Sr. No.220 (27 cases)

1. CRM-3773-2019 IN CRA-D-198-DB-2017

   Bhupender Singh Vs. Narcotic Control Bureau

2. CRM-34648-2019 IN CRA-D-1013-DB-2017

   Dalbir Vs. State of Haryana

3. CRM-40754-2019 IN CRA-D-956-DB-2016

   Charan Singh Vs. State of Punjab

4. CRM-8746-2020 IN CRA-D-1162-DB-2017

   Joginder Singh Vs. State of Punjab

5. CRM-1065-2021 IN CRA-D-1480-DB-2013

   Nazir Hussain and Another Vs. State of Punjab

6. CRM-1672-2021 IN CRA-D-706-DB-2017

   Sikander Singh @ Giani Vs. State of Punjab

7. CRM-1739-2021 IN CRA-D-173-DB-2015

   Ramesh @ Suresh Vs. State of Haryana

8. CRM-21823-2021 IN CRA-D-216-DB-2018

   Pargat Singh Vs. State of Punjab

9. CRM-22307-2021 IN CRA-D-421-DB-2018

   Kartar Singh Vs. State of Haryana

10. CRM-22639-2021 IN CRA-D-550-DB-2013

    Om Parkash Vs. State of Punjab

11. CRM-22787-2021 IN CRA-D-1646-DB-2015

    Jai Bhagwan & Ors. Vs. State of Haryana

12. CRM-23396-2021 IN CRA-D-89-DB-2015

    Mohmmad Kasim Vs. State of Haryana

13. CRM-24183-2021 IN CRA-D-166-2021

Gurnam Singh @ Sardara Vs. State of Punjab

14. CRM-17422-2021 IN CRA-D-14-2019

Balwinder Singh Vs. State of Punjab

15. CRM-24715-2021 IN CRA-D-658-DB-2017

Pargat Singh alias Bagga Vs. State of Haryana

16. CRM-7105-2018 IN CRA-D-427-DB-2016

Khan Singh Vs. Intelligence Officer, Directorate of Revenue Intelligence, Amritsar

17. CRM-4752-2020 IN CRA-D-410-DB-2016

Jarmal Singh Vs. Intelligence Officer, Directorate of Revenue Intelligence, Amritsar

18. CRM-16534-2019 and CRM-39920-2018 IN CRA-D-718-DB-2015

Parveen Kumar @Nandu and Another Vs. State of Punjab

19. CRM-9306-2020 IN CRA-D-384-2019

Gurmeet Singh @ Meeta Vs. State of Punjab

20. CRM-28686-2021 IN CRA-D-101-2020

Gurdev Singh alias Sona Vs. State of Punjab

21. CRM-7811-2021 IN CRA-D-156-2020

Angrej Singh Vs. State of Punjab

22. CRM-31157-2021 IN CRA-D-65-DB-2018

Massa Singh Vs. State of Punjab

23. CRM-33304-2021 IN CRA-D-500-2021

Mukesh Kumar @ Makhi Vs. State of Punjab

24. CRM-11644-2019 IN CRA-D-561-DB-2016

Nirmal Singh and Another Vs. State of Punjab

25. CRM-35274-2021 IN CRA-D-61-2021

Yog Dass and Another Vs. State of Punjab

26. CRM-22916-2021 IN CRA-D-163-DB-2015

Rajesh Vs. State of Haryana

27. CRM-34571 & 34599-2019 IN CRA-D-68-DB-2015

Jaibhagwan Vs. State of Haryana

***

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CRM-40754-2019 in CRA-D-956-DB-2016

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CRM-1739-2021 in CRA-D-173-DB-2015

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AJAY TEWARI, J.

1. The issue at hand is the consideration for suspension of sentence in cases under the Narcotics Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as the 'Act'*). Section 37 of the Act is reproduced herein below:-

> *" 37. Offences to be cognizable and non-bailable-*
>
> *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)*
>
> *(a) every offence punishable under this Act shall be cognizable;*
>
> *(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity]*

shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

2. It must, however, be noted that the preceding Section 36 of the Act sets the tone as follows:-

"36. Constitution of Special Courts --

(1) The Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas as may be specified in the notification.

(2) A Special Court shall consist of a single Judge who shall be appointed by the Government with the concurrence of the Chief Justice of the High Court.

Explanation: In this sub-section, High Court means the High Court of the State in which the Sessions Judge or the Additional Sessions Judge of a Special Court was working immediately before his appointment as such Judge.

(3) A person shall not be qualified for appointment as a Judge of a Special Court unless he is, immediately before such appointment, a Sessions Judge or an Additional Sessions Judge."

3. One essential factual aspect which has to be noticed is the numerical data relating to the disposal and pendency of appeals under the Act. This Bench vide order dated 05.10.2021 directed the registry to provide year wise details of the pending appeals under the Act. The following information has been provided by the Registry in tabular form:-

Year wise disposal of NDPS cases (CRA-D)

Year	Dismissed	Allowed	Disposed of (Decided with some direction)	Total
2013	**1**	**2**	**5**	8
2014	5	0	3	8
2015	7	0	5	12
2016	3	2	5	10
2017	6	1	5	12
2018	0	15	2	17
2019	29	10	3	42
2020	6	0	0	6
2021	8	3	3	14
Total	65	33	31	129

Year wise disposal of NDPS cases (CRA-S)

Year	Dismissed	Allowed	Disposed of (Decided with some direction)	Total
2013	**118**	**109**	**102**	329
2014	116	65	119	300
2015	165	84	131	380
2016	71	99	44	214
2017	44	103	85	232
2018	64	66	76	206
2019	47	43	65	155
2020	36	22	24	82
2021	10	3	14	27
Total	671	594	660	1925

COMPUTER GENERATED REPORT
YEARWISE COUNT OF PENDING NDPS DIVISION BENCH
CRIMINAL APPEALS
FROM YEAR 2013 ONWARDS

SR. NO.	CASE YEAR	COUNT
1	2013	57
2	2014	89
3	2015	171
4	2016	155
5	2017	172
6	2018	152
7	2019	116
8	2020	60
9	2021	108
	TOTAL	1080

COMPUTER GENERATED REPORT
YEARWISE COUNT OF PENDING NDPS SINGLE BENCH
CRIMINAL APPEALS
FROM YEAR 2013 ONWARDS

SR. NO.	CASE YEAR	COUNT
1	2013	1433
2	2014	2059
3	2015	2540
4	2016	2198
5	2017	2174
6	2018	1942
7	2019	1291
8	2020	599
9	2021	591
	TOTAL	14827

4. A perusal of the tables show that from 2013 till date a total number of 129 division bench appeals under the NDPS Act (wherein the sentence was 10 years or more) were decided, out of them 65 were dismissed, 33 were allowed and 31 were disposed of. As regards single bench appeals under the NDPS Act (those where the sentence was upto 10 years) total 1925 appeals were decided, out them 671 were dismissed, 594 were allowed and 660 were disposed of otherwise. The pending position reveals that there are 1080 such appeals which are pending before the division bench from the year 2013 till today under the NDPS

Act. Further there is a pendency of total 14827 appeals before the single bench from the year 2013 till today.

5. The present cases happened to be bunched together because learned counsel for the States argued that the latest decisions of the Supreme Court had directed that both for bail and for suspension of sentence under the Act the strict parameters of Section 37 had to be met. Learned counsel for the applicants-appellants on the other hand contended that the requirements of Section 37 could not be the only consideration for the grant of bail or suspension of sentence. We had requested Sh. P.S. Ahluwalia, Advocate to assist the Court as Amicus Curiae. We place on record our appreciation for the assistance provided by him, and indeed, by all the learned counsel.

