

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL (REGULAR BAIL) NO. 1895 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.Y. KOGJE****and****HONOURABLE MR. JUSTICE SAMIR J. DAVE**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

**INDRESH RAMBACHAN NISHAD****Versus****NATIONAL INVESTIGATION AGENCY****Appearance:**

URVESH M PRAJAPATI(8878) for the Appellant(s) No. 1

VIVEK M BRAHMBHATT(10076) for the Appellant(s) No. 1

MR. DEVANG VYAS, Additional Solicitor General of India with KSHITIJ M

AMIN(7572), Standing Counsel for the Opponent(s)/Respondent(s) No. 2,

MR. JASH THAKKAR, ADVOCATE, MR. SAGAR BHANDARE, ADVOCATE

and MR. SUNDEEP SADAWARTE, ADVOCATE

MR. HARDIK MEHTA, APP for the Respondent No.2

**CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE****and****HONOURABLE MR. JUSTICE SAMIR J. DAVE****Date : 19/02/2024****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)**

Leave to add State as party respondent No.2.

1. The appeal is filed by the appellant under Section 21 of the National Investigation Agency Act for the offenses under Sections 120B of the IPC, under Sections 21(c), 8(c), 25 and 29 of the of the NPDS Act for following reliefs:-

(A) YOUR LORDSHIPS be pleased to call for the records and proceedings of F.I.R. being No.RC-26/2020/NIA/DLI registered with NIA Head Quarters Police Station, New Delhi, and also of NIA Criminal Misc. Application no. 23 of 2022 from the Court of Hon'ble Special Judge, NIA Court, Ahmedabad and after perusing the same, be pleased to quash and set aside the order dated 24.06.2022;"

(B) Your Lordships be pleased to grant this application by releasing the applicant on regular bail in connection F.I.R. being C.R. No.RC-26/2020/NIA/DLI registered with NIA Head Quarters Police Station, New Delhi, in the interest of justice."

2. Learned Advocate for the appellant has submitted that the appellant is implicated and arraigned as an accused no. 9 in connection with F.I.R. no.RC-26/2020/NIA/DLI (arising out of FIR being C.R.No.III-1/2018 registered with NIA Head Quarters Police Station, New Delhi, for the offences punishable under Section-120 (B) of the India Penal Code, 1860 and under Sections-21(c), 8(c), 25 and 29 of the Narcotic Drugs Psychotropic Substances Act, 1985.

2.1 Learned Advocate for the appellant has submitted that the appellant thereafter has preferred a regular bail application before the Hon'ble Special Judge, NIA Court, Ahmedabad being NIA Criminal Misc. Application no. 23 of 2022. The said regular bail application filed by the appellant

was objected by the National Investigation Agency who has filed objections . It is submitted that Hon'ble Special Judge, NIA Court, Ahmedabad thereafter vide order dated 24-06-2022, has been pleased to reject the same.

2.2 Learned Advocate for the appellant has submitted that the appellant is falsely implicated in the alleged offence. The appellant has played no role in commission of the offence. There is no evidence on record to indicate the involvement of the appellant with the crime in question. The appellant is sought to be involved on the basis of suspicion only. It is submitted that the appellant is not found with the possession of the contraband.

2.3 Learned Advocate for the appellant has submitted that the appellant had only accepted consignment for transportation by paying transportation charges as he has also another consignment to deliver at Jammu and Kashmir, and therefore he is wrongly shown as a conspirator. It is submitted that the appellant was totally unknown to the main accused persons as his truck was hired to transport their goods by stating they have to transport important goods and for that they had installed GPS system in truck of the appellant to keep track of the route of his truck.

2.4 Learned Advocate for the appellant has submitted that the investigation has been concluded and charge-sheet has already been filed by the investigating agency before the competent Court. The appellant submits that considering the fact that the charge-sheet has been filed, there is no question of appellant tampering or hampering with the investigation

and therefore, no fruitful purpose would be served by keeping the appellant behind bars.

3. As against this, learned ASG has submitted that the present appellant-accused had conspired with the other co-accused, in commission of the present offence, wherein the present appellant-accused has thus played a pivotal role, and there is ample and credible evidence showing his prima facie involvement in the offence. It is submitted that the present appellant-accused has been involved in the conspiracy together with other co-accused, for transporting the 200 kgs. of narcotic material from Gujarat to Amritsar, Punjab, through his Truck bearing registration No.GJ-12-BW-2323. It is submitted that Sunil Vithal Barmase-accused No.8 herein also arranged the GPS system of LOCONAV Company which was installed in the truck of the present appellant from Gandhidham to Amritsar for safe delivery of the drug consignment to Punjab.

