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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL (REGULAR BAIL - AFTER CHARGESHEET) NO.
15 of 2026**=====

HARPREET SINGH TALWAR @ KABIR TALWAR

Versus

THE STATE OF GUJARAT & ANR.

=====

Appearance:

DR ADITYA SONDHI, SENIOR COUNSEL with MR NIPUN KATYAL, with MR
MANAN SHARMA, MR SURYA SINGH RANA with MR DARSHIT H RAVAL(11887)
for the Appellant(s) No. 1MR ANKIT SHAH(6371) with MR SANDEEP K SADAWARTE, MR
DHARMESH SINGH, Adv, MR GIRISH GOTHWAL, Dysp/CIO for the
Opponent(s)/Respondent(s) No. 2MR CHINTAN DAVE, APP for the Opponent(s)/Respondent(s) No. 1

=====CORAM:**HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA**

and

HONOURABLE MR.JUSTICE D. M. VYAS**CAV JUDGMENT**

(PER : HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA)

**CHRONOLOGY OF EVENTS BEFORE THE NIA
COURT AND THIS COURT:**

1. The Directorate of Criminal Intelligence, Gandhidham, registered a case for the offences under the NDPS Act, which was relatable to the seizure of 2988.21 Kgs. of narcotic drug (heroin). According to the National Investigation Agency (NIA), the consignment was sent from Afghanistan via Bandar Abbas Port Iran to Mundra Port, Gujarat and the heroin was imported in India, concealed with talc powder and was imported by a company named "Ashi Training Company".

2. It appears that on the basis of intelligence input, the consignment was intercepted on 11.9.2021, leading to the seizure of a huge quantity of Heroin and on further investigation, there was another seizure made at Alipur, New Delhi, which led to arrest of several persons.

3. Taking into consideration the magnitude of the offence, the Ministry of Home Affairs, in exercise of the powers under the NIA Act, transferred the case to the NIA on 6.10.2021 and accordingly, the NIA registered the case on 16.10.2021.

4. The NIA after investigation, which led to the arrest of several persons, ultimately, on 14.3.2022, filed a charge-sheet against 10 accused persons and also against 6 other wanted accused persons.

5. A further investigation was continued, during the course of which, 9 other persons were arrested, and a supplementary charge-sheet was also filed on 29.8.2022.

6. The appellant herein, was arrested on 25.8.2022 and he was arraigned as accused No.24 in the supplementary charge-sheet that was filed on 29.8.2022.

7. Subsequently, further supplementary charge-sheets were also filed (details of which would not be necessary for the purpose of this case).

8. The appellant sought for grant of bail by making an application before the Session Court. However, the Sessions Court, by an order dated 13.7.2023, rejected said bail application.

9. Being aggrieved, the appellant preferred a bail application before this Court being Criminal Appeal No.1980 of 2023. This Court, by an order dated 28.3.2024, dismissed the Appeal and thereby confirmed the rejection of the bail application.

10. Being aggrieved by the dismissal of his bail application and its affirmation by this Court, the appellant approached the Supreme Court by filing SLP (Criminal) No.8878 of 2024.

11. At this stage, the orders passed by the Supreme Court, from time to time, till the disposal of the said SLP would be relevant and also necessary.

CHRONOLOGY OF EVENTS BEFORE THE APEX COURT:

12. The Supreme Court on 25.9.2024, taking note of the contentions of the appellant that the charges were yet to be framed and the charge-sheet ran into more than 20,000 pages and as many as 500 persons were cited as witnesses and there was no possibility of conclusion of

trial in near future, proceeded to come to observe that instead of opining on the merits of the prayer for bail, it would be appropriate to issue directions to this Court to take up the appeals filed against the rejection of the applications for discharge and decide the same within 2 months. The Supreme Court also directed the NIA Court seeking for discharge and decide the same by the next date of hearing.

13. The Supreme Court also directed the NIA Court to immediately take up the matter for framing of charges and after affording a reasonable opportunity of hearing, the issue regarding the framing of charges should be decided before 30.11.2024. The Supreme Court also directed all the accused and their counsel and the Public Prosecutor to extend full cooperation. The Supreme Court also stated as follows:

- “8. Meanwhile, the prosecution will submit a list of vulnerable and private witnesses, who are required to be examined at the first instance.
9. The Presiding Officer, NIA Court shall fix the date for recording the statements of such witnesses and the schedule of their examination shall be notified to counsel for the parties in advance. This will be subject to the protection of witnesses.
10. It shall be the responsibility of NIA to produce those witnesses and no request for adjournment in this regard, shall be entertained.
11. A Status Report shall be filed by the NIA before the date fixed. The Presiding Officer, NIA Court, Ahmedabad shall also send a Status Report regarding compliance of

the directions issued hereinabove.

