed.

33. The statement of Tanveer Ahmed, dated 27th May 2024, is hearsay and cannot be read against the petitioner, in light of Section 60 of the Indian Evidence Act, 1872.

<u>Submissions on behalf of the State</u>

34. Reliance was placed on the decision of the Supreme Court in ***Union of India v. Rattan Malik*** 2009 SCC OnLine SC 173, to support the proposition, that bail cannot be granted in an offence under the NDPS Act, unless the requirements under Section 37 NDPS Act, are satisfied.

35. Despite several opportunities, having been granted to the petitioner, the petitioner has been unable to provide a business rationale for the objected transactions. Reliance was placed, in this regard, on the

order dated 7th December 2023, passed by the Competent Authority. Reliance is also placed on Section 68J of the NDPS Act, to contend that under the Act, the onus of proving that property in question is not illegally acquired rests upon the accused.

36. The case against the petitioner stands corroborated, basis the supplementary statement of his employee Lakhbir Singh, dated 6th May 2023, and also, the testimony of Tanveer Ahmed, who is an old associate of Athar Saeed, and has filed an application for becoming a government approver, as noted in order dated 30th May 2024 passed by MM, Patiala House Courts in Case No. RC 35/2022/NIA/DLI.

37. The petitioner went to meet the kingpin of the syndicate, Shahid Ahmed; reliance in this regard is placed upon the supplementary chargesheet, which contains the particulars of the petitioner's travel, and the said meeting.

38. The petitioner is involved in the business of money transfer and has close linkages with an international drug syndicate, basis the aforesaid, there is a substantial flight risk, involved in the case of the petitioner.

39. As regards the ground of parity in relation to Vipin Mittal, reliance is placed on the decision of the High Court of Gauhati in, ***Jai Prakash Singh v. Union of India*** 2009 SCC OnLine Gau 94. It is further to be noted, that while granting bail to Vipin Mittal, his medical condition, was a significant consideration before the Court.

<u>Analysis</u>

40. As per the prosecution, Rs. 1.34 Crores, have been seized from the residence of the petitioner. An amount of Rs. 10 Lakhs was transferred by the petitioner, to Dubai, for the benefit of Shahid Ahmed. Further, as per, the statement of Lakhbir Singh (employee of the petitioner),between the years 2019-2022, Rs. 10 Lakhs through 8 transactions, have been transferred by the petitioner, into the accounts of Shahid Ahmed, Razi Haider Zaidi, Avtar Singh, and also, the accounts of dummy companies; QSA Fashion and R.H. Advertising.

41. In the rejoinder filed by the National Investigation Agency, in the confirmation proceedings before the Competent Authority and Administrator, NDPS Act, the agency provided the following tabulation for the income tax returns of the petitioner, for financial years 2018-2022:

S.No.	Financial year	Taxable Income (In Rs.)	Income Tax Paid (In Rs.)
1.	2018-19	3,44,310	2308
2.	2019-20	4,94,110	1075
3.	2020-21	5,02,180	13,451
4.	2021-22	6,61,980	49,216

42. In light of the aforesaid, the petitioner has been unable to present a rational commercial explanation, for the amounts recovered from him. A mere contention that the amounts were collected, pursuant to the commercial activities of the petitioner, may not be sufficient to overcome the embargo of Section 68J of the NDPS Act, which burdens the petitioner, with an onus to prove that the properties under question, have been derived out of legal sources.

43. Considering lakhs of rupees were being transferred by the petitioner, to the accounts of other co-accused persons, the contention of

the petitioner that he was unaware of the source of the funds that were being transferred by him, is farfetched. This, in light of the fact, that the petitioner has been unable to provide any ledger, for transfer of funds relating to co-accused persons. It is to be noted that in his statement, Lakhbir Singh (employee of the petitioner), provides that an account was being maintained by him, on separate letter pads of 'Sandhu Tour & Travel', in relation to transfer of funds to co-accused persons, however, he gave the letter pad to his employer (the petitioner) upon his demand.

44. Even if the contention of the petitioner, that he was unaware of the source of the lakhs of rupees, already transferred by him, to the accounts of the co-accused persons, is taken at face value, the recovery of Rs. 1.34 Crores, from the residence of the petitioner, is still unaccounted for.

