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

Reserved on: 07.02.2026

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+ **BAIL APPLN. 873/2024**

GULHASAN GULSHER KHANPetitioner

Through: Mr. Vivek Kumar Singh, Mr. Vishal Arun Mishra, Mr. Shubham Gupta, Mr. Avinash Kumar Singh and Ms. Rupali Panwar, Advocates.

versus

DIRECTORATE OF REVENUE INTELLIGENCERespondent

Through: Mr. Satish Aggarwala, Sr. Standing Counsel with Mr. Gagan Vaswani, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

1. The petitioner seeks regular bail in connection with FNO.DZU/34/ENQ-02/2022 dated 07.03.2022 and 08.03.2022, for the offences punishable under Sections 21(c), 23, and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [“NDPS Act”].

A. PROSECUTION CASE

2. The case of the prosecution is as follows:

a. The petitioner herein is the proprietor of M/s. Seven Seas Global Shipping Company [“Seven Seas”], which was named as the



consignee of a consignment of goods imported under Bill of Entry No. 7748800 dated 05.03.2022 [“the consignment”].

- b. Upon an information from the National Customs Targeting Centre, the officers of the Directorate of Revenue Intelligence [“DRI”] examined the consignment on 07.03.2022, at ICD, Tughlakabad. The examination was carried out in the presence of the petitioner herein and the representative of the Customs Broker, M/s. Cargo Navigation Services Private Limited. A panchnama was prepared on 07/08.03.2022.
- c. The description of the goods was ‘APPLE SUN TOP JUICE’ [904 cartons] and ‘POMEGRANATE SUN TOP JUICE’ [944 cartons]. Each carton contained 12 bottles of 1 litre each.
- d. On visual inspection, it was found that 2 cartons of apple juice [24 bottles] contained whitish sediments at the bottom, mixed with the juice.
- e. Upon testing with the aid of a drug field testing kit, the contents of the said bottles were found positive for heroin.
- f. The contents of some of the other cartons were also tested on a random basis, but the test results were inconclusive.
- g. Representative samples were thereafter drawn from the juice bottles, in triplicate, and the 24 bottles in question were, on preliminary examination, found to contain heroin.
- h. The consignment was thereafter seized under a Seizure Memo dated 08.03.2022.



- i. The petitioner's statement was recorded under Section 67 of the NDPS Act on 08/09.03.2022. He stated that:
 - (i) The petitioner met one Arshad Sheikh in Dubai in 2012, who introduced him to Asif Nawaz, CEO of Hafiz Muhamad Asif Trading LLC. The latter wanted to export apple and pomegranate juice to India, which was manufactured in Afghanistan and exported by Waqas Yama Ltd., Jalalabad, Afghanistan. The petitioner already had the requisite regulatory clearances for the import of apple and pomegranate juice. He, therefore, agreed to facilitate such import into India by using the importer-exporter code [“IEC”] of Seven Seas.
 - (ii) The consignment was shipped by one Asif Nawaz from Dubai under Invoice No. 1247 dated 13.10.2021. The invoice was raised in the name of Waqas Yama Ltd, and Seven Seas was named as the consignee therein.
 - (iii) Copies of the original invoice, Country of Origin Certificate, and Bill of Lading were provided to the petitioner by Asif Nawaz, and he engaged a customs broker, M/s Cargo Navigation Services Private Limited, for clearance of the consignment.
 - (iv) The petitioner received a sum of Rs. 1,11,100/- in his bank account from one Syed Saif on 03.03.2022, on the directions of Asif Nawaz, out of which he transferred a sum of Rs. 50,000/- to the broker's representative, Shiva Global Shipping. The petitioner was to be paid Rs. 40,000/- by Asif Nawaz for his services.
 - (v) He was instructed by Asif Nawaz to call one 'Amit', Plot No. 31, Hajipur Road, Adarsh Nagar, City Dasuya, Punjab, at a mobile



number provided by him, who would collect the consignment and hand over the remaining payment to the petitioner. The petitioner stated that he had never spoken to the manufacturer or supplier of the consignment in Afghanistan.

