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(2025) 5 Supreme Court Cases 155

2J

(BEFORE B.V. NAGARATHNA AND N. KOTISWAR SINGH, JJ.)

SLP (Cri) No. 2819 of 2024†

ANKUSH VIPAN KAPOOR .. Petitioner;

Versus

NATIONAL INVESTIGATION AGENCY .. Respondent.

With

Writ Petition (Cri) No. 168 of 2024‡

ANKUSH VIPAN KAPOOR .. Petitioner;

Versus

UNION OF INDIA AND ANOTHER .. Respondents.

SLP (Cri) No. 2819 of 2024 with Writ Petition (Cri) No. 168 of 2024, decided on December 16, 2024

A. **Terrorism and Organised Crime — National Investigation Agency Act, 2008 — Ss. 3(2), 6(5) and 8 r/w Schedule — Transfer of investigation to NIA — Permissibility, in offences under the NDPS Act and UAPA — Held, while the offences under the NDPS Act do not find a place under the NIA Act, UAPA is mentioned in the Schedule to the NIA Act — Therefore, if any provision of the UAPA is attracted, NIA, held, could be directed to exercise jurisdiction to investigate the same — Unlawful Activities (Prevention) Act, 1967, Ss. 17 and 18 (Para 13)**

B. **Terrorism and Organised Crime — National Investigation Agency Act, 2008 — S. 3 r/w Schedule — Status of NIA under provision — Under S. 3(1), NIA, held, constituted as "a special agency" for the investigation and prosecution of offences under the enactments specified in the Schedule to the NIA Act (Para 43)**

C. **Terrorism and Organised Crime — National Investigation Agency Act, 2008 — Ss. 6(1) to (5) r/w S. 3(1) and Schedule — Investigation of scheduled offences by NIA — Powers of the Central Government — Law clarified**

— Sub-sections (1) to (4) of S. 6, held, lay down the framework for initiation of investigation by NIA after a report is received from the State Government by the Central Government — However, an exception to the procedure in sub-sections (1) to (4), held, provided by sub-section (5) — By enacting S. 6(5), Parliament, held, entrusted overriding power to the Central Government to *suo motu* direct NIA to investigate an offence if the Central Government opines that a scheduled offence is committed under the NIA Act and that such scheduled offence is required to be investigated by NIA

† Arising from the Judgment and Order in *NIA* v. *Ankush Vipan Kapoor*, 2024 SCC OnLine P&H 233 (Punjab and Haryana High Court, CRM-M No. 24743 of 2023, dt. 29-1-2024) **[SLP against dismissed]**

‡ Under Article 32 of the Constitution of India

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— Further, sub-section (1) of S. 3, held, begins with a non obstante clause as notwithstanding anything in the Police Act, 1861, the Central Government may constitute a special agency to be called NIA for investigation and prosecution of offences under the Acts specified in the Schedule (Paras 44 to 49)

Held :

Sub-sections (1) to (4) of Section 6 relate to receipt of information and recording thereof under Section 154 CrPC relating to any scheduled offence under the NIA Act by any officer-in-charge of a police station being forwarded to the State Government. The State Government would then forward the report to the Central Government and on receipt of such a report from the State Government, the Central Government would determine whether the offence is a scheduled offence or not and having regard to the gravity of the offence and other relevant factors, whether it is a fit case to be investigated by NIA. (Para 48)

However, sub-section (5) of Section 6 is akin to an exception to sub-sections (1) to (4) of Section 6. It is a *suo motu* power vested with the Central Government to direct investigation of a scheduled offence which has been allegedly committed and which is required to be investigated under the said Act by NIA. This power is dehors the power to be exercised by the Central Government under sub-sections (3) and (4) of Section 6. That is why sub-section (5) of Section 6 begins with a *non obstante* clause and it is notwithstanding anything contained in Section 6 that the *suo motu* power can be exercised by the Central Government by forming an opinion. (Para 49)

