**REPORTABLE**

IN THE SUPREME COURT OF INDIA
EXTRAORDINARY APPELLATE JURISDICTION

**PETITION FOR SPECIAL LEAVE TO APPEAL (CRL.) NO.242 OF 2022**
**ARISING OUT OF DIARY NO. 22702 OF 2020**

**STATE BY (NCB) BENGALURU ..... PETITIONER**

**VERSUS**

**PALLULABID AHMAD ARIMUTTA & ANR. ..... RESPONDENTS**

**ALONGWITH**

**PETITION FOR SPECIAL LEAVE TO APPEAL (CRL.) NO. 1569 OF 2021**

**UNION OF INDIA ..... PETITIONER**

**VERSUS**

**MOHAMMED AFZAL ..... RESPONDENT**

**WITH**

**PETITION FOR SPECIAL LEAVE TO APPEAL (CRL.) 1454 OF 2021**

**UNION OF INDIA**
**NARCOTICS CONTROL BUREAU, BENGALURU ..... PETITIONER**



**VERSUS**

**MOHAMMED AFZAL ….. RESPONDENT**

**WITH**

**PETITION FOR SPECIAL LEAVE TO APPEAL (CRL.) 1465 OF 2021**

**STATE BY INTELLIGENCE OFFICER,**
**NARCOTICS CONTROL BUREAU ….. PETITIONER**

**VERSUS**

**MUNEES KAVIL PARAMABATH @ MUNEES KP ….. RESPONDENT**

**WITH**

**PETITION FOR SPECIAL LEAVE TO APPEAL (CRL.) 2080 OF 2021**

**STATE OF KARNATAKA ….. PETITIONER**

**VERSUS**

**MUNEES KAVIL PARAMABATH ….. RESPONDENT**

**AND**

**PETITION FOR SPECIAL LEAVE TO APPEAL (CRL.) NO. 1773-74 OF 2021**

**STATE BY INTELLIGENCE OFFICER (NCB)**
**BENGALURU ZONAL UNIT, BENGALURU ….. PETITIONER**

**VERSUS**

**ABU THAHIR @ ABDU & ETC. ….. RESPONDENTS**

**O R D E R**

**HIMA KOHLI J.**

Delay condoned in SLP (Crl.) … Diary No. 22702 of 2020.

1. As the facts of the present petitions are intertwined, having arisen from two connected cases registered as NCB Case FN No. 48/01/03/2019/BZU and NCB Case FN No. 48/01/07/2019/BZU, it is proposed to dispose them by a common order. The petitioner-Narcotic Control Bureau, Bengaluru Zonal Unit[1], is aggrieved by an order dated 16th September, 2019 passed in Criminal Leave Petition No. 4462/2019 (subject matter of SLP(Crl.) Diary No. 22702/2020), order dated 14th January, 2020 passed in Criminal Leave Petition No. 8603/2019 (subject matter of SLP (Crl.) No. 1454/2021), order dated 16th January, 2020 passed in Criminal Petition No. 7861/2019 (subject matter of SLP (Crl.) No. 1465/2021), order dated 19th December, 2019 passed in Criminal Petition No. 7624/2019 c/w Criminal Petition No. 6609/2019 (subject matter of SLP (Crl.) Nos. 1773-1774/2021), order dated 08th January, 2020 passed in Criminal Petition No. 7714/2019 (subject matter of SLP (Crl.) No. 1569/2021) and order dated 20th January, 2020 passed in Criminal Petition No. 7897/2019 (subject matter of SLP (Crl.) No. 2080/2021). By the aforesaid orders, the High Court of Karnataka has released the respondents on bail for the offences punishable under Sections 8(c), 8A read with Sections 20(b), 21, 22, 27A, 27B,

1 In short 'NCB'

28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985[2], as the case may be.