- j. The Director of M/s. Cargo Navigation Services Private Limited also made a statement under Section 67 of the NDPS Act, wherein he stated that he had received a request of clearance of the consignment from Shiva Global Shipping, which forwarded the necessary documents, including a copy of the IEC of Seven Seas and the Bill of Lading.
- k. The proprietor of Shiva Global Shipping also gave a statement under Section 67 of the NDPS Act, in which he stated that he was engaged by the petitioner to clear the consignment, and received the documents from the petitioner, for which he received an advance payment of Rs. 50,000/- from the petitioner.
- l. The labels on the carton were in the name of M/s S and S International [“S&S”], A-118, 4th Floor, Abul Fazal Enclave, Part-II, Jamia Nagar, New Delhi – 110025. A partner of S&S made a voluntary statement under Section 67 of the NDPS Act on 06.04.2027, in which it was stated that, he was originally approached for importing a consignment of ‘*SUN-TOP brand juice of Afghanistan origin*’, but he cancelled the deal on the advice of his customs house agent.
- m. The mobile number of ‘Amit’, provided by Asif Nawaz to the petitioner, was traced to one Jaspal Singh, who stated that he had facilitated the mobile connection for Kulvinder @ Kinda, a resident of



village Mehatpur, Jainpur. Jaspal Singh identified Kulvinder @ Kinda from a photograph.

3. On this basis, it is contended that the petitioner had imported the consignment, which included heroin, in the name of his proprietorship firm. He was, therefore, arrested on 09.03.2022 and remanded to judicial custody.

B. SUBMISSIONS BY LEARNED COUNSEL FOR THE PARTIES

4. I have heard Mr. Vivek Singh, learned counsel for the petitioner, and Mr. Satish Aggarwala, learned Senior Standing Counsel for the respondent – DRI.

5. In support of the present application, Mr. Singh submitted as follows:

- a. The prosecution has failed to establish conscious possession of the consignment by the petitioner. In fact, the consignment was intercepted before it came into the possession of petitioner at all.
- b. The importer of the consignment, as evident from the labels on the cartons, was intended to be S&S, and not the petitioner.
- c. Although the petitioner got involved in the transaction in January 2022, believing it in good faith to be a consignment of juice, there is no material whatsoever to suggest that the petitioner was aware of any other contents of the consignment.
- d. The material on record also shows that the petitioner was facilitating the import of the consignment for a relatively small fee, and that it was to be handed over by him to the ultimate importer, who was Kulvinder @ Kinda. Further, he was not in contact with the exporter.
- e. No contraband or incriminating documents have been recovered from the petitioner or at his instance.



- f. The petitioner is also entitled to the benefit of bail on the ground that he has been in judicial custody for approximately 46 months, i.e. since 09.03.2022.
- g. The trial is still at a nascent stage. Although the chargesheet was filed on 31.08.2022 and charges were framed on 14.02.2023 against the petitioner, co-accused Kulvinder @ Kinda has recently been arrested, and a supplementary chargesheet has been filed on 14.07.2025. One witness [PW-1] was partly examined in the year 2023, but his cross examination was inconclusive, as recorded in the order dated 24.04.2023, and he has not been examined again. Another witness [PW-5] was examined and discharged on 07.05.2025. There are a total of 40 witnesses to be examined, and the trial will require substantial time.
- h. The petitioner is a citizen of India, aged in his 60s, and has significant family and business ties to the country.
- i. The petitioner has clean antecedents and is not involved in any other criminal case.

6. Mr. Aggarwala, on the other hand, opposed the grant of bail to the petitioner, on the following grounds:

- a. The present case involves 26.115 kilograms of heroin, which is an extremely large quantity of contraband, compared even to the commercial quantity of 250 grams. Mr. Aggarwala stated that the aforesaid weight is inclusive of the juice and the bottle in which the



sediment was present, in terms of the judgment of the Supreme Court in *Hira Singh and Anr v. Union of India and Anr*¹.

- b. Although the consignment was initially in the name of S&S, the petitioner later provided his IEC for its receipt, and the invoice was also issued by the exporter naming the petitioner's firm as the consignee. This is sufficient to establish conscious possession on his part.
- c. The prosecution relies upon WhatsApp conversations between the petitioner and Asif Nawaz, which refer *inter alia* to payments to be made by “*hawala or western union*”.
- d. The petitioner's case that the actual consignee was not the petitioner, but Kulvinder @ Kinda, is based solely on a WhatsApp message by which Asif Nawaz forwarded the address of 'Amit' to him.
- e. On the point of prolonged incarceration, Mr. Aggarwala submitted that the length of custody alone is insufficient to release the accused on bail, and the Court must have due regard to the requirement of Section 37(1)(b) of the NDPS Act, which lays down the conditions for the grant of bail to persons accused of offences involving commercial quantity of drugs. He argued that those parameters, which are a condition precedent to the grant of bail, are not made out in the present case.