D. **Terrorism and Organised Crime — National Investigation Agency Act, 2008 — S. 6(8) r/w S. 6(5) and Schedule — Commission of offence outside India — Whether can be directed to be investigated by NIA — Powers under sub-section (5) of S. 6, held, reserved to the Central Government to be exercised by it *suo motu* when a scheduled offence is committed in India or overseas to which the said Act applies — Thus, in the case of an offence committed outside India to which the NIA Act extends, the Central Government, held, empowered to direct NIA to register the case as well as take up investigation as if such offence is committed in India (Para 49)**

E. **Terrorism and Organised Crime — National Investigation Agency Act, 2008 — S. 8 — Investigation by NIA, of offence connected with scheduled offence — Whether permissible under provision — As per S. 8, while investigating any scheduled offence NIA, held, may also investigate any other offence which the accused allegedly committed if the offence is connected with the scheduled offence**

Held :

The key words in Section 8 are "connected with the scheduled offence". Therefore, what is necessary to confer power on NIA to investigate any other offence apart from a scheduled offence which has been directed to be investigated by it, "is the connection of" any other offence with the scheduled offence. The

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expression "any other offence" is wide and expansive in nature. The connection with the scheduled offence could be by any other scheduled offence under the NIA Act or any other offence which may not be a scheduled offence under the provisions of the NIA Act but nevertheless has a connection with the scheduled offence under the provisions of the NIA Act. (Para 50)

F. **Terrorism and Organised Crime — National Investigation Agency Act, 2008 — S. 2(g) r/w Schedule — Scheduled offences — Scope of — Whether offences under the UAPA are scheduled offences — Held, S. 2(1)(g) defines "scheduled offence" to mean an offence specified in the Schedule to the NIA Act — Hence, under the Schedule to the NIA Act, inter alia, the offences under the UAPA, held, scheduled offences (Para 51)**

G. **Terrorism and Organised Crime — National Investigation Agency Act, 2008 — S. 8 r/w Ss. 6(4) & (5) — Expression "the accused" — Scope of — Whether "the accused" refers to only the accused in respect of whom a scheduled offence is being investigated, or, can it include any other accused whose name would emerge during the course of investigation of a scheduled offence and who committed an offence having a connection with the scheduled offence**

— Held, the expression "the accused" in S. 8 of the NIA Act cannot be restricted in its meaning and connotation to only the accused in respect of whom investigation is being carried out pursuant to sub-sections (4) and (5) of S. 6 in respect of a scheduled offence — It held could also include any other accused who committed any other offence — However, other offence committed by any other accused needs to have a connection or a nexus with the scheduled offence which is detected during the course of investigation of any scheduled offence

— More importantly, in the case of any other accused, the offences alleged, held, need not be scheduled offences — Held, it could be any offence but must necessarily have a connection with the scheduled offence — Further held, in such an event, on the basis of S. 8, a report may be made to the Central Government — Thereafter, the Central Government, held, can direct investigation against any other accused (i.e. an accused other than the accused who is being investigated) provided it has a connection with the scheduled offence — In such a contingency, the Central Government while invoking S. 6(5) r/w S. 8, held, can direct investigation of any other accused alleging he committed an offence which is connected with the scheduled offence already being investigated — On such a direction by the Central Government NIA, held, can assume jurisdiction to investigate any other accused on the basis that he committed an offence which has to be investigated along with the scheduled offence already under investigation

— Thus, the expression "the accused", held, would have to be given an expansive and enlarged meaning in the above context having regard to the object and purpose of S. 8 and the context in which provision has to be interpreted — Further held, the word "the" used before a noun "accused" in S. 8

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has a particularising effect, as opposed to "a" or "an" — However, "a" and "the" sometimes, held, have to be interchangeably interpreted having regard to the context in which it is found and in order to give it a contextual connotation so as to advance the object and purpose of the provision — Thus, S. 8, held, has to be given a purposive and meaningful interpretation and one which would advance the object of S. 6 and other provisions of the Act — Same, therefore, declined to be read in a curtailed and narrow fashion, as claimed by the petitioner — Interpretation of Statutes — Internal Aids — Articles — Use of definite article "the" — Effect of — "A" and "the" when may be interchangeably interpreted (Paras 59 to 67)

Held :

