

GAHC010005232024



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : Bail Appln./155/2024

ABDUL SALIK AND ANR
S/O- LATE FOIZUL ISLAM, VILLAGE- SOUTH KEUTI, P.O. ASHALKANDI,
P.S. PATHARKANDI, DISTRICT- KARIMGANJ, ASSAM, INDIA, PIN NO.
788724

2: ABDUL FATTA
S/O- LATE FOIZUL ISLAM
VILLAGE- SOUTH KEUTI
P.O. ASHALKANDI
P.S. PATHARKANDI
DISTRICT- KARIMGANJ
ASSAM
INDIA
PIN NO. 78872

VERSUS

THE STATE OF ASSAM
TO BE REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 23.02.2024

Heard Mr. A. Ahmed, learned counsel for the petitioners. Also heard Ms. S.H. Bora, learned Addl. P.P. for the State.

2) By this bail application filed under section 439 Cr.P.C., the petitioners, namely, (i) Abdul Salik, and (ii) Abdul Fatta, who are in custody since their arrest on 08.05.2022, in connection with Patharkandi P.S. Case No. 130/2022 under sections 21(C)/25/29 of the NDPS Act, 1985, is praying for bail. The said case is being tried as Karimganj Special (NDPS) Case No.74/2022.

3) It may be mentioned at the outset that in this application, the name of petitioner no. 2 is Abdul Fatta. In B.A. No. 3415/2023, his name is Abdul Fattha, but in the TCR, his name is written as Abdul Fattah.

4) The learned counsel for the petitioners had submitted that the petitioners have spent 656 days in custody as on today.

5) The prayer for bail by the petitioners has been rejected by this Court by order dated 14.11.2023, passed by this Court in Bail Appln. No. 3415/2023. Hence, this is the second bail application by the petitioners before this Court.

6) The learned counsel for the petitioners has submitted that as per his instructions, except for the petitioners, the other co-accused are on bail and accordingly, it is submitted that as the petitioners, being similarly situated, are entitled to bail.

7) It was also submitted that there has been an inordinate delay in

the trial and till date only 4 (four) out of 10 (ten) witnesses listed in the charge-sheet have been examined and accordingly, it was submitted that there is no chance of an early conclusion of trial for which the petitioners are entitled to be enlarged on bail. In this regard, it was submitted that delay in trial has infringed the fundamental right of the petitioners as enshrined in Article 21 of the Constitution of India and on the ground that there is no sign of early trial, the co-ordinate Bench of this Court has released under-trial prisoners considering the length of their detention. It was also submitted that even the Supreme Court of India had deprecated the long incarceration of under-trial prisoners.

8) It was also submitted that the contraband was not seized from the conscious possession of the petitioners. In this context, it was submitted that as per the FIR dated 07.05.2022, the contraband was allegedly recovered from a closed room where it was kept concealed under the hay stack. However, three out of four prosecution witnesses examined so far have given contradictory evidence in Court regarding the place from which the contraband was recovered. Hence, it was reiterated that the recovery of contraband was not seized from the conscious possession of the petitioners.

9) It was also submitted that the petitioners and their immediate family members have movable and immovable property and therefore, there is no chance that the petitioners would abscond. Moreover, it was submitted that the petitioners are ready and willing to abide by any condition that may be imposed on grant of bail.

10) In support of his submissions, the learned counsel for the petitioners has cited the following cases, viz., (i) *Anjan Nath v. The State of Assam*, order dated 17.10.2023, passed by the Supreme Court of India in SLP

(Crl.) No. 9860/2023; (ii) *Anjan nath v. State of Assam*, judgment dated 19.07.2023, passed by this Court in B.A. No. 2022/2023; (iii) *Rabi Prakash v. The State of Odisha*, order dated 13.07.2023, passed by the Supreme Court of India in SLP (Crl.) 4169/2023, reported in *2023 LiveLaw (SC) 533*; *Mohan Lal v. State of Rajasthan*, (2015) 6 SCC 222.