3.1 It is further submitted that at the time of departure from Gandhidham, the present appellant also received an amount of Rs.30,000/- from Sunil Vithal Barmase-accused No.8 who also arranged for new tyres worth Rs.50,000/- for the said truck of the appellant, and even the various pending dues to the tune of Rs.20,000/- of the said truck towards various state taxes were also paid by the Sunil Vithal Barmase-accused No.8. It is further submitted that in pursuance of the conspiracy, Razak Adam Sumra-accused No.6, Karim Mohammad Sirja-accused No.7 and Sunil Vithal Barmase-accused No.8 under the directions of Shahid Kasam Sumra-accused No.11, arranged to shift the drugs consignment of

200 kgs. in other vehicles prior to lastly loading the same in the truck of the appellant i.e. Indresh Nishad- appellant accused No.9 herein for further delivery at Amritsar, Punjab.

3.2 Learned ASG has submitted that since several co-accused herein are absconding and the investigation is at a crucial stage for collection of further vital evidence against not only the absconding accused and others but also against the present appellant for ascertaining his further role in the offence.

4. Heard learned advocates for the parties and perused the documents placed on record. It appears that the appellant is custody since 27.11.2020. The case of the investigation discloses the fact that the case was registered by ATS Police Station, Ahmedabad, Gujarat vide Crime number 01/2018 under sections 8(c), 21(c), 24, 25, 27(A) and 29 of NDPS Act. The offences initially pertains to a criminal conspiracy by arrested accused namely Aziz Abdul Bhagad, Rafik Adam Sumra, Nazir Ahmed, Arshad Sota, Manzoor Ahmed, Razak Adam Sumra, Karim Md. Siraj and Sunil Vithal Barmase-accused Nos.1 to 8 and wanted accused WA-1 to WA-5 of smuggling and distribution of 500 Kg of illegal narcotic drugs (heroin) from Pakistan to Gujarat, India by sea route. The 500 Kg of narcotic drugs (Heroin) were brought into Gujarat, India by Aziz Bhagad-accused No.1 and Mamad Ibrahim Sama-accused No.13 on the directions of Basheer Dawood Kungda-accused No.12.

4.1 The illegal Heroin was brought by Pakistani nationals in a Pakistani fishing vessel and was delivered in the Indian

territorial waters approximately 7-8 miles from Jakhau Port, Kutch, Gujarat, into an Indian vessel named .“Nagani Mustafa” of Aziz Abdul Bhagad-accused No.1 and “AlMadina” of Mamad Ibrahim Sama-accused No.13. The drug was delivered to Indian vessels twice during the period from 09.03.2018 to 31.05.2018. After completion of investigation ATS/Gujarat filed a charge sheet against Aziz Abdul Bhagad, Rafik Adam Sumra, Nazir Ahmed, Arshad Sota and Manzoor Ahmed, accused Nos.1 to 5 in the Special NDPS Court, Jam-Khambaliya, Gujarat, on 23.01.2019. The ATS, further, arrested three more accused persons on 10.02.2020 including the accused No.8 who were involved in the case.

5. That the Ministry of Home Affairs, Government of India, due to the gravity of the offenses with national and international ramifications, issued orders in the exercise of powers conferred under sub-section (5) of Section 6 read with Section 8 of National Investigation Agency Act, 2008 vide Ministry of Home Affairs, CTRC Division, North Block, New Delhi F.No.11011/44/2020/NIA dated 29.06.2020. In connection with the order of MHA, NIA registered the case as RC-26/2020/NIA/DLI dated 02.07.2020.

6. Subsequently NIA took over the investigation. The NIA after investigation, filed a supplementary Charge Sheet vide No. 02/2020 dated 07/08/2020 in the Spl. Court, Ahmedabad against accused persons Aziz Abdul Bhagad, Rafik Adam Sumra, Nazir Ahmed, Arshad Sota, Manzoor Ahmed, Razak Adam Sumra, Karim Md. Siraj and Sunil Vithal Barmase-accused Nos.1 to 8 under the provisions of Section 120 B of

IPC, Section 21(c) r/w 8(c), 25, 27(A) & 29 of Narcotic Drug and Psychotropic Substances (NDPS) Act & Sections 17 & 18 of the Unlawful Activities (Prevention) Act and continuing the investigation under the provision of section 173 (8) of Cr. P.C.