Section 8 of the NIA Act applies not only when it is acting under sub-section (5) of Section 6 of the NIA Act; it also applies to sub-section (4) of Section 6 of the NIA Act where the Central Government acts on the receipt of a report from the State Government when information received by the officer-in-charge of the police station relates to any scheduled offence and the State Government has forwarded the report to the Central Government. Then, the Central Government, having regard to the gravity of the offence and other relevant factors, if is of the opinion that the offence is a scheduled offence and it is fit to be investigated by NIA, a direction would be issued to NIA to investigate the said scheduled offence. Irrespective of the contingency under which NIA is directed to investigate a scheduled offence under Section 6, Section 8 would apply. In either case, while carrying out the investigation in respect of the accused alleged to have committed a scheduled offence, information may emerge that there are other accused who have committed any other offence which is connected with the scheduled offence committed by the accused in respect of whom investigation is being made by NIA on the basis of Section 6 of the NIA Act. (Para 60)

Therefore, owing to the connection of any other offence with the scheduled offence committed by any other accused in respect of whom investigation is necessary, steps could be taken to investigate the said other accused also. This is because the offence said to have been committed by any other accused has a connection with the scheduled offence. One cannot determine the manner in which such information may emanate while carrying out an investigation in respect of the accused who is alleged to have committed a scheduled offence and who may have also committed any other offence (non-scheduled offence) which could be along with any other accused in respect of whom no direction may yet have been issued to carry on an investigation by NIA under Section 6(5) of the NIA Act but exercise of jurisdiction under Section 8 may become necessary. Therefore, during the course of investigation of an accused alleged to have committed a scheduled offence, if, it emerges or it is detected that the said accused along with any other accused has committed other offence(s), then investigation with regard to any other offence committed by some other accused along with the accused said to have committed the scheduled offence could also be carried out by requesting the Central Government for a direction to investigate the other accused. Such other accused may have committed an offence which has a connection with the scheduled offence

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of the accused who is being investigated and therefore Section 8 provides such a contingency. (Para 61)

Therefore, the nexus or connection between any other offence and the scheduled offence is of critical importance and must be present in order to enable NIA to investigate any other offence committed by an accused in connection with the scheduled offence. The connection between a scheduled offence and any other offence being established would enable NIA to investigate the accused of committing any other offence which is connected with the scheduled offence. Once there is such a connection between a scheduled offence and a non-scheduled offence then, for all practical purposes the non-scheduled offence would come within the connection of a scheduled offence. Therefore, it is held that the accused who may have committed a non-scheduled offence having a connection with a scheduled offence can be investigated by NIA in respect of a non-scheduled offence. (Para 62)

On a holistic reading of Section 8, the expression "the accused" cannot be restricted to only the accused in respect of whom investigation is being carried out by NIA for any scheduled offence. NIA, which is carrying on an investigation into any scheduled offence, can also investigate any other offence which any other accused may have committed provided such other offence is also an offence connected with the scheduled offence under investigation. (Para 67)

Thus, so long as the connection between any offence committed by any other accused and the scheduled offence committed by the accused in respect of whom investigation has been handed over by the Central Government to NIA is established, NIA would be empowered to conduct an investigation of any other accused in respect of a scheduled offence which is connected with the scheduled offence committed by the accused in respect of whom the Central Government has handed over or directed the investigation to be conducted by it. Therefore, the scope of the powers of NIA under Section 8 of the NIA Act has to be interpreted expansively and not in a narrow manner. (Para 68)

H. **Terrorism and Organised Crime — National Investigation Agency Act, 2008 — Ss. 6(5), (6) and 8 r/w Schedule — Direction for investigation by NIA in a given case attracting Ss. 17 and 18 UAPA being scheduled offences under the NIA Act — Exercise of suo motu powers by the Central Government and powers of NIA while investigating such scheduled offences to investigate any other offence such as an offence under the NDPS Act — Scope of — Law clarified**

— Held, if the provisions of Ss. 17 and 18 UAPA are attracted in a given case being scheduled offences under the NIA Act, the Central Government, if opines that such offences have been committed which required to be investigated under the Act, may under S. 6(5), in exercise of its *suo motu* power direct NIA to investigate the scheduled offences — While investigating such scheduled offences, NIA, held, also empowered to investigate any other offence which the accused allegedly committed provided the other offence is connected with a scheduled offence

