

Latest HLJ 2025 (HP)(1) 135 In the High Court of Himachal Pradesh, Shimla.

Cr.MP(M) No.2304 of 2024

(A) Narcotic Drugs and Psychotropic Substances Act, 1985

Section–37(1)(b)–Conditions/Restriction for granting bail involving commercial quantities–Held–That, once no contraband recovered from petitioner, then prosecution objection to bail by involving rigors of 37(1)(b) of NDPS Act, cannot be invoked. (Para 10)

(B) Narcotic Drugs and Psychotropic Substances Act, 1985 Section–29–Abetment and criminal conspiracy–As per prosecution, petitioner was seated nearby, thus liable under Section 29 for conspiracy– Held–That, the invocation of alleging abatement and criminal conspiracy is a matter of tested, examined and proved during trial– Bail petitioner is not guilty at this stage. (Para 10(iii))

(C) Bhartiya Nagrik Suraksha Sahinta, 2023 Section–483 read with Sections 20 & 29 of Narcotic Drugs and Psychotropic Substances Act, 1985–Bail–Charas recovered weighing 1.126 Kgs–Petitioner is in custody since 06.03.2024–Parameters of mandate to grant bail– Petitioner traveling with two co-accused and was unaware of the contraband found in the possession of co-accused–Held–The nature of the accusation, severity of the offense, potential influence over witnesses, likelihood of absconding, and possibility of tampering with evidence were all to be considered–Bail granted. (6(ii))

(D) Narcotic Drugs and Psychotropic Substances Act, 1985 Section–21– Prolonged incarceration–Infringement of personal liberty–In custody for more than 11 months–Held–The fundamental right to a speedy trial under Article 21 must prevail over the seriousness of the alleged crime–Further detention certainly amounts to implicating the petitioner on mere accusation or conjectures-suspicion, by way of punishment, defeating the very intent and object of bail. (Para 23) Cases referred:

(1) Gurbaksh Singh Sibbia vs. State of Punjab (1980) 2 SCC 565.

(2) Ram Govind Upadhyay vs. Sudarshan Singh (2002) 3 SCC 598.

(3) Kalyan Chandra Sarkar vs. Rajesh Ranjan, (2004) 7 SCC 528.

(4) Prasanta Kumar Sarkar vs. Ashish Chatterjee, (2010) 14 SCC 496. reiterated in P. Chidambaram versus Directorate of Enforcement, (2019) 9 SCC 24.

(5) Sushila Aggarwal vs. State NCT Delhi, (2020) 5 SCC 01.

(6) Deepak Yadav vs. State of Uttar Pradesh, (2022) 8 SCC 559.

(7) Ansar Ahmad vs. State of Uttar Pradesh, 2023 SCC Online SC 974.

(8) CBI vs. Santosh Karnani, (2023) 6 SCALE 250.

(9) State of Haryana vs. Dharamraj, 2023 SCC Online SC 1085.

(10) Mukesh Kumar vs. State of Rajasthan and another, 2023 SCC OnLine SC 2025.

(11) Guddan alias Roop Narayan vs. State of Rajasthan, 2023 SCC OnLine SC 1242.

(12) Partha Chatterjee vs. Directorate of Enforcement, 2024 SCC Online SC 3729.

Parties represented by:

For the Petitioner: Ms. Ranjeeta Meghta and Mr. Paras Ram, Advocates.

For the Respondents: Mr. Vishav Deep Sharma, Additional Advocate General.

Ranjan Sharma, Judge:- Bail petitioner [Jitender Singh], who is in custody since 06.03.2024 has come up before this Court, seeking regular bail, under Section 483 of the Bhartiya Nagrik Suraksha Sahinta, hereinafter (hereinafter referred to as BNSS), originating from the FIR No.33 of 2024 dated 06.03.2024, registered at Police Station Chowari, District Chamba, [H.P.], under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act (referred to as the NDPS Act).

FACTUAL MATRIX IN BAIL PETITION:

2. Case of the petitioner as set up by Ms. Ranjeeta Meghta and Mr. Paras Ram, Advocates, is that bail petitioner met two other co-accused at Bus Stand Pathankot [Punjab], when, he was asked by other two co-accused to visit Chamba [Himachal Pradesh] for sight-seeing. Bail petitioner reached Chamba on 05.03.2024. On the next day, on 06.03.2024, bail petitioner boarded a Bus No.HP- 73-2697 from Chamba to Pathankot and as soon as the bus reached Tunihatti at about 11:30 a.m., the bus was intercepted by Police Patrolling Party. Bail petitioner along with two other coaccused were seated at seat Nos.41, 41 and 42 of the aforesaid bus. It is averred in the bail petition that co-accused Suraj Kumar, who was sitting on seat No.41, was carrying a bag and the Police Party asked Suraj Kumar to open the bag for checking. He resisted. Consequently, the Police Personnel, carried the search, when, contraband, i.e. charas, weighing 1.126 Kgs. was recovered from the bag, being carried by co-accused, Suraj Kumar. It is averred that the bail petition had no knowledge about the contraband being carried by co-accused Suraj Kumar. Nothing was recovered from the conscious possession of the bail petitioner. It is averred that the bail petitioner has been falsely implicated in the said case. It is averred that bail petitioner had filed an application for bail on 09.04.2024, but the same was rejected by Learned Special Judge-II, Chamba, on 25.04.2024. In the bail petition, the bail petitioner has furnished undertakings that he shall abide by all such terms and conditions, as may be imposed by this Court and bail petitioner, shall furnish a surety bond and shall not leave the jurisdiction of this Court, without prior permission of the Trial Court or this Court, in case, the bail is granted. It is further averred that the bail petitioner belongs to a reputed family and has no past criminal antecedents. It is further averred that since the bail petitioner is in custody since 06.03.2024 and his personal liberty has been curtailed by detention which is prolonging, coupled with the fact that trial is likely to take considerable time, therefore, the petitioner has approached this Court for grant of bail.

STATUS REPORT:

3. Pursuant to issuance of notice on the bail petition, State Authorities have furnished Status Report dated 20.12.2024, on the Instructions of Superintendent of Police, Chamba.