6. To support their cases, learned counsel for the applicants-appellants have relied upon various judgments and orders passed under the N.D.P.S. Act, IPC and UAPA. Learned counsel for the applicants-appellants have firstly relied upon the judgment passed in **Supreme Court Legal Aid Committee representing Undertrial Prisoners vs. Union of India, 1994(6) SCC 731**, wherein their Lordships held as follows:-

> *"15. But the main reason which motivated the Supreme Court Legal Aid Society to file this petition under Article 32 of the Constitution was the delay in the disposal of cases under the Act involving foreigners. The reliefs claimed included a direction to treat further detention of foreigners, who were languishing in jails as undertrials under the Act for a period exceeding two years, as void*

or in any case they be released on bail and it was further submitted by counsel that their cases be given priority over others. When the petition came up for admission it was pointed out to counsel that such an invidious distinction between similarly situate undertrials who are citizens of this country and who are foreigners may not be permissible under the Constitution and even if priority is accorded to the cases of foreigners it may have the effect of foreigners being permitted to jump the queue and slide down cases of citizens even if their cases are old and pending since long. Counsel immediately realised that such a distinction if drawn would result in cases of Indian citizens being further delayed at the behest of foreigners, a procedure which may not be consistent with law. He, therefore, rightly sought permission to amend the cause-title and prayer clauses of the petition which was permitted. In substance the petitioner now prays that all undertrials who are in jail for the commission of any offence or offences under the Act for a period exceeding two years on account of the delay in the disposal of cases lodged against them should be forthwith released from jail declaring their further detention to be illegal and void and pending decision of this Court on the said larger issue, they should in any case be released on bail. It is indeed true and that is obvious from the plain language of Section 36(1) of the Act, that the legislature contemplated the creation of Special Courts to speed up the trial of those prosecuted for the commission of any offence under the Act. It is equally true that similar is the objective of Section 309 of the Code. It is also true that this Court has emphasised in a series of decisions that Articles 14, 19 and 21 sustain and nourish each other and any law depriving a person of "personal liberty" must prescribe a procedure which

is just, fair and reasonable, i.e., a procedure which promotes speedy trial. See Hussainara Khatoon v. Home Secretary, State of Bihar, (1980) 1 SCC 98, Raghubir Singh v. State of Bihar (1986) 4 SCC 481 and Kadra Pahadiya v.State of Bihar (1983) 2 SCC 104, to quote only a few. This is also the avowed objective of Section 36(1) of the Act. However, this laudable objective got frustrated when the State Government delayed the constitution of sufficient number of Special Courts in Greater Bombay; the process of constituting the first two Special Courts started with the issuance of notifications under Section 36(1) on 4-1-1991 and under Section 36(2) on 6-4-1991 almost two years from 29-5-1989 when Amendment Act 2 of 1989 became effective. Since the number of courts constituted to try offences under the Act were not sufficient and the appointments of Judges to man these courts were delayed, cases piled up and the provision in regard to enlargement on bail being strict the offenders have had to languish in jails for want of trials. As stated earlier Section 37 of the Act makes every offence punishable under the Act cognizable and non-bailable and provides that no person accused of an offence punishable for a term of five years or more shall be released on bail unless (i) the Public Prosecutor has had an opportunity to oppose bail and (ii) if opposed, the court is satisfied that there are reasonable grounds for believing that he is not guilty of the offence and is not likely to indulge in similar activity. On account of the strict language of the said provision very few persons accused of certain offences under the Act could secure bail. Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19

and 21 of the Constitution. We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh v. State of Punjab, 1994(2) Recent Criminal Reports 166(SC), (1994) 3 SCC 569. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak, (1992) 1 SCC 225, release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14

which also promises justness, fairness and reasonableness in procedural matters. What then is the remedy? The offences under the Act are grave and, therefore, we are not inclined to agree with the submission of the learned counsel for the petitioner that we should quash the prosecutions and set free the accused persons whose trials are delayed beyond reasonable time. Alternatively he contended that such accused persons whose trials have been delayed beyond reasonable time and are likely to be further delayed should be released on bail on such terms as this Court considers appropriate to impose. This suggestion commends to us. We were told by the learned counsel for the State of Maharashtra that additional Special Courts have since been constituted but having regard to the large pendency of such cases in the State we are afraid this is not likely to make a significant dent in the huge pile of such cases. We, therefore, direct as under:

(i) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount.

(ii) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment

exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for like amount.

(iii) Where the 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 undertrial 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.

(iv) Where an undertrial accused is charged for the commission of an offence punishable under Sections 31 and 31-A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order.

The directives in clauses (i), (ii) and (iii) above shall be subject to the following general conditions:

(i) the undertrial accused entitled to be released on bail shall deposit his passport with the learned Judge of the Special Court concerned and if he does not hold a passport he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. In the latter case the learned Special Judge will, if he has reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the undertrial accused;

(ii) the undertrial accused shall on being released on bail present himself at the police station which has prosecuted him at least once in a month in the case of those covered under clause (i), once in a fortnight in the case of those

covered under clause (ii) and once in a week in the case of those covered by clause (iii), unless leave of absence is obtained in advance from the Special Judge concerned;

(iii) the benefit of the direction in clauses (ii) and (iii) shall not be available to those accused persons who are, in the opinion of the learned Special Judge, for reasons to be stated in writing, likely to tamper with evidence or influence the prosecution witnesses;

(iv) in the case of undertrial accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner-accused belongs, that the said accused shall not leave the country and shall appear before the Special Court as and when required;

(v) the undertrial accused shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special Judge;

(vi) the undertrial accused may furnish bail by depositing cash equal to the bail amount;

(vii) the Special Judge will be at liberty to cancel bail if any of the above conditions are violated or a case for cancellation of bail is otherwise made out; and

(viii) after the release of the undertrial accused pursuant to this order, the cases of those undertrials who have not been released and are in jail will be accorded priority and the Special Court will proceed with them as provided in Section 309 of the Code."

7. Further learned counsel for the applicants-appellants have relied upon a seven-judge bench decision of the Supreme Court in **P. Ramachandra Rao vs. State of Karnataka, (2002) 4 Supreme Court Cases 578**, wherein their Lordships held as follows:-

> *".....36. Secondly, though we are deleting the directions made respectively by two-and three-Judge Benches of this Court in the cases under reference, for reasons which we have already stated, we should not, even for a moment, be considered as having made a departure from the law as to speedy trial and speedy conclusion of criminal proceedings of whatever nature and at whichever stage before any authority or the court. It is the constitutional obligation of the State to dispense speedy justice, more so in the field of criminal law, and paucity of funds or resources is no defence to denial of right to justice emanating from Articles 21, 19 and 14 and the preamble of the Constitution as also from the directive principles of State policy. It is high time that the Union of India and the various States realize their constitutional obligation and do something concrete in the direction of strengthening the justice delivery system. We need to remind all concerned of what was said by this Court in Hussainara Khatoon (IV)[Hussainara Khatoon (IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98 : "The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial. The State may have its financial constraints and its priorities in expenditure, but, 'the law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty', or administrative inability."*

8. Learned counsel for the applicants-appellants have further relied upon the judgment of the Supreme Court which had occasion to

revisit the issue in **Surinder Singh @ Shingara Singh vs. State of Punjab, (2005) 7 Supreme Court Cases 387**, wherein their Lordships held as follows:-

> *"8. It is no doubt true that this Court has repeatedly emphasised the fact that speedy trial is a fundamental right implicit in the broad sweep and content of Article 21 of the Constitution. The aforesaid article confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law. If a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution. It has also been emphasised by this Court that the procedure so prescribed must ensure a speedy trial for determination of the guilt of such person. It is conceded that some amount of deprivation of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. These are observations made in several decisions of this Court dealing with the subject of speedy trial. In this case, we are concerned with the case where a person has been found guilty of an offence punishable under Section 302 IPC and who has been sentenced to imprisonment for life. The Code of Criminal Procedure affords a right of appeal to such a convict. The difficulty arises when the appeal preferred by such a convict cannot be disposed of within a reasonable time....."*

