

Kalu Ram Vs State Of Himachal Pradesh

Court: High Court Of Himachal Pradesh

Date of Decision: Jan. 15, 2025

Acts Referred: Constitution of India, 1950 " Article 21, 32, 226

Bharatiya Nagarik Suraksha Sanhita, 2023 " Section 483

Code of Criminal Procedure Act, 1973 " Section 437, 438, 439

Indian Penal Code, 1860 " Section 34, 116, 120B, 147, 148, 149, 302, 307

Narcotic Drugs and Psychotropic Substances Act, 1985 " Section 8, 21, 22, 29, 37, 37(1)(b), 52A

Unlawful Activities [Prevention] Act, 1967 " Section 10, 13, 17, 18, 18A, 18B, 20, 21, 38, 39, 40(2), 43D(5)

Prevention of Money Laundering Act, 2002 " Section 45(1)(ii)

Hon'ble Judges: Ranjan Sharma, J

Bench: Single Bench

Advocate: Vinay Thakur, Maan Singh, Pratyush Sharma

Final Decision: Allowed

Judgement

Ranjan Sharma, J

1. Bail petitioner [Kalu Ram], who is in custody since 14.02.2024 has come up before this Court, seeking regular bail, under Section 483 of the

Bhartiya Nagrik Suraksha Sahinta, (hereinafter referred to as BNSS), originating from FIR No.33 of 2024 dated 14.02.2024, registered at Police

Station, Kullu, District Kullu [H.P.], under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act (referred to as the NDPS

Act).

FACTUAL MATRIX IN BAIL PETITION:

2. Case set up by Mr. Vinay Thakur and Mr. Maan Singh, Learned Counsels is that the bail petitioner has been falsely implicated in FIR No. 33 of

2024 dated 14.02.2024, registered at Police Station, Kullu, District Kullu [H.P.], under Sections 21 and 29 of the Narcotic Drugs and Psychotropic

Substances Act (referred to as the NDPS Act). It is averred that bail petitioner has not committed any offence and he is not connected with alleged

recovery of contraband. Moreover, it is submitted that bail petitioner is an old man and nothing is recoverable from him and Investigation is complete

and further detention will not serve any purpose. It is further averred that the rigors of Section 37 of NDPS Act are not attracted as police is alleged

to have implicated the petitioner, of 27 gms of Heroin/Chitta, which comes within the ambit of Intermediate Quantity, which as per the bail petitioner

does not relate to him.

2(i). It is averred that the bail petitioner has moved an application for bail before Learned Special Judge, Kullu, which was dismissed on 19.03.2024,

Annexure P-1 and then, 2nd bail petition before this Court, which was withdrawn on 13.04.2024, Annexure P-2, and thereafter, 3rd bail petition was

also dismissed by the Learned Special Judge-II, Kullu, on 13.05.2024, Annexure P-3.

2(ii). It is further averred that there is no evidence to connect the bail petitioner with the accusation and he has been wrongly and falsely implicated

with the alleged contraband. Bail petitioner has furnished an undertaking that he abide by all the terms and conditions as will be imposed by this Court.

Bail petitioner has further averred that he shall not cause any inducement, threat or promise to any person or persons acquainted with the facts of the

case and shall not flee away from investigation and trial.

It is averred that personal liberty of the bail petitioner under Article 21 of the Constitution of India could neither be curtailed or taken away by way of

penalty, by prolonging the detention just by presuming the guilt against the bail petitioner. Instant bail petition has been filed by bail petitioner, through

his son, with the prayer for releasing the petitioner on bail.

STAND OF STATE AUTHORITIES IN STATUS REPORTS:

3. Pursuant to the issuance of notice, on 02.08.2024, the State Authorities have furnished the Status Report dated 08.08.2024 and

thereafter 2nd Status Report dated 24.08.2024 and thereafter in-order to bring on record the criminal antecedents a Fresh Status Report dated

23.09.2024 was filed by State Authorities, and the Last Status Report dated 28.11.2024, was filed by State Authorities, in order

to show the stage and status of investigation and the trial originating from the FIR in instant case. Perusal of Status Reports reveal that

they contain pari-materia.

3(i). Perusal of Status Reports, indicates that on 14.02.2024, while the police party headed by Head Constable Ram Chand No. 443, was patrolling

towards Babeli, Raison, near JNV School Road at NH-03, at about 01:40 p.m., the police patrolling party noticed two persons coming on foot from

Bandrol side, who came to be Sahil Thakur and Ronit Thakur, who on noticing the police, threw something behind them in the jungle and as soon as

the police went to the jungle to trace the articles thrown by Sahil Thakur and Ronit Thakur, the police noticed two other persons in the jungle and on

seeing the police these two persons namely Kalu Ram {bail petitioner} and co-accused Chandan, became perplexed and they threw a plastic

envelope, which was seized by the police and the same came out to be containing contraband i.e. Heroin /Chitta of 27 Kgs and after completing all

codal formalities, including filling of NCB forms etc., a rukka was sent, leading to, registration of, FIR, on 14.02.2024.

3(ii). Pursuant to arrest of bail petitioner, police started the investigation. Both the bail petitioner and co-accused Chandan, were made to undergo

medical examination at Regional Hospital, Kullu. It is averred that police remand was granted. Thereafter inventory under Section 52-A of NDPS Act

was got prepared at the instance of police from the Magistrate on 16.02.2024 and samples were sent to RFSL and RFSL Report dated 08.03.2024,

was received affirming alleged contraband to be heroin/chitta, weighing 27 gms. Status Reports indicate that in addition to the present case, bail

petitioner has been involved in three other cases i.e. [i] FIR No. 282 of 2018, dated 11.11.2028, which is fixed for PWs evidence; [ii] FIR No.130 of

2021, dated 05.08.2021; and [iii] FIR No.67 of 2023, dated 07.06.2023, in which after the completing investigation, police reports stand filed and the

matter is fixed for consideration on charge before the Learned Special Judge.

In the above backdrop, the Learned State Counsel has prayed for dismissing the bail petition.

4. Heard Mr. Vinay Thakur and Mr. Maan Singh, Learned Counsels for the bail petitioner and Mr. Pratyush Sharma, Learned Additional Advocate

General, for the respondent-State.

STATUTORY PROVISIONS:

5. Before proceeding to analyse the claim for bail, it is necessary to have a recap of statutory provisions of Section 21 and 29 of the NDPS Act, which

reads as under :-

“Section 21 of the NDPS Act reads as under:

21. Punishment for contravention in relation to manufactured drugs and preparations-

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells,

purchases, transports, imports inter-State, exports inter -State or uses any manufactured drug or any preparation containing any manufactured drug shall be

punishable,-

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten

thousand rupees, or with both;

(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which

may extend to ten years and with fine which may extend to one lakh rupees;

(c) where the offence involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which

may extend to twenty years, and shall also be liable to fine, which shall not be less than one lakh rupees but which may extend to two lakh rupees;

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

29. Punishment for abetment and criminal conspiracy.-

(1) Whoever abets or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in

consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of

1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets, or is, a party to,

the criminal conspiracy to the commission of any act in a place without and beyond India which-

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required, to constitute it, such

an offence the same as or analogous to the legal conditions, required, to constitute it an offence punishable under this Chapter, if committed within

India.