3(i). Perusal of Status Report, indicates sequences of events, narrating that the Police Patrolling Party searched Bus No.HP-73-2697, in which petitioner and other co-accused were travelling. It is borne out from the Status Report that during search, Police Patrolling Party found that Suraj Kumar, co-accused, who was sitting at Seat No.41 in the bus, was carrying the contraband, which was recovered, weighed and was found to be containing 1.126 Kgs. of charas. After completing all codal formalities, police investigated the matter, in which bail petitioner was participated. Status Report further refers to SRFSL Report dated 09.04.2024, which corroborates recovery of charas from co-accused, Suraj Kumar, who was sitting at Seat No.41 in the said bus. Status Report further indicates that prosecution intends to examine 22 witnesses, out of which 2 PWs have been examined, as on day and the case is fixed for examining 10 other witnesses on 19/20.02.2025. In this background, Status Report, has been filed by the State Authorities, with the prayer for dismissing of the bail petition.

4. Heard Ms. Ranjeeta Meghta, learned counsel for the bail petitioner and Mr. Vishav Deep Sharma, Learned Additional Advocate General, for the respondent-State.

STATUTORY PROVISIONS:

5. Before dealing with the bail petition, it is necessary to take note of the provisions of Sections 20 and 29 of the NDPS Act, which read as under:- “20. Punishment for contravention in relation to cannabis plant and cannabis.—

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder,—

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable,—

(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees; and

(ii) where such contravention relates to subclause (b),—

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to [one year], or with fine which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

29. Punishment for abetment and criminal conspiracy.-

(1) Whoever abets or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which-

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.”

MANDATE OF LAW:

6. Notably, the claim of the suspect-accused for post arrest or regular bail is to be examined/ tested within the parameters prescribed of the Code of Criminal Procedure and also the broad para-meters mandated by the Hon'ble Supreme Court for regulating grant of bail in *Gurbaksh Singh Sibbia versus State of Punjab* (1980) 2 SCC 565, *Ram Govind Upadhyay versus Sudarshan Singh* (2002) 3 SCC 598 ; *Kalyan Chandra Sarkar versus Rajesh Ranjan*, (2004) 7 SCC 528; *Prasanta Kumar Sarkar versus Ashish Chatterjee*, (2010) 14 SCC 496; reiterated in *P. Chidambaram versus Directorate of Enforcement*, (2019) 9 SCC 24, mandating that the bail is to be granted where the case is frivolous or groundless and no prima facie or reasonable grounds exists which lead to believe or point out towards accusation; and these parameters for regular bail have been reiterated in *Sushila Aggarwal versus StateNCT Delhi*, (2020) 5 SCC 01.

6(i). While dealing with the case for grant of regular bail, under Section 483 BNSS, the three judges bench of Hon'ble Supreme Court, after reiterating the broad parameters, has held in *Deepak Yadav versus State of Uttar Pradesh*, (2022) 8 SCC 559, in Para-25 that the nature of the crime has a huge relevancy, while considering claim for bail.

6(ii). In the case of *Ansar Ahmad versus State of Uttar Pradesh*, 2023 SCC Online SC 974, the Hon'ble Supreme Court had expanded the horizon of the broad parameters, which are to be primarily taken into account, for considering the claim for regular bail or anticipatory bail as under: “11. Mr. R. Basant, the learned Senior Counsel appearing for one of the private

respondents that the Court while granting bail is not required to give detailed reasons touching the merits or de-merits of the prosecution case as any such observation made by the Court in a bail matter can unwittingly cause prejudice to the prosecution or the accused at a later stage. The settled proposition of law, in our considered opinion, is that the order granting bail should reflect the judicial application of mind taking into consideration the well-known parameters including:

- (i) The nature of the accusation weighing in the gravity and severity of the offence;
- (ii) The severity of punishment;
- (iii) The position or status of the accused, i.e. whether the accused can exercise influence on the victim and the witnesses or not;
- (iv) Likelihood of accused to approach or try to approach the victims/ witnesses;
- (v) Likelihood of accused absconding from proceedings;
- (vi) Possibility of accused tampering with evidence;
- (vii) Obstructing or attempting to obstruct the due course of justice;
- (viii) Possibility of repetition of offence if left out on bail;
- (ix) The prima facie satisfaction of the court in support of the charge including frivolity of the charge;
- (x) The different and distinct facts of each case and nature of substantive and corroborative evidence.

12. We hasten to add that there can be several other relevant factors which, depending upon the peculiar facts and circumstances of a case, would be required to be kept in mind while granting or refusing bail to an accused. It may be difficult to illustrate all such circumstances, for there cannot be any straight jacket formula for exercising the discretionary jurisdiction vested in a Court under Sections 438 and 439 respectively of the CrPC, as the case may be."

6(iii). In CBI versus Santosh Karnani, (2023) 6 SCALE 250, the Hon'ble Supreme Court has reiterated the illustrative time-tested broad parameters which are required to be taken into account while considering the prayer for bail; which have recently been reiterated by the Hon'ble Supreme Court in the case of State of Haryana versus Dharamraj, 2023 SCC Online SC 1085.

7. In normal parlance, the principle of law is that bail is a rule and jail is an exception. However, this Court is conscious of the fact that the power under Section 483 of BNSS has to be exercised sparingly. It is trite law that while

considering the prayer for bail {pre-arrest bail or regular bail}, a formation of prima facie opinion

is to gathered as to whether reasonable grounds exist pointing towards accusation or whether the accusation is frivolous and groundless with the object of either injuring or humiliating or where a person has falsely been roped in the crime needs to be tested in the background of the self-imposed restrains or the broad parameters as mandated by law, as referred to herein above. 8. This Court is also conscious of the fact that as per the mandate of law, in Criminal Appeal No 3840 of 2023, titled as Saumya Churasia versus Directorate of Enforcement, decided on 14.12.2023, while considering the prayer for bail, though a Court is not required to weigh the evidence collected by the Investigating Agency meticulously, nonetheless, a Court should keep in mind the nature of accusation, nature of evidence collected in support thereof, severity of punishment prescribed for alleged offences, character of an accused, circumstances which are peculiar to an accused, reasonable possibility of securing the presence of an accused during the trial and the reasonable apprehension of tampering with evidence and the claim for bail has to be examined by carving a balance between the rights of an accused and the larger societal/public interest. In this background, while testing the claim for bail, a Court is required to form a prima-facie opinion in the context of broad-parameters as referred to above, without delving into the evidence on merits, as it may tend to prejudice the rights of the accused as well as the prosecution.