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— Petitioner granted bail in FIR under Ss. 21, 25, 27-A and 29 of the NDPS Act and Ss. 30 and 53 of the Arms Act — This FIR registered at PS Mohali in Punjab and subsequently, another connected case also registered under Ss. 21, 25, 27-A and 29 of the NDPS Act at PS in Amritsar — Even prior to the registration of the aforementioned two FIRs, another case under Ss. 8(c), 21(c), 24, 25, 27-A and 29 of the NDPS Act found also registered by the ATS in Gujarat — Same found involving a criminal conspiracy by the arrested accused therein, inter alia, including *S* (A-10) — This FIR found pertaining to smuggling and distribution of 500 kg of narcotics, which appears to have been illicitly transported from Pakistan to Gujarat via the sea route — Subsequently, investigation transferred by the Central Government to NIA, which re-registered the case under Ss. 8(c), 21(c), 24, 25, 27-A and 29 of the NDPS Act and Ss. 17 and 18 of the UAPA and took over the investigation from ATS Gujarat

— Resultantly, considering factual position, while investigating the offences under Ss. 17 and 18 UAPA (scheduled offences) by virtue of S. 6(5), under S. 8 any other offence such as an offence under the NDPS Act connected with the scheduled offences (Ss. 17 and 18 UAPA), held, could also be investigated — However, such other offence, held, must have a connection with the scheduled offence — Further held, the investigation could also be of a person accused of an offence having a connection with a scheduled offence which is being investigated on the basis of S. 8 — Thus, the Central Government, held, may also direct any such offence also to be investigated on receipt of a report from NIA as against any accused when it is already investigating a scheduled offence against a certain accused, provided that offence having a connection with the scheduled offence — Further, NIA, held, also been conferred wide powers under S. 8 to also investigate into any other offence committed by the accused in respect of whom a scheduled offence is being investigated provided the offence is connected with the scheduled offence under the Schedule

— Certain co-accused persons who found present in FIRs registered in the State of Punjab found not accused under the prior FIR registered in the State of Gujarat — Therefore, question arose whether NIA can investigate only the same accused who is present in NIA investigation qua scheduled offences and for non-scheduled offence by virtue of S. 8 — In other words, can NIA investigate any other accused person who, although not being investigated for any scheduled offences could be investigated by NIA because there exists a link between the two, namely, scheduled and non-scheduled offences, thereby connecting every co-accused

— S. 8, held, has to be read in continuation of what stated in S. 6(5) — Once the Central Government directs NIA to investigate a scheduled offence and during the course of such investigation of a scheduled offence against an accused, it becomes necessary for NIA to also investigate any other offence which the said accused allegedly committed, then such offence, held, could also

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be investigated provided that other offence to be investigated is connected with the scheduled offence

— S. 8 interpreted by holding that while investigating the accused of a scheduled offence, any other accused could also be investigated on the strength of S. 8 — However, for investigating other accused, there held four requirements — Firstly, NIA need to opine that during an investigation, any other accused who allegedly committed an offence having a connection with the scheduled offence has also to be investigated — Secondly, a report by NIA need to be submitted incorporating the aforesaid opinion to the Central Government — Thirdly, the Central Government on consideration of such a report, in exercise of its *suo motu* powers under S. 6(5) r/w S. 8 directs the investigation to be carried out in respect of any other accused also — Fourthly, said investigation of any other accused, held, must be carried out jointly as far as practicable with the investigation of the accused already under progress owing to the connection between the scheduled offence and any other offence

— Contention raised that the correct course would be for NIA to add those accused under FIR registered at Mohali and FIR registered at Amritsar as accused persons under NIA investigation rather than treating other offences as connected — Such a course, held, would lose sight of the salutary statutory intent to investigate and prosecute at a national level and, in particular, S. 6(6) which clearly envisions culling of any duplicity of investigation — By allowing NIA to investigate those accused under different FIRs registered in different States, an enlarged scope, held, provided to the investigation into the scheduled offences

