



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL No. ____/2025
(Arising out of SLP (Crl.) No. 8878/2024)**

Harpreet Singh Talwar @ Kabir Talwar

...Appellant

versus

The State of Gujarat *th.* National Investigating Agency

...Respondent

ORDER

SURYA KANT, J.

Leave granted.

2. The Appellant assails the order dated 28.03.2024 passed by the High Court of Gujarat at Ahmedabad (**High Court**) whereby his prayer for regular bail in connection with **FIR No. RC-26/2021/NIA/DLI** dated 23.09.2022 (**FIR**) registered by the National Investigation Agency (**NIA**), has been declined.
3. The aforesaid FIR arises from investigations into a multi-jurisdictional narcotics smuggling operation allegedly executed by Afghan-based syndicates, with links to domestic operatives, wherein substantial

quantities of heroin were illicitly brought into India under the cover of commercial consignments.

4. The Appellant herein is arraigned as Accused No. 24 in the said case and is currently in custody since 24.08.2022. The offences alleged against him include those under Sections 8(c), 21(c), 23(c), and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (**NDPS Act**), Sections 17, 18, and 22C of the Unlawful Activities (Prevention) Act, 1967 (**UAPA**), and Section 120B of the Indian Penal Code, 1860 (**IPC**). The trial is currently ongoing before the Special Court (NIA), Ahmedabad (**NIA Court**), and is at the stage of examination of Prosecution witnesses.
5. Before delving into the merits of this case, we may briefly advert to the factual matrix *vis-à-vis* the Appellant, i.e. Harpreet Singh Talwar @ Kabir Talwar.
6. The gravamen of the allegations against the Appellant is that he played a central and coordinating role in the facilitation of a consignment of heroin-laced talc stones imported into India in December 2020 through Mundra Port, Gujarat, under the cover of a firm named M/s Magent India. According to the Prosecution, the Appellant's involvement in the present offence must be understood in the context of his long-standing associations with entities and individuals engaged in illicit international trade.

7. The offence came to light when the Directorate of Revenue Intelligence (**DRI**), Gandhidham Unit, registered Case No. DRI/AZU/GRU/NDPS-01/2021 under the NDPS Act. That case pertains to the seizure of 2,988.21 kg of heroin, allegedly originating from Afghanistan and routed through Bandar Abbas, Iran. The narcotics were smuggled into India concealed as talc powder in a consignment addressed to one M/s Aashi Trading Company.
8. Based on intelligence inputs and parallel investigations by customs authorities and the DRI, the case was eventually taken over by the NIA. An FIR was registered on 06.10.2021, under the NDPS Act and UAPA. Due to the spread and magnitude of the alleged offence, investigative efforts were escalated, which led to the NIA discovering involvement of the Appellant in similar cross-border smuggling of narcotics.
9. NIA thus alleges that in September 2020, the Appellant undertook a visit to Dubai, where he was introduced through one Sunny Kakkar to Vityash Koser @ Raju Dubai, a foreign national and a designated accused (WA-7) alleged to be at the helm of a transnational heroin smuggling network.
10. This initial meeting, as per statements recorded under the NDPS Act and UAPA by protected witnesses, laid the foundation for a 'criminal conspiracy' wherein the Appellant agreed to facilitate the import of

heroin into India under the guise of legitimate commercial goods. In furtherance of this arrangement, the Appellant is stated to have instructed his accountant, Sunil Jain, to arrange for the registration of a proprietorship concern in the name of his employee and domestic aide, one Prince Sharma (A-25). This entity—M/s Magent India—was registered on 22.09.2020, and according to the Prosecution, remained under the effective control of the Appellant.

11. Thereafter, the Appellant is alleged to have travelled to Dubai a second time, wherein he finalized the modalities of the import with Raju Dubai. Soon after, a consignment of 22 bags of semi-processed talc weighing 21,880 kilograms was dispatched on 16.11.2020 by M/s Habib Shabab Talc & Marble Processing Co. Ltd., Afghanistan, and routed through Bandar Abbas Port, Iran, consigned to M/s Magent India.
12. The consignment arrived at Mundra Port, Gujarat on 23.12.2020, *via* Bill of Entry No. 2083348. Around this time, Amit Sharma, described as a known associate of Raju Dubai, is said to have visited the Appellant's office at East Patel Nagar, New Delhi. As per the statements of Sunil Jain and protected witnesses, Amit Sharma was handed over the firm's import documents, including GST and IEC credentials, under direct instructions from the Appellant. The

clearance of the consignment was subsequently completed, although it was marked for 100% examination.