7. During the course of the investigation, NIA took over the custody of appellant-accused Indresh S/o Rambachan Nishad-No.9 (appellant-accused) from NIA Special Court after being produced by the jail authorities of Amritsar on a production warrant issued by this Court. During the course of the investigation, it is revealed that 500 Kgs of narcotics drug was delivered by Pakistani vessel. to the Indian vessel of Aziz Abdul Bhagad-accused No.1 and Mamad Ibrahim Sama-accused No.13 in Indian territorial water which was further delivered to Shahid Kasam Sumra-accused No.11 and Rafik Adam Sumra-accused No.2. 295 Kgs of the narcotic drugs were handed over by Shahid Kasam Sumra-accused No.11 and Rafik Adam Sumra-accused No.2 to Nazir Ahmad-accused No.3, Manzoor Ahmad-accused No.5 and Simranjit Singh Sandhu-wanted accused No.2 who then concealed the same in the sacks of Cumin and Suva seeds, and transported the same to Amritsar, Punjab, through Akshar Transport, 200 kg of narcotic drugs out of the 500 Kgs of narcotic drug heroin was buried and concealed by Rafik Adam Sumra-accused No.2, Shahid Kasam Sumra-accused No.11 and Razak Adam Sumra-accused No.6 in the farm of Adam Sumra-accused No.2 & Razak Adam Sumra, in Village Bag. This remaining consignment was also to be delivered to Amritsar, Punjab as per the conspiracy plan. So for further delivery of the balance of 200 kg narcotic drugs (heroin), Shahid Kasam Sumra-

accused No.11 contacted Razak Adam Sumra-accused No.6 {who is the brother of Rafik Adam Sumra-accused No.2} and accused Karim Md. Siraj-accused No.7 conspired for the delivery of the remaining 200 kg narcotic drugs (heroin) from Gujarat to Amritsar, Punjab to which Razak Adam Sumra-accused No.6 and Karim Md. Siraj-accused No.7 agreed for of monetary consideration.

8. Investigation has also revealed that, the accused Karim Md. Siraj-accused No.7 accepted the offer of Shahid Kasam Sumra-accused No.11 and he persuaded his friend accused-Sunil Vithal Barmase (A-8)to help him in the conspiracy. Thereafter Karim Md.Siraj (A-7) and Sunil Vithal Barmase (A-8) also attended a conspiracy meeting with Shahid Kasam Sumra (A-11) at Mira Road near Mumbai. Subsequently, Karim Md. Siraj (A-7) and Sunil Vithal Barmase-accused (A-8) contacted driver appellant -accused for onward delivery of 200 kg narcotic drugs (Heroin) to Amritsar, Punjab by offering Rs. 2 lakh to driver Indresh Nishad (A9)/appellant-accused to which he accepted. Investigation has also revealed that, in furtherance of the conspiracy hatched among accused Karim Md. Siraj (A-7), accused-Sunil Vithal Barmase (A-8) and Indresh Rambachan Nishad (A-9)/appellant-accused, the accused-Sunil Vithal Barmase arranged GPS System of LOCONAV Company and got it installed in the truck of Indresh Nisahd (A-9)/appellant-accused bearing registration NO. GJ-12-BW-2323, for tracking the truck en-route from Gandhidham to Amritsar Punjab for safe delivery of the consignment in Punjab. It is further revealed that, Sunil Vithal Barmase (A-8) had also given one mobile to Indresh Nishad



(A-9)/appellant-accused with SIM and instructed Indresh Rambachan Nishad (A9)-appellant/accused not to call from his mobile and that Indresh Rambachan Nishad (A9)/appellant-accused will receive calls from Punjab on the way from unknown.

