

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 15<sup>th</sup> May, 2023  
Pronounced on: 30<sup>th</sup> May, 2023

+ **BAIL APPLN. 1168/2023**

VIPIN MITTAL ..... Petitioner

Through: Mr. Siddharth Aggarwal, Sr. Adv.  
with Mr. Nipun Katyal & Mr.  
Chaitanya, Advs.

versus

NATIONAL INVESTIGATING AGENCY ..... Respondent

Through: Mr. Chetan Sharma, ASG for NIA  
with Ms. Shilpi Singh, SPP for NIA  
with Insp. Ajay Singh, AIO Mr.  
Yudhivir Singh Chauhan, APP for the  
State.

**CORAM:**  
**HON'BLE MR. JUSTICE ANISH DAYAL**  
**JUDGMENT**

1. This petition has been filed seeking regular bail in FIR No.RC35/2022/NIA/DLI PS National Investigating Agency, New Delhi. The said FIR was registered under sections 8(c), 21 (c), 23 (c), 27 (a), 29 of NDPS Act. Charge-sheet has already been filed *vide* final report dated 16<sup>th</sup> December 2022 before the Ld. Trial Court. Further, 80 prosecution witnesses have also been arrayed for examination.

2. As per the charge-sheet the respondent agency alleges that the petitioner intended to earn huge profits from smuggling *heroin* concealed in licorice roots (*mulethi*). Thereafter, the petitioner hatched a conspiracy along with other accused persons namely Nazir Ahmad Qani and Razi Haider Zaidi to import a consignment from Afghanistan in which *heroin* was concealed. It was further alleged that the petitioner fixed a deal with Zaidi



for the import and received an amount of Rs.11 lacs in cash as an advance for the consignment. The seizure of the contraband was by customs officials at ICB, Atari, Amritsar on 22<sup>nd</sup> April 2022. The *heroin* in the consignment recovered was to the tune of 102.136 and 0.648 kgs. Since the said consignment was imported by M/s. Shree Balaji Trading Company, of which the petitioner was the proprietor, a search was conducted and the petitioner was arrested.

### **Submissions on behalf of the petitioner**

3. Ld. Sr. Counsel for the petitioner has contended that the petitioner has been falsely implicated, *inter alia* considering the following aspects:

*Firstly*, it is not denied that the said consignment of *mulethi* which was to come from Afghanistan was consigned in the name of the petitioner which is evident from the invoice. However, said consignment had been booked genuinely for the purpose of import, and as per instructions from the consignor i.e. Nazir Ahmad, was meant specifically to be sold to Zaidi. In this regard, learned counsel for the petitioner has pointed out a transcript of an audio clip sent by Nazir Ahmad to the petitioner through WhatsApp which was extracted by the agency. This audio clip is of Nazir mentioning that he would send the consignment, and the said consignment has to be taken by a particular person. Thus, as per the petitioner, he was merely an intermediary and neither had any knowledge nor was in conscious possession of the contraband.

*Secondly*, considering that the consignment had been intercepted even before the petitioner could have been in possession, charges against the petitioner can be, at best, of conspiracy.



*Thirdly*, even as per the communication in the mobile phone, between Nazir Ahmad and the petitioner, which was intercepted and transcribed, there was nothing to suggest of a discussion regarding contraband. In fact, WhatsApp chats simply show that the petitioner was enquiring about the whereabouts of the consignment, as he was anticipating a regular trading transaction.

*Fourthly*, as per the investigating agency, amount of Rs.11 lacs in cash from Zaidi received by the petitioner in the office premises on 23<sup>rd</sup> April, 2022, was allegedly an advance payment for the consignment. Ld. Sr. Counsel for the petitioner states that even an assumption that Rs.11 lacs was the advance money for the contraband is erroneous and illogical, considering that the value of the said contraband would be for a few tens of crores. Therefore, at worst, the allegation could be of receiving an amount in cash. As also the receipt of Rs.11 lacs for the consignment would also show that the value ascribed by the petitioner was merely for actual *mulethi* and not for any contraband which was allegedly being smuggled.

#### **Submissions on behalf of the State**

4. Ld. ASG in response submitted that this matter related to the recovery of a large quantity of 102.136 kgs of *heroin* concealed in *mulethi* and it was not denied that the consignee was M/s Shree Balaji Trading Company of the petitioner. Also, it was not the first time that such a consignment had been booked, as there was one in 2018 as well. The consignor was the Afghani national named Nazir Ahmed (accused No.4) and the receiver of the funds was Shahid Ahmad @ Qazi (accused No.3). He stated that the said Shahid Ahmad was intended to be extradited for anti-Indian terror activities. The Ld. ASJ contended that this was akin to narcotics terrorism. He further stressed that notwithstanding there was no particular data extracted from the



mobile chats regarding the contraband, the petitioner was found using 7 unusual applications for communication.