MANDATE OF LAW ON BAIL:

6. Broad parameters have been mandated by the Hon'ble Supreme Court, regulating the bail in the cases of Gurbaksh Singh Sibbia versus State of

Punjab (1980) 2 SCC 565, Ram Govind Upadhyay versus Sudarshan Singh (2002) 3 SCC 598; Kalyan Chandra Sarkar versus Rajesh Ranjan, (2004)

7 SCC 528; Prasanta Kumar Sarkar versus Ashish Chatterjee, (2010) 14 SCC 496; reiterated in P. Chidambaram versus Directorate of Enforcement,

(2019) 9 SCC 24, that bail is to be granted where the allegation is frivolous or groundless and in case neither any prima facie case nor reasonable

grounds exists to believe or point towards the accusation. However, depending upon the facts of each case, the bail can be refused in case, the prima

facie case or reasonable grounds exists and the offence is serious, severity of punishment, reasonable apprehension of fleeing away from investigation

and the trial, and the Character, including past antecedents, behavior, means, position and standing of the accused; likelihood of offence being

repeated; reasonable apprehension of witnesses being influenced and danger of justice being thwarted by grant of bail etc; and then in Sushila

Aggarwal versus State-NCT Delhi, (2020) 5 SCC 01; CBI versus Santosh Karnani (2023) 6 SCALE 250; have been reiterated by the Honble

Supreme Court in State of Haryana versus Dharamraj, 2023 SCC Online SC 1085, as under:

“ (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) Character, behaviour, means, position and standing of the accused;

(vi) Likelihood of the offence being repeated;

(vii) Reasonable apprehension of the witnesses being influenced and

(viii). Danger, of course, of justice being thwarted by grant of bail.”

6(i). In normal parlance, the principle of law is that bail is a rule and jail is an exception. However, this Court is conscious of the fact that the power to

grant or refuse bail is an extraordinary power, which has to be sparingly exercised subject to the anvil of the time tested parameters and restrictions

imposed in law. It is trite law that while considering prayer for bail (pre-arrest bail or regular bail), the factum of prolonged pre-conviction

incarceration and the right of speedy trial has to be taken into account, in the background of the fact as to whether delay in trial was attributable to an

accused or not. Another added factor and not the sole factor of past criminal antecedents; and the factum as to whether an accused has misused

concession-liberty granted earlier. While considering the prayer for bail, the balance has to be carved out between the liberty of an accused vis-à-vis

the societal interests, including danger of justice being thwarted in case the bail is granted.

6(ii). This Court is also conscious of the fact that as per the mandate of law, in Criminal Appeal No. 3840 of 2023, titled as Saumya Churasia versus

Directorate of Enforcement, decided on 14.12.2023, while considering the prayer for bail, the Court is not required to weigh the evidence,

collected by the Investigating Agency meticulously, nonetheless, the Court should keep in mind the nature of accusation, the nature of

evidence collected in support thereof, the severity of punishment prescribed for alleged offences, the character of accused, the circumstances which

are peculiar to accused, reasonable possibility of securing the presence of accused during trial, reasonable apprehension of witnesses being tampered

with and the larger public/state interests. It is in this background, that the claim for bail is to be examined by a Court without delving into the evidence

on merits but by forming a prima-facie opinion on totality of facts in light of broad-parameters referred to above.

6(iii). Even a suspect or an accused under the NDPS Act does not have any vested right or an automatic claim for bail, merely on

the ground, that alleged quantity of contraband is either small or intermediate. While considering the prayer for bail, even in \tilde{A} , offences \tilde{A} , under the \tilde{A} ,

NDPS, relating to \tilde{A} , small or intermediate quantity, still the claim is required to be tested \tilde{A} , in the \tilde{A} , backdrop of broad parameters mandated by the

Hon \tilde{A} \hat{a} , $\sim \hat{a}$, ϕ ble Supreme Court, as referred to above.

The exception to this principle is that the enlargement on bail {be it relates to either small or intermediate quantity of contraband} can be extended

depending on facts of each case, in case, the prima facie accusation does not points towards involvement and no reasonable grounds exit, when, no

recovery was made by the police from the accused or when, the alleged recovery by police appears to be highly doubtful without there being any

connecting material to infer prima facie accusation and after taking into account other parameters mandated by the Hon \tilde{A} \hat{a} , $\sim \hat{a}$, ϕ ble Supreme Court as

referred to above.

ANALYSIS OF CLAIM FOR BAIL IN INSTANT CASE:

7. Taking \tilde{A} , into \tilde{A} , account \tilde{A} , the \tilde{A} , entirety \tilde{A} , of \tilde{A} , facts and \tilde{A} , circumstances \tilde{A} , and \tilde{A} , the \tilde{A} , material \tilde{A} , on \tilde{A} , record \tilde{A} , as borne out from Status

Reports, this Court is of the considered view, that the bail petitioner [Kalu Ram], is entitled to enlarged on bail, for the following reasons:-

NO PRIMA-FACIE ACCUSATION AGAINST THE BAIL PETITIONER:

7(i). Status Reports and the material on record do not point out any prima facie case or reasonable grounds to believe the accusation against the bail

petitioner.

7(ii). The Prosecution story in Status Reports is that on 14.02.2024, while the police party headed by Head Constable Ram Chand No. 443, was

patrolling towards Babeli, Raison, near JNV School Road at NH-03, at about 01:40 p.m., the police patrolling party noticed two persons coming on foot

from Bandrol side, who came to be Sahil Thakur and Ronit Thakur, and after noticing the police, they threw something behind them in the jungle and

as soon as the police went to the jungle to trace the articles thrown by Sahil Thakur and Ronit Thakur, then, in the jungle, the police noticed two other

persons, Kalu Ram {bail petitioner} and the co-accused Chandan, who became perplexed and threw a plastic envelope, which was seized by the

police and the same came out to be containing contraband i.e. Heroin / Chitta of 27 Kgs.

The above prosecution story at this stage appears to be highly doubtful, at this stage, for the reason, that the State Authorities have not made any

assertion-averment in the Status Reports that the substance thrown by two other persons, namely, Sahil Thakur and Ronit Thakur was traced by the

police, which was different from plastic envelope as alleged to have been attributed to the bail petitioner {Kalu Ram} and co accused Chandan. Even

the State Authorities have not placed on record any material i.e. Statements of two other persons namely Sahil Thakur and Ronit Thakur, who were in

jungle and before whom, the alleged plastic envelope containing contraband was recovered-seized by police from the bail petitioner [Kalu Ram] and

co-accused Chandan, as aforesaid. Moreover, no recovery was made by police upon personal search from the bail petitioner. Accordingly, the

prosecution story becomes highly doubtful and not worthy of credence and in these circumstances, neither any prima facie accusation is not made out

nor any reasonable grounds exist against the bail petitioner, at this stage.

7(iii). Status Reports filed by State Authorities, does not indicate anything to show that the bail petitioner is involved, in, offence under, Section

21 of the, NDPS Act. Even otherwise, the accusation is a matter to be, tested, examined and proved, during the trial. Presumption of guilty at

this stage before conclusion of trial defeats the personal liberty of the petitioner. In these circumstances, plea of the bail petitioner for bail has carries

weight and the same is accordingly accepted.

7(iv). Accusation, under, Section, 29, of, NDPS, Act alleging abatement or criminal conspiracy is a matter which is to be tested, examined

and proved on by way of evidence during the trial. The continued detention alleging abatement or criminal conspiracy without there being any cogent

material on record, certainly amount to incarcerating the petitioner by way punishment is impermissible and in these circumstances, the prayer for bail

has merit and the same is accordingly accepted.

PROLONGED INCARCERATION AND INFRINGEMENT OF PERSONAL LIBERTY UNDER ARTICLE 21 OF THE CONSTITUTION OF INDIA:

8. While reiterating, the, principle, that, bail, is a rule, and, jail, is, an, exception, and, no, accused, can be deprived, of

personal, liberty, on, mere, accusation and an accused is to be treated as innocent in the eyes of law, the Hon'ble Supreme Court has

outlined the object of bail in Guddan alias Roop Narayan Versus State of Rajasthan, 2023 SCC OnLine SC 1242, in the following terms:-

11. In, the, case, of, Sanjay, Chandra, V., Central Bureau of Investigation, (2012) 1 SCC 40, while hearing a bail Application in a case of an alleged

economic offence, this court held that the object of bail is neither punitive nor preventative. It was observed as under:

21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by

reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to

ensure that an accused person will stand his trial when, called, upon. The, courts, owe more than verbal respect to the principle that punishment begins

after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a

substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted

for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

25. The provisions of Cr PC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the

jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society

in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our

system of law and normal rule of bail system. It transcends respect, for, the, requirement, that a man shall be considered innocent until he is found guilty. If

such power is recognised, then it, may, lead, to, chaotic, situation and would jeopardise the personal liberty of an individual.