ANLYSIS: CLAIM FOR BAIL IN INSTANT CASE:

9. While examining the claim of the bail petitioner in the instant case, this Court is conscious of the fact that, in case, an accused is alleged involved in commercial quantity of contraband [charas of 1.126 Kgs.], therefore, in normal parlance, the rigors of Section 37 (1) (b) of NDPS Act are to be satisfied before acceding the claim for bail in terms of the mandate of law laid, down by Hon'ble Supreme Court in Narcotics Control Bureau vs Mohit Aggarwal AIR 2022 SC 3444, followed in Union of India vs Ajay Kumar Singh @ Pappu, SLP (Criminal) No.2351 of 2023, has been reiterated by Hon'ble Supreme Court in State by the Inspector of Police vs B. Ramu, SLP (Criminal) No.8137 of 2022 decided on 12.02.2024. In aforesaid background, this Court proceeds to examine the claim of bail petitioner [Jitender Singh], for bail, in view of the Statutory mandate of Section 37 (1) (b) of NDPS Act and on other grounds available to the bail petitioner, by way of exceptions to the rigors of Section 37 of NDPS Act, in terms of the mandate of law of Hon'ble Supreme Court, hereinbelow.

[A]. CLAIM FOR BAIL UNDER SECTION 37(1) (b) OF NDPS ACT:

10. Perusal of Status Report admits in an unambiguous terms that the police party recovered the bag containing 1.126 Kgs. of the contraband, i.e. charas from accused Suraj Kumar, who was occupying seat No.41 in Bus No.HP-73-2697 on 06.03.2024 at about 11:00 a.m. Once no contraband was recovered from bail petitioner [Jitender Singh], then, the prosecution story objecting to bail by involving rigors of Section 37 (1) (b) of NDPS Act, cannot be invoked in case of bail petitioner.

10(i). Case of bail petitioner is that he was not aware that accused, Suraj Kumar, was carrying the contraband in his bag. In these circumstances, once the bail petitioner specifically denies the fact that he had knowledge of accused Suraj Kumar carrying the contraband and no material has been placed on record by State Authorities in the Status Report that the bail petitioner [Jitender Singh], had knowledge of contraband, therefore, the bail petitioner appears

to be not guilty of the offence.

10(ii). Status Report filed by State Authorities do not spell out any material to show that the bail petitioner has resorted to any activities, so as to invoke the provisions of Section 20 of NDPS Act against the bail petitioner. Nothing has been placed on record that the bail petitioner had produced, manufactured, possessed, sold, transported, imported, exported or used the contraband as alleged in the instant case. In these circumstances, the bail petitioner appears to be not guilty, at this stage, and therefore, the bail petitioner deserves to be extended the benefit of bail.

10(iii). Invocation of Section 29 of NDPS Act, alleging abatement and criminal conspiracy is a matter to be tested, examined and proved during trial. Accusation of abatement or criminal conspiracy cannot be attributed against the bail petitioner without any cogent material on record. In these circumstances, based on Status Report/material on record, this Court is of the considered view that the bail petitioner is not guilty at this stage.

10(iv). Moreover, the prosecution story appears to be doubtful in terms of Status Reports dated 20.12.2024, filed before this Court and the earlier Status Report dated 16.04.2024 [taken on record] filed by State Authorities before Learned Trial Court, indicates that it was Suraj Kumar and Pawan Kumar, who went for purchasing the alleged contraband whereas, the bail petitioner [Jitender Singh] had not gone along with them and had stayed back at Chamba, belies the accusation, against the bail petitioner. In these circumstances, this Court is of the considered view that no reasonable grounds exist for believing that the bail petitioner is not guilty of offence.

NOTHING ADVERSARIAL REGARDING REPETITION OF OFFENCE AFTER BAIL:

11. The Status Reports filed by State Authorities have not expressed any apprehension of repetition of offence after release on bail, which, still is being taken care of, by imposing stringent bail conditions in later part of this bail order. Taking into account the entirety of the facts and circumstances, including the Status Reports, this Court is of the considered view that there are no reasonable grounds to believe that the bail petitioner is guilty and nothing exists that bail petitioner is likely to repeat the offence after release on bail and, therefore, even by applying the twin principles in Section 37(1) (b) of the NDPS Act, the bail petitioner [Jitender Singh] is entitled to be enlarged on bail.

[B]. CLAIM FOR BAIL ON OTHER EXCEPTIONAL GROUNDS: CIRCUMSTANCES:

12. Notwithstanding, the discussion with respect to claim for bail under Section 37 (1) (b) of NDPS Act [supra], this Court is of the considered view that bail petitioner is entitled to be enlarged on bail for the following reasons:-

13. Learned counsel for the bail petitioner, Ms. Ranjeeta Meghta, submits that FIR in the instant case was registered on 06.03.2024 and the petitioner is in custody for more than 11 months now. It is further submitted that investigation is complete and challan/police report dated 26.06.2024 has been filed and charges have been framed and out of 22 PWs, two PWs have been examined and evidence of 8 other PWs is scheduled for 19.02.2025 and on 22.02.2025

before Learned Special Judge, Chamba.

13(i). While dealing with the claim for bail, where the accused had suffered incarceration for more than 14 months, coupled with the fact that there is no much progress in the trial and such trial was to take considerable time, the Hon'ble Supreme Court in Mukesh Kumar versus State of Rajasthan and another, 2023 SCC OnLine SC 2025, granted bail to the accused therein, in the following terms:-

"2. The petitioner is accused of giving one blow on the head of the deceased with a danda (Bamboo). It may also be mentioned that occurrence took place on 08-06-2020 and the deceased succumbed to his injuries on 12-06-2020.

5. After cancellation of bail by the High Court, the petitioner has again surrendered on 16-11-2022 and is in custody.

7. It may be seen that there are cross-versions and both sides suffered injuries. The question as to who was the aggressor will depend upon the appreciation of evidence and will be decided by the Trial Court at an appropriate stage. It is not expedient or desirable for this Court to express any opinion in relation thereto at this stage.

8. Suffice to say that the petitioner has been in custody for more than 14 months, the crucial witnesses have since been examined and there is no likelihood of tampering with the evidence. Even otherwise also, the witnesses are close family members of both sides, hence there is no likelihood of winning over the witnesses.

9. Since conclusion of trial will take considerable time, we deem it appropriate to release the petitioner on bail.

11. Consequently, without expressing any views on the merits of the case, the petitioner is directed to be released on bail, subject to his furnishing bail bonds to the satisfaction of the Trial Court. 2025 Jitender Singh V/s State of Himachal Pradesh 143

12. The petitioner and his family members as well as Respondent No. 2 and his family members will ensure that no untoward incident takes place again."