### **Rejoinder submissions on behalf of the petitioner**

5. In rejoinder, the Ld. Sr. Counsel for the petitioner stated that the said activity of consigning the *mulethi* cannot be seen as suspicious considering that it was done as a regular trading activity, purchased at about Rs. 45 per kg and sold for Rs.85 per kg to a named buyer i.e., Zaidi. He submitted that for a trader to get a consignment and have a ready buyer for it was a big business positive and to earn profit out of it. Therefore, the act of purchasing *mulethi* and selling it to a named buyer was not unusual but highly normal in the trading business. According to his estimate, the total value of said *mulethi* consignment would be about Rs.11 to 12 lacs. He refuted the contention of the Ld. ASG that this matter involved the National Investigating Agency or relating to any terror activity since the charge-sheet filed had removed any terror provisions from the charges proposed, and was only restricted to provisions under NDPS Act.

6. Notwithstanding the grounds for seeking bail on the merits of the matter, the Ld. Sr. Counsel for the petitioner relied on the medical condition of the petitioner who had been diagnosed with Chronic Myeloid Leukemia (CML) and was under treatment since 2017. Medical documents in this regard have been placed on record by the petitioner. Medical status report had been requisitioned from the Jail Superintendent and in the said report it is confirmed that the petitioner was a known case of CML and was advised treatment and investigation and haematology opinion. He was referred to Safdarjung Hospital on 7<sup>th</sup> September, 2022 where he was advised blood investigation. He was again sent to Safdarjung Hospital on 29<sup>th</sup> September,



2022 for review when he was advised treatment for three months. In October, 2022 he was referred to DDU Hospital, Surgery Department for complaints of bleeding per rectum for which he was advised medications and other treatments. He also had an Ophthalmologic issue which was again resolved. In May, 2023 he was again investigated for his bleeding issues and was advised a sigmoidoscopy test and was referred to the gastroenterology department of G B Pant Hospital.

### **Analysis**

7. Upon a perusal of documents on record, it is evident that it is an admitted situation that the contraband was found concealed in *mulethi* consignment which was imported by M/s Shree Balaji Trading Company registered at Dwarka, New Delhi, of which the petitioner is the proprietor. It also transpires that the suppliers of this consignment were from Afghanistan named M/s Aleem Nazir Ansari Ltd. The said Afghanistan firm had designated a notified party i.e. Al Fadi Foods LLC in UAE to receive funds for the consignment. The said consignment was to be received by one Razi Haider Zaidi @ Raja who was a resident of Muzaffarnagar, Uttar Pradesh. Pursuant to the interception at ICP, Atari, Amritsar on 24<sup>th</sup> April, 2022 the consignee of this consignment, the petitioner herein was arrested. Later, on 24<sup>th</sup> August, 2022 Razi Haider Zaidi was also arrested for his involvement in the case. There were four accused in the said charge-sheet, the petitioner as A-1, Razi Haider Zaidi as A-2, Shahid Ahmad @ Qazi as A-3 and Nazir Ahmad Qani as A-4.

8. Further case of prosecution is that A-2, Razi Haider Zaidi handed over cash worth Rs.11 lacs to the petitioner for purchase of this consignment. The said Shahid Ahmad, A-3 was a habitual offender of



smuggling narcotics and was arrested by the DRI in 2011 as well. The investigation revealed that even earlier A-2, Razi Haider Zaidi along with A-3, Shahid Ahmad @ Qazi and A-4, Nazir Ahmad Qani had smuggled *heroin* concealed in licorice roots imported from Afghanistan which was through a consignment imported by one Rajender Prasad Sharma, proprietor of M/s. R R Global Impex from which about 50 kgs of *heroin* was recovered and charge-sheet has already been filed by the NCB. It has also been stated that as per the investigation, the petitioner had imported one consignment of liquorice roots in 2018 from A-4, Nazir Ahmad Qani also. As per the invoice filed by the petitioner, the total consigned price for the said consignment was US\$ 10,200.