12. Post the matter for further consideration on 18.12.2024.”

14. In compliance of the said order, a status report was filed on 17.12.2024 by the NIA. This status report was taken note of by the Apex Court, and it was noticed that the charges had been framed and the trial had formally commenced and the witnesses were also scheduled to be examined from 20.12.2024 onwards.

15. The Supreme Court also took into consideration that the status report, which revealed that the prosecution proposed to examine 610 witnesses, out of which 85 had been identified as vulnerable and private witnesses. The Supreme Court, in its order dated 18.12.2024, stated as follows:

- “3. However, on a cursory look of the list of 85 witnesses, we find that some of them are Government officials or working in such institutions where it is difficult to accept that their version can be influenced by the accused.
4. Consequently, we direct the Prosecutor to revisit the list of 85 vulnerable and private witnesses and further identify the most vulnerable and private witnesses only, some of whom shall be produced for examination before the Special Court on the date fixed 1.0., 20.12.2024.
5. The Principal Judge, City Civil & Sessions Court, Bhadra, Ahmedabad is directed to list the trial at least three times in a month for recording the evidence. For this purpose, if need be, he will be relieved from other urgent or time bound cases.

6. The Registrar General of the Gujarat High Court is, accordingly, directed to take up the matter with the High Court on administrative side and see that the Presiding Officer is able to devote sufficient time for expeditious conclusion of this trial.
7. Post the matter on 03.02.2025.
8. Before the next date of hearing, the Trial Court shall fix at least three more dates after 20.12.2024 and record statement of most vulnerable witnesses. A status report shall be sent by the Presiding Officer of the Court before the next date of hearing.”

16. On 3.2.2025, the Supreme Court took notice of the fact that out of 24 most vulnerable and private witnesses which had been identified, 9 witnesses had already been examined and it proceeded to pass an order impressing upon the prosecution that on the next dates of hearing, the witnesses pointed out by the appellant should be examined first along with other remaining vulnerable witnesses and directed the Special Court to continue to list the trial in terms of the time-line mentioned in the order dated 8.12.2024 and also directed to file a fresh status report and directed the matter to be listed on 5.3.2025.

17. The Supreme Court took note of the status report and also took note of the fact that the Presiding Officer had been recommended for elevation and therefore requested this Court to consider the desirability of posting a new Presiding Officer who would continue with the endeavour to record the statements of the vulnerable

witnesses at the earliest.

18. The Supreme Court also noticed that the depositions of 6 remaining witnesses should be recorded before the next date of hearing and adjourned the matter to 5.3.2025.

19. On 5.3.2025, the Supreme Court took the status report filed by the NIA, perused it and proceeded to direct the NIA Special Court to continue to examine the witnesses on day-to-day basis and the remaining witnesses were ordered to be examined at the earliest, preferably before the next date of hearing, i.e. 26.3.2025.

20. The Supreme Court took note of the status report and also the fact that the NIA had supplied a list of 24 most important / vulnerable witnesses and out of them, 16 had been examined, while two of them had passed away. It also took note of the fact that the Presiding Officer of the NIA Court had been recommended for elevation and therefore, it requested this Court to post a new Presiding Officer as soon as the Presiding Officer was elevated and the Supreme Court also observed that the Special Court should continue with its endeavour to record the statements of the vulnerable witnesses at the earliest and expressed a hope that the depositions of the remaining 6 witnesses should also be recorded before the next date of hearing, i.e. 16.4.2025.

21. On 16.4.2025, the Supreme Court took into consideration the status report that was filed by the NIA and observed and noticed that out of the 24 vulnerable and most important witnesses, 20 had already been examined and two had passed away and two were untraceable and the matter was thereafter adjourned to consider the submissions of the Union on merits and the matter was ordered to be posted on 23.4.2025.

22. On 23.4.2025, the arguments were heard and the orders were reserved.

23. On 13.5.2025, the Supreme Court disposed of the SLP and proceeded to observe that the appellant had not been able to make out a case for grant of regular bail.