— Further, considering statutory intent for an actual realisation of the statutory scheme, the Act, especially S. 6, held, offence-centric and not accused-centric — Further held, the Act revolves around effective investigation of scheduled offences — Similarly, the central concern of S. 8, held, defining the scope of offences that can be investigated by NIA and on what basis and not who are the accused — Further held, the phraseology of S. 8, held, also establishes that NIA can only widen its investigation to a non-scheduled offence only "while investigating any scheduled offence" — Importantly, NIA, held, not given unbridled power to initiate investigation of a connected and non-scheduled offence in the absence of an investigation of any scheduled offence — This held speaks to Parliament's wisdom to build safeguards within the text of the NIA Act — Unlawful Activities (Prevention) Act, 1967, Ss. 17 and 18 (Paras 53 to 71)

Held :

The expression "*Agency may also investigate any other offence which the accused is alleged to have committed*" has no doubt to be read with the rigour of "*if the offence is connected with the scheduled offence*". In other words, if any other offence is connected with the scheduled offence, then NIA may investigate such other offence which the accused is alleged to have committed provided there is a connection of such other offence with the scheduled offence. (Para 58)

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It is reiterated that, while investigating the accused regarding scheduled offences, if NIA submits a report about some other accused who may have also committed certain offences connected with the scheduled offences under investigation then, the Central Government on a consideration of such a report may exercise *suo motu* powers and direct NIA to also investigate the other accused also provided the offences alleged against the other accused are offences, having a connection with the scheduled offence already under investigation. Thus, on the aforesaid basis NIA would be enabled to also carry out an investigation of any other accused who has committed an offence connected with the scheduled offence already being investigated. This would be in the realm of a joint investigation into scheduled offences which may have occurred in different parts of the country but having a connection with other offences also. (Para 63)

I. **Terrorism and Organised Crime — National Investigation Agency Act, 2008 — S. 6(5) r/w Ss. 8 and 14 — Cancellation of bail — Justification along with validity of orders issued by the Central Government by exercising power under S. 6(5) r/w S. 8 of the NIA Act**

— Petitioner granted bail in FIR under Ss. 21, 25, 27-A and 29 of the NDPS Act and Ss. 30 and 53 of the Arms Act — This FIR registered at PS Mohali in Punjab and subsequently, another connected case also registered under Ss. 21, 25, 27-A and 29 of the NDPS Act at PS in Amritsar — Even prior to the registration of the aforementioned two FIRs, another case under Ss. 8(c), 21(c), 24, 25, 27-A and 29 of the NDPS Act found also registered by the ATS in Gujarat — Same found involving a criminal conspiracy by the arrested accused therein — This FIR found pertaining to smuggling and distribution of 500 kg of narcotics, which appears illicitly transported from Pakistan to Gujarat via the sea route — Subsequently, investigation transferred by the Central Government to NIA, which re-registered the case under Ss. 8(c), 21(c), 24, 25, 27-A and 29 of the NDPS Act and Ss. 17 and 18 of the UAPA and took over the investigation from ATS Gujarat — Thereafter, cancellation of bail claimed by NIA — Same allowed by the High Court by considering necessity of custodial interrogation in view of grave allegations of cross-border narco-terrorism involving a huge recovery of 500 kg of heroin

— Connection sought to be made between FIR registered at Amritsar and FIR registered at Mohali found with FIR registered in Gujarat in respect of which Ss. 17 and 18 UAPA invoked which are scheduled offences — Further, as per common thread between the relevant three Orders issued by the Central Government in exercise of powers under S. 6(5) r/w S. 8, all these offences found relating to Ss. 8(c), 21(c), 24, 25, 27-A and 29 as well as Ss. 21, 25, 27 and 29 of the NDPS Act — Therefore, the offences in FIR registered in Gujarat and the offences registered against the petitioner under FIRs registered at Mohali and Amritsar, held, all under the NDPS Act — In view of the connectedness of the offence under the NDPS Act with the scheduled offence in Gujarat FIR in respect of which the Central Government opined that the provisions of Ss. 17 and 18 UAPA (scheduled offences under the NIA Act) were also attracted — Resultantly, the Central Government directed NIA to investigate into the scheduled offences (Ss. 17 and 18 UAPA) on the basis of the initial Order passed under S. 6(5)