27. This, Court, time, and, again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on

the personal, liberty of, the individual guaranteed under Article 21 of the Constitution.

12. Further, in, the, case, of, Sandeep, Jain, v. National Capital Territory of Delhi, (2000) 2 SCC 66, this Court, while hearing a bail application held that

conditions for grant of bail cannot become so onerous that their existence itself is tantamount to refusal of bail. This Court held as under:

We, are, unable, to, appreciate, even, the first, order, passed, by, the, Metropolitan Magistrate imposing the onerous condition, that, an,

accused, at, the, FIR stage, should, pay, a, huge, sum, of, Rs. 2 lakhs to be set at liberty. If he had Rs.2 lakhs, If, the, cheques, issued,

by his surety were dishonoured, the Court could perhaps have taken it as a paid it, is, a, different, matter. But, the fact that, he, was, not, able,

to, pay that amount, and in default thereof he is, to, languish in jail, for more than 10 months now, is sufficient indication that he was unable to make up

the, amount. Can, he, be, detained in custody endlessly for his inability to pay, the amount in the range, of, ground to suggest to the payee of the

cheques to resort to the legal remedies provided by law.

Similarly, if, the, Court, was, dissatisfied with, the, conduct, of, the, surety, as, for his failure to raise funds for honouring the, cheques,

issued, by, him, the, Court could have directed the appellant to substitute him with another surety. But to keep him in prison for such a long period, that

too in a case where bail would normally be granted for the offences alleged, is not only hard but improper. It must be remembered that the Court has not even,

come, to, the, conclusion, that, the allegations, made, in, the, FIR, are, true. That can be decided only when the trial, concludes, if, the,

case, is, charge- sheeted by the police.

BAIL TO ENSURE AND SAFEGUARD PERSONAL LIBERTY IN ARTICLE 21:

9. While dealing with the concept of bail and personal liberty of an accused under Article 21 of the Constitution of India, the Hon'ble Supreme

Court in Criminal Appeal No.2787 of 2024, titled as Javed Gulam Nabi Shaikh Versus State of Maharashtra and Another, has held :-

"18 Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist

fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a

variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental

neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a

speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that

the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be

innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21 We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the, right, of the accused to, have, a,

speedy, trial, could be said, to have been, , infringed, , thereby violating Article 21 of the Constitution.

22 In view of the aforesaid, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court is set aside.

9(i). Prolonged incarceration and deprivation of speedy trial amounts to curtailing the sacrosanct right of personal liberty and in these circumstances,

denial of bail can neither be punitive nor preventative de hors the principle that bail is rule and jail is an exception, in view of the mandate of the Hon'ble

Supreme Court, in Manish Sisodia vs Directorate of Enforcement, SLP (Criminal) No.8781 of 2024, decided on 09.08.2024, as under :-

"49. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has

been deprived of his right to speedy trial.

50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court

ought to have given due weightage to this factor.

52. The Court also reproduced the observations made in Gudikanti Narasimhulu (supra), which read thus:

“10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in Gudikanti Narasimhulu v. Public

Prosecutor, High Court reported in (1978) 1 SCC 240. We quote:

“What is often forgotten, and therefore warrants reminder, is, the object, to keep a person in judicial custody pending trial or disposal of an appeal.

Lord Russell, C.J., said [R v. Rose, (1898) 18 Cox]:

“I observe, that, in this case, bail was refused for the prisoner. It cannot be, too strongly, impressed on the, magistracy of the country that

bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial.”

53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be

withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The

principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases,

this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should

recognize the principle that “bail is rule and jail is exception.”

55. As observed by this Court in the case of Gudikanti Narasimhulu (supra), the objective to keep a person in judicial custody pending trial or disposal of an appeal is

to secure the attendance of the prisoner at trial.

56. In the present case, the appellant is having deep roots in the society. There is no possibility of him fleeing away from the country and not being available for

facing the trial. In any case, conditions can be imposed to address the concern of the State.

57. Insofar as, the apprehension, given, by, the learned, ASG, regarding, the, possibility, of, tampering the evidence is, concerned, it, is

to be noted that the case, largely, depends on documentary evidence which, is, already, seized, by, the, prosecution. As, such, there is no

possibility of tampering, with the evidence. Insofar as the concern, with regard, to influencing the witnesses, is, concerned, the, said, concern,

can, be, addressed by imposing stringent conditions, upon the appellant.”

9(ii). While, adjudicating the, claim for bail, even under, Special Enactments, like PMLA, [akin to NDPS Act], the Hon'ble Apex Court in

Criminal Appeal No._____ of 2024 [Arising out of SLP (Criminal) No., 10778 of 2024], titled as Kalvakuntla Kavitha Versus Directorate of

Enforcement and connected matter has mandated that the fundamental right of liberty in Article 21 of the Constitution of India is superior to the

statutory restrictions, in following terms :-

“13. We had also reiterated the well-established principle that “bail is the rule and refusal is an exception”. We had further observed that the fundamental right

of liberty provided under Article 21 of the Constitution is superior to the statutory restrictions.

9(iii). While dealing with the claim for bail under Special Enactments and rigors of Section 45 (1) (ii) of PMLA and proviso to Section 43-D (5) of the

Unlawful Activities [Prevention] Act, 1967 and Section 37 of NDPS Act, the Hon’ble Supreme Court in Criminal Appeal No.4011 of 2024, in V.

Senthil Balaji Versus The Deputy Director, Directorate of Enforcement, has mandated that the rigours and restrictions in Special Enactments,

including Section 37 of NDPS Act, will melt down where there is no likelihood of trial being completed in a reasonable time and period of incarceration

already undergone may be, exposed to, vice, of being, violative of, Article 21 of Constitution of India, in the following terms:-

“24. There are a few penal statutes that make a departure from the provisions of Sections 437, 438, and 439 of the Code of Criminal Procedure, 1973.

A higher threshold is provided in these statutes for the grant of bail. By way of illustration, we may refer to Section 45(1)(ii) of PMLA,

proviso to Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 and Section 37 of the Narcotic, Drugs, and Psychotropic Substances Act, 1985

(for short, “NDPS Act”). The provisions regarding bail in some of such statutes start with a non obstante clause for overriding the provisions of Sections

437 to 439 of the CrPC. The legislature has done so to secure the object of making the penal provisions in such enactments. For example, the PMLA provides for

Section 45(1)(ii) as money laundering poses a serious threat not only to the country's financial system but also to its integrity and sovereignty.

25. Considering the gravity of the offences in such statutes, expeditious disposal of trials for the crimes under these statutes is contemplated. Moreover, such

statutes contain provisions laying down higher threshold for the grant of bail. The expeditious disposal of the trial is also warranted considering the higher threshold

set for the grant of bail. Hence, the requirement of expeditious disposal of cases must be read into these statutes. Inordinate delay in the conclusion of the trial and

the higher threshold for the grant of bail cannot go together. It is a well settled principle of our criminal jurisprudence that “bail is the rule, and jail is the

exception.” These stringent provisions regarding the grant of bail, such as Section 45(1)(iii) of the PMLA, cannot become a tool which can be used to incarcerate the

accused without trial for an unreasonably long time.

26. There are a series of decisions of this Court starting from the decision in the case of K.A. Najeeb, which hold that such stringent provisions for the grant of bail

do not take away the power of Constitutional Courts to grant bail on the grounds of violation of Part III of the Constitution of India. We have already referred to

paragraph 17 of the said decision, which lays down that the rigours of such provisions will melt down where there is no likelihood of trial being completed in a

reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. One of the reasons is that if, because

of such provisions, incarceration of an under-trial accused is continued for an unreasonably long time, the provisions may be exposed to the vice of being violative

of Article 21 of the Constitution of India.