24. However, the operative portion of the order passed by the Supreme Court, would be relevant, which is as follows:

“35. In light of the foregoing discussion, and without expressing any opinion on the merits of the case, we dismiss the instant appeal with the following directions:

- i. We are not inclined to enlarge the Appellant on regular bail at this stage. He shall be at liberty to renew his plea for regular bail after a period of 6 months, or at a stage where the ongoing trial has progressed substantially;
- ii. The NIA is directed to submit to the Special Court an additional list of witnesses who, in its assessment, are sensitive or material, inasmuch as their testimony may have a direct bearing on the

role of the Appellant or other co-accused in the ongoing trial and connected investigation;

- iii. The Special Court is directed to list the matter twice in a month and record the statements of Prosecution witnesses on a continuous and uninterrupted basis; and
- iv. If the Presiding Officer of the Special Court has not been posted thus far, we request the Hon'ble Chief Justice of the High Court of Gujarat to do the needful within a week."

25. The above set of orders have been narrated only to emphasize the fact that the Apex Court monitored the conduct of the entire case by the NIA Court, firstly by directing the NIA Court to consider the issue of framing the charges and secondly, after the trial commenced, pass orders directing the examination of vulnerable and protected witnesses, thereby ensuing an expeditious trial, at least in so far as the witnesses who were relevant in so far as the appellant was concerned.

26. It must also be pertinent to state here that though the Supreme Court came to the conclusion that the appellant was not entitled to be enlarged on bail, it nevertheless, took into consideration that the appellant had been in custody since 24.8.2022 and observed that though that duration of about 3 years by itself would not be a ground for grant of bail, it proceeded to grant liberty to the appellant, to renew his prayer for bail after a period of six months or at a stage where the ongoing trial has progressed substantially, whichever is earlier. The

Supreme Court clearly observed that such a course would allow the prosecution to complete the examination of its core witnesses while preserving the right of the accused to seek release at a later and more appropriate stage.

27. It may also be pertinent to state here that the Supreme Court while disposing of the appellant's SLP also directed the NIA to submit to the Special Court an additional list of witnesses who in its assessment were sensitive or material and their testimony would have a direct bearing on the role of the appellant or the other accused in the ongoing trial and connected investigation. The Supreme Court also directed that the matter should be listed twice in a month for recording of the statements of the prosecution witnesses on a continuous and uninterrupted basis.

28. The direction of the Supreme Court to the NIA to submit an additional list of witnesses, who in its assessment were sensitive or material, was however not complied with by the NIA.

29. The appellant, thereafter, proceeded to file another Special Leave Petition (Criminal) Diary No.69493 of 2025 before the Apex Court. In this SLP, once again, the appellant sought to challenge the order dated 28.03.2024 passed by this Court, by which this Court had affirmed the rejection of the bail by the NIA Court.

30. The Supreme Court, on hearing, proceeded to pass an order in the following terms:

- “3. It is not in dispute that the said judgment was earlier challenged in SLP(Crl.) No.8878/2024 in which leave was granted and the Criminal Appeal was disposed of vide judgment dated 13.05.2025 with certain directions. Applying the doctrine of merger, there can be no quarrel that the judgment dated 28.03.2024 of the High Court is no longer in question. The instant Special Leave Petition is, thus, not maintainable. The same is, accordingly, dismissed. However, in terms of the liberty granted by this Court, the petitioner may be well-advised to approach the High Court with a fresh petition/application for the grant of bail. Such a petition/application shall be considered by the High Court on merits in light of the observations already made by this Court in the previous decision dated 13.05.2025.
4. We request the High Court that if such an application is made within one week, the same shall be disposed of expeditiously and preferably within four weeks.
5. As a result, the pending interlocutory application also stands disposed of.”

31. As could be seen from the above, though the Supreme Court dismissed the said Special Leave Petition, on the grounds of its maintainability, it however proceeded to state that by virtue of the liberty granted by the Supreme Court on 13.5.2025, the appellant could approach this Court with a fresh application for grant of bail and that such an application was required to be considered by this Court in the light of the observations already made by the Supreme Court in its order dated

13.5.2025.

32. Pursuant to the said order passed by the Supreme Court, the present appeal has been preferred.

SUBMISSIONS ADVANCED BY THE APPELLANT:

33. Learned Senior counsel, Dr. Aditya Sondhi appearing for the appellant, contended that the appellant was in custody from 25.8.2022, i.e., he had been incarcerated for more than 40 months and on that score alone, he was entitled to be released on bail. He sought to place reliance on the judgments of the Apex Court, an inordinate delay in the conclusion of the trial resulting in a long incarceration, coupled with the fact that there was no possibility of the trial being concluded in the near future, entitles the person in custody to be granted bail only on that ground and without reference to the normal considerations for grant of bail, i.e. gravity of the offences, etc.