9. Learned counsel for the applicants-appellants have further relied upon a full bench judgment of this Court in **Tule Ram vs. State of Haryana, 2005 SCC OnLine P&H 864**, wherein it was held as

follows:-

> *"13. While giving the interpretation, we are conscious of the fact that according to the constitutional mandate of Article 21 of the Constitution of India a speedy trial is guaranteed by the State for all persons falling foul with law. Since an appeal is only an extension of the trial, the Courts of law would be obliged to ensure the expeditious disposal of the appeals and pass appropriate orders as and when they feel that the right of the convict to the guarantee provided under Article 21 of the Constitution of lndia is being interfered with. As and when any appellant move this Court, then taking into consideration the facts and circumstances of the case, in case the delay in the disposal of the appeal is not attributable to the appellant himself, the Court may pass such orders as the appellant may be entitled in view of the provisions of Article 21 of the Constitution of lndia.*
>
> *The reference is answered accordingly."*

10. Learned counsel for the applicants-appellants have further relied upon a division bench judgment of this Court in **Daler Singh vs. State of Punjab, 2006 SCC Online P&H 1591**, wherein it was laid down as follows:-

> *"16. It cannot be disputed that under the constitutional scheme an accused is entitled to a speedy trial and speedy justice. An appeal is a continuation of trial. His right to liberty is fundamental one but some provisions with regard to curtailing his liberty could be enacted and the same, if reasonable, could be taken as valid. However, the absolute bar as to curtail liberty of the accused, even if the delay in final disposal of the appeal is not attributable to him, can certainly be said to be against the intent and spirit of the*

Fundamental Rights and would be violative of the Constitutional mandate. As such the liberty of the accused cannot be taken away absolutely for an indefinite period. We are afraid if liberty of an accused is curtailed unreasonably, then his right to appeal will be defeated; his destiny will be unimaginable if he is ultimately acquitted after he has undergone almost the entire sentence or major chunk of it, and no body would come to explain the justification for the period of his confinement during which he remained in custody till the disposal of the appeal. The plight of such convicts can well be imagined.

28. In a latest judgment rendered in Salem Advocates Bar Association, Tamil Nadu v. Union of India, 2005 (3) RCR (Civil) 530 (SC) : 2005 (3) Civil Court Cases 420 (SC), the Apex Court while dealing with the issue of disposing of the appeals under different Acts including the NDPS Act laid certain guidelines for the Courts to make an endeavour to dispose of the appeals within a fixed period by putting the cases in different tracks. The same are reproduced as under:

> *"Criminal Appeals should be classified based on offence, sentence and whether the accused is on bail or in jail. Capital punishment cases, rape, sexual offences, dowry death cases should be kept in Track I. Other cases where the accused is not granted bail and is in jail, should be kept in Track II. Cases which affect a large number of persons such as cases of mass cheating, economic offences, illicit liquor tragedy, food adulteration cases, offences of sensitive nature should be kept in Track III. Offences which are tried by special courts such as POTA, TADA, NDPS, Prevention of Corruption Act, etc. should be kept in Track IV. Track V - all other offences.*
>
> *The endeavour should be complete Tract I cases within a period of six months. Track II cases within nine months. Track III within a year, Track IV and Track V within fifteen months."*

29. We, therefore, feel that keeping in view the spirit of Article 21, the following principles should be adopted for the release of the prisoners (convicts) on bail after placing them in different categories as under :—

(i) Where the convict is sentenced for more than ten years for having in his conscious possession commercial quantity of contraband, he shall be entitled to bail if he has already undergone a total sentence of six years, which must include at least fifteen months after conviction.

(ii) Where the convict is sentenced for ten years for having in his conscious possession commercial quantity of the contraband, he shall be entitled to bail if he has already undergone a total sentence of four years, which must include at least fifteen months after conviction.

(iii) Where the convict is sentenced for ten years for having in his conscious possession, merely marginally more than non-commercial quantity, as classified in the table, he shall be entitled to bail if he has already undergone a total sentence of three years, which must include at least twelve months after conviction

(iv) The convict who, according to the allegations, is not arrested at the spot and booked subsequently during the investigation of the case but his case is not covered by the offences punishable under section 25, 27-A and 29 of the Act, for which in any case the aforesaid clauses No. (i) to (iii) shall apply as the case may be, he shall be entitled to bail if he has already undergone a total sentence of two years, which must include at least twelve months after conviction.

30. In our view, no bail should be granted to a proclaimed offender, absconder or the accused repeating the offence under the Act. Similarly a foreign national who has been indicted under the Act and other traffickers who stand

convicted for having in their possession extra ordinary heavy quantity of contraband (like heroine, brown-sugar, charas etc.) shall not be entitled to the concession of bail as extending the said concession to such like convicts, in our view, would certainly be against the very spirit of the 'Act'.

31. Similarly a convict who is sentenced for the commission of an offence punishable under section 31 and 31A of the Act shall not be entitled to be released on bail by virtue of this order.

32. The principles enumerated above would, however, have no effect on the concession of bail, otherwise provided under the provisions of the Act or any other law for the time being in force. At the same time these principles would also not affect the right of any convict to apply for interim suspension of sentence on account of any exceptional hardship, which shall be dealt with according to the facts of the each individual case, nor shall it affect the right of convict to seek bail on the merits of case."

11. Learned counsel for the applicants-appellants have further relied upon another full bench judgment of this Court which again referred to the provisions of Article 21 of the Constitution of India in the matter of **Dalip Singh @ Deepa vs. State of Punjab, 2010(2) R.C.R. (Criminal) 566,** wherein it was held as follows:-

"37. We may, however, hasten to add that the said position would not strictly be applicable to cases under the Narcotic Drugs and Psychotropic Substances Act, 1985 (`NDPS Act' - for short) which provides for various other factors to be kept in view including that of Sections 32-A and 37(1) (b) and (2) of the NDPS Act. A case for

the grant of bail pending trial or suspension of sentence pending disposal of appeal would not be on the same analogy in view of the provisions of Sections 32-Aand 37(1) (b) and (2) of the NDPS Act. In respect of the said provisions a Full Bench of this Court in the case of Tule Ram v. State of Haryana, 2005 (4) RCR (Crl.) 319, considered the powers of the appellate Court for suspension of sentence in a case under the NDPS Act pending appeal. It was held that the appellate Court has no power to suspend sentence during pendency of the appeal. The NDPS Act, it was observed, makes no provision for post-conviction suspension of sentence. Besides, it is difficult for an appellate Court to record its satisfaction that there are reasonable grounds for believing that the convict is not guilty of the offence. The exception, however, that was carved out is when there is delay in disposal of the appeal and the delay is not attributable to the appellant. In such a situation the appellate Court may pass such orders so as to protect the right of speedy trial guaranteed to a convict under Article 21. It was observed that according to the Constitutional mandate of Article 21 a speedy trial is guaranteed by the State for all accused persons, and since an appeal is only an extension of the trial, the Courts of law would be obliged to ensure the expeditious disposal of appeals and pass appropriate orders as and when they feel that the right of the convict to the guarantee provided under Article 21 is being interfered with. Therefore, as and when any appellant moves this Court, then taking into consideration the facts and circumstances of the case, in case the delay is in the disposal of the appeal is not attributable to the appellant himself, the Court may pass such orders as the appellant may be entitled in view of the provisions of Article 21."