11) Per contra, the learned Addl. P.P. has opposed the prayer for bail and it was submitted that there was no delay in the commencement of trial. Moreover, it was submitted that in the matter of grant of bail, the rigours of section 37 of the NDPS Act, 1985 was applicable. It was also submitted that from the evidence on record, it was apparent that the contraband was seized from the house of the petitioners, as the place from where the contraband was seized was a closed area within the compound of their house. In support of her submissions, the learned Addl. P.P. has cited the case of *Balbir Kaur v. State of Punjab*, AIR 2009 SC 3036.

12) As per charge-sheet, the complainant, who is a Sub-Inspector of Police had received secret information that large quantity of narcotic drugs were kept concealed in the house of the petitioners. Accordingly, the O/c., Patharkandi P.S. had made a G.D. Entry No. 136 dated 07.05.2022 at 2.20 AM. During search, 19 nos. of soap boxes containing 262 gms. of narcotic drugs suspected to be brown sugar was seized and the two petitioners herein as well as one Sahajahan Uddin were arrested. It was submitted by the learned Addl. P.P. that as per the FSL report, the sample of contraband had tested positive for heroin.

13) As the trial is proceeding in this case, the Court is of the considered opinion that this is not an appropriate time to call for the trial Court records to examine the evidence on record and to appreciate as to whether or

not there was sufficient evidence for convicting the petitioners.

14) As per the evidence of PW-1, recovery of contraband was from the cow-shed of Abdul Fattah (petitioner no.2). As per the version of PW-3, the contraband was recovered from the house of Abdul Fattah (petitioner no.2). As per the version of PW-4, the police team had searched the house of Abdul Fattah (petitioner no.2), and there was a closed small room belonging to Abdul Fattah and adjacent to it was a cow-shed which was closed under hay and 19 soap boxes were recovered. Be that as it may, the place from where the contraband is seized was within a compound of the petitioners, and it was a closed area. Thus, the so called discrepancy, if any, in the evidence of the PWs is not sufficient to discredit the search and seizure of contraband in this case.

15) The learned Addl. P.P. has *prima facie* been able to satisfy the Court that there are materials in the charge-sheet to suggest that both the petitioners, who were brothers, and owner of the property from where contraband was seized are involved in the storage of commercial quantity of heroin.

16) We may refer to the case of *Narcotics Control Bureau v. Mohit Aggarwal*, AIR 2022 SC 3444. The said case was lodged under section 8/22/29 of the NDPS Act, 1985. In the said case, a 3-Judge Bench of the Supreme Court of India had observed as follows:-

11. *It is evident from a plain reading of the non-obstante clause inserted in sub-section (1) and the conditions imposed in sub-section (2) of Section 37 that there are certain restrictions placed on the power of the Court when granting bail to a person accused of having committed an offence under the NDPS Act. Not only are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be factored in. The conditions imposed in sub- section (1) of Section 37 is that (i) the Public Prosecutor ought to be given an opportunity to*

oppose the application moved by an accused person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offence while on bail.

12. *The expression "reasonable grounds" has come up for discussion in several rulings of this Court. In Collector of Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549 a decision rendered by a Three Judges Bench of this Court, it has been held thus:-*

7. *The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than *prima facie* grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [emphasis added]*

13. *The expression 'reasonable ground' came up for discussion in State of Kerala & Ors. v. Rajesh and others, (2020) 12 SCC 122 and this Court has observed as below:*

13. *The expression "reasonable grounds" means something more than *prima facie* grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for." [emphasis added]*

14. *To sum up, the expression "reasonable grounds" used in clause (b) of Sub Section (1) of Section 37 would mean credible, plausible and grounds for*

the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.

* * *

17. Even dehors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant-NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by the submission made by learned counsel for the respondent and the observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage.

17) It would also be relevant to quote herein below the provision of Section 436A Cr.P.C.:-

“436A. Maximum period for which an under trial prisoner can be detained.- Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons

to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded."

18) In this case, charges were explained to both the petitioners on 20.09.2022, to which they had pleaded not guilty and claimed to be tried. Therefore, in the light of *Explanation* to Section 436A CrPC, the period upto 20.09.2022 is liable to be excluded.

19) As commercial quantity of heroin weighing 262 grams was seized, which is contraband drugs and narcotic substance, the Court is unable to hold that there are reasonable grounds for believing that the petitioner is not guilty of such offence and that he is not likely to commit any offence while on bail.