27. Under the Statutes like PMLA, the minimum sentence is three years, and the maximum is seven years. The minimum sentence is higher when the scheduled

offence is under the NDPS Act. When the trial of the complaint under PMLA is likely to prolong beyond reasonable limits, the Constitutional Courts will have to

consider exercising their powers to grant bail. The reason is that Section 45(1)(ii) does not confer power on the State to detain an accused for an unreasonably long

time, especially when there is no possibility of trial concluding within a reasonable time. What a reasonable time is will depend on the provisions under which the

accused is being tried and other factors. One of the most relevant factor is the duration of the minimum and maximum sentence for the offence. Another important

consideration is the higher threshold or stringent conditions which a statute provides for the grant of bail. Even an outer limit provided by the relevant law for the

completion of the trial, if any, is also a factor to be considered. The extraordinary powers, as held in the case of K.A. Najeeb, can only be exercised by the

Constitutional Courts. The Judges of the Constitutional Courts have vast experience. Based on the facts on record, if the Judges conclude that there is no possibility

of a trial concluding in a reasonable time, the power of granting bail can always be exercised by the Constitutional Courts on the grounds of violation of Part III of the

Constitution of India notwithstanding the statutory provisions. The Constitutional Courts can always exercise its jurisdiction under Article 32 or Article 226, as the

case may be. The Constitutional Courts have to bear in mind while dealing with the cases under the PMLA that, except in a few exceptional cases, the maximum

sentence can be of seven years. The Constitutional Courts cannot allow provisions like Section 45(1)(ii) to become instruments in the hands of the ED to continue

incarceration for a long time when there is no possibility of a trial of the scheduled offence and the PMLA offence concluding within a reasonable time. If the

Constitutional Courts do not exercise their jurisdiction in such cases, the rights of the undertrials under Article 21 of the Constitution of India will be defeated. In a

given case, if an undue delay in the disposal of the trial of scheduled offences or disposal of trial under the PMLA can be substantially attributed to the accused, the

Constitutional Courts can always decline to exercise jurisdiction to issue prerogative writs. An exception will also be in a case where, considering the antecedents of

the accused, there is every possibility of the accused becoming a real threat to society if enlarged on bail.

The jurisdiction to issue prerogative writs is always discretionary.

29. As stated earlier, the appellant has been incarcerated for 15 months or more for the offence punishable under the PMLA. In the facts of the case, the trial of the

scheduled offences and, consequently, the PMLA offence is not likely to be completed in three to four years or even more. If the appellant's detention is continued, it

will amount to an infringement of his fundamental right under Article 21 of the Constitution of India of speedy trial.

31. Therefore, the appeal is allowed, and the appellant shall be enlarged on bail till the final disposal of CC No. 9 of 2023 pending before the Principal

Session Judge, Chennai, on the following conditions:

9(iv). Despite the statutory embargoes in Special Enactments, the bail was granted in case of prolonged incarceration with no likelihood of completion

of trial, which makes the detention punitive, the Hon'ble Supreme Court in Criminal Appeal No. 5266 of 2024 (Arising out of SLP (CRL.) No.

13870 of 2024, titled as Partha Chatterjee Versus Directorate of Enforcement, decided on 13.12.2024, 2024 SCC Online SC 3729, has reiterated the

paramount importance of right to life and liberty under Article 21 of the Constitution of India, in the following terms:-

"13. We have considered the rival submissions and carefully examined the material on record. At the outset, it is worth reiterating that this Court, through a catena

of decisions, has consistently emphasized that prolonged incarceration of an accused awaiting trial unjustly deprives them of their right to personal liberty. Even

statutory embargoes on the grant of bail must yield when weighed against the paramount importance of the right to life and liberty under Article 21 of the

Constitution, particularly in cases where such incarceration extends over an unreasonably long period without conclusion of trial.

17. We, however, cannot be oblivious to the settled principles that a suspect cannot be held in custody indefinitely and that undertrial incarceration should not

amount to punitive detention. The Court would, nevertheless, ensure that affluent or influential accused do not obstruct the ongoing investigation, tamper with

evidence, or influence witnesses, namely, actions that undermine the fundamental doctrine of a fair trial.

18. Striking a balance between these considerations and without expressing any opinion on the merits of the allegations, we deem it appropriate to dispose of this

appeal with the following directions:

f. The Petitioner shall thereafter be released on bail on 01.02.2025, subject to his furnishing bail bonds to the satisfaction of the Trial Court.

Keeping in view the factual matrix that neither any prima facie case nor any reasonable grounds exist against the bail petitioner coupled with the fact

the bail petitioner has suffered incarceration for more than 11 months now [since 14.02.2024] and as per Status Report on date of hearing of instant

case {i.e. 4.1.2024}, out of 20 PWs, no PW has been examined and the conclusion of trial is likely to take considerable time and once the

Investigation is complete and the Challan-Final Police Report stands presented before the jurisdictional Court and the bail petitioner is not required for

any further interrogation etc. therefore, in these circumstances, the action of State Authorities in prolonging the detention certainly amounts to

depriving and curtailing the personal liberty of the petitioner on mere accusation or conjectures or surmises, which are yet to be tested, examined and

proved during the trial. Detention can neither be punitive nor preventative, so as to make the petitioner to taste imprisonment as a lesson. Denial of bail

certainly violates the principle that "bail is rule and jail is an exception". State Authorities, have failed to ensure speedy trial, which is still, to

take considerable time for its conclusion, and, therefore, on totality of the facts, as referred to above and the mandate of law

in the cases of Guddan alias Roop Narayan, Javed Gulam Nabi Shaikh, Manish Sisodia, Kalvakuntla Kavitha, Senthil Balaji and Partha Chatterjee

[supra], the claim of the petitioner for bail carries weight and therefore, the petitioner deserves to be released on bail.

PAST CRIMINAL ANTECEDENTS:

10. Learned State Counsel has opposed the claim for bail on the ground that as per the Status Reports, the petitioner has criminal antecedents, who

has been involved in three other cases i.e. [i] FIR No. 282 of 2018, dated 11.11.2028, which is fixed for PWs evidence; [ii] FIR No.130 of 2021, dated

5.8.2021, and, [iii] FIR No.67, of 2023, dated 07.06.2023, in which, after completion of investigation, the challan-

final police report stand filed and matter is fixed for consideration on charge before Learned Special Judge. Based on above criminal antecedents, the

petition is opposed in instant case.

10(i). Before analyzing the contention of the Learned State Counsel it is necessary, to have a recap, of the mandate of law, in

broader sense, as to whether the past criminal antecedents are relevant and in what circumstances and extent thereof and in what circumstances and

to what extent past antecedents turn out to be irrelevant or not much relevant while considering the claim of an accused for bail, which are detailed

here-in-below.

10(ii). While negativating the plea that the past criminal antecedents {i.e. 36 criminal cases of serious nature} cannot solely be the ground for denying

bail or in interfering with the bail order granted by a Court when, an accused was undergoing incarceration coupled with the fact that no cogent

material was placed on record revealing that during bail there is possibility of accused fleeing away from the trial or an accused is likely to threaten

witnesses or is likely to thwart justice, has been outlined by the Honble Supreme Court in *Maulana Mohammed Amir Rashidi versus State of Uttar*

Pradesh, (2012) 2 SCC 382, in the following terms;

4. On the basis of the written complaint in the Police Station, Phoolpur, FIR No 63 of 2009 under Sections 302 and 307 IPC was registered. The second

respondent was arrested only on 24.08.2009. It was further stated by the appellant that the accused is a habitual criminal and has a criminal background having more

than three dozen cases involving serious offences against him.

10. It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of

the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of

the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and

other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.

11. In the case relating to FIR No. 63 of 2009, he was arrested and in jail since 24.08.2009. Another important aspect is that, after filing of charge-sheet on

15.07.2010, prosecution examined two important witnesses as PWs, 1 and 2. This was the position prevailing on 26.07.2010. Even thereafter, now

more than a year has rolled. Counsel appearing for the State assured that the trial will not be prolonged at the instance of the prosecution and ready to complete the

evidence within a period to be directed by this Court. The other objection of the appellant for grant of bail is that he had received threats from the second respondent

and his supporters warning him not to pursue the case against him. It is brought to our notice that based on the representations of the appellant, adequate protection

had already been provided to him.