PROLONGED INCARCERATION AND INFRINGEMENT OF PERSONAL LIBERTY UNDER ARTICLE 21 OF THE CONSTITUTION OF INDIA:

14. While reiterating the principle that bail is a rule and jail is an exception and no accused can be deprived of personal liberty on mere accusation and an accused is to be treated as innocent in the eyes of law, the Hon'ble Supreme Court has outlined the object of bail in Guddan alias Roop Narayan Versus State of Rajasthan, 2023 SCC OnLine SC 1242, in the following terms:- "11. In the case of Sanjay Chandra V. Central Bureau of Investigation, (2012) 1 SCC 40, while hearing a bail Application in a case of an alleged economic offence, this court held that the object of bail is neither punitive nor preventative. It was observed as under: "21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The

object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

25. The provisions of Cr PC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual.

27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution."

12. Further, in the case of Sandeep Jain v. National Capital Territory of Delhi, (2000) 2 SCC 66, this Court, while hearing a bail application held that conditions for grant of bail cannot become so onerous that their existence itself is tantamount to refusal of bail. This Court held as under:

"We are unable to appreciate even the first order passed by the Metropolitan Magistrate imposing the onerous condition that an accused at the FIR stage should pay a huge sum of Rs. 2 lakhs to be set at liberty. If he had paid it is a different matter. But the fact that he was not able to pay that amount and in default thereof he is to languish in jail for more than 10 months now, is sufficient indication that he was unable to make up the amount. Can he be detained in custody endlessly for his inability to pay the amount in the range of Rs.2 lakhs? If the cheques issued by his surety were dishonoured, the Court could perhaps have taken it as a ground to suggest to the payee of the cheques to resort to the legal remedies provided by law.

Similarly if the Court was dissatisfied with the conduct of the surety as for his failure to raise funds for honouring the cheques issued by him, the Court could have directed the appellant to substitute him with another surety. But to keep him in prison for such a long period, that too in a case where bail would normally be granted for the offences alleged, is not only hard but improper. It must be remembered that the Court has not even come to the conclusion that the allegations made in the FIR are true. That can be decided only when the trial concludes, if the case is chargesheeted by the police."

REFORMATIVE APPROACH IN BAIL:

15. While dealing with the concept of bail and personal liberty of an accused under Article 21 of the Constitution of India, the Hon'ble Supreme Court, in Criminal Appeal No.2787 of 2024, titled as Javed Gulam Nabi Shaikh Versus State of Maharashtra and Another, as under:-

“18 Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of

circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article

21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The overarching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21 We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

22 In view of the aforesaid, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court is set aside.”

BAIL NOT TO BE WITHHELD BY WAY OF PENALTY: ARTICLE 21 OF CONSTITUTION OF INDIA:

16. While dealing with a matter relating to the prolonged incarceration and the right to speedy trial and right of liberty to be sacrosanct right and while deprecating that the bail is not to be withheld as punishment so as to operate de hors the principle that bail is rule and jail is an exception, the Hon'ble Supreme Court, in Manish Sisodia vs Directorate of Enforcement, SLP (Criminal) No.8781 of 2024, decided on 09.08.2024, has held as under :- “49. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.

50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct

rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.

52. The Court also reproduced the observations made in *Gudikanti Narasimhulu* (supra), which read thus: “10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in

Gudikanti Narasimhulu v. Public Prosecutor, High Court reported in (1978) 1 SCC 240. We quote: “What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russell, C.J., said [*R v. Rose*, (1898) 18 Cox]: “I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial””

53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very wellsettled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that “bail is rule and jail is exception”.

55. As observed by this Court in the case of *Gudikanti Narasimhulu* (supra), the objective to keep a person in judicial custody pending trial or disposal of an appeal is to secure the attendance of the prisoner at trial.

56. In the present case, the appellant is having deep roots in the society. There is no possibility of him fleeing away from the country and not being available for facing the trial. In any case, conditions can be imposed to address the concern of the State.

57. Insofar as the apprehension given by the learned ASG regarding the possibility of tampering the evidence is concerned, it is to be noted that the case largely depends on documentary evidence which is already seized by the prosecution. As such, there is no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can be addressed by imposing stringent conditions upon the appellant.”

16(i). While adjudicating the claim for bail, even under Special Enactments, like PMLA [akin to NDPS Act], the Hon’ble Apex Court in Criminal Appeal No._____ of 2024 [Arising out of SLP (Criminal) No. 10778 of 2024], titled as *Kalvakuntla Kavitha Versus Directorate of Enforcement* and connected matter has mandated that fundamental right of liberty provided under

Article 21 of the Constitution of India is superior to the statutory restrictions, in the following terms:- “13. We had also reiterated the well-established principle that “bail is the rule and refusal is an exception”. We had further observed that the fundamental right of liberty provided

under Article 21 of the Constitution is superior to the statutory restrictions.”

RIGORS OF STRINTENGENT PROVISIONS IN SPECIAL ENACTMENTS [SECTION 37 OF NDPS] TO GIVE WAY FOR BAIL BASED ON PROLONGED INCARCERATION AND NOT LIKELY TO COMPLETE TRIAL IN A CONSIDERABLE TIME:

17. While dealing with the claim for bail under Special Enactments and rigors of Section 45 (1) (ii) of MPLA and proviso to Section 43-D (5) of the Unlawful Activities [Prevention] Act, 1967 and Section 37 of NDPS Act, the Hon'ble Supreme Court in Criminal Appeal No.4011 of 2024, in re: V. Senthil Balaji Versus The Deputy Director, Directorate of Enforcement, has mandated that rigors in Special Enactments, including Section 37 of NDPS Act, will melt down where there is no likelihood of trial being completed in a reasonable time and prolonged incarceration so as to prevent the deprivation of curtailment of personal liberty and right to speedy trial in terms of Article 21 of Constitution of India, in the following terms:-

“24. There are a few penal statutes that make a departure from the provisions of Sections 437, 438, and 439 of the Code of Criminal Procedure, 1973. A higher threshold is provided in these statutes for the grant of bail. By way of illustration, we may refer to Section 45(1)(ii) of PMLA, proviso to Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 and Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act'). The provisions regarding bail in some of such statutes start with a non obstante clause for overriding the provisions of Sections 437 to 439 of the CrPC. The legislature has done so to secure the object of making the penal provisions in such enactments. For example, the PMLA provides for Section 45(1)(ii) as money laundering poses a serious threat not only to the country's financial system but also to its integrity and sovereignty.