20) In the case of *Satender Kumar Antil v. Central Bureau of Investigation, AIR 2022 SC 3386*, it has been held that:-

"Where undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an under-trial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount."

21) In the present case, as per order dated 20.09.2022, Abdul Fattah (petitioner no.2) was explained charges of committing offence punishable under sections 21(c)/25 of the NDPS Act, 1985 and Abdul Salik (petitioner no. 1) was explained charge of committing offence punishable under 21(c) of the NDPS Act, 1985. Under the said provisions, the punishment prescribed is not less than 10 years but which may extend to 20 years and shall also be liable to fine which

shall not be less than Rs.1.00 lakh but which may extend to Rs.2.00 lakh. Therefore, following the ratio laid down in the case of *Satender Kumar Antil (supra)*, as well as the provision of Section 436A Cr.P.C., the petitioners having been incarcerated for a period of 656 days, have not become entitled to be released on bail, notwithstanding that the third co-accused was been released by this Court on bail by order dated 30.11.2023, passed in B.A. No. 3234/2023.

22) The learned counsel for the petitioners had cited the case of (i) *Anjan Nath (supra)* (ii) *Anjan Nath (supra)* (iii) *Rabi Prakash (supra)*, and (iv) *Mohan Lal (supra)*. With utmost respect to the said decisions, the Court would respectfully referred to the judgment of the Supreme Court of India in the case of (i) *Satender Kumar Antil (supra)*, (ii) *Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549*, decided by a 3-Judge Bench and (iii) *Mohit Aggarwal (supra)*.

23) It appears that the three cases referred above were not placed before the Supreme Court of India and this Court when the two cases of *Anjan Nath (supra)* and *Rabi Prakash (supra)* were decided. The relevant observations of the Supreme Court of India in the case of *Satender Kumar Antil (supra)* and *Mohit Aggarwal (supra)* have been extracted herein before. The relevant observations made in paragraphs 7 and 8 of the case of *Ahmadalieva Nodira (supra)* are quoted below:-

“7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the public prosecutor, the other twin conditions which really have relevance so far the present accused-respondent is concerned, are (1) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based for reasonable grounds.

*The expression "reasonable grounds" means something more than *prima facie* grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case at hand the High Court seems to have completely overlooked the underlying object of Section 37. It did not take note of the confessional statement recorded under Section 67 of the Act. Description Serial No. 43 of the Schedule which reads as follows has not been kept in view.*

* * * (omitted)

In addition, the report of the Central Revenue Control Laboratory was brought to the notice of the High Court. The same was lightly brushed aside without any justifiable reason.

8. *In the aforesaid background, this does not appear to be a case where it could be reasonably believed that the accused was not guilty of the alleged offence. Therefore, the grant of bail to the accused was not called for. The impugned order granting bail is set aside and the bail granted is cancelled. The accused-respondent is directed to surrender to custody forthwith. Additionally it shall be open to the Trial Court to issue notice to the surety and in case the accused does not surrender to custody, as directed, to pass appropriate orders so far as the surety and the amount of security are concerned. It is made clear that no final opinion on the merit of the case has been expressed in this judgment, and whatever has been stated is the background of Section 37 of the Act for the purpose of bail."*

24) Therefore, once again, expressing utmost respect to the case of (i) *Anjan Nath (supra)* (ii) *Anjan Nath (supra)* (iii) *Rabi Prakash*, and (iv) *Mohan Lal (supra)*, cited by the learned counsel for the petitioners, this Court is inclined to follow the decisions of the Supreme Court of India in the case of *Satender Kumar Antil (supra)*, *Ahmadalieva Nodira (supra)* and *Mohit Aggarwal (supra)*, referred herein before.

25) In so far as right to speedy trial is concerned. We cannot disagree that an undertrial has a right to speedy trial. But considering the *Explanation* to Section 436A CrPC, the period upto 20.09.2022 has become liable to be

excluded. Hence, it cannot be said that there has been an inordinate delay in commencement of trial.