45. No satisfactory explanation has been given, as regards the petitioner's travel to Dubai from 31st October 2021 to 4th November 2021 for his meeting with Shahid Ahmed on 1st November 2021.

46. As regards the reliance by counsel for the petitioner, on order dated 30th May 2023, passed in Bail Application No. 1168/2023, granting bail to co-accused Vipin Mittal, counsel for the respondent agency, places reliance on the decision of the High Court of Guwahati in,***Jai Prakash Singh v. Union of India*** (*supra*), where the Court noted as under:

> "*10. Having gone through the aforesaid report, I am not at all convinced that the accused-petitioner is not involved in or connected with the aforesaid case. Simply because he is an illiterate villager or a daily labourer engaged by his employer, cannot be a ground for believing that he is innocent and he had no knowledge about the carriage of Ganja in the Truck, in which, he was travelling along with*

other offenders. The accused-petitioner cannot claim for release on bail merely because some co-accused persons have been granted bail. From the report, it is found that <u>the involvement of the accused-persons, who were enlarged on bail, was not as serious as the involvement of the present accused-petitioner inasmuch as the aforesaid accused-persons were not caught red-handed from the truck carrying the Ganja. While granting the bail, the court is bound to consider the involvement of each accused-person in the alleged offence. I have found the involvement of the present accused-petitioner is much more serious and I am convinced that he is not entitled to get the same treatment as has been given to the other co-accused persons who were enlarged on bail</u>."

(emphasis added)

47. It is also pertinent to note, that bail was granted to co-accused Vipin Mittal, primarily, in view of his medical condition (*Chronic Myeloid Lekemia*), as also certain other critical factors, that differentiate the case of the petitioner, with that of the co-accused; ***firstly***, Vipin Mittal could not have been said to be in conscious possession of the contraband, since, the consignment was confiscated, before he could undertake possession of the same; ***secondly***, the sequence of events pertaining to Vipin Mittal, as also, the fact that a mere Rs. 11 lacs were accepted by him for a drug consignment which was actually worth crores, highlighted that he was acting in regular course of trade of licorice roots (*mulethi*).

48. The medical condition of the co-accused Vipin Mittal, aside, petitioner's position is clearly distinguishable from that of the said co-accused, basis the fact, that out of 1.50 Crores, disbursed by the syndicate, in pursuit of the cross-border smuggling, 1.34 Crores have been found in petitioner's possession, further, such possession must be

considered, in light of the petitioner's role as a facilitator, in transfer of monies, between other members of the syndicate.

49. Contention of the petitioner, that the statements made by Lakbhir Singh (employee of the petitioner), as well as, Tanveer Ahmed, who has applied to become an approver in the present case, cannot be relied upon, may not be apposite, considering, their corroborative nature towards each other, as well as, their consonance with other prevailing facts and circumstances. At this juncture, it is apposite to consider the decision of this Court in ***Mehabub Rahaman v. State (NCT of Delhi)*** 2023 SCC OnLine Del 3488, where, commercial quantity of *heroin* had been recovered from co-accused, however no recovery had been effected from the petitioner therein. This Court while dealing with allegations of conspiracy, basis other evidence on record, held that while disclosure statements themselves are not admissible, existence of conspiracy will have to be proven during trial and reasonable grounds do not exist to record that accused is not guilty of offence alleged. Relevant paragraphs of the said judgment have been extracted hereunder:

> "*15. Therefore, pursuant to appreciation of the contentions of the parties and perusal of records of the case, in the considered opinion of this Court, the possibility that the petitioner would be likely to commit an offence while on bail cannot be ruled out considering his antecedents as also it would be difficult to reach a prima facie conclusion at this stage that he was not involved in the conspiracy of supply of heroin. This Court also takes note of the investigating agency's strong reliance on the various interceptions of phone conversations over a period of time, along with matching voice samples of Bajlur Rahaman, Abu Bakar, Saidul, and the petitioner, and the large recovery of 10.5 kg of heroin, the source of which was finally traced out to the petitioner, as part of the investigation. Even though*

> *<u>disclosure statements alone are not admissible, the existence of the conspiracy would have to be proved during the trial and it would be difficult in these circumstances to accord satisfaction that there are reasonable grounds to believe that he is not guilty of such an offence</u>.”*
>
> (emphasis added)

50. The fact that the present case involves cross-national smuggling of "102.784 Kg"*heroin*, with use of sophisticated mobile phone applications for communication between members of the syndicate, as well as, the use of dummy companies for financial transactions, cannot be ignored.

