REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 923 OF 2022
(ARISING OUT OF SLP (CRL.) NO. 9470 OF 2021)

STATE OF WEST BENGAL ……APPELLANT(S)

VERSUS

RAKESH SINGH @ RAKESH KUMAR SINGH …… RESPONDENT(S)

JUDGMENT

DINESH MAHESHWARI, J.

Leave granted.

2. This appeal by the State of West Bengal is directed against the order dated 24.11.2021, as passed by the Division Bench of Calcutta High Court in CRM No. 3152 of 2021, whereby the respondent, an accused of the offences under Sections 21(b)/29/27A of the Narcotic Drugs and Psychotropic Substances Act, 1985[1], has been ordered to be enlarged on bail with certain additional conditions, apart from bail bonds and sureties.

3. Though, the validity of the order granting bail is in question in this appeal and final determination of all the contentious issues is not called for but, looking to the nature of rival submissions made before us as also

1 Hereinafter also referred to as 'the NDPS Act'.

the nature of accusations concerning the respondent, a somewhat lengthy reference to the relevant background aspects is rather inevitable.

4. The matter in issue in this appeal has its genesis in FIR No. 65 of 2021 dated 19.02.2021, registered at New Alipore Police Station, Kolkata, initially in respect of offences under Sections 21(b)/29 NDPS Act; after recovery of 76 grams of cocaine from a motorcar bearing registration No. WB06P/0233 with three occupants, namely, Somnath Chattopadhyay (security guard), Prabir Kumar De and Pamela Goswami. However, on 23.02.2021, the respondent Rakesh Singh @ Rakesh Kumar Singh was arrested in this matter with the accusations essentially pertaining to the offence under Section 27A of the NDPS Act, i.e., financing illicit trafficking in contrabands and harbouring offenders; and with the allegations that he got the contraband procured and then got it planted in the vehicle occupied by the aforesaid three persons.

5. It is the accusations concerning the respondent which forms the core of the subject-matter of this appeal. Thus, we may take note of the salient features of the prosecution case against the respondent as follows:

5.1. As per the prosecution, the respondent had hatched a criminal conspiracy with the other charged co-accused persons for falsely implicating the said Prabir Kumar De and Pamela Goswami of offences under the NDPS Act out of personal grudge. It is alleged that in order to fulfil his designs, the respondent financed the activity of procuring

cocaine, a contraband drug, to the tune of Rs. 8,50,000/- from the co-accused Amrita Singh @ Sweety; that upon receiving instructions and payment from the respondent, the said co-accused Amrita Singh @ Sweety procured the contraband from other co-accused persons, namely, Daim Akhtar and Farhan Ahmed; and that after procurement, the contraband was handed over to the respondent by the co-accused Amrita Singh@ Sweety.

5.2. According to the prosecution, the respondent, thereafter, engaged the co-accused Amrit Raj Singh, who allured the said Prabir Kumar De and Pamela Goswami to attend a meeting with a senior political leader at New Alipore area on 19.02.2021 in relation with the ensuing Legislative Assembly elections; and the said Amrit Raj Singh went to the house of the respondent on 18.02.2021 and was also seen using the vehicle of the respondent.

5.3. It has further been alleged that on 19.02.2021, the said Prabir Kumar De and Pamela Goswami, accompanied by their security guard Somnath Chattopadhyay, picked up Amrit Raj Singh in their vehicle and proceeded for the meeting scheduled at New Alipore area. Upon reaching the place of occurrence, Amrit Raj Singh, on the pretext of changing his clothes, stayed in the vehicle while Prabir Kumar De, Pamela Goswami, and Somnath Chattopadhyay got off. Taking advantage of the circumstances, Amrit Raj Singh concealed cocaine in different parts of the vehicle and made a call to the respondent over a phone number, which

stood in the name of one Jitendra Kumar Singh. Thereafter, Amrit Raj Singh fled on a scooty, as instructed by the respondent and then, took shelter at the respondent's residence.

5.4. As regards recovery and seizure of contraband, it has been alleged that on 19.02.2021, based on credible source information, a team of officers was constituted at New Alipore Police Station; and this team detained the said vehicle bearing Registration No. WB-06 P/0233, seized 76 grams of cocaine from the vehicle, and arrested the said three persons, who were present in the vehicle. Based on this recovery and seizure, a written complaint dated 19.02.2021 was submitted to the Officer In-Charge of New Alipore Police Station, Kolkata by Somnath Sarkar, SI and thereupon, the said FIR No. 65 of 2021 for offences under Sections 21(b) and 29 NDPS Act was registered. Some of the contents of this written complaint leading to the FIR in question shall have their own bearing on the contentions urged in this matter. The same shall be adverted to at the appropriate juncture hereafter later.

5.5. According to the prosecution, on 20.02.2021, the said Amrit Raj Singh was seen leaving the house of the respondent. Further on 22.02.2021, considering the nature and gravity of crime, the investigation of the matter was taken over by the Detective Department, Lalbazar, Kolkata and the Joint Commissioner of Police, Crime, Kolkata formed the Special Investigation Team[2] under Memo No. CI/47/9/21.

2 'SIT', for short.

5.6. It has further been pointed out that a notice under Section 160 of the Code of Criminal Procedure, 1973[3] read with Section 67 NDPS Act was issued to the respondent by the investigating agency requesting his appearance before the Investigating Officer at Narcotic Cell, 6th Floor, KIT Building, Kolkata on 23.02.2021 at 4:00 p.m. This notice was challenged by the respondent by filing WPA No. 5448 of 2021 but the High Court, by its order of the even date, dismissed the petition so filed by the respondent.