13. Importantly, no remittance was made by M/s Magent India to the Afghan supplier. Instead, the NIA alleges that the Appellant received perfumes, dry fruits, and footwear as barter compensation through other firms controlled by him. The goods were allegedly routed *via* Dubai, without any customs duty being paid, and were disposed of through entities that shared direct or indirect ownership links with the Appellant.
14. When the enforcement agencies began probing similar consignments in early 2021, the Appellant is said to have convened a meeting in his office, attended by Prince Sharma and Amit Sharma. According to one of the protected witnesses, the Appellant asked Amit Sharma to sign a backdated 'Authorization Letter' accepting responsibility for the consignment, which was refused. Subsequently, the Appellant directed that fictitious invoices be raised to show sale of the goods to M/s Prabh International, a company associated with his wife, Shaily Talwar. However, no actual movement of goods ever took place; the transaction was confined to papers only.
15. The Appellant's residence was searched on 24.08.2022, by the NIA, and several items were seized including property documents, import-export records, and an iPhone 13 Pro allegedly used during the

relevant period. He was also taken into custody on the same date. Subsequent forensic examination of call detail records confirmed that during the clearance of the consignment at Mundra, there was simultaneous contact between the Appellant, Amit Sharma, and Raju Dubai, who were located within the same mobile tower zone.

- 16.** In the first charge sheet filed on 14.03.2022, the Appellant was not named as an accused. However, a second supplementary charge sheet was subsequently filed on 20.02.2023, formally naming the Appellant as Accused No. 24. He was charged under Sections 120B of the IPC, 8(c), 21(c), 23(c), 29 of the NDPS Act and Sections 17, 18, 22C of the UAPA. The Prosecution also cited multiple protected witness statements, including those former employees and associates who allegedly corroborated the Appellant's role in the formation and control of Magent India, namely, the logistics of import, and the subsequent efforts to create a paper trail for concealment.
- 17.** The Appellant first moved an application for regular bail before the Special Court, which was declined *vide* order dated 30.07.2023, holding that the material on record disclosed a *prima facie* case of conspiracy under the NDPS Act and UAPA. The Special Court also took note of the magnitude of the offence, the transnational nature of the smuggling operation, and the possibility of the Appellant influencing the course of the ongoing investigation and trial.

- 18.** The aggrieved Appellant then approached the High Court under Section 439 of the Code of Criminal Procedure, 1973 (**CrPC**). However, by a reasoned order dated 28.03.2024, the High Court similarly dismissed the Appellant's regular bail application holding that the statutory bar under Section 43D(5) of the UAPA was attracted in the facts of this case. It further observed that the role attributed to the Appellant, viewed cumulatively with the nature of the conspiracy and the statements of key witnesses, warranted continued custody at that stage.
- 19.** Consequently, the Appellant is before this Court. Upon issuance of notice on 12.07.2024, this Court has from time to time sought to facilitate the expeditious conduct of the ongoing trial, solely for the purpose of enabling a proper and informed consideration of the Appellant's prayer for bail on merits. In that context, directions were issued to NIA to furnish a list of vulnerable and material witnesses, whose testimony was considered essential at this stage. Pursuant to such directions, the NIA identified 24 such witnesses, of whom 20 have since been examined, while two have unfortunately expired, and the remaining two are untraceable despite the Agency's stated efforts.
- 20.** Having touched upon the limited facts and circumstances that are relevant for our consideration, we presently deem it fit to also elucidate the contentions tendered on behalf of both the parties.

21. Mr C. A. Sundaram, Mr Siddharth Bhatnagar, and Dr Aditya Sondhi, learned Senior Counsel appearing on behalf of the Appellant have proffered several submissions against the correctness of the impugned order in denying bail to the Appellant:

- (i)** the accusations against the Appellant rest solely on circumstantial material, and no direct, primary, or even credible indirect evidence has been adduced against him over the course of investigation or trial proceedings so far;
- (ii)** while 20 vulnerable witnesses have already been examined, not one of them has implicated the Appellant in any manner, and no evidence has emerged linking him to any consignment that was actually found to contain contraband;
- (iii)** the only consignment associated with the Appellant was imported through M/s Magent India, received on 23.12.2020, declared as semi-processed talc stones originating from Afghanistan, and duly cleared by Customs after being subjected to 100% inspection, as per the statement of Customs Officer (PW10);
- (iv)** the prosecution's theory of guilt is constructed in hindsight on the basis of 'reverse engineering', relying on a later consignment found in September 2021, nearly one year after

the Appellant's import, which was recovered from a warehouse allegedly linked to a different accused;