50.1 The following smart-phone applications were used for communication *inter se* members of the syndicate:

- BOTIM
- Voxer
- TamTam Messenger
- Signal
- Coverme
- Groupme
- Whastapp
- Telegram

50.2 The following dummy companies and their bank accounts were used as a front, for illicit transfer of money:

- M/s R.H. Advertising (proprietor, Razi Haider Zaidi)
- M/s QSA Fashion (proprietor, Shahid Ahmed)

51. Counsel for the petitioner placed reliance on the following precedents in support of grant of bail:

(i.) ***Narcotics Control Bureau v. Pallulabid Ahmad Arimutta***, (2022) 12 SCC 633: The Supreme Court, in the said case, upheld the impugned orders granting bail to the accused persons, on the grounds that the accused persons had been apprehended, solely, basis, voluntary statements and disclosure statements. The said decision, may not come to the aid of the petitioner herein, as in the present case, along with the statements of his employee (Lakhbir Singh) and Tanveer Ahmed, other factors, such as, monies bearing direct relation to the smuggled consignment i.e. Rs. 1.34 Crores being recovered from his possession, as also, past transactions with the co-accused persons, as also, frequent meetings and consequent travel history, are present and operate against him.

(ii.) ***Kalyan Kumar Gogoi v. Ashutosh Agnihotri*** (2011) 2 SCC 532: In the said case, the Supreme Court, elucidated upon the inadmissibility of hearsay evidence, and may not have a direct bearing at the stage of grant of bail.

(iii.) ***CBI v. K. Narayana Rao*** (2012) 9 SCC 512: The Supreme Court, while discussing the essential ingredients of a criminal conspiracy, held as under:

> "*24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. <u>In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the</u>*

circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence."

(emphasis added)

52. It is imperative to consider, that the decision of the Supreme Court, in ***K. Narayana Rao*** (*supra*), was passed in a case involving offences under the IPC, and also, was passed by the Supreme Court, in its appellate jurisdiction, whereas, the petitioner herein, prays for the grant of bail in a case under the NDPS Act, with the burden of proof imposed upon him by virtue of Section 68J of the NDPS Act.

53. Counsel for the respondent agency, relied upon the decision of the Supreme Court in ***Rattan Mallik*** (*supra*), to contend that bail cannot be granted in a case involving offences under the NDPS Act, unless the rigours of Section 37 are satisfied. In the said case, the accused was involved in the financing and trade of *heroin*, the Court, while denying bail, held that the mere fact, that the contraband was not found in the possession of the accused, would not satisfy the requirements under Section 37. Relevant paragraphs of the said decision, have been extracted as under:

"13. The expression "reasonable grounds" has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide Union of India v. Shiv Shanker Kesari [(2007) 7 SCC 798 : (2007) 3 SCC (Cri) 505]). Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the court is not called upon to record a finding of "not guilty". At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail.

15. Bearing in mind the above broad principles, we may now consider the merits of the present appeal. It is evident from the afore-extracted paragraph that the circumstances which have weighed with the learned Judge to conclude that it was a fit case for grant of bail are: (i) that nothing has been found from the possession of the respondent; (ii) he is in jail for the last three years, and (iii) that there is no chance of his appeal being heard within a period of seven years. In our opinion, the stated circumstances may be relevant for grant of bail in matters arising out of conviction under the Penal Code, 1860, etc. but are not sufficient to satisfy the mandatory requirements as stipulated in clause (b) of sub-section (1) of Section 37 of the NDPS Act.

