

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**Cr.MP(M) No. 287 of 2025****Announced on: 25.03.2025**

Shambhu Lal Meena

.....Petitioner

Versus

State of Himachal Pradesh

.....Respondent

Coram**Hon'ble Mr. Justice Ranjan Sharma, Judge**¹ *Whether approved for reporting? No*

For the petitioner: Mr. Kulwant Singh Gill, Advocate.

For the respondent: Mr. Pranay Pratap Singh, Additional
Advocate General.**Ranjan Sharma, Judge**

Bail petitioner, Shambhu Lal Meena [being in custody 14.09.2023] has come up before this Court seeking regular bail under Section 483 of Bharatiya Nagarik Suraksha Sanhinta [**hereinafter referred to as BNSS**] originating from F.I.R. No. 148 of 2023 dated 14.09.2023 under Section 15 and 29 of the *Narcotic Drugs and Psychotropic Substances Act (referred to as*

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

the NDPS Act) registered with Police Station Majra, District Sirmour, H.P.

FACTUAL MATRIX

2. Case set up by Learned Counsel for the bail petitioner [Shambhu Lal Meena] is that on 14.09.2023 while the police party was on patrolling near Sainwala Mubarikpur bridge, under Police Station Majra, an information was received that a White Creta Hyundai Car bearing registration No. HR14P-9300 was carrying contraband. On receipt of information, Nakka was laid at about 11.50 a.m at NH-07 near HPCL Petrol Pump when, a car bearing registration No. HR14P-9300 being driven by Jitender was intercepted by patrolling party. The driver Jitender was asked to open the dicky of vehicle in which Poppy husk/Chura Post weighing 54.402 Kg was recovered from gunny bags was found. After completing codal formalities, all the four accused i.e. Jitender (Driver), Vishal Sharma who were sitting besides the driver, Sattu Joggi and bail petitioner [Shambhu Lal

Meena] who were sitting on back seat of aforesaid vehicle was arrested on 14.09.2023.

2(i) The case of petitioner Shambhu Lal Meena, is that there is no iota of evidence against the petitioner. It is further averred that bail petitioner has not committed any offence and he is not connected with the same and is not guilty in any manner. It is further averred that no contraband was recovered from the exclusive and conscious possession of petitioner. It is averred that the petitioner is facing incarceration since 14.09.2023 for the last more than one year and six months now.

2(ii). It is averred that the petitioner joined the Investigation and no recovery is pending from the bail petitioner and pursuant to Investigation, the Challan-Final Police Report has been presented before the jurisdictional Court and trial has commenced. Petitioner has furnished an undertaking that in case he is released on bail, the bail petitioner shall join the trial and shall not cause any inducement, threat or promise to any

person acquainted with the facts of the case and shall abide by such terms and conditions as may be imposed by this Court. Bail petitioner is 22 years of age and he undertakes not to flee away from justice.

In above background, the claim for bail has been preferred before this Court.

STAND OF STATE AUTHORITIES IN STATUS REPORT:

3. Pursuance to issuance of notice, the State Authorities have filed the *Status Report* dated 21.03.2025 on Instructions of SHO Police Station, Majra, District Sirmaur [H.P].

3(i). Perusal of Status Report indicates the sequence of events that four accused, namely, Jitender [Driver], Vishal Sharma, Sattu Joggi and Shambhu Lal [bail petitioner] were travelling in White Creta Hundai Car bearing registration No. HR14P-9300, when, on 14.09.2023 it was intercepted by the police patrolling party on information received. The car in question, was searched and contraband weighing a total of 54.402 kg.

Poppy Straw/Chura Post was recovered from dicky of aforesaid vehicle, which was in three gunny bags.

3(ii). Status Report indicates that after completing formalities all four accused were arrested and three of the accused, namely, Jitender [driver], Shambhu Lal [bail petitioner] and Vishal Sharma were produced before the Additional Chief Judicial Magistrate, Court No.1, Nahan for remand on 15.09.2023 whereas, Sattu Jogi, who claimed to be a minor was sent to Juvenile Justice (Home). Status Report indicates that investigation was undertaken and even the SFSL Report dated 12.10.2023 has affirmed contraband to be Poppy Straw. Status Report further indicates that the co-accused, Sattu Jogi, who claimed to be a minor earlier was made to undergo Ossification Test wherein he came to be above 18 years of age but at that time he was released by PMJJB, Nahan on 18.10.2023.