13. Taking note of all these aspects, particularly, the fact that the second respondent was in jail since 24.08.2009, the trial has commenced by examining the two

witnesses on the side of the prosecution and the assurance by the State that trial will not be prolonged and conclude within a reasonable time and also of the fact

that the High Court while granting bail has imposed several conditions for strict adherence during the period of bail, we are not inclined to interfere with the order of

the High Court. In fact, in the impugned order itself, the High Court has made it clear that in case of breach of any of the conditions, the trial Court will have liberty to

take steps to send the applicant to jail again. In addition to the same, it is further made clear that if the appellant receives any fresh threat from the second

respondent or from his supporters, he is free to inform the trial Court and in such event the trial Court is free to take appropriate steps as

observed by the High Court. We also direct the Trial Court to complete the trial within a period of four months from the date of the

receipt of copy of this order, without unnecessary adjournments.

14. With the above observation, finding no merit for interference with the order of the High Court, the appeal is dismissed.

10(iii). While granting bail to an accused having criminal antecedents and was facing incarceration for 7 months and when, no prima-facie accusation

or reasonable grounds existed, by the Hon'ble Supreme Court in *Prabhakar Tewari Versus State of Uttar Pradesh and another*, (2020) 11 SCC

648, in the following terms:-

“4. Learned counsel for the appellant has submitted that the accused Vikram Singh is involved in at least five other criminal cases under the same Police Station,

Jagdishpur. He has also brought to our notice the witness statement of one Narendra Dev Upadhyay. This statement was recorded on 29th March 2019. The part of

his statement to which our attention has been drawn by learned counsel for the appellant records that the said witness saw Vikram Singh standing near National

Highway 56 Flyover on the date of occurrence of the incident in Warisganj with 6 or 7 accomplices and all of them were talking about plans of killing the victim.

5. We have considered the respective submissions. The facts highlighted by the appellant are that the case involves offence under Section 302 read with Sections

120-B/ 34, 147, 148 and 149 of the Indian Penal Code, 1860. The accused has several criminal cases pending against him and has been named in the statement forming

the basis of the FIR on the date of occurrence itself. Two individuals, Rahul Tiwari and Narendra Dev Upadhyay, whose statements have been recorded under

Section 161 of the 1973 Code also refer to involvement of the accused Vikram Singh.

7. On considering the submissions of the learned counsel for the parties. Having regard to the circumstances of this case, in our opinion, there has been no wrong or

improper exercise of discretion on the part of the High Court in granting bail to the accused. The factors outlined in the case of *Mahipal* (supra) for testing the legality

of an order granting bail are absent in the order impugned. The materials available do not justify arriving at the conclusion that the order impugned suffers from non-

application of mind or the reason for granting bail is not borne out from a prima-facie view of the evidence on record. The offence alleged no doubt is grave and

serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail. The High

Court has exercised its discretion in granting bail to the accused Vikram Singh upon considering relevant materials. No ex-facie error in the order has been shown by

the appellant which would establish exercise of such discretion to be improper. We accordingly sustain the order of the High Court granting bail. This appeal is

dismissed. Criminal Appeal No.153 of 2020 [arising out of SLP (CrI) No.9209 of 2019].

9. The accused, Malkhan Singh, in this appeal. He was named in the FIR by the appellant Prabhakar Tewari as one of the five persons who had

intercepted the motorcycle on which the deceased victim was riding, in front of Warisganj Railway Station (Halt) on the highway. All the five accused persons,

including Malkhan Singh, as per the F.I.R. and majority of the witness statements, had fired several rounds upon the deceased victim. The statement of Rahul Tewari

recorded on 15th March, 2019, Shubham Tewari recorded on 12th April, 2019 and Mahipam Mishra recorded on 20th April 2019 giving description of the offending

incident has been relied upon by the appellant. It is also submitted that there are other criminal cases pending against him. Learned counsel for the accused-

respondent A, no.2 has however pointed out the delay A, in recording the witness statements.

A, The accused has been in custody for about A, seven months. In this case also, we find A, no A, error A, or A, impropriety A, in A, exercise A, of A, discretion by the

High Court in granting A, bail A, to A, the A, accused A, Malkhan A, Singh. A, The A, reason A, why A, we come A, to this conclusion A, is A, broadly A, the A, same A,

as A, in A, the A, previous A, appeal A, This A, appeal A, is A, also A, dismissed A, and A, the order of the High Court is affirmed. A, -â€

10(iv). While A, extending the concession of bail despite A, past A, criminal A, antecedents A, on A, principle A, that A, -Ëœbail is rule and jail is an

exception A, -â„¢, benefit of bail, and an accused is A, presumed A, to A, be A, innocent and in A, the guise of pending A, cases, the presumption A, of guilt

could not be inferred A, as has been outlined by the Hon A, -â„¢ble Supreme Court in Union of India versus Mrityunjay Kumar Singh, 2024 SCC OnLine

SC 852, in the following terms:-

A, -â€9. He A, would A, contend A, that A, there A, are A, other A, three A, (3) A, cases A, registered A, against A, the A, respondent which would suffice to reject A, the bail

in the instant case relying upon A, the letter dated 15.12.2023 written by A, the father A, of A, the A, complainant A, in the case No.225 A, of A, 2023 A, addressed A, to

the State Police alleging that the respondent and his associates are A, threatening A, the life A, of A, the complainant and pressurizing him to withdraw the case and

hence there is every likelihood of the witnesses in the instant case also being threatened therefore he seeks for allowing of the appeal and setting aside the order of

the High Court. He would further contend that the respondent is an influential person and would make all attempts to threaten or influence witnesses and there is

every likelihood that he may succeed in his attempts if he continues to have the benefit of the bail. He would also submit that respondent is an influential and a

person with criminal history and having close ties with many gangsters and criminals apart from the top cadres CPI-Maoist, as such there is every likelihood for the

respondent to tamper with the evidence and influence the witnesses. Hence, he prays for the appeal being allowed and impugned order being set aside.

10. Shri Siddharth Luthra, learned Senior Counsel appearing for the respondent, by supporting the impugned order contends that the High Court has rightly set aside

the order of the Special Judge by granting bail to the respondent conditionally way back on 30.01.2023 and even after lapse of more than 1 year and 3 months, there

being no allegation on the conditions of bail having been violated, itself is a good ground for non-interference with the order of bail granted by the High Court.

Elaborating his submissions, he would contend that the prosecution is seeking for the impugned order being set aside essentially on the ground that respondent is

involved in three (3) cases apart from the case registered by NIA. He would further submit that, the case registered by, Chandwa, PSA, in, Case No.99 of

2014 has, resulted, in acquittal and, in the case No.108 of 2015, the respondent has been enlarged on bail by the High Court of Jharkhand. Lastly, in the case

No.4 of 2020, the respondent has been granted anticipatory bail by the High Court of Jharkhand and as such the purported criminal antecedent did not sway in the

mind of High Court while considering the prayer for grant of bail. Even otherwise the pendency of three (3) other cases would have no bearing for the continuation of

the order of bail granted in favour of the respondent. Hence, he has prayed for rejection of the appeal.

15. As rightly contended by Shri Siddharth Luthra, learned Senior Counsel appearing for respondent, in the first case afore-mentioned the respondent has been

acquitted by judgment dated 07.09.2015 (Annexure R-11). In so far as the cases at Serial No.2 and 3 (supra), the respondent has been enlarged on bail vide orders

dated 10.07.2020 (Annexure R-12) and order dated 10.07.2020. In yet another case registered by Chandwa PS Case No. 225 of 2023 the respondent has been enlarged

on anticipatory bail in ABP No. 426 of 2023.