25. Considering the gravity of the offences in such statutes, expeditious disposal of trials for the crimes under these statutes is contemplated. Moreover, such statutes contain provisions laying down higher threshold for the grant of bail. The expeditious disposal of the trial is also warranted considering the higher threshold set for the grant of bail. Hence, the requirement of expeditious disposal of cases must be read into these statutes. Inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together. It is a well settled principle of our criminal jurisprudence that “bail is the rule, and jail is the exception.” These stringent provisions regarding the grant of bail, such as Section 45(1)(iii) of the PMLA, cannot become a

tool which can be used to incarcerate the accused without trial for an unreasonably long time.

26. There are a series of decisions of this Court starting from the decision in the case of K.A. Najeeb, which hold that such stringent provisions for the grant of bail do not take away the power of Constitutional Courts to grant bail on the grounds of violation of Part III of the Constitution of India. We have already referred to paragraph 17 of the said decision, which lays down that the rigours of such provisions will melt down where there is no likelihood of trial being completed in a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. One of the reasons is that if, because of such provisions, incarceration of an under-trial accused is continued for an unreasonably long time, the provisions may be exposed to the vice of being violative of Article 21 of the

Constitution of India.

27. Under the Statutes like PMLA, the minimum sentence is three years, and the maximum is seven years. The minimum sentence is higher when the scheduled offence is under the NDPS Act. When the trial of the complaint under PMLA is likely to prolong beyond reasonable limits, the Constitutional Courts will have to consider exercising their powers to grant bail. The reason is that Section 45(1)(ii) does not confer power on the State to detain an accused for an unreasonably long time, especially when there is no possibility of trial concluding within a reasonable time. What a reasonable time is will depend on the provisions under which the accused is being tried and other factors. One of the most relevant factor is the duration of the minimum and maximum sentence for the offence. Another important consideration is the higher threshold or stringent conditions which a statute provides for the grant of bail. Even an outer limit provided by the relevant law for the completion of the trial, if any, is also a factor to be considered. The extraordinary powers, as held in the case of K.A. Najeeb, can only be exercised by the Constitutional Courts. The Judges of the Constitutional Courts have vast experience. Based on the facts on record, if the Judges conclude that there is no possibility of a trial concluding in a reasonable time, the power of granting bail can always be exercised by the Constitutional Courts on the grounds of violation of Part III of the Constitution of India notwithstanding the statutory provisions. The Constitutional Courts can always exercise its jurisdiction under Article 32 or Article 226, as the case may be. The Constitutional Courts have to bear in mind while dealing with the cases under the PMLA that, except in a few exceptional cases, the maximum sentence can be of seven years. The Constitutional Courts cannot allow provisions like Section 45(1)(ii) to become instruments in the hands of the ED to continue incarceration for a long time when there is no possibility of a trial of the scheduled offence and the PMLA offence concluding within a reasonable time. If the Constitutional Courts do not exercise their jurisdiction in such cases, the rights of the undertrials under Article 21 of the Constitution of India will be defeated. In a given case, if an undue delay in the

disposal of the trial of scheduled offences or disposal of trial under the PMLA can be substantially attributed to the accused, the Constitutional Courts can always decline to exercise jurisdiction to issue prerogative writs. An exception will also be in a case where, considering the antecedents of the accused, there is every possibility of the accused becoming a real threat to society if enlarged on bail. The jurisdiction to issue prerogative writs is always discretionary. 29. As stated earlier, the appellant has been incarcerated for 15 months or more for the offence punishable under the PMLA. In the facts of the case, the trial of the scheduled offences and, consequently, the PMLA offence is not likely to be completed in three to four years or even more. If the appellant's detention is continued, it will amount to an infringement of his fundamental right under Article 21 of the Constitution of India of speedy trial.

31. Therefore, the appeal is allowed, and the appellant shall be enlarged on bail till the final disposal of CC No. 9 of 2023 pending before the Principal Session Judge, Chennai, on the following conditions:

- a. The appellant shall furnish bail bonds in the sum of Rs.25,00,000/ (Rupees twenty five lakhs only) with two sureties in the like amount;
- b. The appellant shall not directly or indirectly attempt to contact or communicate with the

prosecution witnesses and victims of the three scheduled offences in any manner. If it is found that the appellant directly or indirectly made even an attempt to contact any prosecution witness or victim in the scheduled as well as offences under the PMLA, it will be a ground to cancel the bail granted to the appellant;

c. The appellant shall mark his attendance every Monday and Friday between 11 am and 12 noon in the office of the Deputy Director, the Directorate of Enforcement at Chennai. He shall also appear on the first Saturday of every calendar month before the investigating officers of the three scheduled offences;

d. Before the appellant is enlarged on bail, he shall surrender his passport to the Special Court under the PMLA at Chennai;

e. The appellant shall regularly and punctually remain present before the Courts dealing with scheduled offences as well as the Special Court and shall cooperate with the Courts for early disposal of cases; and

f. If the appellant seeks adjournments on nonexisting or frivolous grounds or creates hurdles in the early disposal of the cases mentioned above, the bail granted to him shall be liable to be cancelled.

32. The appeal is allowed on the above terms.”

17(i). While reiterating the grant of bail, despite statutory embargoes in Special Enactments, Hon'ble Supreme Court in Criminal Appeal No.5266 of 2024 (Arising out of SLP (CRL.) No.13870 of 2024, titled as Partha Chatterjee Versus Directorate of Enforcement, decided on 13.12.2024, 2024 SCC Online SC 3729, has been reiterated by treating it to be of paramount importance of right to life and liberty under Article 21 of the Constitution of India, that the incarceration is unreasonably prolonged for conclusion of trial, such incarceration amounts to punitive detention and by granting bail in the following terms:-

“13. We have considered the rival submissions and carefully examined the material on record. At the outset, it is worth reiterating that this Court, through a catena of decisions, has consistently emphasized that prolonged incarceration of an accused awaiting trial unjustly deprives them of their right to personal liberty. Even statutory embargoes on the grant of bail must yield when weighed against the paramount importance of the right to life and liberty under Article 21 of the Constitution, particularly in cases where such incarceration extends over an unreasonably long period without conclusion of trial.