5.7. It has yet further been alleged that the respondent failed to appear in response to the notice aforesaid and, therefore, the police went to search his residence at 12A Orphangunj Road, PS Watgunge, Kolkata-23 but the police personnel faced obstructions from CISF personnel, who blocked their entry into the respondent's residence at the instructions of the respondent's sons. It is the case of prosecution that the respondent could not be located at his residence; and one hard-disk consisting of CCTV footage was seized from his house but, upon forensic examination, it was found that the data had been deleted therefrom. It is, however, pointed out that the respondent was detained and arrested at Galsi PS, Purba Bardhaman in the State of West Bengal at 11:29 p.m. on 23.02.2021.

5.8. As regards the aforesaid allegations concerning the events of 18.02.2021 and 19.02.2021, the prosecution has referred to the call record details of the conversation between the respondent and the said

3 'CrPC', for short.

Amrit Raj Singh as also the CCTV footage recorded on the respondent's neighbourhood as also at other place of fleeing of Amrit Raj Singh. The statement of one Sanjay Singh is also referred in relation to the fact of the said co-accused Amrit Raj Singh leaving the house of the respondent.

5.9. The prosecution has further referred to the statement of one witness Md. Nasir Khan recorded on 27.02.2021 under Section 161 CrPC wherein he had stated that on 10.02.2021, the respondent handed over one bundle of 2000 rupees notes to the said co-accused Amrita Singh @ Sweety and the said co-accused handed over 7/8 small packets to the respondent. The prosecution has also referred to the statement of another witness Nishat Alam @ Ruman Khan recorded under Section 161 CrPC on 28.02.2021 in corroboration of the statement of Md. Nasir Khan, concerning the financing and procurement of cocaine. Yet further, the statements of these two witnesses recorded on 30.03.2021 under Section 164 CrPC have also been referred to. It has also been alleged that on 27.02.2021, the respondent refused to follow the norms of Central Lock-up, Lalbazar and on being requested by the security personnel to follow the norms, he threatened them with dire consequences; and that on 09.03.2021, the respondent, on being produced before the NDPS Court, manhandled the OC, Narcotic Cell by abusing and threatening him which resulted in Hare Street PS Case No. 69 dated 10.03.2021 for offences under Sections 353/506 of the Indian Penal Code, 1860[4] and a charge-sheet has been filed in relation thereto.

4 'IPC', for short.

6. Before proceeding further, it could be usefully noticed that the charge-sheet in the present case was submitted on 03.05.2021, arraying the respondent and several other persons as accused while also stating that the allegations against the aforesaid three occupants of motorcar were not established in investigation. As per the facts projected before us, prayer of the prosecution for discharge of the said three occupants of motorcar is pending consideration before the Trial Court.

7. Having been arrested in connection with this case, the respondent moved an application seeking bail before the Trial Court. The application so moved by the respondent was considered and rejected by the learned Judge, Special Court under NDPS Act cum 4th ASJ, Alipore, South 24 Parganas on 12.03.2021. Thereafter, the respondent approached the High Court in the said CRM No .3152 of 2021 that has been considered and allowed by the High Court by way of impugned order dated 24.11.2021. In the passing, we may take note of the fact that for the said bail application having remained pending for long, the respondent approached this Court by filing SLP(Crl.) No. 7282 of 2021, which was decided on 24.09.2021. This Court, of course, declined to issue any direction as such but, took note of the fact that the prayer for bail was pending since 07.04.2021 and permitted the present respondent to make a prayer for expeditious consideration before the High Court while expressing hope and trust that such a prayer would be given due consideration. As per the record, the High Court, thereafter, heard

detailed arguments on the bail application on 07.10.2021 and pronounced the impugned order on 24.11.2021.

8. Having taken note of the background aspects, it would now be worthwhile to take into comprehension the relevant features of the impugned order, whereby the High Court granted the prayer for bail, albeit on a few extra conditions.

8.1. It was contended before the High Court on behalf of the accused-respondent that 76 grams of cocaine was recovered from the possession of the said occupants of the motorcar and there was no recovery of contraband from his possession; that he was sought to be implicated on the basis of statements made by the aforesaid three persons who are co-accused and their statements were not admissible in evidence; that rigours of Section 37 NDPS Act were not applicable in the case because intermediate quantity of contraband was involved; that the initial prosecution case and the case in the charge-sheet were diametrically opposite inasmuch as initially, the said three persons were apprehended on source information when they pointed out as to where in the car the contraband was concealed but, in the charge-sheet, it was alleged that the respondent got planted the contraband in the car as an act of revenge; that there was no material on record even to *prima facie* support the charge of financing illicit trafficking and harbouring offenders so as to bring the case within four-corners of Section 27A NDPS Act; that Section 42 NDPS Act had not been complied with; that even though several

criminal cases were pending against the respondent, but none of them was under the provisions of the NDPS Act and in only one case was he convicted and sentenced to one year imprisonment for entering into scuffle with a police officer in the Court premises but, the sentence was subsequently suspended by the Appellate Court; and that respondent had been framed in this politically motivated case after he had renounced the membership of one political party and joined a rival political party.

