



2024: PHHC: 010992
212

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.24743 of 2023

Reserved on : 18th January, 2024
Date of pronouncement : 29th January, 2024

National Investigation Agency

... Petitioner

Versus

Ankush Vipin Kapoor

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Sukhdeep Singh Sandhu, Advocate
(NIA Spl. Prosecutor) for the petitioner.

Mr. Vipul Jindal, Advocate for the respondent.

MANJARI NEHRU KAUL, J.

1. The petitioner-NIA is seeking cancellation of bail granted to the respondent vide order dated 05.07.2021 (Annexure P-3) passed by this Court in CRM-M No.23889 of 2021 in case bearing FIR No.20 dated 29.01.2020 under Sections 21, 25, 27-A, 29, 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as, 'NDPS Act') and Sections 30, 53, 59 of the Arms Act, 1959 registered at Police Station Special Task Force, District STF Wing, SAS Nagar, Mohali.

2. **Brief facts of the case:**

A. **Cases in Punjab**

- (i) FIR No.20 dated 29.01.2020 under Sections 21, 25, 27-A, 29, 85 of the NDPS Act and Sections 30, 53, 59 of the Arms Act, 1959 was registered at Police Station STF, District STF Wing, SAS Nagar, Mohali against one Sukhbir Singh @ Happy on the statement of AIG Rachpal Singh; it was alleged that Sukhbir Singh @ Happy was dealing in illegal weapons and Heroin, and since he was present in the city of Amritsar, he could be arrested if timely action was taken. Acting on the said information, the Special Task Force (STF) arrested him after raising a special barricade/naka and on his search, one revolver of 0.32 bore along with live cartridges and six boxes of Heroin weighing 5.690 kilograms was recovered.
- (ii) During interrogation of Sukhbir Singh @ Happy, the name of the respondent/accused surfaced; accused Sukhbir Singh @ Happy disclosed that the car in which he had been caught (i.e. Brezza bearing registration No.PH-02-DJ-0279) belonged to the respondent/accused and had been given to him for onward delivery to a special person, code named 'Baba Jani'. On the same day i.e. 29.01.2020, the respondent/accused was arrested from his shop 'R.C. Creations' at Crystal Chowk, Amritsar; in pursuance of his disclosure statement, the STF recovered Heroin weighing

3.250 kgs, 3 transparent plastic bags along with a can containing ammonia solution, one plastic bag containing 500 grams of codeine charcoal powder and one plastic bottle containing 500 ml of hydrochloride acid from a wooden almirah of his house. The STF thereafter, recorded a second disclosure statement of the respondent/accused on 07.02.2020, pursuant to which a mobile phone was recovered, wherein some WhatsApp conversations for sending and receiving consignments were uncovered. On 11.02.2020, the STF recorded a third disclosure statement of the respondent/accused, as a result, two additional mobile phones were recovered, allegedly used to exchange information through coded language for the procurement and delivery of Heroin.

- (iii) On 31.01.2020, FIR No.23 dated 31.01.2020 under Sections 21, 25, 27-A, 29 of the NDPS Act was registered at Police Station STF, District STF Wing, Amritsar on the statement of Rashpal Singh AIG, STF Border Range, Amritsar; as per the allegations leveled in this FIR, AIG Rashpal Singh received a secret information that the respondent/ accused along with his associates Sukhwinder Singh, Major Singh, Tamanna Gupta, Imran Bashar mal

and others had stored Heroin in huge quantity in the area of Sultanwind, Amritsar for further delivery.

- (iv) Further, the name of co-accused Simranjeet Singh Sandhu alias Simar also emerged, revealing that this accused had international connections and was engaged in the exchange of money through Hawala transactions. Subsequent to the registration of the FIR No.23 of 2020, the respondent/accused was arrested and recovery of 188 kgs 950 grams Dextromethorphan Powder, 25 kgs 965 grams Caffeine, 3 kgs Charcoal, 207 kgs 120 grams intoxicant liquid chemical and other instruments for preparation of Heroin was effected from House No.127-130, Akash Vihar, Sultanwind, Amritsar.
- (v) After conclusion of the investigation in both the above mentioned FIRs bearing No.20 and 23, final reports under Section 173 Cr.P.C. were presented before the Court of competent jurisdiction.