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— Accordingly, during investigating into the scheduled offences in the Gujarat case, NIA forwarded reports to the Central Government in respect of FIRs registered at Amritsar and Mohali, under the NDPS Act — Thereafter, after considering said reports along with strength of S. 8, the Central Government passed Orders to investigate into the offences alleged against the petitioner on the premise that those offences have a connection with the scheduled offences

— As per material on record, before the date of directing NIA to investigate FIR registered at Amritsar, two supplementary charge-sheets found filed by NIA — As per these charge-sheets, before the order passed by the Central Government and invocation of powers under S. 6(5) r/w S. 8 directing investigation of FIR registered at Amritsar, there found at least two accused persons in the ongoing investigation of the scheduled offences — These two persons found also named in the FIRs filed in the State of Punjab

— Impugned Orders of the Central Government, held, in accordance with S. 6(5) r/w S. 8 — Same revealed a connection, nexus and a link which brought out between the scheduled offences investigated by NIA under Ss. 17 and 18 UAPA pursuant to certain Orders insofar as the offences alleged against the petitioner under the provisions of the NDPS Act — Resultantly, S. 8 held to have enabled NIA to investigate into even non-scheduled offences or any other offence of which an accused allegedly committed provided they found connected with any scheduled offence — Ss. 17 and 18 UAPA, held, relevant vide the Schedule to the NIA Act

— Hence, the impugned orders held to be issued by the Central Government by exercising power under S. 6(5) r/w S. 8 and, therefore, there held no reason to quash these impugned orders — Resultantly, the writ seeking quashing of impugned orders dismissed

— Resultantly, considering entire materials, NIA held to have committed no error in seeking cancellation of bail granted to the petitioner by the High Court in respect of the offences alleged against him under the provisions of the NIA Act in the State of Punjab — Further, not only said offences found now being investigated by NIA, but trial also found transferred from the Special Court concerned in the State of Punjab to the Special Court in the State of Gujarat, to be tried along with scheduled offences under Ss. 17 and 18 UAPA as per S. 14 of the NIA Act

— Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 8(c), 21(c), 24, 25, 27-A and 29 — Arms and Explosives — Arms Act, 1959 — Ss. 30 and 53 — Unlawful Activities (Prevention) Act, 1967 — Ss. 17 and 18 — Criminal Procedure Code, 1973, S. 439(2) (Paras 78 to 84)

NIA v. *Ankush Vipan Kapoor*, 2024 SCC OnLine P&H 233, *SLP against dismissed*

Ankush Vipan Kapoor v. *NIA*, 2024 SCC OnLine SC 4004; *Ankush Vipan Kapoor* v. *State of Gujarat*, 2022 SCC OnLine Guj 2772; *Ankush Kapoor* v. *State of Punjab*, 2021 SCC OnLine P&H 4697; *Ankush Kapoor* v. *State of Punjab*, 2021 SCC OnLine P&H 3097, *referred to*

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J. **Constitution of India — Art. 47 — Duty of State under — Scope as well as ripple effects of illicit drug trade and drug abuse, stated — Further, roles of parents, schools and colleges, Local communities and NGOs, NALSA, NCPCR and NCB, also stated in order to prevent drug addiction among adolescents — Further, the youth of our country also implored by the Supreme Court to take charge of their decisional autonomy and firmly resist peer pressure and desist from emulation of certain personalities who may be indulging in drugs — Narcotics, Intoxicants and Liquor — Generally — Narcotic Drugs and Psychotropic Substances Act, 1985 (Paras 86 to 101)**

SK-D/72133/CR

Advocates who appeared in this case :

Ms Aishwarya Bhati, Additional Solicitor General, Siddhartha Dave, Senior Advocate [Vineet Dwivedi (Advocate-on-Record), Sumit Kalra, Vipul Jindal, Ms Yashika Malhotra, Ms Anisha Arora, Ms Simran Ahuja, Rajat Nair, Vishnu Shankar Jain, Gaurang Bhushan, Shivank Pratap Singh, Sarthak Karol, Ms Shivika Mehra, Arvind Kr. Sharma (Advocate-on-Record), Ms Manisha Chava, Sagar Bhandare, Harshit Sethi, Ms Mansi Tripathi, Abhishek Gupta (Advocate-on-Record), Kartik Yadav and Nikilesh Ramachandran (Advocate-on-Record), Advocates], for the appearing parties.