9. The accused-Sunil Vithal Barmase (A8) also gave Indresh Rambachan Nishad (A9)/appellant-accused Rs.30,000/- cash during the departure from Gadhidham, Gujarat to Punjab. The accused Sunil Vithal Barmase (A8) had also arranged new tyres V/Rs.50,000/- for the truck and had also paid pending dues of the truck i.e. Rs, 20,000/- of various state taxes in respect of truck bearing registration No. GJ 12 BW 2323, owned by Indresh Rambachan Nishad (A9)/appellant/accused. Then, as per the conspiracy and on directions of Shahid Kasam Sumra (A-11), Razak Adam Sumra (A-6) dug out the remaining 200 Kg narcotic drugs (Heroin) and kept it in his Swift Dzire car, 'bearing registration no. GJ-12-BR-4334 and delivered it to one white coloured car near a Petrol Pump on Talwada Road which belonged to the accused Karim Md. Siraj (A-7). Then the accused Karim Md. Siraj (A-7) & accused-Sunil Vithal Barmase (A-8) shifted the drugs to a Skoda car and took 200 kg narcotic drugs (Heroin) to Gandhidham, then loaded and concealed it between the wooden panels in the truck of No. GJ 12 BW 2323 of accused Indresh Nishad (A-9)/appellant-accused for further delivery to Amritsar, Punjab.

10. It has further revealed that, Indresh Nishad (A-9)/appellant-accused, had taken the order from M.K.

Transport, Gandhidham, Gujarat for delivery/transportation of wooden Panels from Gandhidham, Gujarat to Jammu in his truck bearing registration no. GJ 12 BW 2323 and Amritsar, Punjab, where the consignment to be delivered, Indresh Nishad (A-9)/appellant-accused accepted the offer of Karim Md. Siraj (A-7) & accused Sunil Vithal Barmase (A-8) for delivering the consignment to Amritsar, Punjab in his own truck. The documents/ records as produced by the owner of Shingla Timbers, Pvt Ltd, Gandhidham, Gujarat, has clearly established that, the Indresh Nishad (A-9)/appellant-accused had taken the order by M. K. Transport for delivery of wooden Panel in Jammu and he himself, on 31/12/2019, visited Shingla Timbers, Pvt. Ltd, located in Gandhidham and loaded the wooden Panel in his truck No. GJ 12 BW 2323 and then took the truck to Gandhidham Industrial area and taken the consignment from the accused Sunil Vithal Barmase (A-8) & Karim Md. Siraj (A-7), then concealed the drug consignment between the wooden panels to avoid detection. The delivery of the 200 kg narcotic drugs (heroin) consignment of, which was managed by Shahid Kasam Sumra (A-11) through Razak Adam Sumra (A-6), Karim Md. Siraj (A-7), accused Sunil Vithal Barmase (A-8), & Indresh Rambachan Nishad (A-9)/appellant-accused, was transported to Amritsar, 'Punjab, in the truck of accused Indresh Rambachan Nishad (A-9)/appellant-accused and it has been later revealed that accused Sukhbir Singh @ Happy was arrested by ' STF/Amritsar while he was found in possession of narcotic drugs heroin and a case vide FIR 20/2020 was registered on 29.01.2020.

10.1 Further 189 Kg of narcotic drug heroin out of the 200 Kg consignment was seized by STF/Amritsar, Punjab from a Kothi situated at Sultanwind, Amritsar, and a case has been registered vide FIR No. 23/2020 dated 31/01/2020 under the provisions of NDPS Act. The truck bearing registration No. GJ-12-BW-2323 belonging to the Indresh Rambachan Nishad (A-9)/appellant-accused was seized and the accused Sunil Vithal Barmase along with 17 other accused persons have been arrested in the said case by STF /Amritsar. Further the mobile Samsung SM B-350E having SIM no. 7878727784 and mobile of Vivo Company, Model No. 1725, SIM no. 9879787784 of the accused Sunil Vithal Barmase (A-8) was seized under Panchanama dated 10/2/2020. Both the numbers were used by the accused Sunil Vithal Barmase (A-8) for the communication with his accomplices Shahid Kasam Sumra, A-11, A-Razak Adam Sumra (A6) and Karim Md. Siraj (A7). The discussion is mainly pertaining to the delivery of remaining 200 kg of narcotic drug Heroin and for collecting funds generated from this illegally smuggled narcotic drugs. The vehicle number GJ-12-CD-5356 Ford Figo which was used by the accused Sunil Vithal Barmase (A-8) for the escorting of vehicle of accused Karim Md. Siraj A-7 for taking the delivery of 200 kg Heroin from Razak Adam Sumra A-6 has been recovered under the seizure Panchnama dated 16/2/2020 and it has been established from the RTO records that the accused Sunil Vithal Barmase (A-8) is the owner of the said vehicle.