B. Grant of bail to the respondent/accused by this Court in FIR No.20 dated 29.01.2020 u/s 21, 25, 27-A, 29, 85 of the NDPS Act and Sections 30, 53, 59 of the Arms Act, 1959 registered at Police Station STF, District STF Wing, SAS Nagar, Mohali

The respondent/accused filed a petition bearing CRM-M No.23889 of 2021 under Section 439 Cr.P.C. for grant of the concession of regular bail in the aforementioned FIR and the said petition was

allowed by this Court vide order dated 05.07.2021 (Annexure P-3) and the respondent/accused was thereafter, enlarged on bail.

C. Grant of bail to the respondent/accused by this Court in FIR No.23 dated 31.01.2020 under Sections 21, 25, 27-A, 29 of the NDPS Act registered at Police Station STF, District STF Wing, Amritsar:

The respondent/accused filed another petition by way of CRM-M No.27365 of 2021 seeking grant of the concession of regular bail under Section 439 Cr.P.C. in the aforesaid FIR and the said petition was also allowed by this Court vide order dated 21.09.2021 (Annexure R-5).

D. Anti-Terrorist Squad (ATS) Cases in Gujarat

Before the registration of the abovementioned FIRs bearing No.20 and 23 in the State of Punjab, another case bearing crime No.01/2018 under Sections 8(c), 21(c), 24, 25, 27(A) and 29 of the NDPS Act already stood registered on 12.08.2018 at Police Station Anti-Terrorist Squad (ATS), Ahmedabad, Gujarat involving a criminal conspiracy by the arrested accused therein, namely Aziz (A-1), Rafik (A-2), Nazir Ahmad (A-3), Arshad alias Raju Dubai (A-4), Manzoor Ahmad Mir (A-5), Razak Adam Sumra (A-6), Karim Mohammed Siraj (A-7), Sunil Vitthal Barmase (A-8) and Sukhbir Singh @ Happy (A-10) as well as some wanted accused namely Shahid Hussain Kasam Sumra (WA-1), Simranjeet Singh Sandhu alias Simar (WA-2), Haji Saab alias Bhaijan (WA-4), Nabi Baksh (WA-5), Basheer Dawood Kungda alias Raja Kathiyara (WA-7). This case pertained to the smuggling and distribution

of 500 kgs of narcotics, which had been illicitly transported from Pakistan to Gujarat via the sea route. The huge consignment of Heroin, weighing 500 kgs, was brought by Pakistani nationals in a fishing vessel and was then transferred to an Indian vessel of the accused within the territorial waters of India during the period from 09.03.2018 to 31.05.2018. Following a comprehensive investigation, ATS Gujarat filed police report before the Special NDPS Court, Jam Khambalia, Gujarat on 23.01.2019. Subsequently, during further investigation, three more persons, including Sunil Vitthal Barmase (A-8), who were also part of the same drug syndicate, were arrested by the ATS.

E. Transfer of investigation to NIA

Given the seriousness and scale of the offences in the aforementioned case registered in the State of Gujarat with national and international implications, the Ministry of Home Affairs, Govt. of India, while exercising its powers under Sections 6 and 8 of the National Investigation Agency Act, 2008 (hereinafter referred to as, 'the NIA Act'), issued a directive/order dated 29.06.2020 bearing No.11011/44/2020/NIA (Annexure P-4) and transferred the investigation of the aforesaid case to NIA. Consequently, the NIA re-registered the case as RC/26/2020/NIA/DLI dated 02.07.2020 under Sections 8(c), 21(c), 24, 25, 27(A) and 29 of the NDPS Act and sections 17 & 18 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as,

‘UAPA’), and accordingly, took over the investigation from the ATS Gujarat.

F. Further investigation by NIA in cases registered by ATS

After registration of the case, NIA carried out further investigation. Subsequently, the physical custody of all the arrested accused (A-1 to A-8) was obtained from the Special NDPS Court, Jam Khambalia, Gujarat and transferred to the NIA Special Court, Ahmedabad, Gujarat. During investigation by the NIA, and the evidence collected, it was revealed that there was a larger conspiracy at play. This involved a smuggling of a huge quantity of narcotics i.e. Heroin from Pakistan into India. The proceeds from the contraband were being utilized for funding terrorist activities. Based on the evidence collected, the NIA filed a supplementary police report before the NIA Special Court, Ahmedabad, Gujarat against the aforesaid accused (A-1 to A-8) under Section 120-B IPC, Sections 8(c), 21(c), 24, 25, 27(A) and 29 of the NDPS Act and Sections 17 & 18 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as, ‘UAPA’).