8.2. On the other hand, it was contended on behalf of the State by the learned Advocate General that the provisions of the NDPS Act should be strictly enforced to curb the menace of drug trafficking, which has a highly damaging effect on the society at large; that the accused-respondent was the kingpin of a drug racket who would neither come in the fore-front nor indulge in any overt act but, would be pulling the strings from behind the curtain; that there was sufficient material to support the charge under Section 27A NDPS Act and hence, the restrictions of Section 37 NDPS Act were attracted; that the complicity and involvement of the accused-respondent as the head of a drug peddling racket was duly established by the statements of various other witnesses other than the said three car-occupants, which include the statements of Md. Nasir Khan and Nishat Alam @ Ruman Khan recorded under Section 164 CrPC; that on 23.02.2021, the respondent had tried to escape to Patna; that the accused-respondent was a history-sheeter with 53 criminal cases against him and his bail was earlier cancelled when he threatened the

Investigating Officer of the case and the prosecution witnesses outside the court room, as reported in the case of the ***State of West Bengal v. Rakesh Kumar Singh:*** **2015 SCC OnLine Cal 1338**; that the accused-respondent was an influential person and was likely to tamper with evidence and threaten prosecution witnesses, if released on bail; that whether or not there was compliance with Section 42 NDPS Act was a question to be raised in the course of trial and not at the stage of hearing of a bail application as held by this Court in the case of ***Union of India through Narcotics Control Bureau, Lucknow v. Md. Nawaz Khan:*** **2021 SCC OnLine SC 782**; and that resistance of the respondent to the attempt of the investigating agency to collect his voice sample points towards his guilt. The learned Advocate General also relied upon the decision of this Court in the case of ***State of Kerala & Ors. v. Rajesh & Ors:*** **(2020) 12 SCC 122** as regards operation of the rigours of Section 37 NDPS Act.

8.3. After having considered the rival submissions, the High Court formed the opinion that the restriction of Section 37 NDPS Act would not apply to this case and the respondent, who was in custody since 23.02.2021, qualified for grant of bail with stringent conditions. Accordingly, the High Court ordered release of the accused-respondent on bail with heightened conditions like: (a) he would furnish a bond in the sum of rupees one lakh with four sureties of rupees fifty thousand each, two of whom must be local persons; (b) he shall report to the Officer-in-

Charge of the concerned police station once in a week; (c) he would not travel outside the State of West Bengal without prior leave of the Trial Court; and (d) he would surrender his passport before the Trial Court immediately. Having regard to the submissions made in this case, we may take note of the relevant part of the discussion and reasoning of the High Court as under: -

> "4. We have considered the rival contentions of the parties. We have also perused the material in the memo of evidence filed on behalf of the State.
> 5. Certain things are clear. Firstly, there was no recovery of contraband items from the physical possession of the petitioner. Nothing was recovered from the person of the petitioner or any place over which the petitioner had exclusive control. We are conscious that mere non-recovery of contraband from a person's possession may not *per se* dilute the rigours of Section 37 of the NDPS Act.
> 6. However, even assuming that the petitioner had dominion or control over the contraband in question, admittedly intermediate quantity (76 gms) of cocaine was seized. It was urged on behalf of the State that the statements of witnesses would indicate that the petitioner was a regular purchaser of contraband items. However, the fact remains that in the present case only 76 gms of cocaine is involved. As observed by the Hon'ble Apex Court in the case of ***Sami Ullaha (Supra),*** where intermediate quantity of narcotics is involved, it may not be justified to apply the rigours of the provisions of Section 37 of the NDPS Act relating to grant of bail.
> 7. Thirdly, the seizure of the Cocaine was from Prabir, Somnath and Pamela as would appear from the seizure list. The First Information Report dated February 19, 2021 also names those three persons as the accused. They have however not been named in the charge sheet. The prosecution case has changed completely from what it was at the time of filing of the FIR. The story in the charge sheet is completely different. While the case of the prosecution initially was that recovery of the contraband item was made from Prabir, Somnath and Pamela who were intercepted in the Motor Car, the story in the charge sheet is that the petitioner planted the contraband item in the Motor Car in which those three persons were travelling to put them in trouble to take revenge for some personal enmity. Prima facie, this raises considerable doubt in our mind as regards the veracity of the prosecution case.

8. Fourthly, in so far as the offence under Section 27A of the NDPS Act is concerned, i.e. financing illicit trafficking and harbouring offenders, prima facie we do not find material evidence to support that charge. In our view, being involved in one solitary transaction concerning contraband items will not amount to financing illicit traffic in narcotics. The word “trafficking” connotes continuous flow. There has to be some degree of continuity and regularity in drug dealing before a person can be said to be trafficking in drugs. Similarly, financing illicit traffic would necessarily mean doing so on a regular or continuous basis. It is much more than purchasing or selling contraband items on one occasion. Such a solitary transaction would, in our prima facie opinion, not fall within the mischief of Section 27A of the NDPS Act. In this connection, one may refer to a decision of the Bombay High Court rendered on October 7, 2020 in ***Criminal Bail Application (Stamp) No. 2386 of 2020 (Reha Chakraborty v. The Union of India State of Maharashtra)***.

9. Fifthly, we also notice that none of the 53 criminal cases pending against the petitioner is under the provisions of the NDPS Act. Though the petitioner has criminal antecedents, there is no history of the petitioner dealing in narcotics in contravention of the provisions of the NDPS Act.

10. Prima facie there is nothing to show that the petitioner has previously violated any of the provisions of the NDPS Act.

11. As regards the State’s argument that the petitioner was trying to abscond on the night when he was arrested, prima facie, the petitioner may be given the benefit of doubt that he was not going to Patna for the purpose of absconding. Since there was no restriction on his movement, merely from the fact that he was headed towards Patna may not necessarily indicate that he was trying to flee.

12. As regards the petitioner’s reluctance to furnish voice sample, we do not think that such refusal would be a ground for denying bail to the petitioner when on an overall assessment of the material on record and on consideration of the applicable law, we are of the prima facie view that the petitioner may have a reasonably arguable case for acquittal at the trial. Refusal of the petitioner to furnish voice sample, may or may not have an adverse effect on his case at the trial, but we are not concerned with the same at this stage.