9. The petitioner has also appended various certificates of appreciation for his business (for M/s. H B Communication Pvt. Ltd, a Company owned and managed by the petitioner) from various industry bodies including the Confederation of Indian Industry (CII), also from the Bar Council of Delhi, Agha Khan Foundation and Superintendent of Police, Gandhi Nagar, the office of the Additional Deputy Commissioner of Police, South-West District, Dwarka, Deputy Commissioner of Police, Bandra, Bombay. Therefore, there is material on record to suggest that petitioner had clean antecedents and a reputation in the industry, and no apparent connection with other accused persons involved in the recovery.

10. As per the statement of the petitioner (even though it was no admissible) he had stated in detail that he had been introduced to A-4 for importing various herbal products including *mulethi*. In 2018 he had imported 20,000 kg of mulethi @ Rs.70 per kg through his firm and the total cost of the same was Rs. 14 lacs. The consignment had arrived at ICP, Atari and had been cleared by the custom house agents. The consignment was



sold within 2 months after being warehoused to various enterprises including health-care industries, trading companies in Khari Baoli, Chandni Chowk and other enterprises after having generated bills. Accordingly, he had paid about Rs.5 lacs from the profit to A-4 through international remittance from his Bank of Baroda account. After the corona pandemic, when the situation had become normal, A-4 started talking to him and convincing him to import mulethi on credit at a lower price. Later, he got a call from A-2 to purchase the *mulethi* being sent from Afghanistan. On 7<sup>th</sup> April, 2022 A-2 visited his office and enquired if whether the consignment had been dispatched from Pakistan, and the petitioner himself was astonished that he was paying him in cash. He gave him a rate of Rs.85 per kg including as he was getting it at Wagah Border for Rs.50 per kg. For making the bill of consignment, he asked A-2 to provide the name of his firm and he was told it was M/s Best Trading Company. When the consignment did not reach even after 12-14 days, the petitioner enquired from A-4 for the delay and he was told that the consignment was stuck in Pakistan and later he was told that truck that was carrying the consignment, had met with an accident. He used to communicate with the A-4 through WhatsApp and later through Signal since Nazir had said that his mobile number was not functioning. He also paid the GST amount to customs officials through online mode on 22<sup>nd</sup> April, 2022, on receiving the said consignment. On 23<sup>rd</sup> April, 2022 A-2 came to his office with a backpack and opened it and took out Rs11 lacs in cash from it. The total consignment was of Rs.13.77 lacs and the remaining Rs.2.77 lacs were to be given through the banking channel. When he asked A-2 as to why was he giving in cash, he told that he will pay him slowly through the banking channel and will take back the cash amount. Therefore, as per this narrative, the



petitioner has contended that there is no question of him being involved in the smuggling of the contraband and he was merely acting as a trader.

11. Further, *prima facie* he was not a flight risk being a permanent resident of NCT of Delhi with family, and has always cooperated in the investigation, and was suffering from a serious medical condition of blood cancer. Besides, there were no independent witnesses, except for official witnesses and therefore the question of tampering with evidence does not arise. Further sections 17, 18 and 22 A of the UAPA Act were struck off from the charge-sheet and the question of any terror activity therefore does not arise. No evidence has been put forward by the investigation to show that there was any particular chat regarding the contraband in any of these communications.

12. The medical report of the petitioner was requisitioned from the Jail Superintendent details of which are extracted below:

*“As per available records, he is a known case of Chronic Myeloid Leukemia (CML). He is under treatment with jail duty doctors, medicine specialists doctors, hematology department of Safdarjung hospital and surgery and eye department of DDU hospital.*

*The inmate / patient was seen by jail duty doctor and medicine specialist doctor with alleged history of Chronic Myeloid Leukemia (CML) since 2017. He was advised treatment, investigation and hematology opinion.*

*He was referred to Safdarjung hospital (SJH) / hematology department on 07.09.2022 wherein he was advised blood investigation and to review with reports on 22.09.2022. Accordingly, his blood tests were done in central jail hospital and he was scheduled for review in SJH on 22.09.2022 however, he could not go due to shortage of DAP staff.*





*He was again sent to hematology OPD of SJH on 29.09.2022 for review, wherein he was reviewed, advised treatment for three months.*

*He was referred to DDU hospital, surgery department on 03.10.2022 for complaints of bleeding per rectum (on and off). On examination, he had no active bleeding and external hemorrhoids at 5 O' clock for which he was advised medication, silts bath, ointment for local application and high fiber diet.*

*On 30.09.2022, inmate / patient was referred to DDU hospital emergency department for complaints of redness in right eye, wherein he was examined by ophthalmologist and he was advised appropriate treatment and to review in eye OPD.*