Further investigation revealed that Simranjeet Singh Sandhu alias Simar (WA-2) from Punjab, had, through his links in Pakistan procured 500 kgs of Heroin from Pakistan, transported it into India via a Port in the State of Gujarat, and subsequently, delivered it to his associates in Punjab. The funds generated from the sale of Heroin were

transferred to support terror activities through illegal means including the Hawala Channel.

G. Storage and transportation of 500 kgs of Heroin

(i) The illegal narcotic drug (Heroin) was brought by Pakistani nationals in a Pakistani fishing vessel and was delivered in the Indian territorial waters into an Indian vessel named 'Nagani Mustafa' of Aziz Abdul Bhagad (A-1) and another boat allegedly belonging to Mamad Ibrahim Sama (WA-8) during the period from 09.03.2018 to 31.05.2018. The consignment of Heroin was unloaded in a godown in village Mandvi, Kutch, by Rafik Adam Sumra (A-2), A-11 Shahid Hussain Kasam Sumra and Razak Adam Sumra (A-6). This pre-planned conspiracy also involved delivering this consignment to Amritsar. For transporting this consignment to Punjab, Shahid Hussain Kasam Sumra (A-11) contacted Razak Adam Sumra (A-6) i.e. brother of Rafik Adam Sumra (A-2), and Karim Mohammed Siraj (A-7) who agreed to transport it to Punjab in lieu of monetary considerations. Razak Adam Sumra (A-6) later recovered the remaining 200 kgs of Heroin from the godown, loaded it in truck bearing registration No.GJ-12-BW-2323 (belonging to accused Indresh Rambachan Nishad (A-9)) and transported it to Amritsar.

(ii) The investigation by NIA further unveiled that, out of the 500 kgs of Heroin allegedly smuggled into India from Pakistan, 295 kgs of Heroin was handed over by A-11 and Rafik Adam Sumra (A-2) to Nazir Ahmed Lassi Mohammad (A-3), Manzoor Ahmed Mir (A-7) and

Simranjeet Singh Sandhu alias Simar (WA-2), who concealed and transported the contraband to Amritsar (Punjab) through Akshar Transport in sacks of cumin and Suva seeds.

(iii) The NIA, thereafter, took custody of Indresh Rambachan Nishad (A-9), the truck owner, after he was produced by the Jail authorities, Amritsar, before the NIA Special Court, Ahmedabad, Gujarat in pursuance of production warrants. During interrogation, accused Indresh Rambachan Nishad (A-9) admitted the receipt of 200 kgs of Heroin in Gujarat from Karim Mohammed Siraj (A-7) and Sunil Vitthal Barmase (A-8) at Gandhi Dham, Gujarat, which had been loaded into his truck bearing registration No.GJ-12-BW-2323 and also the transportation of Heroin in 9 bags to Amritsar, which were then collected by accused Sukhbir Singh @ Happy (A-10) and three others.

(iv) During further investigation, it came to light that accused Sukhbir Singh @ Happy had been arrested by STF Punjab in FIR No.20 dated 29.01.2020 under Sections 21, 25, 27-A, 29, 85 of the NDPS Act and Sections 30, 53, 59 of the Arms Act, 1959 registered at Police Station STF, District STF Wing, SAS Nagar, Mohali. It was also revealed that 188 kgs of Heroin out of the total consignment of 200 kgs sent from Gujarat to Punjab was seized by STF Punjab from a house situated in Sultanwind Amritsar; pursuant to which FIR No.23 dated 31.01.2020 under Sections 21, 25, 27-A, 29 of the NDPS Act at Police Station STF, District STF Wing, Amritsar was registered. Still further, truck bearing

registration No.GJ-12-BW-2323, belonging to accused Indresh Rambachan Nishad (A-9), was seized and accused Sunil Vitthal Barmase (A-8) along with some other persons had been arrested by the STF Punjab in the aforesaid case.