12. Further the learned counsel for the applicants-appellants have relied upon the judgment of the Supreme Court in **Mayuresh Nandkumar Purohit vs. Kaushik Manna and another, 2018 (5) R.C.R. (Criminal) 1005**, wherein it was laid down as under:-

> *"4. The appeal before the High Court, though listed for hearing, has not been heard till date and as per statements made by the learned counsel for the appellant some time may be taken for hearing of the appeal unless the same is expedited. We see no reason to expedite the hearing of the pending appeal before the High court as there are several similar and older matters in the cause-list of the particular bench hearing the matter.*
>
> *5. The accused appellant has been in custody since 23rd November, 2011 i.e. for over six years. The sentence imposed is one of ten years. Considering the totality of the facts of the case, we are of the view that the accused appellant should be released on bail. We order accordingly. Therefore, the appellant is ordered to be released on bail to the satisfaction of the learned trial Court in connection with NDPS Special Case No.27/2012 in F.No.NCB/BZU/CR-19/2011. "*

13. Further the learned counsel for the applicants-appellants have relied upon the judgment of Supreme Court in **Sheru vs. Narcotics Control Bureau, 2020(4) R.C.R.(Criminal) 242**, wherein their Lordships held as follows:-

> *"3. The submission of the learned senior counsel for the appellant, inter alia, is that he has been in custody for almost eight years and despite the directions of this Court to treat the case at priority, at present the case is not reached for hearing.*

4. On the other hand, the learned Additional Solicitor General for the respondent contends that the normal principle of a large period having already been served during the pendency of the appeal cannot be a ground to suspend the sentence and grant bail, in view of the stringent provisions of Section 37 of the NDPS Act. In this behalf, he has invited our attention to judgment of this Court in the case of Union of India vs. Rattan Mallik @ Habul – (2009) 2 SCC 624.

5. We have given a thought to the matter and there is no doubt that the rigors of Section 37 would have to be met before the sentence of a convict is suspended and bail granted and mere passage of time cannot be a reason for the same. However, we are faced with unusual times where the Covid situation permeates. We are also conscious that this Court has passed orders for release of persons on bail to de-congest the jail but that is applicable to cases of upto seven years sentence.

6. In the given aforesaid facts and circumstances of the case, we consider it appropriate to enlarge the appellant on bail on terms and conditions to the satisfaction of the Trial Court."

14. Further the learned counsel for the applicants-appellants have relied upon another recent judgment of the Supreme Court in **Tofan Singh vs. State of Tamil Nadu, (2021) 4 Supreme Court Cases 1**, wherein their Lordships held as follows:-

"27. The NDPS Act is to be construed in the backdrop of Article 20(3) and Article 21, Parliament being aware of the fundamental rights of the citizen and the judgments of this Court interpreting them, as a result of which a delicate balance is maintained between the power of the State to

maintain law and order, and the fundamental rights chapter which protects the liberty of the individual. Several safeguards are thus contained in the NDPS Act, which is of an extremely drastic and draconian nature, as has been contended by the counsel for the appellants before us. Also, the fundamental rights contained in Articles 20(3) and 21 are given pride of place in the Constitution. After the 42nd Amendment to the Constitution was done away with by the 44th Amendment, it is now provided that even in an Emergency, these rights cannot be suspended — see Article 359(1). The interpretation of a statute like the NDPS Act must needs be in conformity and in tune with the spirit of the broad fundamental right not to incriminate oneself, and the right to privacy, as has been found in the recent judgments of this Court."

15. Learned counsel for the applicants-appellants have further relied upon another recent judgment of the Supreme Court in **Union of India vs. K.A. Najeeb, 2021 (3) SCC 713**, wherein their Lordships held as follows:-

"7. The learned Additional Solicitor General, for the appellant, argued that the High Court erred in granting bail without adverting to the statutory rigours of Section 43-D(5) of the UAPA. Relying upon the judgment in NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383], it was highlighted that bail proceedings under the special enactment were distinct and the courts are duty-bound to refuse bail where the suspect is prima facie believed to be guilty. It was further contended that in numerous prior rounds before the Special Court and the High Court, there emerged enough reasons to believe that the respondent was, prima facie, guilty of

the accusations made against him. The fact that the respondent had absconded for years was pressed into aid as legitimate apprehension of his not returning if set free. As regards to the early conclusion of trial, NIA has filed an additional affidavit suggesting to examine 276 witnesses and at the same time expecting to conduct the trial on a day-to-day basis and complete it within around a year.

8. Learned Senior Counsel appearing for the respondent, on the other hand, highlighted that many of the co-accused had been acquitted, and although a few had been convicted as well, but those convicts had also been awarded a sentence of not more than eight years. Given how the respondent has already suffered incarceration of almost five-and-a-half years without the trial having even started, it would violate his constitutional liberty and rights to have him serve most of his sentence without any adjudication of guilt by a judicial authority. He urged that once the High Court had exercised discretion to grant bail, the same ought not to be interfered with except in rare circumstances. Relying upon Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616 and Hussain v. Union of India, (2017) 5 SCC 702, it was argued that such protracted incarceration violates the respondent's right to speedy trial and access to justice; in which case, the constitutional courts could exercise their powers to grant bail, regardless of limitations specified under special enactments.

11. It is a fact that the High Court in the instant case has not determined the likelihood of the respondent being guilty or not, or whether rigours of Section 43-D(5) of the UAPA are alien to him. The High Court instead appears to have exercised its power to grant bail owing to the long period

of incarceration and the unlikelihood of the trial being completed anytime in the near future. The reasons assigned by the High Court are apparently traceable back to Article 21 of our Constitution, of course without addressing the statutory embargo created by Section 43-D(5) of the UAPA.

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

> "*10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh case , (1994) 3 SCC 569 : 1994 SCC (Cri) 899], on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21."*

13. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act") which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252, Babba v. State of Maharashtra, (2005) 11 SCC 569 and Umarmia alias Mamumia v. State of Gujarat, (2017) 2 SCC 731 enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early

> *completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.*
>
> *16. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. InSupreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail."*

16. Further the learned counsel for the applicants-appellants have relied upon a recent judgment of the Supreme Court in **Mossa Koya KP vs. State(NCT of Delhi)**, **Criminal Appeal No.1562 of 2021, arising out of SLP (Crl.) No.8647 of 2021,** wherein their Lordships held as follows:-

> "*12. We appreciate the submission of the Additional Solicitor General that offences under the NDPS Act are of a serious nature and the case is at the post conviction stage.*

Yet the Court cannot be unmindful of the fact that the appellant has undergone 8 years out of the total sentence of 10 years. The appeal is unlikely to be heard early. In all probability, the entire sentence would have been undergone by the time the appeal is heard. The decisions on the basis of which the High Court of Delhi has declined to grant suspension of sentence, are, at the highest, a broad guideline and cannot be placed on the same pedestal as a statutory interdict. With the pendency of the work in the High Court, it may not be feasible to expedite the disposal of the appeal within a short period."

17. Learned counsel for the applicants-appellants have further brought our notice to an application for suspension of sentence decided by a division bench of this Court in **CRM-21050-2018 in CRA-D-328-DB-2016, titled as Pawan Kumar and Another vs. Narcotics Control Bureau Chandigarh,** which was decided on 03.12.2020 in the following terms:-

"1. This is an application seeking suspension of the sentence of rigorous imprisonment for 15 years and of payment of fine of Rs.1,50,000/- and, in default thereof, rigorous imprisonment for 2 years, awarded to the Applicant/Appellant No.2 by the order dated 23rd February, 2016 of the Judge Special Court, Chandigarh ('trial Court'), upon his conviction by the trial Court under Section 18(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. Mr. Sanjay Vashishth, learned counsel for the Respondent/NCB states that as per custody certificate, the Applicant/Appellant No.2 had already undergone a period of 7 years and 6 months in custody. He further states that the case of the Applicant/Appellant for suspension of

sentence stands covered by the judgment of this Court in Daler Singh vs. State of Punjab, 2007(1)RCR (Criminal) 316.

3. In that view of the matter, the sentence awarded to the Applicant/Appellant No.2 by the trial Court is directed to remain suspended during the pendency of the present appeal, subject to the satisfaction of the concerned Chief Judicial Magistrate/Duty Magistrate.