26) It may not be out of place to refer to the observations made by the Supreme Court of India in the case of *Niranjan Hemchandra Sashittal & Anr. v. State of Maharashtra*, (2013) 4 SCC 642: (2013) 0 Supreme(SC) 252, which is as follows:-

18. *At this stage, we think it apposite to advert to another aspect which is sometimes highlighted. It is quite common that a contention is canvassed in certain cases that unless there is a speedy trial, the concept of fair trial is totally crucified. Recently, in Mohd. Hussain @ Julfikar Ali v. State (Government of NCT of Delhi), (2012) 9 SCC 408, a three-Judge Bench, after referring to the pronouncements in P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578: (2002) 0 Supreme(SC) 499, Zahira Habibulla H. Shekh and another v. State of Gujarat and others, (2004) 4 SCC 158, Satyajit Banerjee & Ors. v. State of West Bengal & Ors., (2005) 1 SCC 115, pointed out the subtle distinction between the two in the following manner:-*

“40 “Speedy trial” and “fair trial” to a person accused of a crime are integral part of Article 21. There is, however, qualitative difference between the right to speedy trial and the accused’s right of fair trial. Unlike the accused’s right of fair trial, deprivation of the right to speedy trial does not per se prejudice the accused in defending himself. The right to speedy trial is in its very nature relative. It depends upon diverse circumstances. Each case of delay in conclusion of a criminal trial has to be seen in the facts and circumstances of such case. Mere lapse of several years since the commencement of prosecution by itself may not justify the discontinuance of prosecution or dismissal of indictment. The factors concerning the accused’s right to speedy trial have to be weighed vis-à-vis the impact of the crime on society and the confidence of the people in judicial system. Speedy trial secures rights to an accused but it does not preclude the rights of public justice. The nature and gravity of crime, persons involved, social impact and societal needs must be weighed along with the right of the accused to speedy trial and if the balance tilts in favour of the former the long delay in conclusion of criminal trial should not operate against the continuation of prosecution and if the right of the accused in the facts and circumstances of the case and exigencies of situation tilts the balance in his favour, the prosecution may be brought to an end.” [Emphasis added]

19. *It is to be kept in mind that on one hand, the right of the accused is to have a speedy trial and on the other, the quashing of the indictment or the acquittal or refusal for sending the matter for re- trial has to be weighed, regard being had to the impact of the crime on the society and the confidence of the people in the judicial system. There cannot be a mechanical approach. From the principles laid down in many an authority of this Court, it is clear as crystal that no time limit can be stipulated for disposal of the criminal trial. The delay caused has to be weighed on the factual score, regard being had to the nature of the offence and the concept of social justice and the cry of the collective. In the case at hand, the appellant has been charge-sheeted under the Prevention of Corruption Act, 1988 for disproportionate assets. The said Act has a purpose to serve. The Parliament intended to eradicate corruption and provide deterrent punishment when criminal culpability is proven. The intendment of the legislature has an immense social relevance. In the present day scenario, corruption has been treated to have the potentiality of corroding the marrows of the economy. There are cases where the amount is small and in certain cases, it is extremely high. The gravity of the offence in such a case, in our considered opinion, is not to be adjudged on the bedrock of the quantum of bribe. An attitude to abuse the official position to extend favour in lieu of benefit is a crime against the collective and an anathema to the basic tenet of democracy, for it erodes the faith of the people in the system. It creates an incurable concavity in the Rule of Law. Be it noted, system of good governance is founded on collective faith in the institutions. If corrosions are allowed to continue by giving allowance to quash the proceedings in corruption cases solely because of delay without scrutinizing other relevant factors, a time may come when the unscrupulous people would foster and garner the tendency to pave the path of anarchism.*

20. *It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality. Therefore, the relief for quashing of a trial under the 1988 Act has to be considered in the above backdrop.*