16. The afore-stated facts when seen cumulatively, it would reflect that respondent having been enlarged on bail conditionally and the conditions so stipulated

having not been violated and undisputedly the appellant-state having not sought for cancellation of the bail till date would be the prime reason for us not to entertain

this appeal. In fact, the apprehension of the Union of India that respondent is likely to pose threat to the witnesses and there was a threat posed to the complainant,

Mr. Sanjay Kumar Tiwari, would not be, a, ground, to, set, aside, the, impugned, order enlarging the respondent on bail, in as much in the, case

referred, against, the respondent for the said offence he has, been granted, bail. That, apart, we, are, of, the, considered view that, there are no

, other overwhelming material on record to, set, aside, the, order, granting, bail, which, out weighs the liberty granted by the High, Court under the

impugned order.,

, 17., Hence, we are of the considered view, that, interference, is, not, warranted., However, to, allay the apprehension of the prosecution

it, would suffice, to, observe, that, the prosecution, would be at liberty, to seek, for cancellation of the bail in the event

, any of the conditions being violated, by the respondent and in the event of such, an application being, filed we see no reason, as to, why, said

application, would not, be, considered, on its own merits by, the, jurisdictional, court, independently, and, without, being, influenced,

by its, earlier observations. We, also, make it, expressly clear that, the observations, made, under, the, impugned order would be,

restricted to the, consideration of the prayer for, bail, and the, jurisdictional court without, being influenced by any of the observation, shall proceed to

adjudicate the case on, merits, after, trial. Subject to, the, above observations, the appeal stands dismissed.

10(v). While, dealing with validity of bail order the Honble Supreme Court has mandated that the criminal antecedents were not much relevant in

case, no prima facie case was made out and the

period of incarceration was prolonged, in Ayub Khan versus, State, of, Rajasthan, 2024, SCC, OnLine, SC 3763, in the following terms:-

“9. The principles to be followed while deciding on a bail application are well settled. If Trial Courts commit errors while deciding bail applications, the same can

always be corrected on the judicial side by the Courts, which are higher in the judicial hierarchy. The Constitutional Courts can lay down the principles governing the

grant of bail or anticipatory bail. However, the Constitutional Courts cannot interfere with the discretion of our Trial Courts by laying down the form in which an order

should be passed while deciding bail applications. What the High Court has done in paragraph 9 in the decision in the case of Jugal Kishore is that it has made it

mandatory for the Trial Courts to incorporate a chart containing details of the antecedents of the accused who applies for bail.

10. The presence of the antecedents of the accused is only one of the several considerations for deciding the prayer for bail made by him. In a given case, if the

accused makes out a strong prima facie case, depending upon the fact situation and period of incarceration, the presence of antecedents may not be a ground to

deny bail. There may be a case where a Court can grant bail only on the grounds of long incarceration. The presence of antecedents may not be relevant in such a

case.

In a given case, the Court may grant default bail. Again, the antecedents of the accused are irrelevant in such a case. Thus, depending upon the peculiar facts, the

Court can grant bail notwithstanding the existence of the antecedents. In such cases, the question of incorporating details of antecedents in a tabular form does not

arise. If the directions in the case of Jugal Kishore are to be strictly implemented, the Court may have to adjourn the hearing of the bail applications to enable the

prosecutor to submit the details in the prescribed tabular format.

11. When the prosecution places on record material showing antecedents of the accused, and if the Court, concludes that looking at the facts of the

case and the nature of antecedents, the accused should be denied bail on the ground of antecedents, it is not necessary for the

the Court to incorporate all the details of the antecedents as required by paragraph 9 of the decision in the case of Jugal Kishore.

The Court may only refer to the nature of the offences registered against the accused by referring to penal provisions under which, the accused

the accused has been charged.

10(vi). Pendency of other criminal cases cannot be invoked for denying bail, when, no prima facie case exists, and prolonged

incarceration was writ large, has been mandated by the Hon'ble Supreme Court in Prem Prakash versus Union of India through Directorate of

Enforcement, 2024 SCC OnLine SC 2270, in the following terms:-

"46. The Investigating Agency have also referred to ECIR No. 4 as a criminal antecedent. A reference was made to ECIR No. 4 of 2022 pertaining to illegal

Stone Mining and related activities in Saheb Ganj, Jharkhand, where the petitioner was arrested on 25.08.2022 and the prosecution complaint was filed on 16.09.2022.

Insofar as the bail pertaining to ECIR No. 4 of 2022, which is pending in this Court in SLP (Criminal) No. 691 of 2023, at the after notice stage, the merits of the bail in

that case will be independently examined. Having examined the facts of the present case arising out of ECIR No. 5 of 2023 and in view of the findings recorded

hereinabove, we do not think that the appellant can be denied bail based on the pendency of the other matter. We say so in the facts and circumstances of the

present case as we do not find any justification for his continued detention. The appellant has already been in custody for over one year. The Trial is yet to

commence. There is a reference to one more ECIR which the Investigating Agency refers to in their counter, namely, ECIR /RNZO /18 / 2022 but nothing is available

from the record as to whether any proceedings have been taken against the appellant.

49. In the result, we pass the following order:-

(i) The appeal is allowed and impugned order dated 22.03.2024 is quashed and set-aside.

(ii) The Trial Court is directed to release the appellant on bail in connection with ED case No. ECIR No. 5 of 2023, on furnishing bail, bonds for, a sum of

Rs.5 lakh with 2 sureties of the like amount.

In facts of instant case, the plea of Learned State Counsel is examined and the plea is devoid of any merit, for the reason, that firstly, neither any

prima facie case nor reasonable grounds exist and prosecution story appears to be highly doubtful and improbable at this stage as discussed

hereinabove; and secondly, the Status Report reveals that bail petitioner is in custody since 14.02.2024 and is undergoing incarceration for about 11

months now ; and thirdly, conclusion of trial is likely to take considerable time ; and fourthly, delay in trial is not attributable to the petitioner ; and

fifthly, an accused is presumed to be innocent unless proven guilty ; and sixthly, the continued detention can neither be punitive nor preventative and

seventhly, the continued detention in guise of penalizing the petitioner by, presuming guilt cannot, be permitted; and, eighthly, even, the,

State Authorities have not placed, any, material on record to, revealing that during, bail, there is, possibility of, accused, fleeing,

away, from, the trial or, an accused, is likely to, threaten, witnesses or is, likely to thwart justice ; and ninthly, the State Authorities have

not placed anything on record to show that the petitioner has misused the liberty granted to him earlier; and lastly, once the State Authorities have

adequate safeguards by moving the Courts for cancellation of bail in-case of violation of any concession-liberty granted earlier and the accusation is

yet to be tested, examined and proved during the trial therefore, in these circumstances, the past criminal antecedents or pendency of other cases as

discussed above cannot be the sole basis for denying bail, so as to deprive and curtail the sacrosanct fundamental rights of personal liberty and right of

speedy trial under Article 21 of the Constitution of India and, therefore, the claim of bail petitioner, carries weight and is granted, in peculiar facts of

this case.

MANDATE OF HON'BLE SUPREME COURT GRANTING BAIL DUE TO PROLONGED INCARCENATION AND WHEN

THERE WAS NO LIKELIHOOD OF COMPLETION OF TRIAL :

11. While dealing the involvement of accused of commercial quantity of contraband, by the Hon'ble Supreme Court has extended the benefit of

bail to the petitioner in Petition(s) for Special Leave to Appeal (Crl.) No(s).1904/2023, titled as Sunil Kumar Versus The State of Himachal Pradesh,

decided on 29.03.2023, in the following terms:-

“It is noted that the petitioner has been in custody for more than one and a half years and the trial is yet to conclude. Earlier, the petitioner had been granted interim

bail on two occasions and has not misused the liberty of interim bail or violated any of the bail conditions imposed upon him but has thereafter, surrendered back.

Therefore, keeping all these aspects in view, the petitioner is ordered to be released on bail subject to appropriate conditions being imposed by the Trial Court

including the condition that the petitioner shall diligently participate in the trial. Ordered accordingly.

,

11(i). In Petition(s) for Special Leave to Appeal (Crl.) No(s).4648/2024, titled as Ankur Chaudhary Versus State of Madhya Pradesh, decided on

28.05.2024, Hon'ble Supreme Court extended benefit of bail by invoking Article 21 of Constitution of India as prolonged incarceration defeats the

precious fundamental rights and such fundamental rights have to override the statutory embargo in Section 37 (1) (b) of NDPS Act in the following

terms:-

"Now, on examination, the panch witnesses have not supported the case of prosecution. On facts, we are not inclined to consider the Investigation

Officer as a panch witness. It is to observe that failure to conclude the trial within a reasonable time resulting in prolonged incarceration militates against the

precious fundamental right guaranteed under Article 21 of the Constitution of India, and as such, conditional liberty overriding the statutory embargo created under

Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered.