16. Merely because, according to the learned Judge, nothing was found from the possession of the respondent, it

> *could not be said at this stage that the respondent was not guilty of the offences for which he had been charged and convicted. We find no substance in the argument of learned counsel for the respondent that the observation of the learned Judge to the effect that "nothing has been found from his possession" by itself shows application of mind by the learned Judge tantamounting to "satisfaction" within the meaning of the said provision. It seems that the provisions of the NDPS Act and more particularly Section 37 were not brought to the notice of the learned Judge.*"
>
> (emphasis added)

54. At this juncture it is prudent to advert to a decision of a co-ordinate bench of this Court in ***Joyce Karoung v. Narcotics Control Bureau*** 2018 SCC OnLine Del 9599, wherein the Court denied bail to an accused who was a major link in a drug syndicate, considering his role in the entire transaction involving commercial quantity of *cocaine*, even though there was no recovery from the petitioner therein. The relevant paragraphs of the said judgment have been extracted hereunder:

> "*23. It is not a case that the Petitioner has been apprehended solely on the basis of statement given by the co-accused. Petitioner is also alleged to have been arrested as part of the search and seizure operation from one of the places, which was disclosed by the co-accused during the operation. Not only is the petitioner alleged to have been apprehended, she is alleged to have led to the arrest of another co-accused Stephen, who is alleged to have come to collect the bag of drugs from the petitioner. The petitioner is alleged to be a major link in the entire operation. Stephen who is apprehended on the disclosure of the petitioner in his statement under section 67 has also named the petitioner and shown her involvement. Not only has he named her, but has also stated that earlier also he had come with one James to collect drugs from the petitioner.*"
>
> (emphasis added)

55. Further, the judgment of the High Court of Chhattisgarh in ***Sambhav Parakh v. State of Chhattisgarh*** 2021 SCC OnLine Chh 469, while discussing the judgment of this Court in ***Joyce Karoung*** (*supra*) held as follows:

> "*23. In Joyce Karoung v. Narcotics Control Bureau, the Delhi High Court has held that all those persons who are major link in the entire operation have to be treated in the same manner as if they have taken part in trading of commercial quantity of drugs.*"

56. A co-ordinate bench of this Court, in ***Ridhm Rana v. State (NCT of Delhi)*** 2022 SCC OnLine Del 771, held that there cannot be direct evidence of criminal conspiracy and the same can only be inferred from prevailing circumstances, incidences, etc., relevant paragraphs of the said judgment are extracted as under:

> "*24. There cannot be any direct and clear-cut evidence of criminal conspiracy and Court has to only infer the same from prevailing circumstances, incidences and other related material, which is outcome of the investigation carried out by the prosecuting agency…*"

57. This Court, in ***Ramandeep Singh v. State (NCT of Delhi)*** 2024 SCC OnLine Del 6887, while dealing with an accused who was a member of a sophisticated drug syndicate and charged with criminal conspiracy, in a case involving commercial quantity *heroin*, held as under:

> "*41. It is imperative to take into account the complexity of the modus operandi involved in the present case. The drug syndicate carries out its activities across various states of the country through the means of sophisticated technology and shell companies. Further the nature of the drug involved in the present case (heroin) and the amount of*

quantity recovered in toto from the entire transaction (358.6 Kgs) cannot be lost sight of.

42. Considering the nature of the crime, the complexity and sophistication of the syndicate operations and the role of the petitioner, it is pertinent to advert to the decision of a co-ordinate bench of this court in Mansher v. State (NCT of Delhi), 2024 SCC OnLine Del 1286, which although is a decision passed at the stage of anticipatory bail, yet dealt with a factual situation starkly similar to the present case. The accused in Mansher (supra) as in the present case, used various technological softwares such as Telegram, Facetime, Voxer etc. to communicate with each other. The accused in Mansher (supra) alleged that he was falsely implicated. The observations made by the Court in this regard are extracted hereunder:

> *"23. The internet usage of these numbers of the applicants further revealed that they were used to communicate by way of private internet calls, through Telegram, Facetime, Voxer, Session, etc. The co-accused Mukul also disclosed that he had previously delivered a drug parcel via Porter App to applicant Lokesh Dhingra at the road near Inderpuri. The data retrieved from the Porter App used by the co-accused Mukul corroborates that the parcel was picked to be delivered at Inderpuri.*
>
> *xxx xxx xxx*
>
> *35. The menace of drug trafficking has the potential of affecting a large number of gullible people. Looking at the manner which is alleged by the State to have been employed by the applicants, the task of the investigating agency is arduous. Various means of technological advancements seem to have been employed that has made the task tougher for the investigating agency. In such a scenario, in the opinion of this Court, some play in the joints has to be provided to the State. It cannot be expected that in such circumstances, the investigating agency would be through with the investigation at such a nascent stage. The same would require the custodial interrogation of the accused persons.*