3(iii). Status Report further indicates that the investigation has been completed and Challan-Final Police

Report dated 23.01.2024 has been presented before Learned Special Judge, Nahan. It is averred that the prosecution intends to examine 29 PW's out of which some PW's have been examined by Learned Trial Court and trial has now been fixed for 01.05.2025 and thereafter [as per the Status Report filed in case of co-accused of Jitender in Cr.MP(M) No. 2786 of 2024.

In this background, Learned State Counsel has prayed for dismissal of the bail application.

4. Heard, Mr. Kulwant Singh Gill, Learned Counsel for the bail-petitioner and Mr. Pranay Pratap Singh, Learned Additional Advocate General for the Respondent-State.

STATUTORY PROVISIONS:

5. Before dealing with the bail petition, it is necessary to take note of the provisions of Sections 15 and 29 of the NDPS Act, which read as under:-

15. Punishment for contravention in relation to poppy straw.—

Whoever, in contravention of any provisions of this Act or any rule or order made or condition

of a licence granted thereunder, **produces, possesses, transports, imports inter-State, exports inter-State, sells, purchases, uses or omits to warehouse poppy straw or removes or does any act in respect of warehoused poppy straw** 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 contravention 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:

6. Notably, the claim of the suspect-accused for post arrest or regular bail is to be examined/ tested within the parameters prescribed of the Code of Criminal Procedure and also the *broad para-meters* mandated by the Hon’ble Supreme Court for regulating grant of bail in **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, mandating that the *bail {anticipatory or regular}* is to be granted where the case is frivolous

or groundless and no prima facie or reasonable grounds exists which lead to believe or point out towards accusation; and these parameters for regular bail have been reiterated in **Sushila Aggarwal versus State-NCT Delhi, (2020) 5 SCC 01.**

6(i). While dealing with the case for grant of regular bail, under *Section 483 BNSS*, the three judges bench of Hon'ble Supreme Court, after reiterating the broad parameters, has held in **Deepak Yadav versus State of Uttar Pradesh, (2022) 8 SCC 559**, in Para-25 that the nature of the crime has a huge relevancy, while considering claim for bail.

6(ii). In the case of **Ansar Ahmad versus State of Uttar Pradesh, 2023 SCC Online SC 974**, the Hon'ble Supreme Court had expanded the horizon of the broad parameters, which are to be primarily taken into account, for considering the claim for regular bail or anticipatory bail as under:

“11. Mr. R. Basant, the learned Senior Counsel appearing for one of the private respondents

that the Court while granting bail is not required to give detailed reasons touching the merits or de-merits of the prosecution case as any such observation made by the Court in a bail matter can unwittingly cause prejudice to the prosecution or the accused at a later stage. **The settled proposition of law, in our considered opinion, is that the order granting bail should reflect the judicial application of mind taking into consideration the well-known parameters including:**

- (i) The nature of the accusation weighing in the gravity and severity of the offence;
- (ii) The severity of punishment;
- (iii) The position or status of the accused, i.e. whether the accused can exercise influence on the victim and the witnesses or not;
- (iv) Likelihood of accused to approach or try to approach the victims/ witnesses;
- (v) Likelihood of accused absconding from proceedings;
- (vi) Possibility of accused tampering with evidence;
- (vii) Obstructing or attempting to obstruct the due course of justice;
- (viii) Possibility of repetition of offence if left out on bail;
- (ix) The prima facie satisfaction of the court in support of the charge including frivolity of the charge;
- (x) The different and distinct facts of each case and nature of substantive and corroborative evidence.

12. We hasten to add that there can be several other relevant factors which, depending upon the peculiar facts and circumstances of a case, **would be required to be kept in mind while granting or refusing bail to an accused.** It may be difficult to illustrate all such circumstances, for there cannot be any straight jacket formula for exercising the **discretionary jurisdiction vested in a Court under Sections 438 and 439 respectively of the CrPC**, as the case may be.”