13. We are conscious about the salutary object of the NDPS Act and we have given due regard to the decision of the Hon’ble Apex Court in the case of ***State of Kerala v. Rajesh, (Supra)***. There cannot be any doubt that persons indulging in illegal trafficking in contraband drugs and psychotropic substances must be dealt with, with iron hands. The activities of such persons have a widespread deleterious effect on the society at large. Countless members of the society, often of tender age, fall prey to the heinous and nefarious activities of drug peddlers. However, the decision in each case must depend on the facts of the case and

> no principle of law can be applied blindly to a given set of facts. In the facts of the present case, on an assessment of the material on record, we are of the prima facie view that the petitioner may not have committed the offence that he is charged with. Further, considering the past history of the petitioner which we have adverted to above, there is nothing on record to suggest that he is likely to commit an offence under the NDPS Act while on bail.
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> 14. For the reasons aforestated we are of the view that the restriction in Section 37 of the NDPS Act would not apply. Assessing the nature and gravity of the alleged offence and the material on record and also in view of the fact that the petitioner has been in custody since February 23, 2021, we are of the view that the petitioner qualifies for bail but on stringent conditions.
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> 15. Accordingly, we direct that the petitioner, namely, **Rakesh Singh @ Rakesh Kumar Singh** shall be released on bail upon furnishing a bond of Rs. 1,00,000/-, with four sureties of Rs. 50,000/- each, two of whom must be local, to the satisfaction of the Learned Judge, Special Court under the NDPS Act, Alipore, South 24 Parganas, and on further condition that he shall report to the Officer-in-Charge of the concerned police station once in a week until further orders. The petitioner shall appear before the trial Court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever. He shall not travel outside West Bengal without the prior leave of the Trial Court and shall surrender his passport before the learned Trial Court immediately. The petitioner shall fully cooperate with the Investigating Authority in case of further investigation, if any.
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> 16. In the event, the petitioner fails to adhere to any of the conditions stipulated above without justifiable cause, the trial court shall be at liberty to cancel the petitioner's bail in accordance with law without further reference to this court."

9. Seeking to challenge the order impugned, a wide variety of submissions have been made by the learned senior counsel for the appellant with the assertions that the High Court has erroneously granted bail to the respondent in utter disregard to the facts and circumstances of the case and the principles of law applicable thereto.

9.1. The learned senior counsel has referred to the facts and the background aspects above-noticed and has contended that, for all the evidence collected in investigation and presented in the charge-sheet,

clearly a case of conspiracy of financing illicit trafficking of contraband and harbouring offender, punishable in terms of Section 27A NDPS Act is made out against the respondent. It has been contended that the respondent, in furtherance of conspiracy, financed the activity of procuring cocaine to the tune of Rs. 8.5 lakhs through the co-accused Amrita Singh @ Sweety; then, engaged another co-accused Amrit Raj Singh who lured the said Pamela Goswami and Prabir Kumar De to meet a political leader and on 19.02.2021, planted the contraband in their vehicle, and after planting the contraband, informed the respondent about execution of the work and fled from the spot to take shelter at the respondent's residence. According to the learned counsel, it is clearly made out that the respondent financed the activity of procuring cocaine worth Rs. 8.5 lakhs through the co-accused Amrita Singh @ Sweety and then, harboured the offender Amrit Raj Singh; and this prosecution case against the respondent is duly supported by the statements of the witnesses Md. Nasir Khan and Nishat Alam @ Ruman Khan recorded under Section 161 CrPC as also under Section 164 CrPC and is further supported by the CCTV footage before and after the incident as well as the call data records. Learned counsel would argue that the High Court has seriously erred in not considering the relevant facts and in holding that the restrictions under Section 37 NDPS Act would not apply to the respondent, while losing sight of the fact that this provision operates in addition to the requirements of CrPC.

9.2. The learned senior counsel has further contended that the High Court failed to consider that mere absence of possession of contraband does not absolve scrutiny under Section 37 NDPS Act, as held by this Court in the case of ***Md. Nawaz Khan*** (supra). According to the learned counsel, the High Court has proceeded on the considerations that there was no recovery from the respondent; that the recovery was of intermediate quantity; and that the initial case of prosecution has changed but, the High Court has ignored the fact that after the arrest of Pamela Goswami and Prabir Kumar De with whom cocaine was found, the investigation revealed that all this was done in furtherance of the conspiracy to implicate them at the instance of the respondent.

9.3. While reasserting that a clear case under Section 27A NDPS Act is made out, the learned senior counsel has contended that the High Court's reference to the case of ***Rhea Chakraborty v. Union of India & Anr.*****: 2020 SCC OnLine Bom 990** remains misplaced inasmuch as, even in that decision, it was held by the Bombay High Court that financing is making a particular activity operational or for sustaining it.

9.4. A learned senior counsel has also questioned the conduct of the respondent that even after dismissal of WPA No. 5448 of 2021 on 23.02.2021, he failed to appear before the Investigating Officer at 04:00 p.m.; remained unavailable at his residence; and was finally apprehended at Purba Bardhaman at 11:29 p.m. The learned counsel would submit, while relying on the decision in the case of ***State of U.P. v. Amarmani***

***Tripathi*: (2005) 8 SCC 21,** that the respondent has shown the tendency to abscond or flee and hence, does not deserve indulgence of bail.