In view of the above, we are inclined to allow this petition and direct to enlarge the petitioner on bail on furnishing the suitable bail bonds and sureties and on such

other terms and conditions as may be deemed fit by the trial Court."

À,

11(ii). In Petition(s) for Special Leave to Appeal (Crl.) No(s).7115/2024, titled as Sohrab Khan Versus The State of Madhya Pradesh, decided on

13.08.2024, the Hon'ble Supreme Court has extended the benefit of concession of bail to an accused, who was facing incarceration of one year

and four months in the following terms:-

"The petitioner is an accused for the alleged offences punishable under Sections 8/22 and 29 of the Narcotic Drugs and Psychotropic Substances Act. His bail

application was dismissed by the High Court. He has already undergone about one year and four months in jail. The petitioner and com accused were found in

possession of 80 grams of MD powder each of which commercial quantity is 50 grams.

Considering the fact that the petitioner criminal antecedents and the entire facts and circumstances has no of this case, we are of the opinion that a case of bail is

made out for the petitioner and therefore, the prayer of the petitioner is allowed.

Accordingly, the petitioner is directed to be released on bail forthwith on the usual terms and conditions to be decided by the concerned Court."

11(iii). In Petition(s) for Special Leave to Appeal (Crl.) No(s).9510/2024, titled as Ram Lal Versus The State of Rajasthan, decided on 17.09.2024,

similar benefit of bail was extended where the incarceration was prolonged, in the following terms:-

"The petitioner and the other accused persons are accused for the offences punishable under Sections 8/21 & 8/29 of the Narcotic Drugs and Psychotropic

Substances Act and allegation is that 450 gm of smack has been recovered from them. The bail application of the petitioner was dismissed by the High Court. Hence,

he approached this Court. He has already undergone about 1 year and 6 months in jail.

Heard learned counsel for the petitioner. As per office report dated 13.09.2024, the service is deemed complete on the sole respondent-State but no one has appeared

for the state.

Considering the period of incarceration of the petitioner and the fact that the petitioner has no criminal antecedents, we are of the opinion that a case of bail is made

out for the petitioner.

Accordingly, the petitioner is directed to be released on bail forthwith on the usual terms and conditions to be decided by the concerned Court.

MANDATE OF THIS COURT GRANTING BAIL IN CASES WHERE INCARCENATION PROLONGED AND NO LIKELIHOOD

OF COMPLETION OF TRIAL:

12. While dealing with the claim for bail in a case, dealing with commercial quantity, a Coordinate Bench of this Court, in Cr.MP (M) No.2618 of 2023, *Jasbir Singh, versus State of Himachal Pradesh*, decided on 4.11.2023 has affirmed the right to bail, in view of,

the prolonged detention of the accused therein, in the following terms:-

“(ii). In 2021 (3) SCC, 713, *Union of India Versus K.A. Najeeb*, Hon’ble Apex Court considered various judicial precedents where Article 21 of the

Constitution of India was invoked in case of gross delay in disposal of cases of under-trials and consequential necessity to release them on bail. The earlier

decisions were reiterated that liberty granted by Part-III of the Constitution, would cover within its protective ambit not only due procedure and fairness, but also

access to justice and speedy trial. It was held that once it is obvious that a timely trial would not be possible and the accused have suffered incarceration for a

significant period of time, the Courts would ordinarily be obligated to enlarge them on bail. Some relevant paras from the judgments are extracted hereinafter:-

“10. 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 43D(5)

of 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 43D (5) of UAPA.

11. The High Court’s view draws support from a batch of decisions of this Court, including in *Shaheen Welfare Assn*, 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, 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 perform remain in jail, giving rise to

possible situations that may justify invocation of Article 21.”

(emphasis supplied)

12. 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), Babba v. State of

Maharashtra and Umarmia alias Mamumia v. State of Gujarat 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.

13. We may also refer to the orders enlarging similarly situated accused under the UAPA passed by this Court in Angela Harish Sontakke v. State of Maharashtra.

That was also a case under Sections 10, 13, 17, 18, 18A, 18B, 20, 21, 38, 39 and 40(2) of the UAPA. This Court in its earnest effort to draw balance between the

seriousness of the charges with the period of custody suffered and the likely period within which the trial could be expected to be completed took note of the five

years incarceration and over 200 witnesses left to be examined, and thus granted bail to the accused notwithstanding Section 43D(5) of UAPA. Similarly, in Sagar

Tatyaram Gorkhe v. State of Maharashtra, an accused under the UAPA was enlarged for he had been in jail for four years and there were over 147 witnesses still

unexamined.

15. 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. In Supreme Court Legal Aid Committee (Representing Under-trial Prisoners) v.

Union of India, 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, 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, Courts would ordinarily be obligated to

enlarge them on bail.

17. It is thus clear to us that the presence of statutory restrictions like Section 43D(5) of UAPA per se does not oust the ability of Constitutional Courts to grant bail

on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statute as well as the powers exercisable under Constitutional Jurisdiction

can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of

such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has

exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of UAPA, being used, as the sole metric, for denial of bail, or for wholesale breach, of constitutional right to speedy trial.

UAPA, being used, as the sole metric, for denial of bail, or for wholesale breach, of constitutional right to speedy trial.

5(iv). The bail petition bearing Cr.MP(M), No.1458/2022, instituted by the petitioner was dismissed on merit on 02.09.2022.

While deciding the aforesaid bail petition, considering the fact that FIR in question pertained to the year 2020, it was hoped and expected that the learned Trial

Court would make endeavour to expedite the trial. We are now at the fag end of 2023. In terms of the status report filed by the respondent, the prosecution has

examined 16 witnesses thus far. Statements of 23 prosecution witnesses still remain to be recorded. The interim orders placed on record reflect that the trial has been

deferred time and again for want of presence of prosecution witnesses. Considering the fact that at this stage 23 witnesses remain to be recorded, it is

apparent that the trial is not going to be concluded in near future.

The petitioner, who has already spent about three years and five months in custody, in my considered opinion has made out a case for his enlargement on regular

bail at this stage. There is no criminal history of the petitioner. The apprehension expressed by the prosecution about the likelihood of petitioner's tampering with

the evidence or winning over remaining witnesses, can be taken care of by imposing stringent conditions and also granting liberty to the respondent/State to seek

cancellation of the bail in case the conditions are violated by the petitioner. In view of all the aforesaid reasons and without expressing any opinion on the merits of

the case, the present petition is allowed. Petitioner is ordered to be released on bail in the aforesaid FIR.

12(i). While dealing with claim for bail in a case commercial quantity of 1.004 Kgs. charas and taking into account the prolonged incarceration for

about 13 months, the Co-ordinate Bench of this Court, has extended the concession of bail to the accused, in Cr.MP(M) No.1003 of 2024, titled as

Vijay Singh Versus State of Himachal Pradesh, decided on

24.05.2024, in the following terms:-

10. Though, the case at hand is to be decided by learned trial Court, in the totality of evidence collected on record by the investigating agency, but having

noticed aforesaid glaring aspects of the matter, there appears to be no justification for this Court to let the bail petitioner incarcerate in jail, for an indefinite period

during trial, especially when rigours of S.37 of the Act are not attracted on account of recovery of small quantity.

11. Learned counsel for the petitioner while inviting attention of this court to judgments dated 4.3.2023 and 15.3.2023 passed in Cr.MP(M) No. 62 and 570 of 2023,

titled Puran Chand v. State of HP and Prem Chand v. State of HP., submitted that in similar facts and circumstances, coordinate Bench of this Court as well as this

Court enlarged the accused on bail on the ground of inordinate delay. Having perused aforesaid judgments passed by the coordinate Bench of this Court, this Court

finds that in both the cases, commercial quantity of contraband was recovered from the accused, but yet court having taken note of the fact that they were behind the

bars for more than three years, proceeded to enlarge them on bail.