34. Dr. Sondhi also pointed out that though the Supreme Court in its order dated 13.5.2025 had granted liberty to the NIA to submit a list of witnesses which in its assessment were sensitive or material, the NIA had not chosen to furnish the list of witnesses, which thereby indicated that there were no sensitive witnesses to be examined and that the NIA wanted to protract the trial

only to perpetuate the incarceration of the appellant.

35. Dr. Sondhi submitted that if the NIA was really interested in the conclusion of the trial and the recording of the witnesses in relation to the appellant's role in the entire episode, they ought to have filed the list of witnesses promptly. Dr. Sondhi highlighted the fact that the NIA chose to file the list of witnesses only after this Court during the course of hearing wanted to know whether the direction of the Supreme Court to the NIA to file a list had been complied with and the NIA had responded that, by filing an application before the Special Court and submitting a revised list of 71 total witnesses which were included but left out the original list containing 85 witnesses. Dr. Sondhi pointed out that the NIA was basically seeking to get over the order of the Supreme Court by stating that 71 witnesses as per the additional list were required to be examined and this by itself proved that the intention of the NIA was to protract the trial.

36. Learned Senior counsel Dr. Sondhi argued that once 24 witnesses had been identified by the Supreme Court and 20 out of 24 had been examined (two were dead and two were not traceable), the entire set of witnesses who were considered as vulnerable had already been examined and therefore there was no justification for denial of bail as the entire evidence against the appellant

was already on record.

37. Dr. Sondhi pointed out the fact that NIA chose not to file the list and came out with the list only after the said lacuna being pointed out by this Court, during the course of hearing of this appeal, only indicated their deliberate inaction. Dr. Sondhi submitted that since the NIA did not take advantage of the direction of the Supreme Court to furnish a list of witnesses and get them examined though more than 9 months had elapsed, that factor, by itself, was sufficient to enlarge the appellant on bail.

SUBMISSIONS OF NIA:

38. In response, learned counsel Mr. Ankit Shah appearing on behalf of the respondent NIA submitted that the appellant cannot take advantage of the delay in the trial more so when the NIA was examining the witnesses promptly.

39. Mr. Shah pointed out that after the Supreme Court dismissed the Special Leave Petition on 13.5.2025, a total of 19 witnesses had been examined. He submitted that out of the list of 85 witnesses that it wanted to examine, 13 had been dropped and there remained 23 witnesses from out of the list of 85 witnesses to be examined and an additional 48 witnesses, who were required to be examined, in all he submitted that 17 witnesses were required to be examined and until the depositions of

these other witnesses were concluded, the appellant was not entitled to be enlarged on bail especially when the Supreme Court had on the merits of the appellant's claim concluded that a case of grant of bail had not been made out by the appellant.

40. Learned counsel Mr. Ankit Shah also submitted that for the grant of bail on the ground of an inordinate delay in the conclusion of the trial, the courts were still nevertheless required to examine the claim for grant of bail on merits of the case and the factor of delay alone cannot be the criteria for grant of bail. He placed emphasis on the decision rendered by the Supreme Court in the case of *Gulfisha Fatima v. State (Govt of NCT of Delhi)* reported in **(2026) SCC OnLine SC 10** in support of this contention.

41. After the arguments were heard and the judgment was reserved, written submissions was filed by the counsel for the appellant and also by the counsel for the respondent NIA. The authorities on which they placed reliance were also filed.

POINTS THAT ARISE FOR CONSIDERATION IN THIS APPEAL:

42. In the light of the above, the point to be considered in this appeal is as to whether the appellant is entitled for grant of bail on the ground that has been an inordinate

delay for the trial to be concluded despite the specific orders passed by the Apex Court.

THE CONCEPT OF BAIL DURING INVESTIGATION, AFTER INVESTIGATION AND DURING TRIAL:

43. At the outset, it would be necessary to state the legal position regarding the grant of bail.

44. The word “bail” is not defined under the Code of Criminal Procedure, 1973 (“Cr.PC” for short), though it has been defined under the Bharatiya Nagrarik Suraksha Sanhita, 2023 (“BNSS” for short).

45. “Bail” would essentially mean the release of a person who has been arrested on the suspicion of committing an offence pending his trial. Certain offences are bailable, meaning on being arrested, the person arrested is entitled to demand to be enlarged on bail subject to furnishing of a bond or sureties. The persons who are so arrested will have to be released by the police if the offence is bailable and the person arrested offers to execute a bond and / or furnishes sureties.