9.5. Further, with reference to the decision in the case of ***Prasanta Kumar Sarkar v. Ashish Chaterjee & Anr.*: (2010) 14 SCC 496**, the learned senior counsel has contended that the respondent enjoys considerable political clout in the State of West Bengal and there remains a reasonable apprehension that he may use his power and position to influence the witnesses and to tamper with the evidence; and these aspects need to be taken into consideration while considering the bail plea of such an accused.

9.6. The learned senior counsel has further highlighted the fact that the respondent has been involved in as many as 53 criminal cases at different police stations in the State of West Bengal and has the history of threatening public servants. It has particularly been pointed out that in the year 2015, the respondent attempted to threaten the Investigating Officer and to snatch away the Government documents which resulted in Hare Street PS Case No. 108 dated 19.02.2015, where he was ultimately convicted. It has further been pointed out, with reference to the order in the case of ***State of West Bengal v. Rakesh Kumar Singh*: (2015) SCC OnLine Cal 1338**, that even in custody, he had threatened the police officers. It has yet further been submitted that the respondent refused to follow the norms of the Central Lock-up, Lalbazar and on being requested to do so, he threatened the security personnel with dire consequences;

he also tried to assault and attempted to abscond; and yet further, on being produced before the NDPS Court, he manhandled the OC, Narcotic Cell by abusing and threatening him, which resulted in Hare Street PS Case No. 69 dated 10.03.2021 for offences under Sections 353 and 506 IPC.

10. In this matter, we had heard learned counsel for the parties on 18.05.2022. During the course of submissions, a few queries cropped up, particularly in regard to the status of the said three occupants of the motorcar and as to whether any of their statements had been recorded as also about the particulars of cases pending against the respondent. Having regard to the circumstances, while closing the matter, we permitted the learned counsel for the parties to file supplementary written notes on their submissions as also documents, in addition to the submission notes and documents already filed by them. Accordingly, on behalf of the appellant-State, supplementary written submissions have been filed with additional documents.

10.1. By way of the said supplementary submissions and documents, it has been asserted that after constitution of Special Investigation Team on 22.02.2021, the statements under Section 161 CrPC of the said three occupants of the motorcar were recorded, which uncovered the criminal conspiracy hatched by the respondent to implicate them out of personal vendetta. The statements of these three persons, said to have been recorded by the SIT, have been annexed with these supplementary

written submissions wherein, the said Prabir Kumar De and Pamela Goswami have referred to their own personal relationships as also the attempts of the respondent to forge a relationship with Pamela Goswami and the respondent having been enraged when the matter was reported to the higher authorities of their political party and he was cautioned by the party functionaries. It has been alleged that after such incidents, the respondent threatened to implicate her and Prabir Kumar De in a criminal case. Further, as per those statements, Amrit Raj Singh accompanied them in the motorcar, as indicated in the prosecution story. It has also been narrated as to how Amrit Raj Singh asked the driver to stop the vehicle at a particular place; asked other occupants to get down and he remained inside the vehicle for some time on the pretext of changing his shirt and putting on a cover coat; and within a few minutes of his getting down, 10/25 police personnel encircled the vehicle and then, found the plastic packets at different places inside the vehicle whereas Amrit Raj Singh managed to escape.

10.2. It has also been submitted on behalf of the appellant that the said three persons have yet not been discharged and in the event of being discharged, they would be cited as witnesses by the prosecution.

10.3. As regards the criminal antecedents of the respondent, a list of criminal cases against him has also been placed before us while pointing out that 51 cases are pending against him and in two cases, he has been

convicted wherein the allegations were of criminal intimidation and wrongful restraint of police personnel.

10.4. It has, therefore, been submitted that looking to the nature of accusations and the conduct of the respondent, he is not entitled to be released on bail; and the impugned order deserves to be set aside.

11. The submissions so made on behalf of the appellant State have been equally countered by the learned counsel for the respondent while supporting the order impugned and while asserting that the respondent has been sought to be framed in this case with a concocted story and with distortions of facts.

11.1. The learned counsel has referred to the five major factors taken into consideration by the High Court, namely, that only intermediate quantity of contraband was involved; that Section 27A NDPS Act was not attracted due to lack of *prima facie* evidence concerning involvement of the respondent; that there was no history of the respondent dealing in narcotics; that there was no recovery of contraband from the physical or conscious possession of the respondent; and that the FIR case has been completely changed by the State in the charge-sheet, raising considerable doubt regarding the veracity of prosecution case. The learned counsel would submit that the impugned order, thus, proceeds on valid considerations and yet, the High Court has imposed rather stringent conditions while granting bail, which are being complied with by the

respondent. Thus, according to the learned counsel, no case for interference is made out.

11.2. The learned counsel has again made reference to the aforementioned factual aspects and has strenuously argued that the material witnesses in support of the accusations of conspiracy against the respondent allegedly gave their statements to the police on 27.02.2021 and 28.02.2021 respectively. That being the position, on 22.02.2021, when the respondent was served with notice, the investigation agency had no material to connect him with the present case and there was no reason to summon him. The learned counsel has also attempted to argue that one of the members of the SIT formed by the State had earlier tried to forge a false complaint against the respondent. It has been contended that the respondent was summoned without any material and even when the time to join investigation was scheduled at 04:00 p.m., the State police raided the house of the respondent at 01:30 p.m. and carried out illegal search, though no contraband article was recovered from the house/office of the respondent.