6(iii). In **CBI versus Santosh Karnani, (2023) 6 SCALE 250**, the Hon’ble Supreme Court has reiterated the illustrative time-tested broad parameters which are required to be taken into account while considering the prayer for bail; which have recently been reiterated by the Hon’ble Supreme Court in the case of **State of Haryana versus Dharamraj, 2023 SCC Online SC 1085.**

6(iv). *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 under Section 483 of BNSS has to be exercised sparingly. It is trite law that while considering the prayer for bail*

{pre-arrest bail or regular bail], a formation of prima facie opinion is to gathered as to whether reasonable grounds exist pointing towards accusation or whether the accusation is frivolous and groundless with the object of either injuring or humiliating or where a person has falsely been roped in the crime needs to be tested in the background of the self-imposed restrains or the broad parameters as mandated by law, as referred to herein above.

6(v). 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, though a *Court is not required to weigh the evidence collected by the Investigating Agency meticulously*, nonetheless, a Court should keep in mind the nature of accusation, nature of evidence collected in support thereof, severity of punishment prescribed for alleged offences,

character of an accused, circumstances which are peculiar to an accused, reasonable possibility of securing the presence of an accused during the trial and the reasonable apprehension of tampering with evidence and the claim for bail has to be examined by carving a balance between the rights of an accused and the larger societal/ public interest.

In this background, while testing the claim for bail, a Court is required to form a *prima-facie opinion in the context of* broad-parameters as referred to above, without delving into the evidence on merits, as it may tend to prejudice the rights of the accused as well as the prosecution.

MANDATE OF LAW IN CLAIM FOR BAIL IN COMMERCIAL QUANTITY:

7. This Court is conscious of the fact that in cases relating to commercial quantity of contraband, as in this case, the rigours of Section 37(1)(b) of the NDPS Act are to be satisfied in terms of mandate of the Hon'ble Supreme Court in **Narcotics Control Bureau**

vs Mohit Aggarwal AIR 2022 SC 3444, followed in **Union of India vs Ajay Kumar Singh @ Pappu**, SLP (Criminal) No.2351 of 2023, has been reiterated by Hon'ble Supreme Court in **State by the Inspector of Police vs B. Ramu, SLP (Criminal) No. 8137 of 2022** decided on 12.02.2024. Accordingly, this Court proceeds to examine the claim of bail petitioner [Shambhu Lal Meena], for bail, in view of the statutory provisions of Section 37 (1) (b) of NDPS Act and on other grounds available by way of Exceptions to the rigors of Section 37 of NDPS Act, in terms of the mandate of law hereinbelow.

[A] ANALYSIS ON CLAIM FOR BAIL UNDER SECTION 37(1) (b) OF NDPS ACT IN INSTANT CASE:

8. Perusal of Status Report admits in an unambiguous terms that the police party *recovered Poppy husk/Chura Post weighing 54.402 Kg from gunny bags in the car on 14.09.2023 in a White Creta Hyundai Car bearing registration No.*

HR14P-9300. Once no contraband was recovered from the bail petitioner [Shambhu Lal Meena], then, the rigors of Section 37 (1) (b) of NDPS Act, cannot be invoked in case of the bail petitioner.

8(i). Perusal of Status Report dated 21.03.2025, nowhere indicates, that bail petitioner Shambhu Lal Meena had resorted to production, possession, transportation, import or export or was involved in sale or purchase or use of Poppy straw or had removed such Poppy straw from warehouse in any manner.

8(ii). Accusation against the bail petitioner, is not made out, for the reason that mere factum of travelling in same vehicle cannot lead to inference against the bail petitioner. The ingredients of Section 15 and Section 29 of NDPS Act are to be tested, examined and proved during the trial. Moreover, nothing has been placed on record to connect the bail petitioner with the accusation and therefore, bail petitioner is not prima facie guilty of the accusation under Section 15 and 29 of the Act as alleged

against him.

8(iii). Case of bail petitioner is that he was not aware that other co-accused, were carrying the contraband in car. In these circumstances, once the bail petitioner, specifically denies the fact, that he had knowledge of other accused carrying contraband and no material has been placed on record by State Authorities in Status Report that the bail petitioner [Shambhu Lal Meena], had knowledge of contraband, therefore, the bail petitioner at this stage appears to be not guilty of offence in the instant case.

8(iv). Status Report filed by State Authorities do not spell out any material to show that the bail petitioner has resorted to any activities, so as to invoke the provisions of Section 15 of NDPS Act against the bail petitioner. Nothing has been placed on record that the bail petitioner produces, manufactures, possesses, sells, transports, imports or exports or uses the alleged contraband in instant case. In these

circumstances, the bail petitioner appears to be not guilty, at this stage, and therefore, the bail petitioner deserves to be extended the benefit of bail.