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4. 2021 SCC OnLine P&H 4697, *Ankush Kapoor* v. *State of Punjab* — 165*c*, 169*f*-*g*
5. 2021 SCC OnLine P&H 3097, *Ankush Kapoor* v. *State of Punjab* — 164*f*-*g*, 164*g*, 165*c*, 166*b*-*c*, 166*g*, 169*f*-*g*, 172*f*-*g*, 173*b*

The Judgment of the Court was delivered by

B.V. NAGARATHNA, J.— The writ petition as well as the special leave petition filed by the very same petitioner raising similar questions of law and facts have been heard together and are disposed of by this common judgment.

Factual background

2. Special Leave Petition (Crl.) No. 2819 of 2024 has been filed by the petitioner assailing the impugned order dated 29-1-2024 passed by the High Court of Punjab and Haryana in *NIA* v. *Ankush Vipan Kapoor*[1] cancelling the bail granted to the petitioner vide its order dated 5-7-2021[2].

3. The National Investigation Agency (for short "NIA") filed CRM-M No. 24743 of 2023 before the Punjab and Haryana High Court seeking cancellation of bail granted to the petitioner herein vide order dated 5-7-2021 in *Ankush Kapoor* v. *State of Punjab*[2] in case bearing FIR No. 20 of 2020 dated 29-1-2020 under Sections 21, 25, 27-A, 29, 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act") and Sections 30, 53, 59 of the Arms Act, 1959 registered at Police Station Special Task Force (PS STF), District STF Wing, SAS Nagar, Mohali, Punjab State. The aforesaid FIR was registered against one Sukhbir Singh alias Happy on

1 2024 SCC OnLine P&H 233
2 *Ankush Kapoor* v. *State of Punjab*, 2021 SCC OnLine P&H 3097

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the statement of AIG Rachpal Singh. During interrogation of the aforesaid accused, the name of the petitioner surfaced. It was stated that the car in which he had been caught belonged to the petitioner-accused and the car had been given to him for onward delivery to a special person, code-named "Baba Jani". On the same day, the petitioner was arrested from his shop "R.C. Creations" at Crystal Chowk, Amritsar. Pursuant to his disclosure statements, recovery of, inter alia, narcotic substance heroin was made and a second recovery was made on 7-2-2020 and further recoveries were made pursuant to disclosure statement dated 11-2-2020. FIR No. 23 of 2020 dated 31-1-2020 was registered under Sections 21, 25, 27-A, 29 of the NDPS Act at Police Station STF, District STF Wing, Amritsar on the statement of Rashpal Singh AIG, STF Border Range, Amritsar. On conclusion of the investigation in both the aforesaid FIRs, final reports were presented before the courts of competent jurisdiction.

4. CRM-M No. 23889 of 2021 and CRM-M No. 27365 of 2021 for seeking grant of regular bail were allowed by the High Court by orders dated 5-7-2021[2] and 21-9-2021[3], respectively, and the petitioner herein was released on bail.

5. Even prior to the registration of the aforementioned FIRs, another case bearing FIR No. 1 of 2018 under Sections 8(*c*), 21(*c*), 24, 25, 27-A and 29 of the NDPS Act had already been registered on 12-8-2018 at Police Station Anti-Terrorist Squad (PS ATS), Ahmedabad, Gujarat involving a criminal conspiracy by the arrested accused therein, inter alia, including Sukhbir Singh alias Happy (A-10). This FIR pertains to smuggling and distribution of 500 kg of narcotics, which appears to have been illicitly transported from Pakistan to Gujarat via the sea route.

6. Having regard to the seriousness and scale of the offences in the aforementioned case registered in the State of Gujarat, the Ministry of Home Affairs, Government of India, in exercise of its powers under Sections 6 and 8 of the National Investigation Agency Act, 2008 (for short "the NIA Act") transferred the investigation of the aforesaid case to NIA. Consequently, the NIA re-registered the case as RC/26/2020/NIA/DLI dated 2-7-2020 under Sections 8(*c*), 21(*c*), 24, 25, 27-A and 29 of the NDPS Act and Sections 17 and 18 of the Unlawful Activities (Prevention) Act, 1967 (for short "the UAPA") and took over the investigation from ATS, Gujarat.