7. In rejoinder, Mr. Singh submitted that:

¹ (2020) 20 SCC 272 [hereinafter, “*Hira Singh*”].



- a. The WhatsApp chats are unverified, and cannot be relied upon by the prosecution at this stage. In any event, they do not establish the petitioner's knowledge of the contents of the consignment.
- b. Even the reference to payment by *hawala* was in the context of delayed payment and clearance of the goods, which the petitioner *bona fide* believed, at all times, to be a consignment of juice.
- c. The contents of the chats, and their effect, are to be tested at the time of the trial.

8. Learned counsel cited several judgments and orders of the Supreme Court and this Court in support of their submissions, which shall be considered later in this judgment.

C. ANALYSIS

I. SATISFACTION OF SECTION 37 OF THE NDPS ACT

9. The allegations against the petitioner pertain to a commercial quantity of heroin, for which he has been accused of offences under Sections 21(c) and 23(c) read with Section 29 of the NDPS Act. As far as offences involving commercial quantities of contraband are concerned, Section 37(1)(b) places the following restrictions upon the grant of bail to an accused. Section 37 is reproduced below:

“37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;
(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and



(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”²

10. In *Mohd. Muslim v. State (NCT of Delhi)*³, the Supreme Court has analysed the aforesaid provision, particularly in the context of a claim for bail based upon prolonged incarceration. The Supreme Court has explained the test for satisfaction of Section 37(1)(b)(ii), in the following terms:

“19. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is “not guilty of such offence” and that he is not likely to commit any offence while on bail. What is meant by “not guilty” when all the evidence is not before the court? It can only be a prima facie determination. That places the court’s discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439 CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under the Special Acts (the NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions.

20. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused cooperating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such Special Acts, has to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This Court has generally upheld such conditions

² Emphasis supplied.

³ 2023 SCC OnLine SC 352 [hereinafter, “*Md. Muslim*”].



on the ground that liberty of such citizens has to—in cases when accused of offences enacted under special laws—be balanced against the public interest.

21. *A plain and literal interpretation of the conditions under Section 37 (i.e. that court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a *prima facie* look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.*

22. *The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this Court have, therefore, emphasised that the satisfaction which courts are expected to record i.e. that the accused may not be guilty, is only *prima facie*, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Mallik, (2009) 2 SCC 624). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436-A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil v. CBI, (2022) 10 SCC 51). Having regard to these factors the Court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.”*⁴

11. Applying these standards, the question that the Court must ask itself, in order to satisfy the requirements of Section 37(1)(b)(ii), is whether on a *prima facie* and reasonable reading, the accused may not be guilty. The matter does not require a mini trial or meticulous examination of all the material, but a *prima facie* and reasonable assessment.

12. On the anvil of this test, I am of the view that the petitioner satisfies the condition imposed under Section 37(1)(b)(ii), for the following reasons:

⁴ Emphasis supplied.



- a. As far as the requirement of conscious possession is concerned, although the petitioner's IEC was admittedly used for the transaction, there is *prima facie* no material to establish his knowledge of the nature of the consignment. The consignment was originally intended for S&S, and even when intercepted, the cartons bore labels addressed to S&S. The petitioner's involvement has, therefore, come in at a later stage. Further, the consignment was intercepted before it had ever come into the possession of the petitioner. I am supported in this analysis by the decision of a coordinate Bench of this Court in *Vipin Mittal v. National Investigating Agency*⁵, which in turn relied upon the decisions of the Supreme Court in *Union of India v. Mohd. Nawaz Khan*⁶, and *Md. Muslim*.
- b. Mr. Singh relied upon the judgment of the Supreme Court in *Bharat Chaudhary v. Union of India*⁷, and of this Court in *Mohd. Nasar v. Narcotics Control Bureau*⁸, to submit that WhatsApp chats, unsupported by forensic analysis, cannot be used at this stage to implicate the petitioner. Even otherwise, taking the WhatsApp chats relied upon by the prosecution at their face value, they *prima facie* establish that the petitioner was facilitating the import not on his own account, but for a third-party consignee, named in the WhatsApp chats

⁵ 2023 SCC OnLine Del 3270, paragraph 14.

⁶ (2021) 10 SCC 100.

⁷ (2021) 20 SCC 50, paragraphs 12 and 13.

⁸ 2024 SCC OnLine Del 771, paragraph 31 [hereinafter, “*Md. Nasar*”].



as 'Amit'. Amit's phone number, even according to the prosecution, was ultimately traced to Kulvinder @ Kinda.