8(v). Invocation of Section 29 of NDPS Act, alleging abatement and criminal conspiracy is a matter to be tested, examined and proved during trial. Accusation of abatement or criminal conspiracy cannot be attributed against the bail petitioner without any cogent material on record. In these circumstances, based on Status Report/material on record, this Court is of the considered view that the bail petitioner is not guilty at this stage.

8(vi). Learned Counsel for petitioner relies on the *evidence of Spot Witnesses i.e. PW-4 and PW-5* [which forms part of bail order of co-accused in Cr.MPM No. 906 of 2024, dated 10.01.2025] adduced before Learned Special Judge, Sirmaur at Nahan, wherein PW-4 and PW-5, who were associated as Independent Spot Witnesses by the Police have not supported the prosecution case at this stage. *Deposition of PW-4 and*

PW-5 indicate that the police personnel had asked them [independent witnesses] to sign some blank documents which they signed due to fear of police. Even otherwise, statements of Spot Witnesses PW-4 and PW-5 reveals that they have never seen the accused nor has the police stopped the car in their presence. It is deposed that they do not know as to whether accused were sitting in the car or not. PW-4 and PW-5 have deposed that police did not open the dicky of vehicle in their presence. Without going into other details, the deposition of Spot Witnesses PW-4 and PW-5 has not supported the prosecution case, at this stage, and therefore, the accusation and the guilt is not made out against the bail petitioner and therefore, in these circumstances, bail petitioner is entitled to the concession of bail.

NOTHING ADVERSARIAL REGARDING REPETITION OF OFFENCE AFTER BAIL:

9. The Status Reports filed by State Authorities have not expressed any apprehension of repetition of

offence after release on bail, which still is being taken care of, by imposing stringent bail conditions in later part of this bail order.

Taking into account the entirety of the facts and circumstances, including the Status Reports, this Court is of the considered view that there are no reasonable grounds to believe that the bail petitioner is guilty and nothing exists that bail petitioner is likely to repeat the offence after release on bail and, therefore, even by applying twin principles in Section 37(1) (b) of the NDPS Act, the bail petitioner [Shambhu Lal Meena] is entitled to be enlarged on bail.

[B] CLAIM FOR BAIL ON OTHER EXCEPTIONAL GROUNDS: CIRCUMSTANCES:

Notwithstanding, the discussion with respect to claim for bail under Section 37 (1) (b) of NDPS Act [supra], this Court is of the considered view that the bail petitioner is entitled to be enlarged on bail *on other grounds for the following reasons:-*

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

10. Learned counsel for the bail petitioner, Mr. Kulwant Singh Gill, submits that FIR in instant case was registered on 14.09.2023 and petitioner is in custody for more than 1 year 6 months now. It is submitted that Investigation is complete and *Challan-Final Police Report* dated 23.01.2024 has been presented before jurisdictional Court and charges have been framed and out of 29-PWs only 18 PWs have been examined by Learned Special Judge, Nahan and now case has been fixed for 01.05.2025, at the conclusion of trial is likely to take considerable time.

10(i). While dealing with the claim for bail, where the accused had suffered incarceration for more than 14 months, coupled with the fact that there is no much progress in the trial and such trial was to take considerable time, the Hon'ble Supreme Court in ***Mukesh Kumar versus State of Rajasthan and***

another, 2023 SCC OnLine SC 2025, granted bail to the accused therein, in the following terms:-

- “2. The petitioner is accused of giving one blow on the head of the deceased with a danda (Bamboo). It may also be mentioned that occurrence took place on 08-06-2020 and the deceased succumbed to his injuries on 12-06-2020.
5. After cancellation of bail by the High Court, the petitioner has again surrendered on 16-11-2022 and is in custody.
7. It may be seen that there are cross-versions and both sides suffered injuries. **The question as to who was the aggressor will depend upon the appreciation of evidence and will be decided by the Trial Court at an appropriate stage.** It is not expedient or desirable for this Court to express any opinion in relation thereto at this stage.
8. Suffice to say that the **petitioner has been in custody for more than 14 months**, the crucial witnesses have since been examined and there is no likelihood of tampering with the evidence. Even otherwise also, the witnesses are close family members of both sides, hence there is no likelihood of winning over the witnesses.
9. Since **conclusion of trial will take considerable time**, we deem it appropriate to release the petitioner on bail.
11. Consequently, *without expressing any views on the merits of the case, the **petitioner is directed to be released on bail***, subject to his furnishing bail bonds to the satisfaction of the Trial Court.