*Accordingly, he was referred to DDU hospital ophthalmology department on 10.10.2022 with history of redness I eye. On examination, he had resolving sub conjunctival hemorrhage right eye , for which he was advised treatment and to review after 15 days. He was again reviewed in DDU hospital / ophthalmology department on 26.10.2022. On examination, his sub conjunctival hemorrhage resolved.*

*The Hon'ble Court order dated 20.10.2022 was received on 29.10.2022. In compliance to this the Hon'ble Court order an appointment with Dr. Dinesh Jain, Hematologist, Maharaja Agrasen Hospital, Punjabi Bagh was taken for 01.22.2022. Accordingly, he was reviewed and was advised medication and investigation.*

*Thereafter, he was reviewed by hematologist in Maharaja Agrasen Hospital on 10.01.2023, 14.02.2023, 17.03.2023 and 18.04.2023. He was advised appropriate medications, investigations and to take Gastroenterology opinion in view of bleeding per rectum. He was again reviewed with hematologist on 03.05.2022. He was advised appropriate medication and asked to review after 1 month.*



*The inmate/patient was reviewed in G B Pant hospital Gastroenterology department and he was advised to review with investigations on 03.05.2022 for sigmoidoscopy test. Accordingly, he was referred to Gastroenterology department of G B Pant hospital on 03.05.2023 for sigmoidoscopy test, but the same could not be done as his bowel was not adequately prepared. On patient's request, his sigmoidoscopy test was rescheduled for 12.05.2023.*

*At present, the general medical condition of inmate/patient is stable and he is receiving all prescribed treatment as advised by Maharaja Agrasen Hospital. He is under regular follow up jail dispensary."*

13. Learned counsel for the petitioner *inter alia* adverted to the following decisions:

- i) ***Bharat Chaudhary v. Union of India***, 2021 SCC OnLine SC 1235 where while dealing with an SLP against the bail order of the accused-petitioner, the Hon'ble Supreme Court held that:

*"10. ... Most importantly, none of the tablets were seized by the prosecution during the course of the search conducted, either at the office or at the residence of A-4 at Jaipur, on 16th March, 2020. Reliance on printouts of Whatsapp messages downloaded from the mobile phone and devices seized from the office premises of A-4 cannot be treated at this stage as sufficient material to establish a live link between him and A-1 to A-3, when even as per the prosecution, scientific reports in respect of the said devices is still awaited.*

*11. In the absence of any psychotropic substance found in the conscious possession of A-4, we are of the opinion that mere reliance on the statement made by A-1 to A-3 under Section 67 of the NDPS Act is too tenuous a ground to sustain the impugned order dated 15th July, 2021. This is all the more so*



when such a reliance runs contrary to the ruling in *Tofan Singh (supra)*...”

ii) In *Union of India v. Shiv Shanker Kesari*, (2007) 7 SCC 798 it was held as under:

“8. The word “reasonable” has in law the *prima facie* meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word “reasonable”.

“7. ... In *Stroud's Judicial Dictionary*, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word ‘reasonable’. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy.”

(See *Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar* [(1987) 4 SCC 497] (SCC p. 504, para 7) and *Gujarat Water Supply and Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd.* [(1989) 1 SCC 532]

9. “9. ... It is often said that ‘an attempt to give a specific meaning to the word “reasonable” is trying to count what is not number and measure what is not space’. The author of *Words and Phrases (Permanent Edn.)* has quoted from *Nice & Schreiber, In re* [123 F 987 at p. 988] to give a plausible meaning for the said word. He says ‘the expression “reasonable” is a relative term, and the facts of the particular controversy must be considered before the question as to what constitutes reasonable can be determined’. It is not meant to be expedient or convenient but certainly something more than that.” [Ed. : As observed in *Rena Drego v. Lalchand Soni*, (1998) 3 SCC 341, p. 346, para 9.]