- c. The reference to *hawala* payment does not persuade me to reach a contrary conclusion, as it is *prima facie*, equally consistent with the petitioner's case that he was facilitating an import of a consignment of juice and was anxious about the belated payment.
- d. Mr. Singh joined issue on the measurement of contraband, as relied upon by the DRI. He submitted that the weight of the juice and/or bottles cannot be regarded as "*integral*" to delivery or consumption of the contraband, so as to fall within *Hira Singh*, as interpreted in *Md. Nasar*. I do not consider it necessary to return a finding on this aspect at this stage, as I have proceeded on the basis that the petitioner fulfils the criteria laid down in Section 37(1)(b) of the NDPS Act, even assuming the quantity involved to be a commercial quantity.

13. The petitioner also has no prior criminal involvements and Mr. Aggarwala candidly submitted that he had clear antecedents.

14. For the aforesaid reasons, on the standard laid down in *Md. Muslim*, the petitioner satisfies the conditions imposed by Section 37(1)(b) of the NDPS Act.

II. PROLONGED INCARCERATION AND DELAY IN TRIAL

15. The second ground of consideration in the present case is the petitioner's entitlement to bail on the ground of prolonged incarceration. Mr. Singh submitted that the petitioner has been in custody for approximately 46 months. The Nominal Roll on record also certifies his jail conduct as satisfactory.



16. Mr. Singh relied upon several judgments and orders of the Supreme Court, in which the Court has released persons accused under the NDPS Act on bail, despite the applicability of Section 37. Reference in this connection may be made to the following orders of the Supreme Court, in which Section 37 was otherwise applicable:

Sr. No.	Case No.	Cause title	Date of order / judgment	Period of incarceration
1.	SLP (Crl.) No. 8900/2022	<i>Jitendra Jain v. Narcotics Control Bureau and Anr.</i>	16.12.2022	2 years
2.	SLP (Crl.) No. 6690/2022	<i>Dheeraj Kumar Shukla v. State of U.P.</i>	25.01.2023	2 and a half years
3.	SLP (Crl.) No. 4169/2023	<i>Rabi Prakash v. State of Odisha</i>	13.07.2023	More than 3 and a half years
4.	SLP (Crl.) No. 975/2023	<i>Badsha SK. v. The State of West Bengal</i>	13.09.2023	More than 2 years
5.	SLP (Crl.) No. 8656/2023	<i>Man Mandal and Anr. v. The State of West Bengal</i>	14.09.2023	Almost 2 years
6.	SLP (Crl.) No. 14347/2023	<i>Rased Mia v. The State of West Bengal</i>	24.01.2024	1 year and 6 months
7.	SLP (Crl.) No. 14415/2023	<i>Suman Sk. @ Samirul Islam v. The State of West Bengal</i>	01.03.2024	Not mentioned
8.	SLP (Crl.) No. 14974/2025	<i>Deepchand v. State of Rajasthan</i>	26.11.2025	More than 3 years

17. In many of the aforesaid decisions, the Court referred to the valuable right granted by Article 21 of the Constitution, which would stand defeated



by prolonged incarceration during the period of trial. Upon a consideration of the fundamental right to life and liberty, bail was granted, despite the applicability of Section 37 of the NDPS Act. In some of the judgments, the Supreme Court has specifically considered whether the parameters of Section 37 of the NDPS Act must also be satisfied in such a case.

18. The judgment in *Md. Muslim* deals with the issue in some detail. Referring to its judgments in *Union of India v. K.A. Najeeb*⁹, and *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India and Ors.*¹⁰ [which deals specifically with the NDPS Act], the Supreme Court emphasised that restrictive provisions for bail, such as Section 37 of the NDPS Act, must be interpreted in the context of the inordinate delay in the conduct of the trial. The relevant observations of the Court are as follows:

“12. This Court has to, therefore, consider the appellant’s claim for bail, within the framework of the NDPS Act, especially Section 37. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India [(1994) 6 SCC 731] , this Court made certain crucial observations, which have a bearing on the present case while dealing with denial of bail to those accused of offences under the NDPS Act: (SCC pp. 747-48, para 15)

“15. ... On account of the strict language of the said provision very few persons accused of certain offences under the Act could secure bail. Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution. We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in

⁹ (2021) 3 SCC 713.

¹⁰ (1994) 6 SCC 731.



*mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in *Kartar Singh v. State of Punjab* [(1994) 3 SCC 569]. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in *Abdul Rehman Antulay v. R.S. Nayak* [(1992) 1 SCC 225], release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, 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 would receive a jolt. It is because of this that we have felt that after the accused persons have 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, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters."*

13. When provisions of law curtail the right of an accused to secure bail, and correspondingly fetter judicial discretion (like Section 37 of the NDPS Act, in the present case), this Court has upheld them for conflating two competing values i.e. the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest — as observed in *Vaman Narain Ghiya v. State of Rajasthan* [(2009) 2 SCC 281] ("the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal...."). They are, at the same time, upheld on the condition that the trial is concluded expeditiously. The Constitution Bench in *Kartar Singh v. State of Punjab* [(1994) 3 SCC 569] made observations to this effect. In *Shaheen Welfare Assn. v. Union of India* [(1996) 2 SCC 616] again, this Court expressed the same sentiment, namely, that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly. The Court said that parliamentary intervention is based on:



“17. ... a conscious decision has been taken by the legislature to sacrifice to some extent, the personal liberty of an undertrial accused for the sake of protecting the community and the nation against terrorist and disruptive activities or other activities harmful to society, it is all the more necessary that investigation of such crimes is done efficiently and an adequate number of Designated Courts are set up to bring to book persons accused of such serious crimes. This is the only way in which society can be protected against harmful activities. This would also ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods.”

14. *In a recent decision, while considering bail under the Unlawful Activities (Prevention) Act, 1967, this Court in *Union of India v. K.A. Najeeb* [(2021) 3 SCC 713] observed that: (SCC pp. 720-21, para 12)*

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

The Court concluded that statutory restrictions like Section 43-D(5) UAPA, cannot fetter a constitutional court's ability to grant bail on ground of violation of fundamental rights.

15. *Even in the judgment reported as *Vijay Madanlal Choudhary v. Union of India* [(2023) 12 SCC 1] this Court while considering bail conditions under the Prevention of Money Laundering Act, 2002, held that: (SCC p. 269, para 325)*

“325. ... If Parliament/Legislature provides for stringent provision of no bail, unless the stringent conditions are fulfilled, it is the bounden duty of the State to ensure that such trials get precedence and are concluded within a reasonable time, at least before the accused undergoes detention for a period extending up to one-half of the maximum period of imprisonment specified for the offence concerned by law.”

16. *In the most recent decision, *Satender Kumar Antil v. CBI* [(2022) 10 SCC 51] prolonged incarceration and inordinate delay engaged the attention of the Court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 of the NDPS*



Act. The Court expressed the opinion that Section 436-A (which requires *inter alia* the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply: (SCC p. 127, para 86)

“86. ... 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.”

xxxx xxxx xxxx xxxx

23. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31-12-2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 prisoners in the country. Of these 1,22,852 were convicts; the rest 4,27,165 were undertrials.

24. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in *A Convict Prisoner v. State* [1993 SCC OnLine Ker 127] as “a radical transformation” whereby the prisoner:

“13. ... loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity and autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”

25. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal” [Working Papers - Group on Prisons & Borstals - 1966 U.K.] (also see Donald Clemmer's “The Prison Community” published in 1940). Incarceration has further deleterious effects—where the accused belongs to the weakest economic strata:



immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials—especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”¹¹

19. A similar reference is found in *Rabi Prakash v. State of Odisha*¹², which reads as follows:

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”¹³

20. In *Dheeraj Kumar Shukla v. State of Uttar Pradesh*¹⁴ also, the Supreme Court was of the view that the conditions under Section 37 of the NDPS Act “can be dispensed with”, in a case of prolonged incarceration, even where commercial quantities of drugs are concerned.

21. The following judgments of this Court have also been cited by Mr. Singh:

- a. In *Gopal Dangi v. State NCT of Delhi*¹⁵, the Court analysed, the case on merits, and also the right under Article 21 of the Constitution, and

¹¹ Emphasis supplied.

¹² 2023 SCC OnLine SC 1109.

¹³ Emphasis supplied.

¹⁴ 2023 SCC OnLine SC 918.

¹⁵ BAIL APPLN. 3350/2023 and connected matter, decided on 15.07.2024.



released the petitioners on bail. The petitioners had been in custody for approximately 1 year 10 months.

b. In *Dilbagh Singh v. State through SHO Special Cell*¹⁶, the allegation concerned a commercial quantity, and, relying upon precedents of the Supreme Court and this Court, a Coordinate Bench of this Court released the petitioner on bail, having regard to the inordinate delay in completion of the trial.