12. Hon'ble Apex Court having taken note of inordinate delay in conclusion of trial in similar facts ordered for enlargement of accused on

bail in Nitish Adhikary @ Bapan v. The State of West Bengal, Special Leave to Appeal (Crl.) No. 5769 of 2022 decided on 1.8.2022 and in Abdul Majeed Lone v.

Union Territory of Jammu and Kashmir, Special Leave to Appeal (Crl) No. 3961 of 2022, decided on 1.8.2022, who were also framed under Narcotic Drugs and

Psychotropic Substances Act and were behind the bars for approximately two years and there was no likelihood of conclusion of trial in near future, subject to certain

conditions.

13. Learned Counsel appearing for the petitioner, to substantiate his plea for enlarging the petitioner on bail, has referred order dated 12.10.2020 passed by a three

judges Bench of the Supreme Court, in Criminal Appeal No. 668 of 2020, titled Amrit Singh Moni v. State of Himachal Pradesh, whereby petitioner therein, facing trial

for recovery of 3.285 kilograms charas from a vehicle, alongwith four other persons, was enlarged on bail, for having been in detention for 2 years,

and 7 months, as till then out of 14 witnesses, 7 witnesses were yet to be examined and last witness was examined in February, 2020 and, thereafter,

there was no further progress in the trial.

14. Recently, Hon'ble Apex Court in SLP(Crl) No. 1904 of 2023 titled Sunil Kumar v. The State of Himachal Pradesh, decided on 29.3.2023, has ordered enlargement of

petitioner therein, who was behind bars for one and half years, on the ground of delay in trial and conduct of the petitioner.

15. Learned Additional Advocate General, referring to judgment of a three Judges Bench of Supreme Court, passed on 19.7.2022 in Narcotics Control

Bureau v. Mohit Aggarwal contends that period of detention cannot be a ground for enlarging the petitioner on bail, especially in the cases where rigors of Section

37 are attracted.

16. In the instant case, bail petitioner is behind bars for more than 13 months and till date trial has not been completed and there are very bleak chances of conclusion

of the same in near future, as such, there appears to be no justification to keep the bail petitioner behind the bars for an indefinite period, during trial.

12(ii). Recently, the Co-ordinate Bench of this Court in Cr.MP(M) No. 2656 of 2024, titled as Kamal Singh Versus State of Himachal Pradesh,

decided on 11.12.2024, has enlarged the accused on bail in case relating to commercial quantity of charas, i.e. 1.209 Kgs. where the accused was

facing incarceration for about 12 months, in the following terms:-

“2.Allegedly, police recovered one rucksack (pithu bag) from the vehicle containing huge quantity of contraband. On weighing, police found that 1.209 Kgs.

of charas / sulfa was being transported by the occupants in the vehicle, as detailed hereinabove. Since, no plausible explanation ever came to be rendered on record

qua possession of aforesaid commercial quantity of contraband.....

21. In view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court, petitioner has carved out a case for grant of bail,

accordingly, the petition is allowed and the petitioner is ordered to be enlarged on bail in aforesaid FIR.....

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ABOVE BROADER PRINCIPLES OF BAIL APPLIED IN GRAVER OFFENCES APPLIED TO LESSER GRAVER ACCUSATION:

13. In backdrop of the mandate of law supra, once the concession of bail has been granted by taking into account the prolonged incarceration and the

fact that conclusion of the trial was likely to take considerable time in cases of commercial quantity under NDPS Act, then, on the same analogy

and by applying the same broader principles, to the facts of instant case, where the accusation against the petitioner, relates to,

lesser, graver, accusation of Intermediate Quantity which of course, is yet to be tested, examined and proved during the trial and therefore, this

Court accedes to the prayer for bail, to the petitioner in facts of instant case.

NOTHING ADVERSARIAL REGARDING TAMPERING WITH EVIDENCE OR WITNESSES ETC:

14. Status Reports filed by State Authorities have neither pointed out any adversarial circumstances nor placed any material on record, at this stage, to

infer that after release on bail, the petitioner is likely to tamper with the evidence or may cause any inducement threat or promise to any person or

persons acquainted with the facts of the case. However, the apprehension if any, of the State Authorities can be safeguarded, at this stage by

imposing stringent conditions in this bail order.

NOTHING ADVERSARIAL REGARDING OBSTRUCTING OR ATTEMPTING TO THWARTING JUSTICE:

15. Status Reports filed by State Authorities have neither pointed out any adversarial circumstances nor placed any cogent and convincing material on

record, at this stage, to infer that after release on bail, the petitioner may obstruct or thwart the cause of justice in any manner. In absence of any

material, the plea for bail deserves to be granted to the petitioner, in instant case.

NOTHING ADVERSARIAL LIKELIHOOD OF FLEEING AWAY FROM TRIAL OR JURISDICTION OF COURT:

16. In order to safeguard the rights of bail petitioner and to take care of apprehensions of State that bail petitioner may flee away [notwithstanding the

fact that no such apprehension has been pointed out in Status Report] yet, in peculiar facts of this case, this Court stringent conditions in the bail

orders, in later part of this order.

CONCLUSION AND DIRECTIONS:

17. Taking into account the entirety of the facts, the material on record and the mandate of law and in view of the discussion made and the reasons

recorded hereinabove and in the peculiar facts of case, the instant petition is allowed, and the State Authorities are directed to release the petitioner

[Kalu Ram] on bail, subject to observance of the following conditions:-

(i) Respondent-State Authorities shall release bail petitioner [Kalu Ram] on furnishing personal bond of Rs.75,000/- {Rs Seventy Five Thousand} with two sureties

on furnishing similar bond amount each, to the satisfaction of the Learned Trial Court concerned;

(ii) Petitioner shall undertake and shall also appear on every date of trial hereinafter;

(iii) Petitioner shall abide by all or any other condition(s), which may be imposed by the Learned Trial Court, in view of this order;

(iv) Petitioner shall neither involve himself nor shall abet the commission of any offence hereinafter. Involvement in any offence whatsoever or abetting thereof shall

entail automatic cancellation of bail granted in terms of this order ;

(v) Petitioner shall disclose his functional E-Mail IDs/ WhatsApp number and that of his surety to the Learned Trial Court;

(vi) Petitioner, after release, shall report, to the Investigating Officer or SHO of Police Station concerned, nearest to his native place, i.e. Dobhi, Tehsil

and District Kullu [HP], on 2nd Sunday of every month at 11.00 a.m., only for having an update on good conduct and behaviour;

(vii) Petitioner shall not jump over the bail and also shall not leave the country without the prior information of the Court;

(viii) Petitioner shall not tamper with the evidence in any manner;

(ix) Petitioner shall not cause any inducement, threat or promise {directly or indirectly} to witnesses of any other person acquainted with the case;

(x) Petitioner is free to seek modification of any condition contained hereinabove, if need arises;

(xi) State Authorities are free to move this Court for seeking alteration/modification of any of the condition contained in this order or any condition imposed by the

Learned Trial Court as a sequel to this order, in fact situation of instant case or circumstances so necessitate, at any time herein-after;

(xii) State Authorities are free to move this Court for seeking cancellation of the concession of bail, in case, the petitioner violates any of the conditions contained in

this order.;

18. Observations made in this judgment shall not be construed in any manner as an indictive of findings, for or against the parties herein, either for the

purpose of investigation or for trial, which shall proceed in-accordance with law, irrespective of any of the observations contained hereinabove.

19. Petitioner is permitted to produce/use copy of this order, downloaded from the web-page of the High Court of Himachal Pradesh, before the

authorities concerned, and the said authorities shall not insist for production of a certified copy, but if required, may verify about the passing of this

order from the Website of this Court.

20. Registry is directed to forward a copy of this order to Superintendent of Police, Kullu, District Kullu, Himachal Pradesh, for information and

necessary action in terms of this order.

Pending miscellaneous application(s), if any, shall also stand disposed of.