H. Further investigation by NIA in the cases registered in the State of Punjab

The NIA, after taking over the investigation in FIRs No.20 and 23, carried out further investigation, during which the NIA took the custody of Sukhbir Singh @ Happy from the NIA Special Court at Ahmedabad, Gujarat after being produced by the Amritsar jail authorities in pursuance of production warrants. During his custodial interrogation, accused Sukhbir Singh @ Happy revealed the involvement of respondent/accused and his other close aides namely Major Singh, Arman, Sukhwinder Singh @ Sukha, Tammana Gupta, Manish Singh, Manjit Singh, Sahil Sharma, Harminder Singh Randhawa, Arjun Attwal, Anwar Masih and others in the drug syndicate, who were arrested by the STF. The aforesaid persons had been involved in the transportation, storage, purification, delivery and sale of drugs in Amritsar on the directions of Simranjeet Singh Sandhu alias Simar (WA-2).

I. Dismissal of bail by Hon'ble High Court Gujarat

The respondent/accused moved an application for grant of anticipatory bail before the NIA Special Court at Ahmedabad, Gujarat, which was dismissed. Thereafter, he approached the Hon'ble High Court at Gujarat seeking the concession of anticipatory bail. Vide order dated

26.09.2022 (Annexure P-7), the Hon'ble Gujarat High Court also dismissed his prayer for anticipatory bail.

J. Framing of charges against co-accused under UAPA

The NIA, after completion of investigation, submitted challan before the NIA Special Court at Ahmedabad. The NIA Special Court, Ahmedabad, finding sufficient material, then framed charges under Sections 17 and 18 of the UAPA among other Sections vide order dated 18.07.2023 against the following 24 accused:

- (1) Aziz S/o Abdul Bhagad (A-1)
- (2) Rafik S/o Adham Sumra (A-2)
- (3) Nazir Ahmad S/o. Lassi Mahamad Thakar (A-3)
- (4) Arshad alias Raju Dubai S/o Abdul Razak Sota (A-4)
- (5) Manzoor Ahmad Mir S/o Ali Mahomad Mir (A-5)
- (6) Razak Adam Sumra S/o Adam Abdreman Sumra (A-6)
- (7) Karim Mohammed Siraj S/o Mohhamad Osman
Mohammad Siraj (A-7)
- (8) Sunil Vitthal Barmase S/o Vitthal Ukandrao Barmase (A-8)
- (9) Indresh S/o. Rambachan Nishad, (A-9)
- (10) Sukhbir Singh @ Happy S/o. Lakhbir Singh, (A-10)
- (11) Shahid Hussain Kasam Sumra, (A-11)
- (12) Basheer Dawood Kungada @ Raja Kathiyara @ Behra
(A-12)
- (13) Mamad Ibrahim Sama, (A-13)
- (14) Tamana Gupta D/o. Rakesh Gupta (A-14)
- (15) Major Singh S/o. Kulwant Singh, (A-15)
- (16) Sahil Sharma S/o. Pradeep Sharma, (A-16)
- (17) Anwar Masih S/o. Aziz Masih, (A-17)

- (18) Sukhwinder Singh @ Sukh S/o. Sardar Gurnam Singh,
(A-18)
- (19) Mantej Singh @ Mantej Mann @ Micky S/o. Sawinder
Singh, (A-19)
- (20) Arman Bassar Mal S/o. Mohammad Dildar, (A-20)
- (21) Harminder Singh @ Romi S/o Dalbir Singh Randhava,
(A-21)
- (22) Manjit Singh @ Manna S/o Jasbir Singh, (A-22)
- (23) Kuldeep Singh S/o Sardul Singh, (A-23)
- (24) Malkit Singh S/o Baljit Singh, (A-24)

3. **Submissions of learned counsel for the petitioner/NIA**

Learned counsel appearing on behalf of the petitioner, in support of his prayer, has inter alia made the following submissions:

- (i) That after this Court granted bail to the respondent vide order dated 05.07.2021 (Annexure P-3), new evidence has emerged, revealing his involvement in smuggling 500 kgs of Heroin from Pakistan to Gujarat and then to Punjab and additionally, the respondent also being a member of a narco-terrorist syndicate.
- (ii) That the last consignment of 200 kgs of Heroin, part of the aforementioned 500 kgs of Heroin, was transported from Gujarat to Amritsar and received by Sukhbir Singh @ Happy (A-10) with the help of Major Singh (A-15) and Sukhwinder Singh (A-18) along with one accused Arjun Attwal which was

done on the directions of Simranjeet Singh Sandhu alias Simar (WA-2) and respondent/accused Ankush Vipin Kapoor.