21. *It is perceivable that delay has occurred due to dilatory tactics adopted by the accused, laxity on the part of the prosecution and faults on the part of the system, i.e., to keep the court vacant. It is also interesting to note that though*

there was no order directing stay of the proceedings before the trial court, yet at the instance of the accused, adjournments were sought. After the High Court clarified the position, the accused, by exhibition of inherent proclivity, sought adjournment and filed miscellaneous applications for prolonging the trial, possibly harbouring the notion that asking for adjournment is a right of the accused and filing applications is his unexceptional legal right. When we say so, we may not be understood to have said that the accused is debarred in law to file applications, but when delay is caused on the said score, he cannot advance a plea that the delay in trial has caused colossal hardship and agony warranting quashment of the entire criminal proceeding. In the present case, as has been stated earlier, the accused, as alleged, had acquired assets worth Rs.33.44 lacs. The value of the said amount at the time of launching of the prosecution has to be kept in mind. It can be stated with absolute assurance that the tendency to abuse the official position has spread like an epidemic and has shown its propensity making the collective to believe that unless bribe is given, the work may not be done. To put it differently, giving bribe, whether in cash or in kind, may become the "mantra" of the people. We may hasten to add, some citizens do protest but the said protest may not inspire others to follow the path of sacredness of boldness and sacrosanctity of courage. Many may try to deviate. This deviation is against the social and national interest. Thus, we are disposed to think that the balance to continue the proceeding against the accused-appellants tilts in favour of the prosecution and, hence, we are not inclined to exercise the jurisdiction under Article 32 of the Constitution to quash the proceedings. However, the learned Special Judge is directed to dispose of the trial by the end of December, 2013 positively.

27) The Court also takes note of the observations of the Supreme Court of India in the case of *Hira Singh & Anr. v. Union of India & Anr.*, AIR 2020 SC 3255: (2020) 0 Supreme(SC) 320, decided by a 3-Judge Bench, which is extracted as below:-

8.5. The problem of drug addicts is international and the mafia is working throughout the world. It is a crime against the society and it has to be dealt with iron hands. Use of drugs by the young people in India has increased. The drugs are being used for weakening of the nation. During the British regime control was kept on the traffic of dangerous drugs by enforcing the Opium Act, 1857. The Opium Act, 1875 and the Dangerous Drugs Act, 1930. However, with the passage of time and the development in the field of illicit drug traffic and during abuse at national and international level, many deficiencies in the existing laws have come to notice. Therefore, in order to remove such deficiencies and difficulties, there was urgent

need for the enactment of a comprehensive legislation on Narcotic Drugs and Psychotropic Substances, which led to enactment of NDPS Act. As observed herein above, the Act is a special law and has a laudable purpose to serve and is intended to combat the menace otherwise bent upon destroying the public health and national health. The guilty must be in and the innocent ones must be out. The punishment part in drug trafficking is an important one but its preventive part is more important. Therefore, prevention of illicit traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 came to be introduced. The aim was to prevent illicit traffic rather than punish after the offence was committed. Therefore, the Courts will have to safeguard the life and liberty of the innocent persons. Therefore, the provisions of NDPS Act are required to be interpreted keeping in mind the object and purpose of NDPS Act; impact on the society as a whole and the Act is required to be interpreted literally and not liberally which may ultimately frustrate the object, purpose and preamble of the Act. Therefore, the interpretation of the relevant provisions of the statute canvassed on behalf of the accused and the intervener that quantity of neutral substance(s) is not to be taken into consideration and it is only actual content of the weight of the offending drug, which is relevant for the purpose of determining whether it would constitute "small quantity or commercial quantity", cannot be accepted.

28) Thus, the Court is of the considered opinion that in offence of dealing with drugs (including storage), transporting of drugs and narcotic substances and drug peddling, which has the tendency to adversely affect the society and destroy the future of the youths must also be treated to be a separate class of offence.

29) In the case of *P. Ramachandra Rao Vs. State of Karnataka, (2002) 4 SCC 578*, a 7- Judge Bench of the Supreme Court of India had held as follows:-

29. *For all the foregoing reasons, we are of the opinion that in Common Cause case (I) (as modified in Common Cause (II) and Raj Deo Sharma (I) and (II), the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:-*

(1) *The dictum in A.R. Antulay's case is correct and still holds the field.*

(2) *The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A.R. Antulay's case, adequately take care of right to speedy trial. We uphold and re-affirm the said propositions.*

(3) *The guidelines laid down in A.R. Antulay's case are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied like a strait-jacket formula. Their applicability would depend on the fact-situation of each case. It is difficult to foresee all situations and no generalization can be made.*