12. The petitioner and his family members as well as Respondent No. 2 and his family members will ensure that no untoward incident takes place again.”

10(ii). 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 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 Rs.2 lakhs? If the cheques issued by his surety were dishonoured, the Court could perhaps have taken it as a 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."

REFORMATIVE APPROACH: BAIL:

10(iii). 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***, as under:-

- "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 overarching 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.”

**BAIL NOT TO BE WITHHELD BY WAY OF PENALTY:
ARTICLE 21**

10(iv). While dealing with a matter relating to the prolonged incarceration and the right to speedy trial and right of liberty to be sacrosanct right and while deprecating that the bail is not to be withheld as punishment the Hon’ble Supreme Court, in ***Manish Sisodia vs Directorate of Enforcement, SLP (Criminal)***

No.8781 of 2024, decided on 09.08.2024, has affirmed the principle that bail is a rule and Jail is an exception. 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 Russel, 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.**”

10(v). 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 fundamental right of liberty provided under Article 21 of the Constitution of India is superior to the statutory restrictions, in the 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.”

RIGOURS OF STRINGENT PROVISIONS IN SPECIAL ENACTMENT [SECTION 37 NDPS] TO GIVE WAY FOR BAIL BASED ON PROLONGED INCARCERATION AND NO LIKELIHOOD OF COMPLETION OF TRIAL IN CONSIDERABLE TIME:

10(vi). While dealing with the claim for bail under Special Enactments and rigors of Section 45 (1) (ii) of MPLA 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 re: V. Senthil Balaji Versus The Deputy Director, Directorate of***

Enforcement, has mandated that rigors 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 the prolonged incarceration so as prevent deprivation or curtailment of personal liberty and to ensure right of speedy trial, in terms 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:
- a. The appellant shall furnish bail bonds in the sum of Rs.25,00,000/ (Rupees twenty five lakhs only) with two sureties in the like amount;

- b. The appellant shall not directly or indirectly attempt to contact or communicate with the prosecution witnesses and victims of the three scheduled offences in any manner. If it is found that the appellant directly or indirectly made even an attempt to contact any prosecution witness or victim in the scheduled as well as offences under the PMLA, it will be a ground to cancel the bail granted to the appellant;
- c. The appellant shall mark his attendance every Monday and Friday between 11 am and 12 noon in the office of the Deputy Director, the Directorate of Enforcement at Chennai. He shall also appear on the first Saturday of every calendar month before the investigating officers of the three scheduled offences;
- d. Before the appellant is enlarged on bail, he shall surrender his passport to the Special Court under the PMLA at Chennai;
- e. The appellant shall regularly and punctually remain present before the Courts dealing with scheduled offences as well as the Special Court and shall cooperate with the Courts for early disposal of cases; and
- f. If the appellant seeks adjournments on non-existing or frivolous grounds or creates hurdles in the early disposal of the cases mentioned above, the bail granted to him shall be liable to be cancelled.

32. The appeal is allowed on the above terms.”

10(vii). 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 that the statutory embargoes on the grant of bail must yield when weighed against the paramount importance of right to life and liberty under Article 21 of the Constitution of India, in cases, where the incarceration extends even an unreasonably long period without conclusion of the trial making such incarceration punitive, has been deprecated 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:

a to e

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;

g to i.....”

Keeping in view the factual matrix that no reasonable grounds exist against the bail petitioner, as referred to above, coupled with the fact the bail petitioner has suffered incarceration for *more than 1 year 6 months [since 14.09.2023]* and even trial is likely to take considerable time, therefore, further detention shall certainly amount 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 of the petitioner can neither be punitive nor preventative, so as to make the petitioner to

taste imprisonment as a lesson. Denial of bail shall certainly violates the principle that “bail is rule and jail is an exception”. Even, the State Authorities, have failed to ensure *speedy trial* and still considerable time is likely to be taken for conclusion of trial, then, in view of 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 petitioner deserves to be released on bail.

MANDATE OF HON'BLE SUPREME COURT IN GRANTING BAIL IN CASES OF COMMERCIAL QUANTITY WHERE THERE WAS NO LIKELIHOOD OF ITS COMPLETION:

11. In similar situation while dealing the involvement of accused of commercial quantity of contraband, Hon'ble Supreme Court has extended the benefit of bail to the bail 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.”

