

Non-Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2023

[Arising out of SLP(CRL.)No.2351 OF 2023]

UNION OF INDIA

... APPELLANT

VERSUS

AJAY KUMAR SINGH @ PAPPU

... RESPONDENT

J U D G M E N T

PANKAJ MITHAL, J.

1. Leave granted.
2. Heard Ms. Aishwarya Bhati, learned Additional Solicitor General, appearing for the Union of India and Mr. Divyesh Pratap Singh, learned Advocate-on-Record, appearing for the respondent.
3. The appellant-Union of India has preferred this appeal against the final judgment and order dated 17.10.2022 passed by the High Court of judicature at

Allahabad, allowing Criminal Miscellaneous Bail Application No.21330 of 2022 and directing for the release of the respondent-accused Ajay Kumar Singh @ Pappu on bail.

4. The respondent-accused is alleged to be involved in Case No.687/2021 arising out of Case No.1/2021 under Sections 8/20/27-A/29/32 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'), Police Station-D.R.I., Varanasi.
5. The respondent-accused has been directed to be released on bail by the impugned order keeping in mind the larger mandate of Article 21 of the Constitution of India in the light of the decision of this Court passed on 11.07.2022 in Satender Kumar Antil v. Central Bureau of Investigation and Anr. in SLP(Crl.)No.5191 of 2021 reported in (2022) SCC online SC 825, mainly for the reason that the main accused persons - Om Prakash Yadav and Amit Yadav have already been enlarged on bail.

6. Since the respondent-accused was in custody and had been directed to be released on bail, this Court on 13.02.2023 while issuing notice on the Special Leave Petition passed an interim order directing the suspension of the impugned order passed by the High Court.
7. It may be pertinent to note that the respondent-accused had not participated in the investigation and had avoided his arrest for more than one year whereupon he was arrested from a restaurant in Raipur.
8. The background facts in a nutshell are that the Directorate of Revenue Intelligence (DRI) Varanasi on 11.01.2021 had information that a huge quantity of narcotics "ganja" is likely to be transported in a truck bearing registration no. AP-05-W-8699 from Bhadrachalam (Andhra Pradesh) to Jaunpur in U.P. via Varanasi. At around 6 pm on the said date, the aforesaid truck appeared, moving towards Prayagraj and was apprehended near Raja Talab. The person

driving the truck introduced himself as Om Prakash Yadav, resident of district Ballia (U.P.). The other person in the truck introduced himself as Amit Yadav, helper (Khalashi). Initially, both of them denied the transportation of ganja and informed that the truck is loaded with cattle feed but upon search in the presence of the officers/panchas and the above two persons, 6 packets and 135 plastic sacks containing 1005 packets of varying size were recovered. Upon opening them, it was found that they contained dry green grey-coloured grassy substance which appeared to be ganja. The seized packets were weighed and their gross weight was found to be 3971.600 kg.

9. The driver of the vehicle Om Prakash Yadav revealed that he was driving the truck with the co-accused Amit Yadav as helper of one Bittu Dada of Jamshedpur and at the behest of Shri Ram Pravesh Yadav, resident of Ballia, he had gone to Jamshedpur where the acquaintance of respondent-accused gave him the

truck which was loaded with ganja for safe delivery in lieu of Rs.50,000/-. He further informed that the respondent-accused indulges in illicit trade of ganja.

10. Similar information was revealed by the helper Amit Yadav.

11. The information revealed by the above two accused persons indicated that both of them knew the respondent-accused and that they had connived with him to transport the illicit ganja and that they were in direct contact with the respondent-accused all through on his mobile number. The facts as unfurled from the complaint/FIR and the statements of the above two accused persons recorded under Section 67 of the NDPS Act reveals that respondent-accused is the kingpin and the organiser of the illicit trade in ganja.

12. It is on record that the respondent-accused has been involved in similar crimes in the past and that several cases are pending against him.

13. In light of the above, the grant of bail to the above two accused persons - the driver of the vehicle and the helper, does not seem to be a good and sufficient reason for granting bail to the respondent-accused. The above two accused are not the main accused, but the vicarious agents of the respondent-accused, who is the main person in drug trafficking and was involved in the above illegal transactions. The role of the respondent-accused is clearly different from that of the driver and the helper, the other two co-accused. The co-accused Om Prakash Yadav in his affidavit filed in support of his bail application before the High Court admitted the involvement of the respondent-accused and his role as the mastermind of the illegal trade, as is evident from the order of his release on bail. Therefore, the High Court was not justified in releasing him on bail in the same manner as the above two accused persons.
14. This apart, it is noticed that the High Court, in passing the impugned order of bail, had lost sight

of Section 37 of the NDPS Act, which, *inter alia*, provides that no person accused of an offence involving commercial quantity shall be released on bail unless the twin conditions laid down therein are satisfied, namely, (i) the public prosecutor has been given an opportunity to oppose the bail application; and (ii) the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any such offence while on bail.

15. For the sake of convenience Section 37(1) is reproduced hereinbelow:-

"37. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

16. In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.
17. The quantity of "ganja" recovered is admittedly of commercial quantity. The High Court has not recorded any finding that the respondent-accused is not *prima facie* guilty of the offence alleged and that he is not likely to commit the same offence when enlarged on bail rather his antecedents are indicative that he is a regular offender. In the absence of recording of such satisfaction by the court, we are of the opinion that the High Court manifestly erred in enlarging the respondent-accused on bail.

18. In view of the aforesaid facts and circumstances and considering the role assigned to the respondent-accused and the illegality committed in releasing him on bail, we set aside the impugned final order dated 17.10.2022 passed by the High Court of judicature at Allahabad and allow the appeal.

19. The appeal is allowed.

.....J.
[V. Ramasubramanian]

.....J.
[Pankaj Mithal]

New Delhi;
March 28, 2023.