11. The vehicle number GJ-12-BF-6337 Skoda which was taken by accused Sunil Vithal Barmase (A-8) from the house of Karim Md. Siraj A-7 and transferred the 200 kg Heroin from

the vehicle number GJ-12-DM-1948 to vehiclenumber GJ-12-BF-6337 belonging to Karim Md. Siraj A-7 has been recovered under the seizure Panchnama dated 16/2/2020. It has been established from the records of RTO that accused Karim Md. Siraj (A-7) is the owner of said vehicle. The investigation has revealed that the accused Sunil Vithal Barmase (A8) and accused Karim Md.Siraj A-7 had received advance payment of Rs. 11 lakhs from Shahid Kasam Sumfa (A-11) and later Rs. 06 lakhs, total Rs. 17 lakhs for taking delivery of 200 kg Heroin and for its onward transportation to Amritsar, Punjab which clearly established that they were raising the funds through illegitimate sources. This fact has been ascertained through the statement of witness of NR & Company, V. Patel Angadia, Kutch, and R. M.Angadia, Ahmedabad and through the receipts produced by the witnesses.

11.1 The NIA on 24.05.2021, filed a supplementary charge-sheet against the accused Sunil Vithal Barmase (A-8) in the Spl. NIA, Court, Ahmedabad under Section 120 B of IPC, Section 21(c) r/w 8(c), 25, & 29 of Narcotic Drug and Psychotropic Substances (NDPS) Act and Sections 17 & 18 of the UA(P) Act and further investigation of the case is continued as per the Provision of section 173 (8) Cr. P.C. STF/ Amritsar during their investigations arrested (1) Arman Bassar Mall, (2) Sukhwinder Singh @ Sukh, (3) Major Singh, (4). Miss Tamanna Gupta, (5) Mantej Singh @ Mantej Mann @ Micky, (6) Sahil Sharma, (7) Harminder Singh Randhawa @ Romi, (8) Manjit Singh @ Manna, (9) Arjun Atwal, (10) Anwar Masih, (11) Gagandeep Singh, (12) Ankush Kapoor (13) Hanitpal Singh @ Honey and (14) Sukhbir Singh @ Happy

along with (15) Razak Adam Sumra (A-6), (16) Karim Md.Siraj (A-7), (17) Sunil Vithal Barmase (A-8) & (18) Indresh Rambachan Nishad (A-9)/appellant-accused .

12. The accused persons who were arrested by STF/Amritsar in their FIR 20/2020 & FIR 23/2020 were found to 'be involved in this instant case. In continuance of the above said order No.11011/44/2020/NIA dated 29.06.2020 which directed the NIA to investigate FIR.No.01/2018 of ATS Gujarat has further, vide its Order No. 11011/44/2020/NIA, dated 28.06.2021 directed the NIA to investigate in respect of FIR No.23/2020 dated 31.01.2020 of STF/Amritsar being a connected offence as per the provisions of Section 8 of the National Investigation Act, 2008. on receipt of the order No.11011/44/2020/NIA dated 29.06.2020 issued by MHA, STF/Amritsar , they have registered an FIR 20/2020/STF (Border Range)/Amritsar which is a connected offence of FIR 23 /2020. Hence the said proposal was forwarded by NIA to Ministry of Home Affairs for consideration. That further, in continuation of the order No.11011/44/2020/NIA dated 29.06.2020 and 28.06.2021 which directed the NIA to investigate FIR.No.01/2018 of ATS Gujarat, and to investigate FIR No.23/2020 dated 31.01.2020 of STF/Amritsar being a connected offence, and further, directed the NIA vide order No.1011/44/2020/NIA dated 13.10.2021 to also investigate FIR No.20/ 2020 of STF/Amritsar being a connected offence as per the provisions of Section 8 of the National Investigation Act, 2008. On receipt of the MHA orders, an application was filed in the Hon'ble NDPS Spl. Court at Amritsar by NIA on 29.09.2021 for transferring the original case

documents/articles from NDPS Spl. Court, Amritsar to NIA Spl. Court, Ahmedabad. The NDPS Court, Amritsar rejected the plea filed by NIA for transferring the case from NDPS Spl. Court, Amritsar, Punjab to NIA Spl. Court, Ahmedabad, Gujarat. Hence, SLP in the Hon'ble Supreme Court of India has been initiated by NIA and is pending. The apex court has passed an order dated 10.01.2024 in Transfer Petition (s) No(S). 487-488 of 2023 that the pendency of SLP will not come in way of hearing of present appeal.