(4) *It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause Case (I), Raj Deo Sharma case (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay's case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time limits cannot and will not by themselves be treated by any Court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.*

(5) *The Criminal Courts should exercise their available powers, such as those under Sections 309, 311 and 258 of Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial judge can prove to be better protector of such right than any guidelines. In appropriate cases jurisdiction of High Court under Section 482 of Cr.P.C. and Articles 226 and 227 of Constitution can be invoked seeking appropriate relief or suitable directions.*

(6) *This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary-quantitatively and qualitatively-by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act.*

30) We may also refer to the decision of the Supreme Court of India

in the case of *Tarun Kumar v. Assistant Director, Directorate of Enforcement*, (2023) 0 Supreme(SC) 1163, wherein the Supreme Court of India, in the context of Prevention of Money Laundering Act, has observed as follows:-

20. *It is also difficult to countenance the submission of learned Counsel Mr. Luthra that the investigation qua the appellant is complete and the trial of the cases likely to take long time. According to him the appellant ought not to be incarcerated indefinitely merely because the investigation is kept open with regard to the other accused. In this regard, it may be noted that the appellant has not been able to overcome the threshold stipulations contemplated in Section 45 namely he has failed to prima facie prove that he is not guilty of the alleged offence and is not likely to commit any offence while on bail. It cannot be gainsaid that the burden of proof lies on the accused for the purpose of the condition set out in the Section 45 that he is not guilty of such offence. Of course, such discharge of burden could be on the probabilities, nonetheless in the instant case there being sufficient material on record adduced by the respondent showing the thick involvement of the appellant in the alleged offence of money laundering under Section 3 of the said Act, the Court is not inclined to grant bail to the appellant.*

21. *The apprehension of the learned counsel for the appellant that the trial is likely to take long time and the appellant would be incarcerated for indefinite period, is also not well founded in view of the observations made by this Court in case of *Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.*, 2022 SCC OnLine 929. On the application of Section 436A of the Code of Criminal Procedure, 1973, it has been categorically held therein that:-*

“419. Section 436A of the 1973 Code, is a wholesome beneficial provision, which is for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely specifies the outer limits within which the trial is expected to be concluded, failing which, the accused ought not to be detained further. Indeed, Section 436A of the 1973 Code also contemplates that the relief under this provision cannot be granted mechanically. It is still within the discretion of the Court, unlike the default bail under Section 167 of the 1973 Code. Under Section 436A of the 1973 Code, however, the Court is required to consider the relief on case-to-case basis. As the proviso therein itself recognises that, in a given case, the detention can be continued by the Court even longer than one-half of the period, for which, reasons are to be recorded by it in writing and also by imposing such terms and conditions so as to ensure that after release, the accused makes himself/herself available for expeditious completion of the trial.”

31) The co-ordinate Bench of this Court in the case of *Baiju Thakur v. Union of India, B.A. 3765/2023, decided on 13.02.2024*, had held to the effect that embargo under section 37 of the NDPS Act applied in cases where commercial quantity of drugs were seized and that liberty available under Article 21 of the Constitution of India must override the statutory embargo created under section 37 of the NDPS Act.

32) The Court is also inclined to refer to the observations made by the Supreme Court of India in the case of *Shaikh Uzma Feroz Hussain v. State of Maharashtra*, Writ Petition (Crl.) No. 587/2023, decided on 10.11.2023, which is extracted below:-

The learned counsel appearing for the petitioner insists on passing a direction to decide the case in a time bound manner.

We are of the view that since every High Court and every Court in the Country has a huge pendency, the Constitutional Court should avoid temptation of fixing a time-bound schedule for disposal of any case before any Court unless the situation is extra ordinary.

33) Thus in light of the discussions above, although the petitioners has spent about 656 days in custody, but as per the provisions of section 436A Cr.P.C. and the ratio of the case of *Satender Kumar Antil (supra)*, the petitioners are still not entitled to bail.

34) Thus, this application for bail is once again rejected.

35) Before parting with the record, it is made clear that nothing contained in this order shall prejudice either side during trial.

JUDGE

Comparing Assistant