2. The facts leading to registering of the aforesaid cases against the respondents are that on 22nd March, 2019, the petitioner-NCB had received information that two persons i.e., Nausheer Mohammed [A-1] and Noushad Mannakkamvalli [A-2] were going to carry drugs and travel to Doha by Oman Airways from Bengaluru International Airport. Immediately on receiving such information, a team of NCB officers arrived at the airport and on searching the luggage of A-1 and A-2, seized 4.525 Kgs of Hashish, 965 Grams of Amphetamine and 30 Grams of Cocaine. Both the respondents in SLP(Crl) @ Diary No. 22702/2020 i.e. Pallulabid Ahamad Arimutta and Mohammed Majid Saleem were arraigned as Accused Nos. 3 and 4 in NCB Case FN No. 48/01/03/2019/BZU[3] and arrested for the offences stated above. Similarly, Mohammed Afzal[A-6], respondent in SLP (Crl.) No. 1454/2021 was arrested on an allegation that his Call details record[4] revealed that he was in constant conversation with A-2 and one Abu Thahir @ Abdu [A-5]. Additionally, reliance was placed by the Department on the statement of A-5 recorded under Section

2 In short 'NDPS Act'
3 Hereinafter referred to as the 'first case'
4 For short 'CDR'

67 of the NDPS Act which purportedly revealed that both of them had arranged the drugs that were delivered to A-1 and A-2 on 22nd March 2019, who were going to carry the same in their luggage while flying to Doha.

3. Munees Kavil Paramabath [A-8], respondent in SLP (Crl.) No. 1454/2021 was purportedly found to be in conversation with A-2, A-6, A-7 and A-8 as per the CDR of A-5 on the date of the seizure. The petitioner-NCB claims that apart from the statement of A-5 recorded under Section 67 of the NDPS Act, he had also voluntarily stated during his examination that he was paid money by A-8 for financing the drugs. Abu Thahir @ Abdu [A-5] and Sabir Bayan [A-7], respondents in SP (Crl.) No. 1773-1774/2021 were similarly arrested on the statement of the co-accused, namely, A-2, A-6 and A-8 and on an allegation that flight tickets of A-1 were recovered from the house of A-5 and A-6.

4. After registering the first case and in the course of conducting an investigation officers of the petitioner-NCB claimed to have gathered credible information that Abu Thahir @ Abdu and Mohammed Afzal arraigned as [A-1] and [A-2] in NCB Case FN No. 48/01/07/2019/BZU[5], were going to reach Bengaluru Airport alongwith persons named Khushboo Sharma and

5 Hereinafter referred to as the 'second case'

Mohammad Asif for trafficking drugs to Doha. The said accused were apprehended in the parking area of Bengaluru Airport on 15th June, 2019. It is stated that Khushboo Sharma was found to be in possession of a black bag that when searched, revealed 510 grams of Methamphetamine concealed in sanitary napkins. Further, when A-1 and A-2 were taken by the Department to a tenanted flat occupied by them, NCB officers found huge quantities of drugs stashed there, namely, 330 Grams of Methamphetamine, 13.680 Kgs of Hashish, 2.850 Kgs of Hashish Oil, 9.050 Kgs of Ganja and 4586 Capsules of Lyrica.

5. The specific allegations levelled against Mohammed Afzal [A-2], respondent in SLP (Crl.) No. 1569/2021 who was granted bail vide order dated 08th January, 2020 in the second case registered by the NCB, is that apart from his own inculpatory statement and the confessional statement of the co-accused, Abu Thahir @ Abdu [A-1] recorded under Section 67 of the NDPS Act, large quantity of drugs were seized at his tenanted premises and from the hand bag of the co-accused, Khushboo Sharma also found to be in his possession at the Airport, which concealed drugs.

6. As for Munees Kavil [A-5], respondent in Criminal Petition No. 7897/2019

who was granted bail vide order dated 20th January, 2020 in the second case registered by the NCB, the basis for arresting him was the statement made against him by the co-accused, A-1 under Section 67 of the NDPS Act disclosing therein that A-5 had sent drugs to Doha on several previous occasions on instructions received from his brother and that he was financing the drug business.