13. The role played by the appellant herein as per the prosecution is that Karim Md. Sira (A7) and Sunil Vithal Barmase (A8) transported the 200 Kg of narcotic drugs heroin in the Skoda car to Gandhidham and loaded it in the truck of Indresh Rambachan Nishat (appellant-accused) for further delivery to Amritsar, Punjab. For this Karim Md. Sira (A7) and Sunil Vithal Barmase (A8) paid Rs.2 Lakh to the driver Indresh Rambachan Nishat (appellant-accused). The consignment of 200 Kg narcotic drugs (heroin) delivery of which was managed by wanted accused No.1 through Razak Adam Sumra (A6), Karim Md. Sira (A7) and Sunil Vithal Barmase (A8), was transported to Amritsar, Punjab, in the truck of driver Indresh Rambachan Nishat (appellant-accused). The same consignment was seized by STF/Amritsar, Punjab. A case has been registered vide FIR No.23/2020 dated 31.01.2020 under the provisions of NDPS Act and driver-Indresh Rambachan Nishat (appellant-accused) alongwith 11 other accused persons have been arrested in the said case by STF/Amritsar.

14. The aforesaid role played is supported by the evidence in the form of statement of secret witnesses, documentary evidence like Panchnamas drawn and the scientific evidence through Call Detail Records and FSL report.

15. The Court has heard the groups of appeals arising out of same crime and hence, joint arguments are made by both the sides regarding invoking UAPA as well as the twin test under Section 37 of the NDPS Act. According to the appellants-accused there is no justification in invoking UAPA in view of the role played individually like a driver of the vehicle would not be aware of the contents of the goods stored on his vehicle, or the owner of premises having rented the same will not be aware of the day to day activities in the premises. Whereas the investigating agency has taken a stand that it was an organized crime where each individual was given a role to play to achieve common object and that each one was aware of the involvement of high quantity of narcotics contraband and have in fact benefited monetarily out of their respective roles.

16. Both the parties have cited various orders of High Courts and decisions of Apex Court which would require reference and discretion.

16.1 Much reliance is placed by the appellants on decision dated 05.07.2021 by High Court of Punjab and Haryana in case of co-accused Ankush Kapoor who was granted bail in CRM-M-23889 of 2021. However, it will be pertinent to observe that the same was passed when the investigation was that of S.T.F. Punjab Police which was later taken over by the NIA. The NIA then preferred an application being CRM. M 24743 of 2023, before the Punjab and Haryana High Court for cancelling the bail of the very accused and

the Punjab and Haryana High Court vide its order dated 20.01.2024 has cancelled the bail of the accused Ankush Kapoor.

17. Reliance is placed on the judgment of the Apex Court in case of **Union of India v/s. K.A.Najeeb**, reported in **(2021) 3 SCC 712** to argue the invoking of U.A.P.A. and the special provisions therein will not curtail jurisdiction of the constitutional Court. There cannot be any quarrel with such propositions however, in para-15 of the aforesaid judgment, the Apex Court has observed a special fact of the said case where accused was in custody for five years and that the co-accused who were tried and convicted were handed sentence of eight years rigorous imprisonment.

18. The appellant has relied upon two orders passed by Hon'ble Supreme Court where the Apex Court has allowed the applications therein. However, in order passed in case of **Rabi Prakash v/s. State of Odisha**, reported in **2023 SCC Online SC 1109**, the facts were that the applicant was an occupant of the truck which was carrying the contraband, whereas in case of **Angela Harish Sontakke v/s. State of Maharashtra**, reported in, **Manu/SC/0685/2016** the applicant was a lady accused.

19. In case of **Mohd. Muslim v/s. State (NCT of Delhi)**, reported in, **MANU/SC/0320/2023**, the Apex Court explained the purport of Section 37 and its application by Constitutional Court. The Apex Court had considered favourably the bail application, but also had facts that the accused was 23 years age, there was no recovery of contraband (ganja) from him and had suffered incarceration of seven years already.