- (iii) That the respondent/accused was working for accused Simranjeet Singh Sandhu alias Simar (WA-2) and was involved in refining and preparing Heroin. He, along with co-accused Sukhbir Singh @ Happy (A-10) had also purchased chemicals for purification from Aarti factory, Ludhiana which was then used for the purpose of purification and preparation of Heroin. Furthermore and pertinently, a huge recovery of chemicals used for the purification was effected from the respondent/accused by STF, pursuant to his first disclosure statement in FIR No.20 dated 29.01.2020 under Sections 21, 25, 27-A, 29, 85 of the NDPS Act and Sections 30, 53, 59 of the Arms Act, 1959 registered at Police Station STF, District STF Wing, SAS Nagar, Mohali.
- (iv) That as part of the criminal conspiracy, the respondent/accused had himself asked Sukhbir Singh @ Happy (A-10) to pick up and receive accused Arman Bassar Mal, an Afghan national, from Delhi airport and bring him to Sultanwind, Amritsar for the purpose of carrying out purification of Heroin; Video clips of the purification process were forwarded by Sukhwinder Singh to Simranjeet Singh Sandhu alias Simar (WA-2) through WhatsApp by the respondent/accused.

- (v) That from the evidence collected by the petitioner, during investigation it had come to the fore that the respondent/accused was the main aide of Simranjeet Singh Sandhu alias Simar (WA-2) and Tanveer Singh Bedi (WA-15); he had been entrusted with the task of running the operations of the drug syndicate in Amritsar and had also been managing their illegal finances. The said fact stood duly corroborated from the disclosure statement made by co-accused Arman Bassar Mal, Sukhwinder Singh and others.
- (vi) That the involvement of the respondent/accused in a larger conspiracy, with cross-border implications, was evident from the huge recovery of Heroin effected from him in connection with FIR No.20 dated 29.01.2020 under Sections 21, 25, 27-A, 29, 85 of the NDPS Act and Sections 30, 53, 59 of the Arms Act, 1959 registered at Police Station STF, District STF Wing, SAS Nagar, Mohali.
- (vii) That following the grant of bail to the respondent/accused by this Court on 05.07.2021, additional serious offences were added, impacting the socio-economic well-being of the country. The involvement of the respondent/accused in narco-terrorism has further exacerbated the situation. Consequently, the bail granted to the respondent/accused should be cancelled

as his custodial interrogation had become imperative to uncover the organized crime operating at an international level.

Moreover, given the involvement of the respondent/accused in such serious offences, there is a genuine concern and likelihood that he could abscond and evade the legal process.

In support, learned counsel has placed reliance upon **‘Pradeep Ram vs. State of Jharkhand & another’ 2019(3) RCR (Criminal) 538.**

(viii) The order dated 18.07.2023 i.e. order framing charges as well as the other details of the challan presented has been produced in this Court today, which has been taken on record subject to all just exceptions.

4. **Submissions made by learned counsel for the respondent/accused**

Learned counsel appearing on behalf of the respondent/accused, while vehemently controverting the submissions made by the counsel opposite, has made the following submissions:

- (i) That the bail was granted to the respondent by this Court vide order dated 05.07.2021 after a thorough consideration of the facts and circumstances of the case including the alleged recovery of Heroin made from the respondent.
- (ii) That mere addition of a few offences should not be a ground for cancelling the bail granted to the respondent, especially

when he had not breached any conditions of the bail and furthermore, when he was willing to join investigation and cooperate with the investigating agency.

- (iii) That there was no substantial evidence or material whatsoever collected against the respondent, therefore, cancellation of his bail could not be sought on vague and flimsy grounds on the basis of a disclosure statement allegedly suffered by co-accused which to say the least, has very weak evidentiary value in the eyes of law.
- (iv) That co-accused Sukhbir Singh @ Happy, through whom the respondent was being connected to case FIR No.20 dated 29.01.2020 under Sections 21, 25, 27-A, 29, 85 of the NDPS Act and Sections 30, 53, 59 of the Arms Act, 1959 registered at Police Station STF, District STF Wing, SAS Nagar, Mohali, had not even been charge-sheeted by the petitioner for offences under the UAPA; therefore, the petitioner could not seek cancellation of the bail, which had been rightly granted to the respondent.
- (v) That it was not even the case of the petitioner that the respondent had ever traveled to Gujarat or was present there or had transported anything, much less Heroin, from Gujarat to Punjab. The allegations of transportation of narcotic drugs from Gujarat to Punjab were against the other accused, who

had allegedly acted on the directions of accused Simranjeet Singh Sandhu alias Simar. Thus, it left no manner of doubt that the respondent had no role much less any concern with the alleged offences. Therefore, the submissions of the learned counsel for the petitioner that the respondent was running the operations from Amritsar for the Drug Cartel, were on the face of it, absurd and baseless.