xxx xxx xxx
36. Even though, it is alleged that the applicants have been falsely implicated by certain police officials who had accompanied the raiding party, the same, at this stage, is not a relevant fact for deciding the present applications. However, since specific allegations have been made against police officials, the respondent is directed to enquire the said aspect.
xxx xxx xxx
39. The present case involves recovery of a commercial quantity of contraband. <u>The allegations against the present applicants are that they are the kingpins of the syndicate. The contrabands are alleged to have been imported from the other countries through dark web and distributed amongst the public in this country</u>.
xxx xxx xxx
41. <u>Dismantling such a complex modus operandi, which is alleged to have been used by the applicants and the other accused persons, by its very nature, requires thorough investigation and custodial interrogation</u>."

(emphasis added)

58. In view of the aforesaid facts and circumstances, considering the large amount of *heroin* involved (about 102.784 Kg), the sophisticated and complex nature of the conspiracy, *modus operandi* of the accused, role ascribed to the petitioner, and a serious possibility of flight risk (*the accused being a part of an international drug syndicate, with base of operations in Dubai, and prior travel history*). it cannot be said that the petitioner has been able to overcome the rigors of Section 37. The plea for regular bail cannot be granted, at this stage.

59. In unique facts of the present case and the nature of the conspiracy alleged, it may be useful to advert to the observations made by the

Supreme Court in the dissenting opinion of Hon'ble Ms. Justice Indira Banerjee, in, ***Tofan Singh v. State of T.N.*** (2021) 4 SCC 1.The relevant paragraphs are extracted as under:

> "*162. The illicit production, distribution, sale and consumption of drugs and psychotropic substances, is a crime of multi-dimensional magnitude, that imposes a staggering burden on the society. In an article "Narcotic Aggression and Operation Counter Attack" published in Mainstream dated 7-3-1992, V.R. Krishna Iyer, J. said:*
>
> > *"Religion is opium of the people, but today opium is the religion of the people, and like God, is omnipresent, omnipotent and omniscient. Alas! Opium makes you slowly ill and eventually kills, makes you a new criminal to rob and buy the stuff, tempts you to smuggle at risk to become rich quick, makes you invisible trafficker of psychotropic substances and operator of a parallel international illicit currency and sub rosa evangelist mafia culture. Drug business makes you if not killed betimes, the possessor of pleasure, power and empire. What noxious menace is this most inescapable evil that benumbs the soul of student, teacher, doctor, politician, artists and professional, and corrupts innocent millions of youth and promising intellectuals everywhere."*
>
> *163. In the words of Krishna Iyer, J., "the global scenario in its sombre macabre, devouring delinquency, is dominated by drug abuse and narcotic trade. Trafficking in drugs and psychotropic substances is not any local or regional crime confined only to India and third-world countries, but is a worldwide phenomenon. All nations including India, had huge drug abuse as a threat to the survival of human beings*
>
> *164. Illicit drug trafficking is an organised crime, highly sophisticated and complex. <u>This illicit traffic, cleverly carried out by hardened criminals with dexterity and skill, not only violates national drug laws and international conventions, but also involves many other criminal activities, including racketeering, conspiracy, bribery and corruption of public officials, tax evasion, banking law</u>*

violations, illegal money transfers, import/export violations, crimes of violence and terrorism.

xxx xxx xxx

166. Considering the huge profits derived by drug barons from rampant consumption of opium and other narcotic drugs, tycoons of the drug cartels, who have international links, go to any extent, to exploit and manipulate unhealthy economic conditions, as well as corruption and weaknesses in the administration, to push drugs into the society, in complete disregard of the health, morality and well-being of the people.