46. Certain offences are made non-bailable, thereby meaning that the police after arresting a person have no right to enlarge him on bail. The person who is arrested in connection with a non-bailable offence, would have to be necessarily be produced within 24 hours before the

nearest Magistrate as provided under Section 57 of the Cr.PC.

47. Section 167 of the Cr.PC stipulates that, whenever any person is arrested and is detained in custody, and the investigation cannot be completed within the period of 24 hours (as envisaged under Section 57) the officer in charge of the police station or the police officer making the investigation, is satisfied that the accusation against him is well founded, he is required to transfer to the nearest judicial magistrate a copy of the entries in the diary relating to the case and also at the same time produce the accused before the magistrate.

48. The Magistrate before whom such an accused is produced is empowered to authorize the detention of the accused in such custody as he thinks fit for a term not exceeding 15 days. The Magistrate is, however, precluded from authorizing the detention of the arrested person for a total period exceeding 90 days or 60 days which is dependent on the punishment prescribed for the offence which is alleged to have been committed by the arrested person. The magistrate cannot also authorize the detention of the accused until the accused is produced before him in person.

49. Section 437 of the Cr.PC entitles the person accused of committing an non-bailable offence to seek for bail

when he is brought before a court (other than the High Court or Court of Session).

50. At this stage, it must be relevant to state that the investigation of the offence alleged against the accused is still pending and at that stage, i.e. the investigation stage, the court is empowered to release the accused on bail if the conditions under 437(1) and (2) are satisfied.

51. However, in respect of the offences under the NDPS Act, by virtue of Section 37, the requirement of granting bail is governed by twin conditions specified under Section 37(1)(b)(i) and (ii).

52. In addition to the conditions laid down in section 37(1)(b), by virtue of Section 37(2), the limitations prescribed under the Cr.PC, i.e. under Section 437(1) sub-section (1) and (2), are also made applicable for the purpose of granting bail. Simply put, whenever a person is accused of an offence under the NDPS Act, the grant of bail is governed by the conditions imposed not only by the Cr.PC but also by the specific provisions in the NDPS Act, which are more stringent than the conditions prescribed under the CrPC.

53. It is to be stated here that the grant of a bail for a person accused of committing an offence in which the investigation has just started, would be completely different as compared to the considerations for granting

bail after the investigation is completed.

54. If the investigation is not completed within a specified time limit, the person arrested becomes entitled for grant of bail and this is popularly called “default bail”.

55. On conclusion of the investigation, the Cr.PC requires the police to file a final report under Section 173. On a final report being filed, the Magistrate is empowered under section 173(4) to make such order as he deems fit relating to the custody of the accused, if the accused has been released on bond. Thus, on a final report being filed, the magistrate is, in fact, empowered to discharge the bond on which the accused had been released and thereby order him to be taken into custody.

56. Section 209 of the Cr.PC mandates that when a case is instituted on a police report or otherwise and, the accused is brought before the magistrate and if it appears to the magistrate, the offence is triable exclusively by the court of session, he is required to commit the case to the court of sessions.

57. The Magistrate, at that stage, is also empowered to remand the accused to custody until such commitment being made. The Magistrate is also entitled to remand the accused to custody during and after the conclusion of the trial and in both these cases, this would be subject to the subject to the provisions of the Code relating to grant of

bail. Thus, if the accused has been released on bail during the investigation, on the final report being filed and the magistrate coming to the conclusion that it is a case triable by the court of sessions, he is empowered to discharge the bond and remand the accused to custody until the commitment has been made. This, grant of bail, as narrated above, is at a stage where the investigation has commenced and has been concluded.

58. The Cr.PC thereafter contemplates that in respect of cases to be tried by a court of sessions on the accused being produced before the court pursuant to the order of commitment made under section 209, the prosecution is required to open the case by describing the charge brought against the accused and stating that what evidence he proposed to prove the guilt of the accused.

59. The Sessions court upon consideration of the case and the document submitted to him and after hearing the submissions of both the accused and the prosecution, would be entitled to discharge the accused if he considers that there is insufficient materials or insufficient grounds for proceeding against the accused.

60. At this stage, even if the accused has been remanded to custody, the accused by virtue of the discharge will be automatically set free. If, however, the sessions court finds that there are grounds for proceeding

against the accused, the trial would commence and after a trial, the sessions court would either proceed to pass an order of acquittal or a conviction. If the accused is in custody, he would therefore continue to remain in custody until the Session court rendered its final judgment of acquittal or conviction.

61. At this stage, it must be stated and emphasized that after the charges were framed and the trial has commenced, if the accused is in custody, his entitlement to seek for bail is provided only under 436A of the CrPC.