- (vi) That the dismissal of the petition under Section 438 Cr.P.C. filed by the respondent before the Special Court at Ahmedabad and the Hon'ble Gujarat High Court was irrelevant, as it involved an altogether different and separate cause of action qua the re-registration of an FIR, and was also based on a genuine apprehension that he would be arrested despite having been granted the concession of regular bail by this Court.
- (vii) That since co-accused Sukhbir Singh @ Happy, who had a much more grave and pivotal role to play in comparison to the respondent, had not even been charge-sheeted for any offence under the UAPA, it could be safely discerned that prima facie the offences under Sections 17 & 18 of UAPA were not attracted at all in the present case against the respondent. Merely because charges under the UAPA stood framed against co-accused could not lead to an inference that even the respondent was involved in that case.

(viii) That the entire petition failed to disclose even a single cogent ground to arrest the respondent except vague and unsubstantiated allegations of commission of offences under the UAPA. The respondent could not be made to suffer in custody once again for the same offences merely because the case stood transferred to another investigating agency, as it would be violative of Article 20 (2) of the Constitution of India.

(ix) That the respondent is a young family man, who is running his business and evidently is being falsely roped in the present case by the State agencies; therefore, a lenient view be taken and the present petition be dismissed to protect the personal liberty of the respondent.

5. I have heard learned counsel for the parties and with their able assistance perused the relevant material placed on record.

6. The special powers of this Court as well as the Court of Sessions with respect to grant of bail have been provided under Section 439 of the Code of Criminal Procedure. Before proceeding further, it would be apposite to reproduce Section 439 Cr.P.C.:

“439. Special powers of High Court or Court of Sessions regarding bail:

(1) A High Court or Court of Sessions may direct,-

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of

the nature specified in sub-section (3) of Section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Sessions shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Sessions or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

(2) A High Court or Court of Sessions may direct that any person who has been released on bail under this chapter be arrested and commit him to custody.”

7. Sub-Section (2) of Section 439 Cr.P.C. deals with cancellation of bail granted to any person under Chapter XXXIII. A bail granted to a person can be cancelled if there is some breach or violation of the conditions imposed upon an accused by the Court while granting bail, or if the order vide which an accused has been granted bail suffers from patent illegalities and infirmities, and thus, has resulted in miscarriage of justice. In the present case, the petitioner is not invoking the provisions of Section 439(2) Cr.P.C. on either of the grounds mentioned therein. Rather the cancellation of bail of the

respondent/accused is being sought only on the ground that more serious and grave offences under the UAPA have been added.

8. The key question which thus arises for consideration of this Court is, as to whether the bail granted to an accused in a criminal case can be cancelled due to the subsequent addition of more serious and severe offences.

9. The Hon'ble Supreme Court, while dealing with a similar issue regarding cancellation of bail on account of subsequent addition of offences, in **Pradeep Ram's case (supra)** held as under:

“29. In view of the foregoing discussions, we arrive at following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:-

(i) The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

(ii) The investigating agency can seek order from the court under Section 437(5) or 439(2) of Cr.P.C. for arrest of the accused and his custody.

(iii) The Court, in exercise of power under Section 437(5) or 439(2) of Cr.P.C., can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to

custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail.

(iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it need to obtain an order to arrest the accused from the Court which had granted the bail.”