10. The word “reasonable” signifies “in accordance with reason”. In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the



*circumstances in a given situation. (See Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd. [(2003) 6 SCC 315])*

*11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.”*

**iii)** In ***CBI v. K. Narayana Rao***, (2012) 9 SCC 512 it was held as under:

*“24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence.”*



14. Post appreciation of the contentions of the parties and the documents on record, this Court is of the considered opinion, that the petitioner is entitled to be enlarged on bail subject to the conditions stated below. *Firstly*, the petitioner cannot be said to have been in conscious possession of the contraband, since despite being the consignee, the contraband was intercepted before it came to his possession. *Secondly*, from the sequence of events, facts and circumstances, it seems *prima facie* that the petitioner was merely acting as a trader oblivious of the contraband hidden in the consignment, since he was consigning it at a commercial price and selling it to a named buyer at a commercial price and making a reasonable profit out of it. *Thirdly*, there is no evidence on record to show that there was discussion regarding contraband between the petitioner and the Afghani exporter. *Fourthly*, the acceptance of Rs. 11 lakhs in cash *prima facie* seems to be in context of a regular trading deal and there is no windfall gain that was found in the hands of the petitioner. *Fifthly*, the petitioner clearly had an established reputation in the industry as evident from the certificates of appreciation from multiple state authorities, and was an unlikely candidate for involvement in large scale smuggling of contraband. *Sixthly*, there is no suggestion or evidence that the earlier transaction with Nazir was illegal or suspicious. *Seventhly*, by specifying the receiver of the consignment, it seems *prima facie* that the petitioner was used as an intermediary, without knowledge of the smuggled contraband. *Finally*, aside from the above, the petitioner is suffering from a critical illness (and requires consistent medical attention, as evident from the medical report extracted above) and is not a flight risk, being a resident of Delhi and has clean antecedents.

15. This Court takes guidance from the following decisions of the Hon'ble Supreme Court, for the above assessment:



- i) On the issue of conscious possession, in *Union of India v. Mohd. Nawaz Khan*, (2021) 10 SCC 100, it has been held as under:

“24. In the present case, the High Court while granting bail to the respondent adverted to two circumstances, namely, (i) absence of recovery of the contraband from the possession of the respondent; and (ii) the wrong name in the endorsement of translation of the statement under Section 67 of the NDPS Act.

25. We shall deal with each of these circumstances in turn. The respondent has been accused of an offence under Section 8 of the NDPS Act, which is punishable under Sections 21, 27-A, 29, 60(3) of the said Act. Section 8 of the Act prohibits a person from possessing any narcotic drug or psychotropic substance. The concept of possession recurs in Sections 20 to 22, which provide for punishment for offences under the Act. In *Madan Lal v. State of H.P.* [*Madan Lal v. State of H.P.*, (2003) 7 SCC 465 : 2003 SCC (Cri) 1664] this Court held that : (SCC p. 472, paras 19-23 & 26)

“19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.

20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.

21. It is highlighted that unless the possession was coupled with the requisite mental element i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.



22. The expression “possession” is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in *Supt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja* [*Supt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038*] to work out a completely logical and precise definition of “possession” uniform[ly] applicable to all situations in the context of all statutes.

23. The word “conscious” means awareness about a particular fact. It is a state of mind which is deliberate or intended.

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26. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.”

26. What amounts to “conscious possession” was also considered in *Dharampal Singh v. State of Punjab* [*Dharampal Singh v. State of Punjab, (2010) 9 SCC 608 : (2010) 3 SCC (Cri) 1431*], where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In *Mohan Lal v. State of Rajasthan* [*Mohan Lal v. State of Rajasthan, (2015) 6 SCC 222 : (2015) 3 SCC (Cri) 881*], this Court also observed that the term “possession” could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or



*personal knowledge as to the existence of the contraband and the intention based on this knowledge.”*

(emphasis added)

- ii) On the issue of the twin conditions for bail, in ***Mohd. Muslim v. State (NCT of Delhi)***, 2023 SCC OnLine SC 352 it was held as under:

“20. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

21. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India v. Rattan Malik*19). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. *Satender Kumar Antil supra*). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.”

(emphasis added)





## **Conclusion**

16. On a *prima facie* assessment therefore, of the above facts and circumstances, this Court is of the considered opinion that there were reasonable grounds to believe that the petitioner's guilt may not be proved and further there is no material on record to show that he was likely to commit any offence while on bail. In light of the above, and that the trial in the matter is likely to take some time, and it would not be prudent to keep the petitioner behind bars for an indefinite period, particularly considering his medical condition, this Court finds it to be a fit case for grant of bail to the petitioner.

17. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 1,00,000/- with one surety of a family member of the like amount, subject to the satisfaction of the Ld. Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Ld. Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not



switch off or change the mobile number without prior intimation to the IO concerned. The mobile location be kept on at all times.

vi. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.

vii. Petitioner shall report to the IO every Saturday between 4 and 5pm, through video call to register his presence and his location.

18. Needless to state, any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

19. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

20. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

**ANISH DAYAL, J**

**MAY 30 , 2023/sm**