167. India has been directly engulfed in drug trafficking by virtue of its geographical location, flanked on three sides by illicit narcotic drug production regions. To the West lies the Golden Crescent, comprising Iran, Afghanistan and Pakistan, which illegally produce a huge volume of opium, converted into heroin in illicit factories. In the East, the Golden Triangle is made up of Burma, Thailand and Laos, which produce thousands of tons of opium, cultivated over thousands of hectares of land. The third flank is along the 1568 km border with Nepal in the North. The Himalayan foothills and the Terai regions of Nepal produce inter alia "cannabis restin". The long land border with Pakistan and a network of airports and seaports linking India to other countries has facilitated illegal trafficking in drugs.

168. India is not only a transit point for the export of narcotic drugs from the regions surrounding it, to western and other countries. India also provides a lucrative market for narcotic drugs and psychotropic substances. That apart, there is widespread illicit cultivation of plants yielding narcotic drugs, like opium and ganja in India.

169. Illicit drugs from the Golden Crescent, the Golden Triangle, as well as from Nepal and China, are smuggled into India for consumption and sale and also onward transmission to other countries. Illicit drugs find their way, inter alia, into metropolitan cities of India like Delhi, Mumbai, Bengaluru, etc. The amount of illicit narcotic

<u>drugs that are seized in India by law enforcement authorities, only constitute the tip of the iceberg</u>.

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209. The Law Commission of India, in its 155th Report on Narcotic Drugs and Psychotropic Substances Act, 1985, submitted in July 1997, inter alia, stated:

> *"1.2. Emergence of white-collar crimes.—The crimes are generally of two kinds:*
>
> > *(a) Traditional crimes affecting individual persons, like murder, theft, assault, etc.;*
> >
> > *(b) White-collar crimes or socio-economic crimes affecting the public at large like smuggling, hoardings, adulteration, illicit trafficking and sale of narcotic drugs and psychotropic substances, etc. White-collar crimes are of recent origin and may be defined as all illegal acts committed by unlawful means — the purpose being to obtain money or property or business or personal gain or profit. Such crimes are committed by the organised gangs having influence. Some of the salient features of the white-collar crimes are as under:*
> >
> > *(a) there is no social sanction against such white-collar crimes;*
> >
> > *(b) these crimes are committed by organised gangs equipped with most modern technology;*
> >
> > *(c) there is generally a nexus between the politicians, law enforcing agencies and the offenders indulging directly in such crimes;*
> >
> > *(d) there is no organised public opinion against such crimes; and*
> >
> > *(e) the traditional crimes are isolated crimes, while the white-collar crimes are part and parcel of the society.*

1.3. Drug trafficking and illicit use of narcotic drugs and psychotropic substances.—The genesis and development of the Indian drug trafficking scenario are closely connected with the strategic and geographical location of India which has massive inflow of heroin and hashish from across the Indo-Pak border originating from "Golden Crescent" comprising of Iran, Afghanistan and Pakistan which is one of the major illicit drug supplying areas of the world. On the North Eastern side of the country is the "Gold Triangle" comprising of Burma, Laos and Thailand which is again one of the largest sources of illicit opium in the world. Nepal also is a traditional source of cannabis, both herbal and resinous. Cannabis is also of wide growth in some States of India. As far as illicit drug trafficking from and through India is concerned, these three sources of supply have been instrumental in drug trafficking. Prior to the enactment of the Narcotic Drugs and Psychotropic Substances Act, 1985, the statutory control over narcotic drugs was exercised in India through a number of Central and State enactments. The principal Central Acts were (a) the Opium Act, 1857, (b) the Opium Act, 1878, and (c) the Dangerous Drugs Act, 1930."

(emphasis supplied)"

(emphasis added)

60. Notably, the Supreme Court in ***Ranjan Kumar Chadha* v. *State of Himachal Pradesh*** 2023 SCC OnLine SC 1262, took note of the adverse effects of the menace of drug trafficking, upon the society, as under:

"*129. It has been observed in* Baldev Singh *(supra) that drug abuse is a social malady. While drug addiction eats into the vitals of the society, drug trafficking not only eats into the vitals of the economy of a country, but illicit money generated by drug trafficking is often used for illicit activities including encouragement of terrorism. It has acquired the dimensions of an epidemic, affects the economic policies of the State, corrupts the system and is detrimental to the future of a country."*

(emphasis added)

61. Accordingly, petition is dismissed. Pending applications (if any) are rendered infructuous.

62. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

DECEMBER 2, 2024/*kp*