17. We, however, cannot be oblivious to the settled principles that a suspect cannot be held in custody indefinitely and that undertrial incarceration should not amount to punitive detention. The Court would, nevertheless, ensure that affluent or influential accused do not obstruct the ongoing investigation, tamper with evidence, or influence witnesses, namely, actions that undermine the fundamental doctrine of a fair trial.

18. Striking a balance between these considerations and without expressing any opinion on the merits of the allegations, we deem it appropriate to dispose of this appeal with the following

directions:

a to e 2

f. The Petitioner shall thereafter be released on bail on 01.02.2025, subject to his furnishing bail bonds to the satisfaction of the Trial Court; g to i.....”

Keeping in view the factual matrix that no reasonable grounds exist against the bail petitioner, as referred to above, coupled with the fact the bail petitioner has suffered incarceration for more than 11 months [since 06.03.2024] and even trial is likely to take considerable time for the reason that out of total 22 PWs only 2 PWs have been examined as yet, therefore, further detention shall certainly amount to depriving and curtailing the personal liberty of the petitioner on mere accusation or conjectures or surmises, which are yet to be tested, examined and proved during the trial. Detention of the petitioner can neither be punitive nor preventative, so as to make the petitioner to taste imprisonment as a lesson. Denial of bail shall certainly violates the principle that “bail is rule and jail is an exception”. Even, the State Authorities, have failed to ensure speedy trial and still considerable time is likely to be taken for conclusion of trial, then, in view of mandate of law in the cases of Guddan alias Roop Narayan, Javed Gulam Nabi

Shaikh, Manish Sisodia, Kalvakuntla Kavitha, Senthil Balaji and Partha Chatterjee [supra], the petitioner deserves to be released on bail.

NO PAST CRIMINAL ANTECEDENTS:

18. The Status Reports do not indicate any past criminal incident against the bail petitioner and once no cogent reasons-material and evidence exists against him, at this stage, therefore, prolonging the detention shall certainly violate the personal liberty of the petitioner mandated under Article 21 of the Constitution of India.

MANDATE OF HON’BLE SUPREME COURT IN GRANTING BAIL IN CASES OF COMMERCIAL QUANTITY WHERE THERE WAS NO LIKELIHOOD OF ITS COMPLETION:

19. In similar situation while dealing the involvement of accused of commercial quantity of contraband, Hon’ble Supreme Court has extended the benefit of bail to the bail petitioner in Petition(s) for Special Leave to Appeal (Crl.) No(s).1904/2023, titled as Sunil Kumar Versus The State of Himachal Pradesh, decided on 29.03.2023, in the following terms:-

“It is noted that the petitioner has been in custody for more that one and a half years and the trial is yet to conclude. Earlier, the petitioner had been granted interim bail on two occasions and has not misused the liberty of interim bail or violated any of the bail conditions imposed upon him but has thereafter, surrendered back.

Therefore, keeping all these aspects in view, the petitioner is ordered to be released on bail subject to appropriate conditions being imposed by the Trial Court including the condition that the petitioner shall diligently participate in the trial. Ordered accordingly.”

19(i). In Petition(s) for Special Leave to Appeal (Crl.) No(s).4648/2024, titled as Ankur

Chaudhary Versus State of Madhya Pradesh, decided on 28.05.2024, Hon'ble Supreme Court extended benefit of bail by invoking Article 21 of Constitution of India as prolonged incarceration defeats the precious fundamental rights and such fundamental rights have to override the statutory embargo in Section 37 (1) (b) of NDPS Act in the following terms:- "Now, on examination, the panch witnesses have not supported the case of prosecution. On facts, we are not inclined to consider the Investigation Officer as a panch witness. It is to observe that failure to conclude the trial within a reasonable time resulting in prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India, and as such, conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered.

In view of the above, we are inclined to allow this petition and direct to enlarge the petitioner on bail on furnishing the suitable bail bonds and

sureties and on such other terms and conditions as may be deemed fit by the trial Court."

19(ii). In Petition(s) for Special Leave to Appeal (Crl.) No(s).7115/2024, titled as Sohrab Khan Versus The State of Madhya Pradesh, decided on 13.08.2024, the Hon'ble Supreme Court has extended the benefit of concession of bail to an accused, who was facing incarceration of one year and four months and had no criminal antecedents as in this case, in the following terms:- "The petitioner is an accused for the alleged offences punishable under Sections 8/22 and 29 of the Narcotic Drugs and Psychotropic Substances Act. His bail application was dismissed by the High Court. He has already undergone about one year and four months in jail. The petitioner and com accused were found in possession of 80 grams of MD powder each of which commercial quantity is 50 grams.

Considering the fact that the petitioner criminal antecedents and the entire facts and circumstances has no of this case, we are of the opinion that a case of bail is made out for the petitioner and therefore, the prayer of the petitioner is allowed.

Accordingly, the petitioner is directed to be released on bail forthwith on the usual terms and conditions to be decided by the concerned Court." 19(iii). In Petition(s) for Special Leave to Appeal (Crl.) No(s).9510/2024, titled as Ram Lal Versus The State of Rajasthan, decided on 17.09.2024, similar benefit of bail was extended where the incarceration was prolonged and the accused had no criminal antecedents, as in this case, in the following terms:- "The petitioner and the other accused persons are accused for the offences punishable under Sections 8/21 & 8/29 of the Narcotic Drugs and Psychotropic Substances Act and allegation is that 450 gm of smack has been recovered from them. The bail application of the petitioner was dismissed by the High Court. Hence, he approached this Court. He has already undergone about 1 year and 6 months in jail.

Heard learned counsel for the petitioner. As per office report dated 13.09.2024, the service is deemed complete on the sole respondent State but no one has appeared for the state.

Considering the period of incarceration of the petitioner and the fact that the petitioner has no criminal antecedents, we are of the opinion that a case of bail is made out for the petitioner. Accordingly, the petitioner is directed to be released on bail forthwith on the usual terms and

conditions to be decided by the concerned Court.”