22. As opposed to these judgments, Mr. Aggarwala has drawn my attention to two judgments of Supreme Court and two of this Court, which mandate an analysis in terms of Section 37 of the NDPS Act, even in cases which would fall within the ambit of Article 21 grounds:

- a. In *Narcotics Control Bureau v. Mohit Aggarwal*¹⁷, and a recent judgment in *Union of India v. Vigin K. Varghese*¹⁸, the Supreme Court has emphasised the requirement of Section 37 of the NDPS Act in cases of commercial quantity of drugs, even when the High Court had rendered a finding relatable to Article 21 of the Constitution.
- b. In *Okeke Gloria Adaobi v. DRI*¹⁹, a Coordinate Bench of this Court declined bail on a consideration on merits under Section 37 of the NDPS Act, despite an argument that the petitioner had been incarcerated for a period of approximately 1 year and 8 months, and that the trial was likely to take a long time.

¹⁶ BAIL APPL. 3649/2024, decided on 23.10.2024.

¹⁷ (2022) 18 SCC 374.

¹⁸ SLP (CRL.) 7768/2025, decided on 13.11.2025.

¹⁹ 2025 SCC OnLine Del 4011.



c. In *Amit Bhatnagar v. Narcotics Control Bureau*²⁰, the period of custody was approximately two years. This Court nonetheless applied Section 37 of the NDPS Act and held that the rigour of the statute cannot be diluted unless the delay has been caused for reasons attributable to the State, and the period of custody is unconscionably long to constitute miscarriage of justice. While denying bail, the Court specifically observed that the petitioner therein may be entitled to revisit this ground if the trial remains stagnant for an unduly extended period.

23. In the present case, as I have come to the conclusion that the petitioner satisfies the conditions under Section 37 of the NDPS Act, it is not necessary to adjudicate whether this analysis is necessary in all cases, even where prolonged incarceration is made out, rendering the continued custody of the petitioner violative of Article 21 of the Constitution.

24. On an application of the principles mentioned above, I am of the view that the petitioner herein is also entitled to be released on bail on grounds relatable to Article 21 of the Constitution. He was arrested on 09.03.2022, and has remained in custody for a period of almost four years. The prosecution has cited 40 witnesses. While the order on charges against him was made on 14.02.2023, in almost three years since then, only one witness [PW-1] was examined inconclusively in 2023, and one other witness [PW-5] was examined only in 2025. The order sheets of the Special Court from 24.04.2023 onwards have been placed on record before this Court. They show that several adjournments were necessitated by the absence of

²⁰ BAIL APPLN. 1804/2025, decided on 27.08.2025.



witnesses, non-production of the accused, and other reasons not attributable to the petitioner. Additionally, co-accused Kulvinder @ Kinda has been chargesheeted only recently by way of a supplementary charge sheet, which will further affect the pace of the trial. The trial is therefore unlikely to conclude within a reasonable period.

D. CONCLUSION

25. On a holistic consideration of the facts, the petitioner is therefore entitled to bail, both in terms Section 37 of the NDPS Act, and Article 21 of the Constitution.

26. It is, therefore, ordered that the petitioner shall be released on regular bail in connection with FNO.DZU/34/ENQ-02/2022 dated 07.03.022 and 08.03.2022, for the offences punishable under Sections 21(c), 23, and 29 of the NDPS Act, subject to furnishing a bail bond in the sum of Rs. 50,000/-, with one surety of the like amount, to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- a. The petitioner shall appear before the learned Trial Court as and when directed.
- b. If the petitioner has a passport, he shall surrender the same to the learned Trial Court, and shall not leave the country without the prior permission of the learned Trial Court.
- c. The petitioner shall ordinarily reside at the address as per prison records, and shall not change the address without informing the concerned Investigating Officer/ Station House Officer.
- d. The petitioner shall furnish to the concerned Investigating Officer/ Station House Officer, a mobile number on which he may be



contacted at any time and shall ensure that the number is kept active and switched on at all times.

- e. The petitioner shall not contact, nor visit, nor offer any inducement, threat, or promise to any of the prosecution witnesses or other persons acquainted with the facts of the case.
- f. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

27. The application stands disposed of in the above terms.

28. Needless to state, the observations of this Court are only for the purpose of deciding the present application, and shall not be construed as an expression of opinion on the merits of the case.

29. Copy of this judgment be sent to the concerned Jail Superintendent for information and necessary compliance.

PRATEEK JALAN, J

FEBRUARY 11, 2026
dy/KA/