4. The application is disposed of in the above terms."

18. The aforesaid decision of this Court was carried up by the Narcotics Control Burearu to the Supreme Court by way of Special Leave to Appeal (Crl.) No.7780 of 2021, wherein their Lordships vide judgment dated 29.10.2021 held as follows:-

".....Having heard learned Additional Solicitor General appearing for the petitioner- Narcotics Control Bureau and carefully perusing the material available on record, we see no reason to interfere with the impugned order pased by the High Court of Punjab & Haryana at Chandigarh suspending the sentence of the sole respondent-herein.

The Special Leave Petition is, accordingly, dismissed."

19. Further the learned counsel for the applicants-appellants have brought our notice to an application in **Mahmood Kurdeya vs Narcotics Control Bureau, Bail Application No.1030 of 2021, decided/pronounced on 24.08.2021,** wherein a single bench of the Delhi High Court declined an application pending trial in a case under Sections 22, 23 & 29 of the Act. That decision was carried up by the accused to the Supreme Court by way of Criminal Appeal No.1570 of

2021 arising out of SLP (Crl.) No.7085 of 2021. The said appeal was decided on 07.12.2021 wherein their Lordships held as follows:-

> *"What persuades us to pass an order in favour of the appellant is the fact that despite the rigors of Section 37 of the said Act, in the present case though charge sheet was filed on 23.09.2018 even the charges have not been framed nor trial has commenced. The manufacturer who sold the drugs to the appellant during the sunset clause himself has been granted bail."*

20. Finally, the learned counsel for the applicants-appellants have relied upon the latest decision of a division bench of this Court in **Harpal Singh vs. National Investigation Agency and another, passed in CRM-8262-2021 in CRA-S-3721-SB-2015,** wherein after discussing Lokesh Chadha's case (supra), Rajesh's case (supra), Supreme Court Legal Aid Committee's case (supra) and Tule Ram's case (supra) this Court has suspended the sentence of a convict who had undergone 7 years 4 months and few days out of the total sentence of 10 years awarded under the Act.

21. However, Mr. Sanjay Vashisht, Senior Panel Counsel for NCB, Ms. Varinder Kaur Warraich, Junior Standing Counsel for UOI and the learned counsel for the States have relied upon various judgments of the Supreme Court wherein, as per them, a divergent view had been taken. Firstly, they have relied upon the judgment of the Supreme Court in **Union of India vs. Ram Samujh, (1999) 9 Supreme Court Cases 429,** wherein their Lordships held as follows**:-**

> *"7. It is to be borne in mind that the aforesaid legislative*

mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in Durand Didier v. Chief Secy., Union Territory of Goa, 1989(2) RCR (Criminal) 505 : (1990) 1 SCC 95 as under:

> *"24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine."*

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

> *(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and*
>
> *(ii) that he is not likely to commit any offence while on bail*
>
> *are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended."*

22. Learned counsel for the respondents have further relied upon a judgment of the Supreme Court in **Union of India vs. Mahaboob Alam, (2004) 4 Supreme Court Cases 105,** wherein again after another 5 years, the aforesaid decision passed in Ram Samujh (supra) was followed and their Lordships held as under:-

> *"8. In the case of Dadu v. State of Maharashtra [(2000) 8 SCC 437 : 2000 SCC (Cri) 1528] this Court held that though a part of Section 32-A insofar as it ousts the jurisdiction of the court to suspend the sentence awarded to the convict under the Act is unconstitutional, still held that the whole of the section would not be invalid and the restriction imposed by the offending section was distinct and severable. It further held that the legislative mandate under that section has to be followed by the courts while granting bail to the offenders under the Act. It also held [at SCC p. 456, para 28 quoting from Union of India v. Ram Samujh, (1999) 9 SCC 429, pp. 431-32, para 7] that the court should bear in mind "that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental*

in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved".

In the said judgment this Court also relied on the following passage with approval in the case of Durand Didier v. Chief Secy., Union Territory of Goa, 1989(2) RCR (Criminal) 505 ; (1990) 1 SCC 95 in the following words:

> *"24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.*

9. Following the above dangerous trend arising out of narcotics trade, this Court in the said case held that though the court has the power of granting bail in spite of the language of Section 32-A, that the same should be done only and strictly subject to the conditions spelt out in Section 37 of the Act."

23. Further the learned counsel for the respondents have relied

upon another judgment of the Supreme Court in **Ratan Kumar Vishwas vs. State of U.P. and Another, (2009) 1 Supreme Court Cases 482,** wherein their Lordships held as under:-

> *"17. It is to be noted that in Dadu v. State of Maharashtra [(2000) 8 SCC 437 : 2000 SCC (Cri) 1528] it was held that Section 32-A was ultra vires to the extent it took away the powers relatable to Section 389 of the Code of Criminal Procedure, 1973 (in short "the Code"). In Dadu case it was held as follows:*
>
> > *"29. Under the circumstances the writ petitions are disposed of by holding that:*
> > *(1) Section 32-A does not in any way affect the powers of the authorities to grant parole.*
> > *(2) It is unconstitutional to the extent it takes away the right of the court to suspend the sentence of a convict under the Act.*
> > *(3) Nevertheless, a sentence awarded under the Act can be suspended by the appellate court only and strictly subject to the conditions spelt out in Section 37 of the Act, as dealt with in this judgment."*
>
> *In the said case it was clearly observed that a sentence awarded under the Act can be suspended by the appellate court only and strictly subject to the conditions as spelt out in Section 37 of the Act.*
>
> *18. To deal with the menace of dangerous drugs flooding the market, Parliament has provided that a person accused of offence under the Act should not be released on bail during trial unless the mandatory conditions provided under Section 37 that there are reasonable grounds for holding that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail are satisfied. So far as the first condition is concerned, apparently the accused has been found guilty and has been convicted."*

24. Learned counsel for the respondents have further relied upon a judgment passed in **Union of India vs. Rattan Mallik@ Habul, (2009) 2 Supreme Court Cases 624**, wherein the view given in Ratan Kumar Vishwas's case (supra) was reiterated as under:-

> *"8. Having carefully gone through the impugned order, we are constrained to observe that while dealing with the application for bail, the learned Judge appears to have lost sight of the mandatory requirements of Section 37 of the NDPS Act and thus, the impugned order is clearly unsustainable.*
>
> *9. The broad principles which should weigh with the court in granting bail in a non-bailable offence have been enumerated in a catena of decisions of this Court and, therefore, for the sake of brevity, we do not propose to reiterate the same. However, when a prosecution/conviction is for offence(s) under a special statute and that statute contains specific provisions for dealing with matters arising thereunder, including an application for grant of bail, these provisions cannot be ignored while dealing with such an application.*
>
> *12. It is plain from a bare reading of the non obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the*

alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

25. Learned counsel for the respondents have further relied upon a judgment of Supreme Court which came after 11 years i.e. in **State of Kerala etc. vs. Rajesh etc., (2020) 12 Supreme Court Cases 122**, wherein their Lordships held as follows:-

"17. The jurisdiction of the court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted in case there are reasonable grounds for believing that the accused is not guilty of such offence, and that he is not likely to commit any offence while on bail. It is the mandate of the legislature which is required to be followed. At this juncture, a reference to Section 37 of the Act is apposite. That provision makes the offences under the Act cognizable and non-bailable....."

18. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in the offences under the NDPS Act. In Union of India v. Ram Samujh, (1999) 9 SCC 429 : 1999 SCC (Cri) 1522 , it has been elaborated as under:

"7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes

deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in Durand Didier v. State (UT of Goa), (1990) 1 SCC 95 : 1990 SCC (Cri) 65 as under: (SCC p. 104, para 24)

> *'24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.'*

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

> *(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and*
> *(ii) that he is not likely to commit any offence while on bail*
>
> *are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid*

> *mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended."*

19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 CrPC, but is also subject to the limitation placed by Section 37 which commences with non obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

20. 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."