MANDATE OF THIS COURT IN GRANTING BAIL IN CASES OF COMMERCIAL QUANTITY WHERE TRIAL WAS PROLONGED AND THERE WAS NO LIKELIHOOD OF ITS COMPLETION IN REASONABLE PERIOD:

20. While dealing with the claim for bail in a case, a Co-ordinate Bench of this Court, in Cr.MP (M) No.2618 of 2023, Jasbir Singh versus State of Himachal Pradesh, decided on 4.11.2023 has affirmed the right to bail in view of the prolonged detention of the accused therein, in the following terms:-

“5(ii). In 2021 (3) SCC, 713, Union of India Versus K.A. Najeeb, Hon’ble Apex Court considered various judicial precedents where Article 21 of the Constitution of India was invoked in case of gross delay in disposal of cases of under- trials and consequential necessity to release them on bail. The earlier decisions were reiterated that liberty granted by Part-III of the Constitution, would cover within its protective ambit not only due procedure and fairness, but also access to justice and speedy trial. It was held that once it is obvious that a timely trial would not be possible and the accused have suffered incarceration for a significant period of time, the Courts would ordinarily be obligated to enlarge them on bail. Some relevant paras from the judgments are extracted hereinafter:-

“10. It is a fact that the High Court in the instant case has not determined the likelihood of the respondent being guilty or not, or whether rigours of Section 43D(5) of UAPA are alien to him. The High Court instead appears to have exercised its power to grant bail owing to the long period of incarceration and the unlikelihood of the trial being completed anytime in the near future. The reasons assigned by the High Court are apparently traceable back to Article 21 of our Constitution, of course without addressing the statutory embargo created by Section 43D (5) of UAPA.

11. The High Court’s view draws support from a batch of decisions of this Court, including in Shaheen Welfare Assn, laying down that gross delay in disposal of such cases would justify the invocation of Article 21 of the Constitution and consequential necessity to release the undertrial on bail. It would be useful to quote the following observations from the cited case:

“10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh case, on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.” ... (emphasis supplied)

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), Babba v. State of Maharashtra and Umarmia alias Mamumia v. State of Gujarat 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. 13. We may also refer to the orders enlarging similarly situated accused under the UAPA passed by this Court in *Angela Harish Sontakke v. State of Maharashtra*. That was also a case under Sections 10, 13, 17, 18, 18A, 18B, 20, 21, 38, 39 and 40(2) of the UAPA. This Court in its earnest effort to draw balance between the seriousness of the charges with the period of custody suffered and the likely period within which the trial could be expected to be completed took note of the five years' incarceration and over 200 witnesses left to be examined, and thus granted bail to the accused notwithstanding Section 43D(5) of UAPA. Similarly, in *Sagar Tatyaram Gorkhe v. State of Maharashtra*, an accused under the UAPA was enlarged for he had been in jail for four years and there were over 147 witnesses still unexamined.

15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a

speedy trial. In *Supreme Court Legal Aid Committee (Representing Under-trial Prisoners) v. Union of India*, it was held that undertrials cannot

indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.

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

5(iv).A previous bail petition bearing Cr.MP (M) No.1458/2022 instituted by the petitioner was dismissed on merit on 02.09.2022. While deciding the aforesaid bail petition, considering the fact that FIR in

question pertained to the year 2020, it was hoped and expected that the learned Trial Court would make endeavour to expedite the trial. We are now at the fag end of 2023. In terms of the status report filed by the respondent, the prosecution has examined 16 witnesses thus far. Statements of 23 prosecution witnesses still remain to be recorded. The zimni orders placed on

record reflect that the trial has been deferred time and again for want of presence of prosecution witnesses. Considering the fact that at this stage 23 witnesses remain to be recorded, it is apparent that the trial is not going to be concluded in near future. The petitioner, who has already spent about three years and five months in custody, in my considered opinion has made out a case for his enlargement on regular bail at this stage. There is no criminal history of the petitioner. The apprehension expressed by the prosecution about the likelihood of petitioner's tampering with the evidence or winning over remaining witnesses, can be taken care of by imposing stringent conditions and also granting liberty to the respondent/State to seek cancellation of the bail in case the conditions are violated by the petitioner. In view of all the aforesaid reasons and without expressing any opinion on the merits of the case, the present petition is allowed. Petitioner is ordered to be released on bail in the aforesaid FIR....."

20(i). While dealing with claim for bail in commercial quantity of 1.004 Kgs. charas and taking into account the prolonged incarceration for about 13 months, the Co-ordinate Bench of this Court, has extended the concession of bail to the accused, in Cr.MP(M) No.1003 of 2024, titled as Vijay Singh Versus State of Himachal Pradesh, decided on 24.05.2024, in the following terms:-

"10. Though, the case at hand is to be decided by learned trial Court, in the totality of evidence collected on record by the investigating agency, but having noticed aforesaid glaring aspects of the matter, there appears to be no justification for this Court to let the bail petitioner incarcerate in jail, for an indefinite period during trial, especially when rigours of S.37 of the Act are not attracted on account of recovery of small quantity.

11. Learned counsel for the petitioner while inviting attention of this court to judgments dated 4.3.2023 and 15.3.2023 passed in Cr.MP(M) No. 62 and 570 of 2023, titled Puran Chand v. State of HP and Prem Chand v. State of HP., submitted that in similar facts and circumstances, coordinate Bench of this Court as well as this Court enlarged the accused on bail on the ground of inordinate delay. Having perused aforesaid judgments passed by the coordinate Bench of this Court, this Court finds that in both the cases, commercial quantity of contraband was recovered from the accused, but yet court having taken note of the fact that they were behind the bars for more than three years, proceeded to enlarge them on bail.

12. Hon'ble Apex Court having taken note of inordinate delay in conclusion of trial in similar facts ordered for enlargement of accused on bail in Nitish Adhikary @ Bapan v. The State of West Bengal, Special Leave to Appeal (Crl.) No. 5769 of 2022 decided on 1.8.2022 and in Abdul Majeed Lone v. Union Territory of Jammu and Kashmir, Special Leave to

Appeal (Crl) No. 3961 of 2022, decided on 1.8.2022, who were also framed under Narcotic Drugs and Psychotropic Substances Act and were behind the bars for approximately two years and there was no likelihood of conclusion of trial in near future, subject to certain conditions.

13. Learned Counsel appearing for the petitioner, to substantiate his plea for enlarging the petitioner on bail, has referred order dated 12.10.2020 passed by a three judges Bench of the Supreme Court, in Criminal Appeal No. 668 of 2020, titled Amrit Singh Moni v. State of Himachal Pradesh, whereby petitioner therein, facing trial for recovery of 3.285 kilograms charas from a vehicle, alongwith four other persons, was enlarged on bail, for having been in

detention for 2 years and 7 months, as till then out of 14 witnesses, 7 witnesses were yet to be examined and last witness was examined in February, 2020 and, thereafter, there was no further progress in the trial.