62. It may be pertinent to state here that the considerations for grant of a bail at the investigation stage and on the conclusion of the investigation would be different as compared to the considerations for grant of bail after the trial has commenced. After the trial has commenced, the rigors of Section 437 of the Cr.PC and in case of NDPS Act under Section 37 would stand altered and this is because there is a specific provision made under which an under-trial prisoner is entitled for grant of bail i.e., Section 436A of Cr.PC, which reads as follows:

“436A. Maximum period for which an undertrial 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.”

63. In the light of Section 436A of Cr.PC, the considerations for grant of bail after the trial has commenced would only be the delay in conclusion of the trial and this would be if the accused is in custody.

64. It may be pertinent to state here that if the accused has been enlarged on bail during the period of investigation, inquiry or trial, he would not get the benefit of maximum period of detention envisaged under Section 436A. In other words, only if an accused is in custody throughout the period of investigation and continued to be in custody, even during trial, he would be entitled to the benefit of Section 436A.

65. The question as to whether the benefit of bail envisaged under Section 436A is applicable to offences under the NDPS Act or not is covered by the decision rendered by the Supreme Court in Mohd. Muslim Alias Hussain v. State (NCT of Delhi) reported in (2023) 18 SCC 166, in which, it has been held as follows:

“16. In the most recent decision, Satender Kumar Antil v. Central Bureau of Investigation prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply:

“86.....We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.”

66. It may be pertinent to state here that in Mohd. Muslim's case also, the Supreme Court was considering the grant of bail to the accused who were charged for committing the offences punishable under the NDPS Act.

67. It is, thus, the law that the statutory embargo for grant of a bail during the pre-trial stage cannot be pressed into service if the trial has commenced and there has been a prolonged incarceration due to an inordinate

delay in the conclusion of the trial.

68. In fact, in this very case, the Supreme Court in its order dated 13.5.2025 has itself stated in para 24 as under:

“24. The rigour of Section 43D(5) of the UAPA would, however, in an appropriate case yield to the overarching mandate of Article 21 of the Constitution, especially where the trial is inordinately delayed or where the incarceration becomes punitive. However, such relaxation cannot possibly be automatic and must be evaluated in light of the specific facts and risks associated with each case, as has been previously clarified.”

69. It is, therefore, clear that if there is an inordinate delay in the conclusion of the trial, the incarceration can be considered as punitive, and Article 21 would come into operation entitling the person incarcerated to be released on bail. Thus, the argument of NIA that even when there is a delay in the conclusion of the trial, the normal consideration for grant of bail as envisaged under Section 37 of NDPS Act or under Section 43(d)(5) of the Unlawful Activities (Prevention) Act, 1967 would be untenable.

WHETHER THERE HAS BEEN A DELAY IN THE CONDUCT OF THE TRIAL INSOFAR AS PRESENT APPELLANT IS CONCERNED IN THIS CASE

70. As narrated in this judgment above, the appellant herein was arrested on 25.8.2022 and has been in custody ever since, i.e., the appellant has been in custody

for 3 years and 8 months.

71. The request of the appellant to be enlarged on bail was considered on its merits by the Sections Court and was rejected. This rejection of bail by the Sections Court was confirmed by this Court and also by the Supreme Court.

72. It may be relevant to notice here that at the relevant point of time, the case was still under investigation, and the trial was yet to commence. When the matter reached the Apex Court against the grant of rejection of bail, the Supreme Court on 25.9.2024 took note of the fact that charges were yet to be framed and instead of opining on the merits of the prayer for bail, thought it fit to issue certain directions which were directed to ensure the examination of all the witnesses who were relevant as against the appellant.

73. The directions issued to the NIA Court were to (a) immediately take up the matter for framing of charge and after hearing the parties, decide on the issue regarding framing of the charge (b) to submit a list of vulnerable and private witnesses who were required to be examined at the first instance (c) to fix the date for recording the statements of such witnesses and notify the schedule to the parties in advance. The Supreme Court made it clear that it would be the responsibility of the NIA to produce

those witnesses and no request for adjournment to produce witnesses should be entertained. Therefore, it is clear that the Supreme Court basically monitored the conduct of the entire case and ensured that the trial commenced and all the vulnerable and important witnesses were examined. It must be borne in mind, the continuance of the appellant in custody facilitated that the witnesses were protected from the likelihood of being put under any kind of influence and consequentially ensure a fair trial.