10. Further, the Hon'ble Apex Court in '**Ms.X vs. The State of Maharashtra & another**' 2023 LiveLaw (SC) 205, while relying upon the judgment rendered in **Pradeep Ram's case (supra)**, held as under:

“20. As can be discerned from the observations made in Pradeep Ram (supra), addition of a serious offence can be a circumstance where a Court can direct that the accused be arrested and committed to custody even though an order of bail was earlier granted in his favour in respect of the offences with which he was charged when his application for bail was considered and a favourable order was passed. The recourse available to an accused in a situation where after grant of bail, further cognizable and non-bailable offences are added to the FIR, is for him to surrender and apply afresh for bail in respect of the newly added offences. The investigating agency is also entitled to move the Court for seeking the custody of the accused by invoking the provisions of 437(5)33 and 439(2)34 Cr.P.C., falling under Chapter XXXVIII of the Statute that deals with provisions relating to bails and bonds. On such an application being moved, the Court that may have released

the accused on bail or the Appellate Court/superior Court in exercise of special powers conferred on it, can direct a person who has been released on bail earlier, to be arrested and taken into custody.”

11. A bare reading of the above observations made by the Hon'ble Supreme Court leaves no manner of doubt that a Court in the exercise of its powers under Section 439(2) of the Cr.P.C. can direct a person, who has already been granted bail, to be arrested and thereafter, commit him to custody on account of subsequent addition of more severe and serious offences. The investigating agency, in such a scenario, is entitled to seek an order from the Court under Section 437(5) or 439(2) of the Cr.P.C. as the case may be, for arresting the accused and taking his custody on addition of such offences.

12. Coming to the case in hand, the respondent was arrayed as an accused in FIR No.20 dated 29.01.2020 under Sections 21, 25, 27-A, 29, 85 of the NDPS Act and Sections 30, 53, 59 of the Arms Act, 1959 registered at Police Station STF, District STF Wing, SAS Nagar, Mohali on the basis of a disclosure statement of co-accused Sukhbir Singh @ Happy, from whom a recovery of 5.690 kilograms of Heroin along with one revolver of 0.32 bore and four live cartridges was effected on the spot. It would also be relevant to notice here that pursuant to the first disclosure statement suffered by the respondent/accused, a recovery of 3.250 kgs of Heroin, a can containing ammonia solution, one plastic bag containing 500 grams of codeine charcoal powder and one plastic bottle

containing 500 ml of hydrochloride acid was effected. Thereafter, the respondent/accused approached this Court under Section 439 of the Cr.P.C. and vide order dated 05.07.2021 (Annexure P-3), he was enlarged on bail. The relevant portion of the order granting bail to the respondent/accused by this Court on 05.07.2021 (Annexure P-3) is being reproduced as thus:

“After hearing learned counsel for the parties, I find merit in the present petition, for the following reasons: -

- (a) The petitioner was not named in the secret information, wherein only description of co-accused Sukhbir Singh @ Happy was mentioned along with Creta car bearing registration No.PB-02- DM-9518, whereas he was found driving Brezza car bearing registration No.PB-02-DJ-0279.*
- (b) The petitioner was nominated in the FIR, on the basis of disclosure statement of aforesaid co-accused Sukhbir Singh @ Happy, from whom the commercial quantity of heroin was recovered.*
- (c) The petitioner is not involved in any other case prior to registration of present FIR and subsequent FIR registered on the very next day i.e. 31.01.2020.*
- (d) The defence set up by the petitioner that he is running his family business of cloth merchant and is Income Tax Payer as well as that he has recently joined a gym, where he came in contact with some person and he has been trapped in this case without there being any mens rea on his*

part, is yet to be ascertained during the course of trial.

- (e) As per affidavit of DSP, STF filed in CRM-M-24847-2020 (first bail application of the petitioner), giving the status report, neither it is stated that the petitioner is owner of the car recovered from co accused Sukbir Singh @ Happy, as in the secret information, there was reference of Hyundai Creta car, whereas as per status report, Brezza car was recovered; registration numbers of both these cars were different nor the affidavit states about ownership of the house, from where recovery was effected post disclosure by the petitioner.*
- (f) The police recorded three successive disclosure statements of the petitioner, on the basis of which, the alleged narcotics as well as mobile phones were recovered, however, the affidavit is again silent about any call details between the petitioner and co-accused, which may show that there was no meeting of mind among them to run an organized racket of selling of narcotics.*
- (g) It is admitted case of the prosecution that the petitioner is in custody since 30.01.2020; a period of 01 year, 04 months and 17 days has passed despite the fact that challan was presented on 09.07.2020 and despite a lapse of one year, prosecution evidence has not started and as many as 38 prosecution witnesses have been sited and it will take long time in conclusion of the trial.*

(h) *The petitioner will hand over his passport to the police authorities and will not leave the country without prior permission of the Court.*

In view of the above, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.