11.3. With reference to the genesis of the case arising out of FIR No. 65 of 2021 and recovery of contraband from the motorcar occupied by the said three persons, the learned counsel has particularly referred to the fact that as per the complaint, the said occupants had pointed out the place in the motorcar where cocaine was concealed and this fact itself gives rise to considerable doubt in relation to the prosecution case about

anyone concealing cocaine in the motorcar without knowledge of the said occupants. In the given circumstances, according to the learned counsel, observations of the High Court that the prosecution case has changed completely from what it was at the time of filing of FIR cannot be said to be unjustified. It is submitted that there is not even *prima facie* evidence to allege that the respondent got planted contraband in the motorcar of the said three occupants, who remain the main accused persons in this case.

11.4. Apart from questioning the correctness of the statements said to have been made by the said witnesses Md. Nasir Khan and Nishat Alam @ Ruman Khan, the learned counsel has pointed out that both of them are convicts in a rape case and they came out of jail only 2-3 months before the incident related with the present matter. This apart, according to the learned counsel, even taking their statements on face value, the charge under Section 27A will not get attracted for it being solitary transaction and the motive being of revenge and not drug peddling. The learned counsel has elaborated that for attracting the mischief of Section 27A NDPS Act, there ought to be doing something on regular basis and a solitary transaction is not covered thereunder; and this is coupled with the fact that nothing was recovered from the respondent or from any place over which he had exclusive control.

11.5. It has further been submitted that there was no question of the respondent absconding; rather he had duly replied to the notice and, in

fact, had also given his locations. Thus, the police were well aware of his location and hence, they could arrest him whenever they chose.

11.6. As regards the cases against the respondent, it has been argued that the respondent is a well-known political team leader and a substantial number of cases were filed against him by the State police itself but, in none of such cases, the respondent was involved in the offences pertaining to the NDPS Act.

11.6.1. It has also been submitted that in Hare Street PS Case No. 108 dated 19.02.2015, the respondent was convicted only under Section 353 IPC and his appeal against conviction is pending and sentence has been suspended. It has also been pointed out that SLP(Crl.) No. 5053 of 2015, filed by the respondent against the bail cancellation order is also pending, wherein this Court has granted interim relief against bail cancellation.

11.6.2. It has further been submitted that the entire case is a concocted one and no connecting material is available in the record. As regards the allegations about removing of data from the hard-disk of CCTV footage of the respondent's residence, it is submitted that no such hard-disk was recovered from the respondent.

11.7. The supplementary submissions made on behalf of the appellant have also been countered with further supplementary submissions on behalf of the respondent wherein, it has been reiterated that as per the FIR, the said three occupants of the motorcar pointed out as to where the contraband (cocaine) was concealed in the vehicle. As regards the

purported statements of the said three occupants under Section 161 CrPC, it has been contended that the three statements annexed with the supplementary written submissions on behalf of the State were neither in the charge-sheet nor in the record of the Trial Court. On the contrary, one statement of Pamela Goswami, recorded on 19.02.2021, has been annexed on behalf of the respondent wherein, she allegedly confessed to be a dealer in drugs and it is submitted that the same is a part of the charge-sheet. It has also been alleged that 10 months prior to the seizure in question, the father of Pamela Goswami had made a written complaint to the Commissioner of Police, Kolkata alleging that Prabir Kumar De had made Pamela Goswami a drug addict. Moreover, the observations made by the High Court in the order dated 06.01.2022, while granting bail to the co-accused Amrita Singh@ Sweety have also been referred.

11.8. It has been reasserted that the allegations levelled against the respondent of financing illicit trafficking is not made out nor any case of harbouring offenders is made out. The decision in the case of ***Rhea Chakraborty*** (supra) has been relied upon.

12. We have given anxious consideration to the rival submissions and have scanned through the material placed before us.

13. At the first blush, a few factors appear operating against the respondent and it appears questionable if the respondent was entitled to be granted bail in this matter, particularly having regard to the facts and circumstances that: (a) the accusation is essentially of financing the

trafficking of contraband and also of harbouring offenders, which relates to the offence under Section 27A NDPS Act and to which, the rigours of Section 37 NDPS Act do apply; (b) the accusation is supported by *prima facie* evidence, including the statements of witnesses as also CCTV footage and call data records; (c) on 23.02.2021, even though the respondent attempted to question the notice summoning him to appear at 04:00 p.m. and the High Court dismissed his writ petition but, he did not appear and was apprehended later in the night at a distant place; (d) the prosecution has shown that the respondent was involved in as many as 53 criminal cases and he has been convicted in at least two of them; and (e) the prosecution has alleged that even in relation to this particular case, the respondent had been separately charge-sheeted for the offence pertaining to Section 353 IPC and he has attempted to threaten the law enforcing agencies and personnel.

13.1. However, a comprehensive look at the salient and core features of this case persuades us to endorse the view taken by the High Court as being a possible view of the matter, particularly in regard to the doubt on the prosecution case and consequentially a reasonable ground to believe against the complicity of the respondent.

14. The accusation against the respondent pertaining to offence under Section 27A NDPS Act is essentially based on the prosecution story that the respondent, nursing a grudge against the said two occupants of the motorcar namely, Prabir Kumar De and Pamela Goswami, hatched the

conspiracy to have them implicated in an NDPS Act case and in pursuance thereof, got the contraband procured through the co-accused Amrita Singh@ Sweety after making payment for the same; got the contraband planted in the said motorcar through the other co-accused Amrit Raj Singh; and extended shelter to Amrit Raj Singh before and after the event of planting. This story is sought to be supported and strengthened with the statements of the said witnesses Md. Nasir Khan and Nishat Alam @ Ruman Khan, as recorded under Section 161 CrPC on 27.02.2021 and 28.02.2021 respectively as also their statements under Section 164 CrPC as recorded on 30.03.2021.