26. Learned counsed for the respondents have further relied upon another judgment of the Supreme Court in **State (GNCT of Delhi) Narcotics Control Bureau vs. Lokesh Chadha, (2021) 5 Supreme Court Cases 724**, wherein it was held as follows:-

> *"9. While considering the rival submissions, we must at the outset advert to the manner in which the learned Single Judge [Lokesh Chadha v. State, 2020 SCC OnLine Del 1723] of the High Court has dealt with the application for suspension of sentence under Section 389(1) CrPC. The offence of which the respondent has been convicted by the Special Judge arises out of the provisions of Sections 23(c) and 25-A of the NDPS Act. The findings of the learned Special Judge which have been arrived at after a trial on the basis of evidence which has been adduced indicate that the respondent who was a proprietor of a courier agency was complicit with a foreign national in the booking of two parcels which were found to contain 325 gm of heroin and 390 gm of pseudoephedrine. Section 37 of the NDPS Act stipulates that no person accused of an offence punishable for the offences under Section 19 or Section 24 or Section 27-A and also for the offences involving a commercial quantity shall be released on bail, where the Public Prosecutor opposes the application, unless the Court is satisfied "that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail". Where the trial has ended in an order of conviction, the High Court, when a suspension of sentence is sought under Section 389(1) CrPC, must be duly cognizant of the fact that a finding of guilt has been arrived at by the trial Judge at the conclusion of the trial. This is not to say that the High Court is deprived of its power to suspend the sentence*

under Section 389(1) CrPC. The High Court may do so for sufficient reasons which must have a bearing on the public policy underlying the incorporation of Section 37 of the NDPS Act."

27. Thus we find that in the year 1994, the Supreme Court held that a person who had undergone five years of pre-convict custody was entitled to be released on bail, on the touchstone of Article 21 of the Constitution of India. Though this judgment related to undertrials and only one time directions were issued, however, the directions in no way can be said to be against the legislative intent but are in furtherence of Article 21 of the Consitution of India. Therefore, it will also not be inappropriate if similar principles are followed with some variations and modifications in cases relating to convicts who are languishing in jails for the reasons that their appeals are not likely to be heard for a considerable period.

28. Then in P. Ramachandra Rao, where the accused was found to have amassed assets disproportionate to his known sources of income and the charge-sheet was filed for offences under Sections 13(1) (e) read with Section 13(2) of the Prevention of Corruption Act, 1988, the constitutional bench of the Supreme Court stressed upon speedy trial at the touchstone of Articles 21, 19 and 14 and the Preamble of the Constitution as also from the Directive Principles of State Policy.

29. Then we have Surinder Singh @ Shingara Singh, where the convict was awarded the sentence of life imprisonment for an offence

under Section 302 IPC and the interim order granting him bail had been made absolute. However, the Supreme Court again stressed upon speedy trial and specifically observed that the difficulty arises when the appeal preferred by such a convict cannot be disposed of within a reasonable time.

30. Then came Tule Ram, wherein a full bench of this Court after perusing the data provided with regard to the pendency or disposal of appeals under the Act went into the question as to what was the extent of the power for suspension of sentence which could be exercised by the High Court while dealing with the applications for suspension of sentence in appeals under the NDPS Act. The bench held that the Appellate Court had no power to suspend sentence during pendency of the appeal and that the Act makes no provision for post-conviction suspension of sentence. The exception, however, that was carved out was that when there is delay in disposal of the appeal which is not attributable to the convict, the Court may pass such orders as the convict may be entitled to in view of the provisions of Article 21 of the Constitution of India.

31. Thereafter, in Daler Singh, where the recovery was of 35 kg of poppy husk and the convict had undergone 7 years out of the total sentence of 12 years awarded under the Act, a division bench of this Court had suspended the sentence and had also laid down some principles for releasing the convicts under the NDPS Act at the touchstone of Article 21 of the Constitution of India.

32. Then in Dalip Singh, which was a case of murder, certain guidelines had been laid down by a full bench of this Court for the purpose of bail during trial and for suspension of sentence pending appeal in the spirit of Article 21 of the Consitution of India while considering various other factors of the case.

33. Then came Sheru, where the convict had undergone 8 years out of the total sentence awarded under the Act, the Supreme Court had suspended the sentence after considering covid situation.

34. Then in Tofan Singh, where the recovery was of 5.250 kgs of heroin and the convict had undergone 9 years of sentence out of the total sentence of 10 years awarded under the Act, the Supreme Court had suspended the sentence while referring the matter to the larger bench for reconsideration of the issue as to whether the officer investigating the matter under the Act would qualify as police officer or not and the larger bench while dealing with this issue had stressed upon Article 21 of the Constitution of India in cases under the NDPS Act.

35. Then we have K.A. Najeeb, wherein the accused was facing trial under UPA, IPC and Explosives substances Act, the Supreme Court granted bail after 4 years of custody while holding that once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

36. Then in Mossa Koya KP, where the recovery was of 1 kg of heroin and the convict had undergone 8 years out of the total sentence of 10 years, the Supreme Court had granted suspension of sentence.

37. Then in Pawan Kumar and another, where the recovery was of 15.5 kg of opium, the Supreme Court upheld the decision of this Court granting suspension of sentence to one of the convicts who had undergone 7½ years out of the total sentence of 15 years awarded under the Act.

38. Then in Mahamood Kurdeya, where the recovery was of 50 kg 800 grams of contraband from the Syrian national and who had undergone 3 years 3 months of custody, the Supreme Court had granted bail on the ground that even the trial had not been commenced till now.

39. Then in a recent case of Harpal Singh, a division bench of this Court had allowed the application for suspension of sentence of a convict who had undergone 7 years and 4 months of custody out of the total sentence of 10 years awarded under the Act, keeping in view the right guaranteed to a convict under Article 21 of the Consitution of India for a speedy trial.

40. On the contrary, in Ram Samujh, where the recovery was of 5 kg of opium and the custody was of only 1 year & 9 months, the Supreme Court gave primacy to the rigors of Section 37 of the Act and the bail was rejected. Another 5 years later in Mahaboob Alam, where the convict who was a previous offender had been awarded 15 years of

sentence under Section 21 of the Act, the Supreme Court reiterated the view taken in Ram Samujh and held that granting bail to a repeated offender merely on the ground that co-accused had been granted bail was not good in law. After a period of 4 years in Ratan Kumar Vishwas, where the recovery was 250.400 kgs of charas and the convict had been awarded 14 years of sentence under the Act and had undergone 4½ years of custody out of the total sentence, the Supreme Court again accorded primacy to Section 37 of the Act and rejected the application for suspension of sentence which view was reiterated in the very next year in Rattan Mallik, where the recovery was of 14.9 Kg of heroin and the convict had undergone 3 years out of the total sentence of 10 years. Then after 11 years came Rajesh, where the recovery was more than 10 kgs of hashish oil and currency notes, the Union of India had challenged the post-arrest bail granted to an accused by the High Court of Kerala after 1 year of custody. In that case also, the Supreme Court again accorded primacy to Section 37 of the Act and cancelled bail of the accused. However, it had directed the trial Court to proceed and expedite the trial. Then in the latest case of Lokesh Chadha, the Supreme Court again applied the conditions of Section 37 of the Act to decline suspension of sentence to a convict who had undergone 4 years & 4 months of custody out of the total sentence of 10 years awarded under the Act.

41. The salient factor in all the cases relied upon by the learned counsel for the respondents is that in none of those cases the convict/accused could even argue that his case was covered under

Article 21 of the Constitution of India. None of the cases fell under the categories enumerated either in Supreme Court Legal Aid Committee or Daler Singh. The maximum custody in these cases was of Lokesh Chadha and Ratan Kumar Vishwas where also they had undergone less than 5 years of the sentence. In none of these cases, the Supreme Court disagreed with even one of the decisions relied upon by the learned counsel for the applicants-appellants. Thus, it has to be concluded that there is no divergence of opinion as sought to be projected by the learned counsel for the respondents-States. Where the convict/accused is not able to bring his case within the parameters of Article 21 of the Constitution of India the stringent provisions of Section 37 of the Act have to be applied.