74. Thereafter, by a series of orders, over a period of nearly eight months from September 2024 till the disposal of the SLP filed by the appellant in May 2025, the Supreme Court closely monitored the trial and thereby ensured that the most vulnerable and important witnesses were examined. This monitoring basically ensured that the trial by the NIA Court was expedited and the witnesses who were vulnerable and who could have been influenced or intimidated were examined and their evidence came on record.

75. Even after all the vulnerable witnesses were examined, the Supreme Court, consciously, directed the NIA to furnish an additional list of witnesses which it thought was important and sensitive and at the same time gave the appellant liberty to seek for bail after 6 months or after the trial had progressed substantially. This

clearly indicated that the Apex Court was expecting the NIA to ensure that all the witnesses who were relevant in so far as the appellant were examined and the appellant would thereafter have the opportunity to seek for bail.

76. The Supreme Court by directing the NIA to submit an additional list of witnesses basically granted one more opportunity to the NIA to examine those witnesses who were considered as sensitive or material in relation to the role of the appellant. Obviously, those witnesses to be cited in the additional list were required to be examined within the period of 6 months. However, despite the specific directions to ensure that all the witnesses who were considered as sensitive and material were examined, the NIA did not even furnish the additional list of witnesses which it had thought was sensitive or material.

77. It is only when this appeal was taken up for consideration, pursuant to the order passed by the Apex Court on 18.12.2024, on this aspect being pointed out by this Court did the NIA file a list of additional witnesses only on 3.2.2025.

78. An affidavit has been filed before this Court to the following effect:

“2. It is submitted that in compliance of oral directions of this Hon’ble Court date 18.02.2026, the prosecution

(NIA) by way of this Affidavit hereby undertakes to fully cooperate and not seek any adjournment before the Ld. Special Court, NIA Ahmedabad during the period of day-to-day trial qua the examination of the 23 sensitive or material witnesses against the Appellant A-24 in compliance of the day-to-day trial Order passed by the Ld. Special Court dated 13.02.2026, in the interest of justice of this case. The prosecution further submits that the examination of the 23 sensitive or material witnesses may require approx. 02 (two) months' time and for the same, this Hon'ble Court may kindly grant sufficient time to the Ld. NIA Special Court. Annexed herewith and marked as D-1 is the Application dated 13.02.2026 along with the order dated 13.02.2026, for kind perusal of this Hon'ble Court."

79. Thus, despite the order of 13.5.2025 permitting the NIA to file an additional list, the list ultimately came to be filed only 9 months after the order was passed.

80. As could be seen from the affidavit, the NIA has stated that 23 sensitive and material witnesses who were relevant insofar as the role of the appellant is concerned, would have to be examined and they were requesting the NIA Court to take up the trial on a day-to-day basis. The NIA has also stated that it would require 2 months for completing the examination of the 23 witnesses.

81. In other words, 9 months after the order passed by the Apex Court, the NIA is of the view that it required two more months to complete the deposition of the remaining witnesses that it considers sensitive or material in so far as the appellant is concerned. In effect the period of 6 months stipulated by the Apex Court has been extended

by a period of 3 months and the NIA states that it required 2 more months. The NIA has thereby virtually doubled the period of time granted by the Apex Court for the examination of the witnesses who were relevant against the appellant.

82. The cumulative effect of these facts leaves no room for doubt that despite specific timelines stipulated by the Apex Court for the conduct of the trial both during the pendency of the SLP and the ultimate timeline of 6 months to conduct the trial while disposing off the SLP, the NIA has not ensured the deposition of all the witnesses against the appellant thereby establishing that there has been an inordinate delay in the conduct of the trial, even in the face of the orders passed by the Apex Court.

83. Be that as it may, the following events have occurred which would be highly relevant for the purposes of considering this appeal.

84. The appeal was heard and the orders were reserved on 23.2.2026. The learned counsel for the NIA was granted a week's time to file his written submissions, which were ultimately filed thereafter. A request was also made by the appellant after the orders were reserved to file the written submissions, and this request was also granted, and the written submissions were filed on

5.3.2026.

85. On 20th March 2026, the NIA filed an affidavit in which it was stated as follows:

- “2. It is submitted that in compliance of the affidavit dated 21.02.2026 filed before this Hon'ble Court, with the submissions to examine the 23 sensitive or material witnesses against the Appellant A-24 within 02 (two) months before Ld. Special Court, it is submitted that Ld. Special Court has started examination of these witnesses from 17.02.2026 on day-to-day basis.
3. It is further submitted that since 17.02.2026, total 18 witnesses, out of 23 witnesses, have been examined till 17.03.2026. 01 witness Shri Gulab Chand Yadav, has expired on 21.06.2024. 01 witness Shri Manjeet Singh is medically unfit to travel as opined by his doctor for recurrent infections, lung disease and kidney diseases. 02 witnesses i.e. Zia-Ullah Yousufi and Protected witness "SJ" are untraceable at the available address, efforts to locate them are underway. Ld. Court has fixed NDOH for 23.03.2026 for evidence of witness Nand Kishor.”