14.1. Though, *prima facie,* it appears that the aforesaid statements of the witnesses have not as such gone into consideration of the High Court but, a close look at the impugned order makes it clear that in paragraph 7 thereof, the High Court has noticed as to what was contained in the initial FIR and what was suggested in the charge-sheet; and has found, *prima facie*, that the story in the charge-sheet, about the respondent having got contraband item planted in the motorcar in which the said three persons were travelling to put them in trouble because of personal enmity, was of considerable doubt. The High Court has, and in our view rightly so, not elaborated on all the features of evidence so as to leave the relevant aspects open for trial. However, in view of the contentions advanced before us, it may be observed that at the present stage, the contention on the part of the respondent cannot be ignored that if such statements of

the said two witnesses were recorded on 27.02.2021 and 28.02.2021, there was no material with the investigating agency to summon him on 22.02.2021. This is apart from the fact that the statements of the said two witnesses, *prima facie* give rise to some reasonable questions, as to why were they kept as companions while the respondent and the co-accused Amrita Singh @Sweety purportedly carried out the alleged clandestine deals with exchange of contraband and the currency?

15. In response to the said part of the contentions of respondent that there was no material with the prosecution to summon him on 22.02.2021, it has been alleged on behalf of the appellant that the said three occupants of motorcar made their statements which were recorded under Section 161 CrPC and those statements gave out the background of animosity of the respondent as also the methodology employed by the respondent through the co-accused Amrit Raj Singh by getting the contraband planted in the vehicle. Serious objections have been raised on behalf of the respondent as regards the said three statements of the motorcar occupants with the submissions that the same were not part of the charge-sheet and were not on the record of the Trial Court. This apart, on behalf of the respondent, another statement of Pamela Goswami, said to have been recorded on the date of seizure i.e., 19.02.2021 has been placed before us while submitting that the same is a part of the record and therein, she has admitted herself to be a person dealing in narcotic drugs. Having regard to the circumstances of the case and the subject-

matter of this appeal, we do not propose to enter into this controversy as to whether the alleged statements of the said motorcar occupants do form a part of the Trial Court record or not nor do we propose to make any observation as regards evidentiary value thereof but, after examining the same on their face value and taking note of the other relevant material on record, we are constrained to observe that the alleged statements of motorcar occupants give rise to more questions rather than supplying necessary answers, as noticed *infra*.

16. According to the prosecution, the FIR in question for offences under Sections 21(b) and 29 NDPS Act came to be registered on the basis of a written complaint dated 19.02.2021, as submitted to the Officer In-Charge of New Alipore Police Station, Kolkata by Somnath Sarkar, SI after the aforesaid proceedings of search of the said motorcar as also seizure of contraband from the motorcar. This complaint dated 19.02.2021 is an admitted document of the appellant and is rather the foundation of the entire matter. A few passages of the said written complaint, disclosing as to what exactly transpired in detaining the vehicle and as to how the contraband was recovered, could be usefully noticed as under: -

> "….At about 11:30 hrs we reached at Nalini Ranjan Avenue, under New Alipore P.S. area. Source led us to the spot and maintained watch. <u>At about 13:00 hrs source pointed out towards one maroon colored Honda BR-V car was coming along from West to East direction. The said vehicle was detained with the help of other raiding team members on the road</u> in front of a house named as Parameshwari Sadan at 92/93 Nalini Ranjan Avenue, block-B (formerly 24N, Block-B), PS-New Alipore, Kol-53 and found two male and one female persons sited inside of the maroon colored

car bearing no. WB06P0233. One male person sited at driver sit and another male person waws sited next to the driver seat (front) and one female person sited at rear seat of the said vehicle/car. We disclosed our identity for the purpose of detention…

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…..After that the undesigned started to search the male detainees and the said vehicle/car one by one on the spot in presence of all maintaining all legal formalities and at that time the lady constable Pema Lamu Sherpa started to search the female detainee maintaining decency and decorum. During search of the vehicle bearing no. WB06P0233 on being asked the all detainees of the vehicle bearing no. WB06P0233 pointed out towards at the rear zip cover of the left front seat and under driver's seat of the said vehicle where the contravened drugs/cocaine were found in concealed manner in black colored polythene packets. Thereafter undersigned took out two black colored polythene packets and opened those one by one. On being opened the packet found in the left side rear zip cover of driver seat, found 35 pieces transparent zip pouch each containing white colored power (*sic*) said to be cocaine and weighing about 40 gms. On being opened the packets found under the driver seat, found 31 pieces transparent zip pouch each containing white coloured power (*sic*) said to be cocaine and weighing about 36 gms…."

(emphasis supplied)

16.1. Two major aspects emerge from the extraction foregoing: one, that before interception, the motorcar in question was in motion and was moving from west to east direction, which was detained by police with the help of other raiding team members; and second, that during search, the occupants of motorcar pointed towards two specific places inside the vehicle where the contraband drug/cocaine was placed in a concealed manner i.e., rear zip cover of the left front seat and beneath the driver's seat. Both these assertions, when examined with reference to the alleged statements of the three motorcar-occupants, as placed before us with supplementary written submissions, their incompatibility and contradiction strikingly come to the fore. According to the said statements, a few

minutes before the alleged ‘encircling’ of motorcar by the raiding team, the said occupants had come out of the vehicle and Amrit Raj Singh remained inside for changing his clothes; and he spent a minimum of 10 to 15 minutes inside the vehicle when these three persons allegedly saw him bending down and doing something on the floor of the car! The story, as sought to be suggested in these statements, contradicts the fundamental facts stated in the initial complaint that the search and raiding team persons had in fact stopped and detained the moving vehicle; and that the occupants of motorcar pointed towards the specific places in the vehicle where the contraband items were concealed.