- (v) the Appellant cannot be held vicariously liable for material found in a warehouse long after his consignment was cleared, particularly when other importers who used the same channel or warehouse were not proceeded against, such as M/s Vyom Fashion and M/s VK Enterprises;
- (vi) the allegations of a barter-style *quid pro quo* involving imported goods like perfumes and dry fruits remain unsubstantiated, and the relevant witness (X3) admitted that the exchange of goods was limited to documentation and that the products never actually arrived;
- (vii) the allegation of five telephonic calls between the Appellant and co-accused Raju Dubai is insufficient to establish criminal conspiracy as while his purported interaction with Raju Dubai may reflect bad judgment, it cannot automatically translate to culpability, especially when no forensic link or recovery connects him to heroin;
- (viii) more pressingly, no extradition proceedings have been initiated against the said foreign national (Raju Dubai), and

the primary actors who allegedly exercised real control over the consignments still remain absconding;

(ix) the Appellant's business is Delhi-based and has been operating in the import-export sector for over 15 years, and he has no prior convictions under the NDPS Act or UAPA—thus proving that he is not a flight risk;

(x) the Appellant has been in judicial custody since 24.08.2022, and prolonged preventive detention runs afoul of his rights to liberty and dignity.

22. *In stark contrast*, Ms Aishwarya Bhati, learned Additional Solicitor General appearing on behalf of the State of Gujarat/NIA seeks to vociferously contest the prayer for grant of bail to the Appellant. To that end, she canvassed the following submissions:

(i) the Appellant was not merely an incidental actor but a key facilitator in some of the six major consignments, which collectively formed the architecture of what has since been recognised as one of the largest heroin seizures in Indian history, with a market value exceeding INR 21,000 crores;

(ii) M/s Magent India was a front company created by the Appellant immediately after his first meeting with Raju Dubai in September 2020. The consignment imported in December

2020 under the Appellant's instructions shares a direct operational pattern with the later consignment seized in September 2021; thus, all six consignments bore similar hallmarks of subterfuge and were routed *via* shell firms, using Afghan-origin talc to mask the smuggling of heroin;

- (iii)** although no contraband was recovered from the Appellant's consignment, the absence of physical recovery is not fatal to the case of criminal conspiracy under the UAPA and NDPS Act—which is made out from the Appellant's meetings abroad, telephonic calls, alleged coordination through protected witnesses, and attempt to obfuscate documentary trails;
- (iv)** the death of a key witness under suspicious circumstances on the day he was to record a judicial statement, apart from the fact that two critical witnesses remain untraceable, are clearly indicative of the risk of witness elimination or influence should the Appellant be enlarged on bail;
- (v)** this Court has already declined bail to similarly placed co-accused, including those who had remained in custody for over two years, on the ground that the rigours of Section 43D(5) of the UAPA were attracted. No mitigating circumstance has been shown to warrant a different

conclusion in the present case, particularly when several key witnesses are yet to be examined, and multiple accused remain absconding;

(vi) charges have since been framed in the ongoing trial, with several key witnesses already being examined—which indicates that the trial is progressing at a remarkable pace;

(vii) the Appellant is a habitual economic offender, with antecedents involving smuggling and customs violations, which militates against grant of bail keeping in view the rigours of the subject-statutes; and

(viii) the serious nature of the offences alleged against the Appellant, and their direct detrimental effect on the security of the nation necessarily postulate that the Appellant should not be afforded the relief of bail at this stage.

23. It may merit to discuss at the outset, the scope and application of Section 43D(5) of UAPA whereunder the court, at the stage of bail is not required to meticulously examine the admissibility and reliability of evidence. The degree of satisfaction required under this provision has to be lower than the proof beyond reasonable doubt, but must still be rooted in material that is not inherently improbable or *ex facie* unreliable.

- 24.** The rigour of Section 43D(5) of the UAPA would, however, in an appropriate case yield to the overarching mandate of Article 21 of the Constitution, especially where the trial is inordinately delayed or where the incarceration becomes punitive. However, such relaxation cannot possibly be automatic and must be evaluated in light of the specific facts and risks associated with each case, as has been previously clarified.¹
- 25.** Having given our anxious consideration to the submissions advanced by both sides and upon careful perusal of the material on record, we are of the view that the Appellant has not been able to make out a case for grant of regular bail at this stage.
- 26.** We say so for the reason that despite no direct recovery of contraband effected from the Appellant, the Prosecution's case is that he played a coordinating and enabling role in facilitating the import of narcotics concealed as talc through M/s Magent India—which he allegedly controlled through a proxy. The consignment, although not seized with heroin, shares structural and logistical similarities with those where heroin was ultimately found.
- 27.** The charge against the Appellant must also be evaluated in light of the broader matrix of facts, including **(i)** his alleged meetings in Dubai with a principal foreign accused; **(ii)** the transfer of documents

¹ Union of India v. K.A. Najeeb, (2021) 3 SCC 713.

through intermediaries for the clearance of a flagged consignment; **(iii)** efforts to retrospectively fabricate invoices and assign responsibility to others; **(iv)** the use of multiple firms allegedly connected to him to obfuscate the true nature of the transactions; and **(v)** his telephonic calls to certain co-conspirators. These aspects, supported by the statements of protected witnesses and circumstantial linkages, currently meet the threshold of *prima facie* satisfaction regarding the Appellant's complicity.