14. Recently, Hon'ble Apex Court in SLP(Crl) No. 1904 of 2023 titled Sunil Kumar v. The State of Himachal Pradesh, decided on 29.3.2023, has ordered enlargement of petitioner therein, who was behind bars for one and half years, on the ground of delay in trial and conduct of the petitioner.

15. Learned Additional Advocate General, referring to judgment of a three Judges Bench of Supreme Court, passed on 19.7.2022 in Narcotics Control Bureau v. Mohit Aggarwal contends that period of detention cannot be a ground for enlarging the petitioner on bail, especially in the cases where rigors of Section 37 are attracted.

16. In the instant case, bail petitioner is behind bars for more than 13 months and till date trial has not been completed and there are very bleak chances of conclusion of the same in near future, as such, there appears to be no justification to keep the bail petitioner behind the bars for an indefinite period, during trial.”

20(ii). Recently, the Co-ordinate Bench of this Court in Cr.MP(M) No.2656 of 2024, titled as Kamal Singh Versus State of Himachal Pradesh, decided on 11.12.2024, has enlarged the accused on bail in case relating to commercial quantity of charas, i.e. 1.209 Kgs. where the accused was facing incarceration for about 12 months, in the following terms:-

“2.Allegedly, police recovered one rucksack (pithu bag) from the vehicle containing huge quantity of contraband. On weighing, police found that 1.209 Kgs. of charas/sulfa was being transported by the occupants in the vehicle, as detailed hereinabove. Since, no plausible explanation ever came to be rendered on record qua possession of aforesaid commercial quantity of contraband.....”

21. In view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court, petitioner has carved out a case for grant of bail, accordingly, the petition is allowed and the petitioner is ordered to be enlarged on bail in aforesaid FIR.....”

21. The Status Reports filed by the State Authorities do not indicate that any recovery is still attributable to the petitioner in the aforesaid incident. **NOTHING ADVERSARIAL REGARDING TAMPERING WITH EVIDENCE OR WITNESSES ETC:**

22. The Status Reports filed by State Authorities have neither pointed out any adversarial circumstances nor placed any material on record, at this stage, to infer that after release on bail, the petitioner is likely to tamper with evidence or may cause any inducement, threat or promise to any person or persons acquainted with the facts of the case. However, the apprehension if any, of the State Authorities can be safeguarded, at this stage by imposing stringent conditions in this bail order.

NOTHING ADVERSARIAL REGARDING OBSTRUCTING OR ATTEMPTING TO THROTTLING JUSTICE:

23. The Status Reports filed by State Authorities have neither pointed out any adversarial circumstances nor placed any material on record, at this stage, to infer that after release on bail, the petitioner may obstruct or thwart the cause of justice in any manner. However, the apprehension if any, of the State Authorities are taken care of, by imposing stringent bail conditions as mandated herein, in the instant case.

Keeping in view the material on record, as borne out from the Status Reports and the statements recorded during Investigation and the evidence of PWs adduced at this stage, and the law referred to above coupled with the fact that no reasonable grounds exist to believe the accusation against the bail petitioner at this stage coupled with the fact that the trial is likely to take considerable time for its conclusion; with another added fact that delay in trial was not attributable to the bail petitioner therefore, the further detention certainly amounts to implicating the petitioner on mere accusation or conjectures-suspicion, by way of punishment, defeating the very intent and object of bail; by making petitioner to be incarcerated for about 11 months now; and in these circumstances, the plea for bail carries weight and the same is accordingly granted.

24. In order to safeguard the rights of bail petitioner and to take care of apprehensions of State that bail petitioner, may flee away [notwithstanding the fact that no such apprehension has been pointed out in Status Report] yet, in peculiar facts of this case, this Court stringent conditions in the bail orders, in later part of this order.

25. Taking into account the entirety of the facts and the material on record and the mandate of law, as referred to above, and in the peculiar facts of this case, the instant petition is allowed, and the State Authorities are directed to

release the petitioner [Jitender Singh] on bail, subject to observance of the following conditions:-

(i) Respondent-State Authorities shall release bail petitioner [Jitender Singh] on furnishing personal bond of Rs.75,000/- with two sureties on furnishing similar bond amount each, to the satisfaction of the Learned Trial Court concerned;

(ii) Petitioner shall undertake and shall also appear on every date of trial hereinafter;

(iii) Petitioner shall abide by all or any other condition(s), which may be imposed by the Learned Trial Court, in view of this order;

(iv) Petitioner shall neither involve himself nor shall abet the commission of any offence hereinafter. Involvement in any offence whatsoever or abetting thereof shall entail automatic cancellation of bail granted in terms of this order ;

(v) Petitioner shall disclose his functional E-Mail IDs/ WhatsApp number and that of his surety to the Learned Trial Court;

(vi) Petitioner after release, shall report to the Investigating Officer or SHO of Police Station concerned, nearest to his native place, i.e. Naushera, Tehsil Mukerian, Hoshiarpur [Punjab], on 2nd Sunday of every month at 08.00 a.m., only for having an update on good conduct and

behaviour;

(vii) Petitioner shall not jump over the bail and also shall not leave the country without the prior information of the Court;

(viii) Petitioner shall not tamper with the evidence in any manner;

(ix) Petitioner shall not cause any inducement, threat or promise to witnesses of any other person acquainted with the case;

(x) Petitioner is free to seek modification of any condition contained hereinabove, if need arises;

(xi) State Authorities are free to move this Court for seeking alteration/modification of any of the condition contained in this order or any condition imposed by the Learned Trial Court as a sequel to this order, in fact situation of instant case or circumstances so necessitate, at any time herein-after;

(xii) State Authorities are free to move this Court for seeking cancellation of the concession of bail, in case, the petitioner violates any of the conditions contained in this order.;

26. Observations made in this judgment shall not be construed in any manner as an indictive of findings, for or against the parties herein, either for the purpose of investigation or for trial, which shall proceed in-accordance with law, irrespective of any of the observations contained hereinabove.

27. Petitioner is permitted to produce/use copy of this order, downloaded from the web-page of the High Court of Himachal Pradesh, before the authorities concerned, and the said authorities shall not insist for production of a certified copy, but if required, may verify about the passing of this order from the Website of this Court.

28. The Registry is directed to forward a copy of this order to Superintendent of Police, Chamba, District Chamba, Himachal Pradesh, and Superintendent of Police, Hoshiarpur, District Hoshiarpur [Punjab], for information and necessary action in terms of this order.

Pending miscellaneous application(s), if any, shall also stand disposed of.