86. As could be seen from the above, just before the orders were reserved in this appeal, the NIA Court has taken up the examination of witnesses on a day to day basis from 17.2.2026 and within a period of a month, the examination of all but one of the 23 sensitive witnesses who were relevant in so far as the role of the appellant were concerned has been completed.

87. On 6th April 2026, an affidavit was filed by the appellant, in which it has been stated as follows:

- “3. It is further submitted that the NIA, filed an additional affidavit before this Hon'ble Court on 20.03.2026, stating that, total 18 witnesses out of 23 witnesses, have been examined till 17.03.2026, 01 witness Gulab Chand Yadav passed away on 21.06.2024, 01 witness Shri Manjeet Singh is medically unfit to travel as opined by his doctor for recurrent infections, lung diseases and kidney diseases. 02 witnesses namely Zia-Ullah Yousufi and Protected Witness "SJ" are untraceable at the available addresses. The NIA further stated that only 1 remaining witness namely Nand Kishore was scheduled to be examined on 23.03.2026.
4. It is submitted that the said only witness qua the Appellant herein namely Nand Kishor was examined on 23.03.2026 as PW-66. It is further submitted that, now, even as per the Respondent Agency, NIA, no witness remains to be examined qua the present Appellant. A true and correct copy of the deposition dated 23.03.2026 of PW-66, namely Nand Naval Kishor is annexed herewith and marked as **ANEXURE X-1.**”

88. As could be seen from the above, the last of the 23 witnesses has also been completed and therefore all the witnesses who were considered as sensitive or material in so far as the appellant is concerned have been completed. In other words, all the evidence that the NIA wished to adduce against the appellant has come on record.

89. In view of this fact, it is clear that the question of the possibility of the appellant being in a position to influence the examination of the witnesses would not be possible and the appellant would not be in a position to do any act which can undermine the trial.

90. The objective of the Apex Court to ensure that all the witnesses who were relevant in so far as the appellant is

concerned are examined also stands fulfilled and the request of the appellant for grant of bail will have to be considered in this context and in the background of the fact that the apex court had reserved liberty to the appellant to renew his application for bail after 6 months.

91. The completion of the examination of all the witnesses who were relevant in so far as the appellant and who were considered as sensitive or relevant having been completed, the appellant would be entitled for grant of bail. It is to be borne in mind that the trial of the case will obviously consume a large amount of time given the fact that there are several numbers of witnesses cited by the NIA who are yet to be examined to establish the role of the other accused in the case. The need to keep the appellant in custody till the examination of all the other witnesses would be unfair to the appellant, more so, when all the evidence that the NIA wanted to adduce against him as already come on record.

92. We are therefore of the view that the appellant herein is entitled to be released on bail, and we accordingly grant bail to the appellant on conditions that the trial court may impose which in its view are necessary to secure the presence of the appellant on every date of hearing.

93. If the appellant makes any attempt to protract the

trial or engages in any act which the NIA Court deems detrimental to the conduct of the trial and delays the conduct of the case, it would be at liberty to seek for cancellation of bail and for remanding the appellant to custody once again.

94. It is also necessary to clarify here that this order cannot be used by the other accused on the ground of parity. This order is being passed in the peculiar facts of the case i.e., the direction of the Supreme Court to the NIA to furnish an additional list of witnesses who were relevant in so far as the appellant was concerned and also because the Apex Court had granted liberty to the appellant to seek for bail after the expiry of 6 months or the progress of the trial.

95. It may be pertinent to state here that the order of the Supreme Court was passed on 13.5.2025 and 2 months' time had been granted to the NIA to complete the examination of the remaining of the 23 witnesses cited by them. In effect, the NIA has had the benefit of nearly one year to complete the examination of all the witnesses who were relevant in so far as the appellant was concentered as against the 6 months that was envisaged by the Supreme Court.

96. In the result, the appellant is ordered to be enlarged on bail on such conditions that the NIA Court deems fit

and also subject to the observations made above in para 94.

97. The appeal is accordingly, ALLOWED.

**Sd/-
(N.S.SANJAY GOWDA,J)**

**Sd/-
(D. M. VYAS, J)**

OMKAR