42. In these circumstances, we would now examine all the cases under the parameters laid down in Supreme Court Legal Aid Committee and Daler Singh, of course with the clear understanding that the directions made therein are not mandatory and have to serve as guidelines. Those cases where the claim for suspension of sentence is made out on the basis of long custody would be disposed of by the present order while those where the claim is not supported by long custody would be segregated and listed for hearing individually. For convenience, the facts of each case are briefly stated.

(1) CRM-3773-2019 in CRA-D-198-DB-2017

Custody certificate dated 27.12.2021 filed by way of affidavit of Yogesh Jain, Deputy Superintendent, Central Jail, Ferozepur is taken

on record. As per the custody certificate, the applicant-appellant has undergone actual sentence of more than 8 years & 11 months out of the total sentence of 15 years. Further in another FIR registered under the NDPS Act the applicant-appellant is already on bail. The recovery in the present case was of 14 kg 80 gm of heroine.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (supra), we deem it appropriate to suspend the sentence of the applicant-appellant-Bhupender Singh. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of.

(2) CRM-34648-2019 in CRA-D-1013-DB-2017

Custody certificate dated 29.11.2021 filed by way of affidavit of Sandeep Dangi, Deputy Superintendent, District Prison (Jind), Haryana is taken on record.

Registry is directed to segregate this application from this bunch of matters and be listed for hearing individually.

(3) CRM-40754-2019 in CRA-D-956-DB-2016

Custody certificate dated 29.12.2021 filed by way of affidavit of Satnam Singh, PPS, Additional Superintendent, Central Jail, Ludhiana is taken on record. As per the custody certificate, the applicant-appellant has undergone actual sentence of more than 6 years & 5 months out of

the total sentence of 12 years. Further the applicant-appellant was 14 days' late from the date of surrender in jail. The recovery in the present case was of 1440 kg of poppy husk.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (supra), we deem it appropriate to suspend the sentence of the applicant-appellant-Charan Singh. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of.

(4) CRM-8746-2020 in CRA-D-1162-DB-2017

Custody certificate has not been filed in the present case.

Resultantly, the Registry is directed to segregate this application from this bunch of matters and be listed for hearing individually.

(5) CRM-1065-2021 in CRA-D-1480-DB-2013

Custody certificate dated 27.12.2021 filed by way of affidavit of Yogesh Jain, Deputy Superintendent, Central Jail, Ferozepur is taken on record.

Registry is directed to segregate this application from this bunch of matters and be listed for hearing individually.

(6) CRM-1672-2021 in CRA-D-706-DB-2017

Custody certificate has not been filed.

Registry is directed to segregate this application from this bunch of matters and be listed for hearing individually.

(7) CRM-1739-2021 in CRA-D-173-DB-2015

Custody certificate dated 29.11.2021 filed by way of affidavit of Satyapal Kasnia, Deputy Superintendent, Central Jail No.1, Hisar, Haryana is taken on record. As per the custody certificate, the applicant-appellant has undergone actual sentence of more than 3 years & 5 months out of the total sentence of 12 years. The recovery in the present case was of 120 kg of poppy husk. Further two more FIRs have been registered against the applicant-appellant under the NDPS Act. However, he is on bail in one of the FIRs and has already completed his sentence in another FIR. The recovery in the present case was of 52 kg of poppy husk.

Considering the period of incarceration already suffered by the applicant-appellant in the present case, we do not deem it appropriate to suspend the sentence of the applicant-appellant-Ramesh Kumar.

Registry is directed to segregate this application from this bunch of matters and be listed for hearing individually.

(8) CRM-21823-2021 in CRA-D-216-DB-2018

Custody certificate has not been filed in the present case.

Resultantly, the Registry is directed to segregate this application from this bunch of matters and be listed for hearing individually.

(9) CRM-22307-2021 in CRA-D-421-DB-2018

Custody certificate dated 29.11.2021 filed by way of affidavit of Shailakshi Bhardwaj, Deputy Superintendent of Prison, District Prison (Karnal), Haryana is taken on record.

Registry is directed to segregate this application from this bunch of matters and be listed for hearing individually.

(10) CRM-22639-2021 in CRA-D-550-DB-2013

Custody certificate dated 28.12.2021 filed by way of affidavit of Bhupinder Singh, PPS, Deputy Superintendent, Central Jail Bathinda is taken on record.

Registry is directed to segregate this application from this bunch of matters and be listed for hearing individually.

(11) CRM-22787-2021 in CRA-D-1646-DB-2015

Custody certificates dated 29.11.2021 & 03.01.2022 filed by way of affidavit of Sewa Singh, Deputy Superintendent, District Prison (Rohtak), Haryana are taken on record. As per the custody certificate, the applicant-appellant No.2-Virender has undergone actual sentence of more than 8 years & 10 months out of the total sentence of 20 years and the applicant-appellant No.4-Lalan Chaudhary has undergone actual

sentence of more than 10 years & 9 months out of the total sentence of 20 years. The recovery in the present case was of 231 kgs of Charas.

Considering the period of incarceration already suffered by the applicant-appellants in the present case and the fact that the appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (supra), we deem it appropriate to suspend the sentence of the applicant-appellant No.2-Virender Singh and the applicant-appellant No.4-Lalan Chaudhary. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of.

(12) CRM-23396-2021 in CRA-D-89-DB-2015

Custody certificate dated 29.11.2021 filed by way of affidavit of Sewa Singh, Deputy Superintendent, District Prison, Rohtak, Haryana is taken on record. As per the custody certificate, the applicant-appellant has undergone actual sentence of more than 10 years & 1 month out of the total sentence of 14 years. The recovery in the present case was of 104 kg 600 gm of charas.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (supra), we deem it appropriate to suspend the sentence of the applicant-appellant-Mohmmad Kasim. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of.

(13) CRM-24183-2021 in CRA-D-166-DB-2021

Custody certificate dated 28.12.2021 filed by way of affidavit of Manjit Singh Sidhu, PPS, Additional Superintendent, Central Jail, Amritsar is taken on record.

Registry is directed to segregate this application from this bunch of matters and be listed for hearing individually.

(14) CRM-17422-2021 in CRA-D-14-2019

Custody certificate dated 28.12.2021 filed by way of affidavit of Bhupinder Singh, PPS, Deputy Superintendent, Central Jail, Bathinda is taken on record.

Registry is directed to segregate this application from this bunch of matters and be listed for hearing individually.

(15) CRM-24715-2021 in CRA-D-658-DB-2017

Custody certificate dated 29.11.2021 filed by way of affidavit of Shailakshi Bhardwaj, Deputy Superintendent of Prison, District Prison, Karnal, Haryana is taken on record.

Registry is directed to segregate this application from this bunch of matters and be listed for hearing individually.

(16) CRM-7105-2018 in CRA-D-427-DB-2016

Custody certificate dated 29.12.2021 filed by way of affidavit of Iqbal Singh Brar, Superintendent, District Prison Sri Muktsar Sahib, Punjab is taken on record. As per the custody certificate, the applicant-

appellant has undergone actual sentence of more than 8 years & 5 months out of the total sentence of 15 years. The recovery in the present case was of 57 kgs 982 gms of heroin alongwith 2 pistols, 52 live cartridges and 3 magazines.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (supra), we deem it appropriate to suspend the sentence of the applicant-appellant-Khan Singh. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of.

(17) CRM-4752-2020 in CRA-D-410-DB-2016

Custody certificate dated 28.12.2021 filed by way of affidavit of Rajiv Kumar Arora, PPS, Additional Superintendent, Central Prison, Faridkot is taken on record.

Registry is directed to segregate this application from this bunch of matters and be listed for hearing individually.

(18) CRM-16534-2019 & CRM-39920-2018 in CRA-D-718-DB-2015

Custody certificate dated 28.12.2021 filed by way of affidavit of Rajinder Singh Hundal, PPS, Superintendent, Central Jail Gurdaspur is taken on record.