However, it is made clear that at any subsequent stage, if the petitioner is found involved in any case under NDPS Act, it will be open for the prosecution to apply for cancellation of his bail.”

13. Subsequent to the grant of bail, the Ministry of Home Affairs, Govt. of India, vide order dated 13.10.2021 bearing No.11011/44/2020/NIA (Annexure P-6), while exercising its powers under Sections 6 and 8 of the NIA Act, transferred the investigation to NIA, which was already investigating the matter involving a larger conspiracy i.e. case bearing crime No.01/2018 under Sections 8(c), 21(c), 24, 25, 27(A) and 29 of the NDPS Act registered on 12.08.2018 at Police Station Anti-Terrorist Squad (ATS), Ahmedabad, Gujarat. Similarly, investigation of the connected case bearing FIR No.23 dated 31.01.2020 under Sections 21, 25, 27-A, 29 of the NDPS Act registered at Police Station STF, District STF Wing, Amritsar was also transferred to the NIA by the Ministry of Home Affairs, Govt. of India, vide order dated 28.06.2021 bearing No.11011/44/2020/NIA (Annexure P-5).

14. As already stands noticed by this Court in Para 2 of this order (Brief facts of the case), the investigation carried out by the petitioner/NIA has revealed that a cross-border organized crime syndicate is involved in the smuggling of a huge quantity of narcotics (Heroin) weighing 500 kilograms, which had been smuggled from Pakistan to India through sea route into the State of Gujarat. The aforesaid consignment orchestrated by Pakistani nationals, was transported to the State of Punjab for sale. As per allegations, the respondent/accused is the main aide of wanted accused Simranjeet Singh Sandhu alias Simar (WA-2) and had been entrusted with the task of running a drug cartel in the State of Punjab alongside managing financial transactions through the Hawala Channel.

15. The version put forth by the petitioner/NIA prima facie correlates with the huge recovery of Heroin made by the ATS Gujarat as well as STF Punjab in FIRs No.20 of 2020 and FIR No.23 of 2020. Therefore, this Court at this stage does not find any merit in the submissions made by the learned counsel appearing on behalf of the respondent/accused that apart from bald assertions there is no material which would remotely link him with the huge recovery of Heroin effected in Gujarat or with the drug cartel allegedly in operation. Furthermore, even the NIA Special Court, Ahmedabad, after finding prima facie sufficient cogent material to proceed, has framed charges

against as many as 24 accused persons including Sukhbir Singh @ Happy under sections 17 & 18 of the UAPA, among other offences.

16. This Court also finds no force in the submissions made by the learned counsel for the respondent/accused that his arrest would not be required since he was ready to join investigation and cooperate with the investigating agency. In the instant case, there are grave allegations of cross-border narco-terrorism involving a huge recovery of 500 kgs of Heroin, which as already noticed in the earlier part of this order, was smuggled into India through Gujarat and then into Punjab in a meticulously planned manner. Therefore, to unearth and bust the drug syndicate and to ascertain the involvement and role played by the respondent/accused and others, a thorough and effective investigation is required to be carried out, which would not be possible without his custodial interrogation. In view of the nature and severity of the allegations, coupled with the stakes involved, this Court concurs with the submissions made by the learned counsel for the petitioner about the possibility of the respondent evading the process of law.

17. It is no longer a secret and it is rather very unfortunate that the menace of drugs has spread like termites and is slowly spreading its tentacles. To effectively deal with the alarming rise of this drug menace, it would be required to disrupt the supply chain by targeting the source of these drugs and psychotropic substances. The instant case is one such case where the custodial interrogation of the respondent would be

necessitated so that the petitioner is able to go to the root and identify the source as to where the drugs are coming from, as well as the Hawala Channel. The investigation, in the facts and circumstances of the case, would have to be taken to a logical conclusion, for which the interrogation of the respondent, who is alleged to be running the operations of the drug syndicate in Punjab on behalf of its kingpin, who is based outside India, would be crucial.

18. After taking into consideration the totality of the facts and circumstances as discussed above, the instant petition is allowed and the bail granted to the respondent/accused vide order dated 05.07.2021 (Annexure P-3) is hereby cancelled, in order to enable a thorough investigation into the offences which have been added subsequently.

19. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

January 29, 2024

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No