16.2. When the assertions of the SI lodging the written complaint after search of the vehicle and seizure of contraband on 19.02.2021 are pitted against the alleged statements of the three occupants of the vehicle, the question does arise as to which of the two contradictory versions is to be accepted at this stage? In our view, at the present stage and on *prima facie* consideration of the matter, the only logical approach could be to proceed on the basis of the version of the SI as given in the written complaint because, it is not the case of the appellant that the version in the written complaint is not correct. In this view of the matter, the very edifice of the prosecution case against the respondent crumbles down and falls flat. Putting it differently, the story of planting of contraband in the vehicle in question by some third person like Amrit Raj Singh could only

be disbelieved, for being squarely contrary to the initial case of the prosecution, as stated in the written complaint.

16.3. Once the veracity of prosecution case against the respondent is in serious doubt, further analysis on the other factors about financing the drug trafficking and harbouring of offender need not be undertaken because, when the story of planting of contraband is removed out of consideration, all other factors by which respondent is sought to be connected with such alleged planting could only be regarded as false and fanciful, at least at this stage.

16.4. Hence, suffice it to observe for the present purpose that in the given set of facts and circumstances, the High Court has rightly found that applicability of Section 27A NDPS Act is seriously questionable in this case. That being the position; and there being otherwise no recovery from the respondent and the quantity in question being also intermediate quantity, the rigours of Section 37 NDPS Act do not apply to the present case.

17. After the discussion aforesaid, we are constrained to reiterate that the High Court has dealt with this part of the matter without much elaboration and rightly so, for only the prayer of bail being under consideration. However, we have considered it appropriate to delve farther in the matter in view of the submissions made and material presented before us. In any case, for what has been discussed hereinabove, the result precisely remains the same as indicated by the

High Court, that diametrically opposite case in the charge-sheet than that alleged in FIR gives rise to serious doubt on the veracity of the prosecution case against the respondent. In this view of the matter, the other part of submissions and reference to the cases of ***Md. Nawaz Khan*** and ***Rhea Chakraborty*** (supra) do not require much elaboration. As aforesaid, when the case against the respondent of getting the contraband planted in the vehicle in question is *prima facie* disbelieved because of material available on record, the questions concerning possession of contraband, its quantity or financing are all rendered redundant. In this view of the matter, reference to the other pieces of supporting evidence like the alleged statements of the said Md. Nasir Khan and Nishat Alam @ Ruman Khan as also the alleged CCTV footage and call data records cannot provide sustenance to the prosecution case against the respondent, at least at this stage.

18. The other segment of the relevant aspects of this case pertains to the conduct of the respondent. In this regard, a few noticeable facts and factors against him could be summarised thus: he has been involved in as many as 53 criminal cases and had been convicted in two of them; there had been several allegations against him of threatening the Investigating Officers and public servants from time to time; even in the present case too, he had allegedly threatened and misbehaved with the police officers and has been charge-sheeted for offences under Sections 353 and 506 IPC; and on 23.02.2021, he did not appear before the

Investigating Officer even after dismissal of his writ petition by the High Court and was arrested at a faraway place. These facts and factors, *prima facie,* give rise to the question as to whether the respondent was entitled to be granted the indulgence of bail. The High Court has taken the view that, *prima facie,* the respondent might not have committed the offence he has been charged with in this case; and, looking to his past history, there was nothing on record to suggest that he was likely to commit an offence under the NDPS Act while on bail. The High Court has, in the totality of circumstances, taken the view that the respondent was entitled for bail on stringent conditions and has imposed additional conditions as noticed hereinbefore.

18.1. Although, the past history of the respondent and even his conduct in relation to the processes concerning the present case give rise to a few questions but, the strong countervailing factor in the present case is the *prima facie* indication that he is being sought to be framed by concoctions and baseless stories. Another factor noticeable is that the respondent has not been involved in any NDPS Act case or any akin offence in the past. Interestingly, it is noticed from the material placed on record that nothing of any contraband article has been recovered from the respondent or from any place under his exclusive control. This factor further adds on to the doubt as to whether the respondent had at all been indulgent in narcotics or any contraband? That being the position, the view as taken by the High Court cannot be said to be an altogether unacceptable or

impossible view of the matter. Moreover, it cannot be said that the respondent was consciously seeking to abscond on 23.02.2021 merely because he was found in the night at Purba Bardhaman and not at Kolkata. In any case, the aspect relating to tendency to flee has been duly taken care of with the conditions as imposed by the High Court. The other submissions with reference to the decision in the case of ***Prasanta Kumar Sarkar*** (supra) hardly make out a case for interference particularly looking to the nature of evidence sought to be adduced by the prosecution against the respondent. In this regard, we would hasten to observe that apart from the stringent conditions already imposed by the High Court, it is always open for the prosecution to seek imposition of any further condition or even to seek cancellation of the bail granted to the respondent, in case of any fault on his part in due adherence to the conditions already imposed.

19. In view of the above, we find no reason to consider interference in the order passed by the High Court granting bail to the respondent with specific conditions.

20. Before concluding on the matter, we deem it appropriate to observe that none of the comments herein would be of any bearing on the final view to be taken by the Trial Court after the trial because, the observations herein are only of *prima facie* view and that too, so far relevant for the purpose of the question of grant of bail to the respondent.

21. Accordingly, and in view of the above, this appeal fails and is dismissed subject to the observations foregoing.

……..…….. J.
(DINESH MAHESHWARI)

……..…….. J.
(ANIRUDDHA BOSE)

NEW DELHI;
JULY 11, 2022.