Registry is directed to segregate these applications from this bunch of matters and be listed for hearing individually.

(19) CRM-9306-2020 in CRA-D-384-DB-2019

Custody certificate has not been filed in the present case.

Resultantly, the Registry is directed to segregate this application from this bunch of matters and be listed for hearing individually.

(20) CRM-28686-2021 in CRA-D-101-2020

Custody certificate dated 28.12.2021 filed by way of affidavit of Manjit Singh Sidhu, PPS, Additional Superintendent, Central Jail Amritsar is taken on record. As per the custody certificate, the applicant-appellant has undergone actual sentence of more than 6 years & 3 months out of the total sentence of 15 years. The recovery in the present case was of 8 kgs of heroin.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (supra), we deem it appropriate to suspend the sentence of the applicant-appellant-Gurdev Singh. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of.

(21) CRM-7811-2021 in CRA-D-156-2020

Custody certificate dated 28.12.2021 filed by way of affidavit of Manjit Singh Sidhu, PPS, Additional Superintendent, Central Jail Amritsar is taken on record. As per the custody certificate, the

applicant-appellant has undergone actual sentence of more than 7 years & 3 months out of the total sentence of 12 years. The recovery in the present case was of 10 kgs of heroin.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (supra), we deem it appropriate to suspend the sentence of the applicant-appellant-Angrej Singh. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of.

(22) CRM-31157-2021 in CRA-D-65-DB-2018

Custody certificate dated 28.12.2021 filed by way of affidavit of Rajiv Kumar Arora, PPS, Additional Superintendent, Central Prison Faridkot is taken on record.

Registry is directed to segregate this application from this bunch of matters and be listed for hearing individually.

(23) CRM-33304-2021 in CRA-D-500-2021

Custody certificate dated 28.12.2021 filed by way of affidavit of Bhupinder Singh, PPS, Deputy Superintendent, Central Jail Bathinda is taken on record.

Registry is directed to segregate this application from this bunch of matters and be listed for hearing individually.

(24) CRM-11644-2019 in CRA-D-561-DB-2016

Custody certificate dated 29.12.2021 filed by way of affidavit of Satnam Singh, PPS, Additional Superintendent, Central Prison, Ludhiana is taken on record. As per the custody certificate, the applicant-appellant No.2-Gaganjit Singh @ Gogi has undergone actual sentence of more than 6 years & 9 months out of the total sentence of 15 years. Further another FIR has also been registered against the applicant-appellant No.2-Gaganjit Singh @ Gogi under the NDPS Act. The recovery in the present case was of 3700 kgs of poppy husk.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (supra), we deem it appropriate to suspend the sentence of the applicant-appellant No.2-Gaganjit Singh @ Gogi. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of.

(25) CRM-35274-2021 in CRA-D-61-2021

Custody certificate dated 27.12.2021 filed by way of affidavit of Yogesh Jain, Deputy Superintendent, Central Jail Ferozepuris taken on record.

Registry is directed to segregate this application from this bunch of matters and be listed for hearing individually.

(26) CRM-22916-2021 in CRA-D-163-DB-2015

Custody certificate dated 29.11.2021 filed by way of affidavit of Shailakshi Bhardwaj, Deputy Superintednent of Prison, District Prison Karna, Haryana is taken on record. As per the custody certificate, the applicant-appellant has undergone actual sentence of more than 8 years & 4 months out of the total sentence of 14 years. The recovery in the present case was of 104 kgs 600 gms of charas.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (supra), we deem it appropriate to suspend the sentence of the applicant-appellant. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of.

(27) CRM-34571 & 34599-2019 in CRA-D-68-DB-2015 (O&M)

Custody certificate dated 29.11.2021 filed by way of affidavit of Surender Kumar, DSP1, Deputy Superintendent, District Prison Kaithal, Haryana is taken on record. As per the custody certificate, the applicant-appellant has undergone actual sentence of almost 6 years out of the total sentence of 12 years. The recovery in the present case was of 1 kg 700 gms of charas.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the appeal is not likely to be heard in the near future, we deem it appropriate to suspend the sentence of the applicant-appellant. Ordered accordingly.

Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate. Recovery of fine shall remain stayed during the pendency of appeal.

Applications stand disposed of.

43. A photocopy of this order be placed on files of the connected cases.

(AJAY TEWARI)
JUDGE

(PANKAJ JAIN)
JUDGE

Reserved on : December 07, 2021
Pronounced on : January 12, 2022
ashish

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No

PANKAJ JAIN, J.

1. I have had the privilege of perusing the judgment authored by my esteemed brother Ajay Tewari, J. While concurring with the preposition of law laid down therein, I wish to add another aspect. Picture showing gold smoked mustard fields with the proud prosperous farmer used to showcase this land of five rivers. Today Punjab is related to a portrait of wailing mother holding corpse of her son who died of drug overdose as well. Statistics relied upon by J. Tewari are an ode to this fact. More than the burden of over 16,000 appeals pending before this Court what weighs in is that over the years, the number of cases has not shown any decline. When this number is pitched against number of working days, in some years the average is more than one appeal per day. There are more than 16,000 convicts under NDPS and majority of them in the State of Punjab. This makes out a case for State to look beyond deterrent measure in the form of NDPS Act and evolve reformative measures as well.

2. As a prologue to 'the case for a new economy' David Korten in his celebrated book 'Agenda for a New Economy' quoted from an anonymous source:-

> "A man was standing beside a stream when he saw a baby struggling in the water. Without a thought he jumped in and saved it. No sooner had he placed it gently in the shore then he saw another and jumped in to save it, then another and another. Totally focused on saving babies, he never thought to look upstream to answer the obvious question: Where are the babies coming from and how did they get in the water?"

3. It is a welfare State and has a role bigger than mere policing. State of Punjab apart from registering cases, needs to wake up to the challenge. The concern expressed by the Apex Court in Ram Samuj's case has already been spelled hereinabove. The malady has gripped the society. It cannot afford to be in a state of inertia. This Court is sure that there must be some individual efforts being made by public spirited citizens on the issue of drugs, but the menace by now is beyond the individual efforts. These efforts need to be integrated to respond to this ailment. It is for the State to shoulder the responsibility to catalyze such response. Time has come for the society and the State to look upstream.

4. Keeping in view this aspect, State of Punjab is directed to file response on the following issues:-

(i) Whether State has any road map in place to fight this menace?

(ii) Whether any State sponsored scientific study by any Government organization or non-Government organization has ever been conducted on the cause and effect of drug addiction in State of Punjab?

(iii) Whether State of Punjab has ever mapped drug addiction and found as to what are the most affected areas/districts?

(iv) If any such mapping has been done whether any further study has been made to find out the reasons for such menace in the affected area?

(v) In case, there is no such study till now, time frame by when such study can be conducted and placed on record before this Court?

5. In the background of the fact that the elections already stand

notified in the State of Punjab, we take cognizance of the fact that there have been incidents of 'Drugs for Vote' in elections in Punjab. Former Chief Election Commissioner stated with respect to 2012 elections that in one month alone recovery of around 55 kgs of heroin and around 430 kgs of poppy husk was made in the State and that almost every psychotropic substance was found in circulation during elections.

6. Thus, we deem it fit to issue notice to State Election Commission, Punjab to solicit their response to ensure 'Drug free Elections'. For this purpose, the Election Commission of India is impleaded through its Secretary, Nirvachan Sadan, Ashoka Road, Pandit Pant Marg Area, Sansad Marg Area, New Delhi – 110001 in the main case i.e. CRA-D-198-DB-2017. Let it be served through the Additional Solicitor General of India Sh. Satya Pal Jain, Senior Advocate for 20.01.2022.

7. Registry is directed to make necessary corrections in the Memo of Parties of the said main case and be listed for hearing on 20.01.2022 for the aforesaid purpose.

(PANKAJ JAIN)
JUDGE

(AJAY TEWARI)
JUDGE

January 12, 2022
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