7. Mr. S.V. Raju and Mr. K. M. Nataraj, learned Additional Solicitors General both appearing for the petitioner-NCB in the connected petitions have challenged the impugned orders primarily on the ground that the High Court has erred in returning a finding that the rigors of Section 37 of the NDPS Act are not attracted to the facts of the present cases; that none of the pre-conditions stipulated in Section 37 of the NDPS Act that starts with a *non-obstante* clause, had been met in the instant cases for granting any relief to the respondents and that a concession has been granted to the respondents on an erroneous presumption that there is a reasonable ground for believing that they are not guilty for such an offence. It has been vehemently argued by the learned Additional Solicitors General that in the instant cases, there existed justifiable reasons to reject the bail applications of the respondents and there was hardly

any ground to believe that they were not guilty of the offences alleged against them or that they are not likely to commit any such offence while on bail.

8. Vide order dated 05th January, 2020, learned counsel for the petitioners-NCB were directed to prepare a comprehensive tabulated statement with respect to the role attributed to each of the respondents, the evidence gathered against them at the time of their arrest, their antecedents, the dates on which they were arrested and the period of custody undergone by them, for ready reference. The said tabulated statement has been filed and a perusal thereof reveals that in SLP (Crl.) @ Diary No.22702/2020, SLP (Crl.) No.1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) Nos. 1773-1774/2021, SLP (Crl.) No. 2080/2021, heavy reliance has been placed by the petitioner-NCB on the voluntary statements of the accused and the co-accused recorded under Section 67 of the NDPS Act for arresting them. Another piece of evidence referred to is the CDR details in respect of A-3, A-4, A-5, A-6 and A-8 in the first case which as per the prosecution, goes to show that the said respondents were constantly in touch with each other and with A-1 and A-2 on the date of the seizure. The attention of this Court was also drawn to the fact that the antecedents of A-5, A-6 and A-8 in the first case and A-2 and A-5 in the second

case are not clean.

9. Having gone through the records alongwith the tabulated statement of the respondents submitted on behalf of the petitioner-NCB and on carefully perusing the impugned orders passed in each case, it emerges that except for the voluntary statements of A-1 and A-2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, *prima facie*, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking. It has not been denied by the prosecution that except for the respondent in SLP (Crl.) No. 1569/2021, none of the other respondents were found to be in possession of commercial quantities of psychotropic substances, as contemplated under the NDPS Act.

10. It has been held in clear terms in ***Tofan Singh Vs. State of Tamil Nadu***[6]***,*** that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused

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under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No@ Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless.

11. However, the evidence brought before us against Mohammed Afzal [A-2], respondent in SLP (Crl.) No. 1569/2021, subject matter of the second case i.e., NCB Case FN No. 48/01/07/2019/BZU, who was granted bail vide order dated 08th January, 2020, will have to be treated on an entirely different footing. There are specific allegations levelled against the said respondent regarding recovery of substantial commercial quantities of drugs from a rented accommodation

occupied by him pursuant to which he was arrested on 16th June, 2019. This aspect has been completely overlooked while passing the order dated 08th January, 2020 wherein, the only reason that appears to have weighed with the High Court for releasing him on bail is that his case stands on the same footing as A-1, A-3 and A-4 who had been enlarged on bail vide orders dated 11th October, 2019, 16th September, 2019 and 09th September, 2019, in connection with the second case registered by the Department. We are of the firm view that A-2 cannot seek parity with the aforesaid co-accused and no such benefit could have been extended to him in view of Section 37 of the Act when he was found to be in conscious possession of commercial quantity of psychotropic substances, as contemplated under the NDPS Act. That being the position, the petitioner-NCB succeeds in SLP (Crl.) No. 1569/2021. The bail granted to the respondent-Mohmmed Afzal [A-2] is cancelled forthwith at this stage and he is directed to surrender before the Sessions Court/Special Judge (NDPS) within a period of two weeks, for being taken into custody.

12. The petitions are disposed of in terms of the aforesaid order.

13. Needless to state that the observations made above are limited to examining the relief sought in the present petitions for cancellation of bail. This

Court has refrained from making any observations on the merits of the case pending before the trial Court.

**……CJI.**
**[N. V. RAMANA]**

**……J.**
**[SURYA KANT]**

**……J.**
**[HIMA KOHLI]**

**New Delhi,**
**January 10, 2022.**