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 and had no criminal antecedents as in this case, 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 and the accused had no criminal antecedents, as in this case, 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 IN GRANTING BAIL IN CASES OF COMMERCIAL QUANTITY WHERE TRIAL WAS PROLONGED AND THERE WAS NO LIKELIHOOD OF COMPLETION:

11(iv). While dealing with the claim for bail in a case, a Co-ordinate 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:-

“5(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 perforce 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 Statue 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.”

- 5(iv).A previous 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 zimni 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.....”

11(v). While dealing with the claim for bail in 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 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.”

11(vi). 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.....”

In present case, keeping in view the material on record, as borne out from the Status Report and the statements recorded during Investigation and the evidence of PWs adduced at this stage and the law referred to above coupled with the fact that no reasonable grounds exist to believe the accusation against the bail petitioner at this stage, coupled with the fact, that the trial is likely to take considerable time for its conclusion; with another added fact that delay in trial was not attributable to the bail petitioner; therefore, in these circumstances any further detention shall certainly amounts to implicating the petitioner on mere accusation or conjectures-suspicion and that too by way of punishment which shall defeat intent and object of bail, despite having made the petitioner to suffer incarceration for about 1 year and 6 months now; and in these circumstances, the plea

for bail carries weight and the same is accordingly granted.

NO PAST CRIMINAL ANTECEDENTS:

12. Status Report do not indicate any past criminal incident against the bail petitioner and once no cogent reasons-material and evidence exists against him, at this stage, therefore, prolonging the detention shall certainly violate the personal liberty of the petitioner mandated under Article 21 of the Constitution of India.

NO RECOVERY DUE FROM PETITIONER:

13. Status Report filed by State Authorities does not indicate that any recovery is yet to be made from the petitioner in relation to the incident, in instant case.

NOTHING ADVERSARIAL REGARDING TAMPERING WITH EVIDENCE OR WITNESSES ETC:

14. The Status Report 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 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.

CO-ACCUSED RELEASED ON BAIL:

15. Co-accused namely Sattu Jogi and Vishal Sharma released on 18.10.2023 and 10.01.2025. Perusal of Status Reports reveal that one of the co-accused Sattu Jogi, who was detained and sent to Juvenile Justice Home at Nahan alleging him to be a minor and after ossification test, he came out to be major, who was released on 18.10.2023. Another co-accused namely Vishal Sharma and bail petitioner [Shambhu Lal Meena], were mere travellers in the ill-fated White Creta Hyundai Car and therefore, bail petitioner [Shambhu Lal Meena] is entitled for enlargement of bail on principle of

parity, when other co-accused, Vishal Sharma and Sattu Jogi, have been released.

**NOTHING ON RECORD REVEALING APPREHENSION
OF OBSTRUCTING OR ATTEMPTING TO
THRAWTLING JUSTICE:**

16. Status Report 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 may obstruct or thwart the cause of justice in any manner. However, the apprehension if any, of the State Authorities are taken care of, by imposing stringent bail conditions as mandated herein, in the instant case.

17. In order to maintain a balance between the fundamental right of bail petitioner, under Article 21 and apprehensions of State Authorities [though nothing has been placed on record against the petitioner that he may flee away], yet, in peculiar facts of this case, this Court imposes stringent conditions in terms of the later part of this order.

18. Taking into account the entirety of the facts and the material on record and the mandate of law, as referred to above, and in the peculiar facts of this case, the **instant petition is allowed**, and the *State Authorities are directed to release the petitioner [Shambhu Lal Meena] on bail*, subject to observance of the following conditions:-

- (i) Respondent-State Authorities shall release bail petitioner [Shambhu Lal Meena] 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. Failure to appear in trial, except when exempted, shall result in cancellation of the concession of bail as granted by this Court.
- (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, on 2nd Sunday of every month at 08.00 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.;

19. 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.

20. 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.

21. The Registry is directed to forward a copy of this order to Superintendent of Police, Sirmaur at Nahan, Himachal Pradesh and Superintendent of Police, District Chittorgarh [Rajasthan], for keep an update on the conduct/behavior of petitioner herein with reference to contention no. 18 (ii) *supra*, for information and necessary action in terms of this order.

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

(Ranjan Sharma)
Judge

25th March, 2025
(himani)