20. Lastly, in rent decision of the Apex Court in case of **Gurwinder Singh v/s. State of Pujab and Another**, in Criminal



Appeal No.704 of 2024, the Apex Court has extensively dealt with the issue of bail under Section 43D of the UAPA after referring to the very provision has explained in paras-21 and 21 as under:-

“21. On a textual reading of Section 43 D(5) UAP Act, the inquiry that a bail court must undertake while deciding bail applications under the UAP Act can be summarised in the form of a twin-prong test:

1) Whether the test for rejection of the bail is satisfied?

1.1 Examine if, prima facie, the alleged 'accusations' make out an offence under Chapter IV or VI of the UAP Act

1.2 Such examination should be limited to case diary and final report submitted under Section 173 CrPC; 2) Whether the accused deserves to be enlarged on bail in light of the general principles relating to grant of bail under Section 439 CrPC ('tripod test')?

On a consideration of various factors such as nature of offence, length of punishment (if convicted), age, character, status of accused etc., the Courts must ask itself:

2.1 Whether the accused is a flight risk?

2.2. Whether there is apprehension of the accused tampering with the evidence?

2.3 Whether there is apprehension of accused influencing witnesses?

22. The question of entering the 'second test' of the inquiry will not arise if the 'first test' is satisfied. And merely because the first test is satisfied, that does not mean however that the accused is automatically entitled to bail. The accused will have to show that he successfully passes the 'tripod test'."

21. Thereafter, the Apex Court proceeded to refer to the decision of Watali's case as under:-

“23. In the previous section, based on a textual reading, we have discussed the broad inquiry which Courts seized of bail applications under Section 43D(5) UAP Act r/w Section 439 CrPC must indulge in. Setting out the framework of the law seems rather easy, yet the application of it, presents its own complexities. For greater clarity in the application of the test

set out above, it would be helpful to seek guidance from binding precedents.

In this regard, we need to look no further than Watali's case which has laid down elaborate guidelines on the approach that Courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paragraphs 23 to 29 and 32, the following 8-point propositions emerge and they are summarised as follows:

● **Meaning of 'Prima facie true'** [para 23]: On the face of it, the materials must show the complicity of the accused in commission of the offence. The materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence.

● **Degree of Satisfaction at Pre-Chargesheet, Post Chargesheet and Post- Charges-Compared** [para 23]: Once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge.

In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the chargesheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.

● **Reasoning, necessary but no detailed evaluation of evidence** [para 24]: The exercise to be undertaken by the Court at this stage-of giving reasons for grant or non-grant of bail-is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage.

● **Record a finding on broad probabilities, not based on proof beyond doubt** [para 24]: "The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise."

● **Duration of the limitation under Section 43D(5)** [para 26]: The special provision, Section 43-D of the 1967 Act,

applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof.

● **Material on record must be analysed as a 'whole'; no piecemeal analysis** [para 27]: The totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance.

● **Contents of documents to be presumed as true** [para 27]: The Court must look at the contents of the document and take such document into account as it is.

● **Admissibility of documents relied upon by Prosecution cannot be questioned** [para 27]: The materials/evidence collected by the investigation agency in support of the accusation against the accused in the first information report must prevail until contradicted and overcome or disproved by other evidence. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible."

22. The Court has perused the order passed by the Special Judge, NIA in NIA Criminal Misc. Application No.23 of 2022 dated 24.06.2022 in case of the appellant. The Special Court has assigned proper reasons by assigning the role played by the appellant and nature of evidence available on record. The same is discussed in para-20 to 23 of the order.

23. As discussed above, the offense is of very serious in nature and the extent of the offence running from across border to the State of Punjab. It is definitely not a work of an individual, but handy work of an organized crime where the role of each of the accused has been defined. The prosecution is therefore, justified in invoking the provisions of NIA and UAPA for the purpose of investigation and as discussed above, the facts of the case would reveal that the facts would not stand the twin test of Section 37 of the NDPS Act.

24. In view of the pronouncement of the Apex Court in case of **Gurwinder Singh (supra)** and also having discussed the nature of offense having serious effect on the society, which is a result of an organized network and the role of each accused-appellant with prima-facie evidence in support, the Court is not inclined to exercise discretion in favour of the appellant. Hence, the appeal is hereby ***dismissed***. Rule is discharged.

(A.Y. KOGJE, J)

(SAMIR J. DAVE, J)

SIDDHARTH