28. This Court is cognizant of the fact that no heroin or narcotic substances were directly recovered from the consignment linked to the Appellant. However, the investigative narrative does not rest solely on physical recovery but proceeds on the basis of conspiracy and facilitation. In such cases, the absence of direct seizure is not dispositive, particularly where there exists a pattern of covert coordination, fictitious entities, and barter-based compensation—features which, according to the prosecution, mark the smuggling architecture employed in the present matter.

29. The Appellant faces serious charges, which allegedly carry grave societal ramifications, including the facilitation of cross-border drug trafficking—an offence with well-documented links to organised crime and public health degradation. The seizure in the connected consignment is part of what the Prosecution claims to be the largest

heroin bust in Indian history, valued at over INR 21,000 crores. The scale and sophistication of the operation, involving foreign syndicates, shell firms, medical visas, and false documentation, elevates this case far beyond routine NDPS violations.

- 30.** This Court also cannot ignore the fact that multiple key witnesses still remain to be examined, and the trial while underway, will take time in completion. Out of 24 most vulnerable or material witnesses, two have died, and two others are untraceable. One of the deceased witnesses, a retired Customs Officer, was found dead on the very day he was scheduled to record his statement under Section 164 CrPC. The risk of witness tampering or elimination—whether directly attributable to the Appellant or not—is a real and present concern that militates against the grant of bail at this stage.
- 31.** Moreover, the Appellant’s criminal antecedents, though not involving prior accusations under the NDPS Act, include multiple DRI and customs proceedings involving smuggling of cigarettes, undervaluation of imports, and alleged complicity in corruption offences. These antecedents are relevant only for the limited purpose of evaluating the Appellant’s propensity to interfere with the process of justice if enlarged on bail.
- 32.** NIA has also highlighted that several accused remain absconding, including the primary foreign conspirators. In that context, the

Appellant's foreign travel, overseas connections, and financial capacity cannot be overlooked in evaluating the possibility of flight risk. These are not speculative concerns but flow directly from the Appellant's prior conduct and profile.

33. We are conscious of the settled principle that pre-trial incarceration should not translate into punitive detention. The Appellant has been in custody since 24.08.2022, and while we do not find that this duration alone warrants bail under the present circumstances, the Appellant shall remain at liberty to renew his prayer for bail after a period of six months, or upon substantial advancement in the trial, whichever is earlier. Such a course would allow the Prosecution to complete the examination of its core witnesses while preserving the accused's right to seek release at a later and more appropriate stage.

34. Before parting with this matter, we deem it necessary to clarify that, at this stage, it would be premature and speculative to extend the allegations against the Appellant to the domain of terror financing. While the prosecution has invoked provisions of the UAPA and has broadly linked the smuggling enterprise to trans-national syndicates with suspected affiliations, there is no compelling reason to currently link the Appellant and proscribed terrorist organisations, either within or outside the country. The evidentiary foundation to sustain such a grave allegation must be clear and compelling—something that, can be

seen only after a substantial portion of evidence is led by both the parties.

35. In light of the foregoing discussion, and without expressing any opinion on the merits of the case, we dismiss the instant appeal with the following directions:

- i.** We are not inclined to enlarge the Appellant on regular bail at this stage. He shall be at liberty to renew his plea for regular bail after a period of 6 months, or at a stage where the ongoing trial has progressed substantially;
- ii.** The NIA is directed to submit to the Special Court an additional list of witnesses who, in its assessment, are sensitive or material, inasmuch as their testimony may have a direct bearing on the role of the Appellant or other co-accused in the ongoing trial and connected investigation;
- iii.** The Special Court is directed to list the matter twice in a month and record the statements of Prosecution witnesses on a continuous and uninterrupted basis; and
- iv.** If the Presiding Officer of the Special Court has not been posted thus far, we request the Hon'ble Chief Justice of the High Court of Gujarat to do the needful within a week.

36. As a measure of abundant caution and at the cost of repetition, we make clear that this order shall not be construed as an expression of opinion on the merits of the case and shall not prejudice the trial proceedings in any manner.

37. Ordered accordingly. Pending applications, if any, are disposed of.

..... **J.**
(SURYA KANT)

.....**J.**
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI
DATED: 13.05.2025