7. During further investigation by NIA, it emerged that accused Sukhbir Singh alias Happy had been arrested by STF Punjab in FIR No. 20 of 2020 dated 29-1-2020 under certain provision of the NDPS Act and the Arms Act, 1959 registered at PS STF, SAS Nagar, Mohali, Punjab and after recovery being made, FIR No. 23 of 2020 dated 30-1-2020 had been registered under certain provisions of the NDPS Act at Police Station STF, District STF Wing, Amritsar, Punjab. The NIA took custody of Sukhbir Singh alias Happy from the NIA Special Court at Ahmedabad, Gujarat after being produced by the Amritsar Jail authorities in pursuance of production warrants. During his custodial interrogation, accused Sukhbir Singh alias Happy revealed the involvement of the petitioner herein and his other close aides in the drugs syndicate involved in the transportation, storage, purification, delivery and sale of drugs in Amritsar.

2 *Ankush Kapoor* v. *State of Punjab*, 2021 SCC OnLine P&H 3097
3 *Ankush Kapoor* v. *State of Punjab*, 2021 SCC OnLine P&H 4697

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8. The petitioner herein moved an application for grant of anticipatory bail before the NIA Special Court at Ahmedabad, Gujarat which was dismissed. The High Court vide order dated 26-9-2022[4] also dismissed his prayer for anticipatory bail. The NIA on completion of investigation, submitted challan before the NIA Special Court at Ahmedabad which has framed charges under Sections 17 and 18 UAPA against 24 accused.

9. On 2-5-2023, the NIA moved an application before the High Court of Punjab and Haryana seeking cancellation of bail granted to the petitioner in FIR No. 20 of 2020.

10. On hearing the submissions on behalf of the NIA as well as on behalf of the petitioner-accused, the High Court considered the case in light of Section 439 of the Code of Criminal Procedure, 1973 (for short "CrPC") and the judgments applicable to the facts of the case. The High Court noted that the petitioner was granted bail by it on 5-7-2021[2] but thereafter on 13-10-2021, the Central Government in exercise of its powers under sub-section (5) of Section 6 read with Section 8 of the NIA Act transferred the investigation to NIA, which was already investigating the matter involving FIR No. 1 of 2018 under Sections 8(*c*), 21(*c*), 24, 25, 27-A and 29 of the NDPS Act registered on 12-8-2018 at PS ATS, Ahmedabad, Gujarat. Similarly, investigation of the connected case bearing FIR No. 23 of 2020 dated 31-1-2020 under Sections 21, 25, 27-A, 29 of the NDPS Act registered at Police Station STF, District STF Wing, Amritsar, Punjab was also transferred to the NIA by the Central Government by Order dated 28-6-2021. The High Court noted the contention that there was huge recovery of heroin made by ATS Gujarat as well as STS Punjab in FIR No. 20 of 2020 and FIR No. 23 of 2020, and therefore, the link between the petitioner herein to the said recovery of heroin effected in Gujarat or with the drug cartel allegedly in operation, had to be investigated. That in fact, the NIA Special Court, Ahmedabad had framed charges against 24 accused including Sukhbir Singh alias Happy under Sections 17 and 18 UAPA, among other offences.

11. Therefore, the High Court found grave allegations of cross-border narco-terrorism involving a huge recovery of 500 kg of heroin, which was stated to have been smuggled into India through Gujarat and then into Punjab in a meticulously planned manner. In order to seriously investigate the offences and the drug syndicate that the petitioner-accused and others had a role in, it was necessary that the investigation be carried out with custodial interrogation. Hence, the submission of the petitioner herein that he would cooperate with the investigation and therefore taking him into custody was unnecessary was not accepted by the High Court. Consequently, the High Court allowed the application filed by NIA and cancelled the bail granted by it by order dated 5-7-2021[2] so as to enable the NIA to thoroughly investigate into the offences which had been added into the offences alleged. Being aggrieved by the impugned order[1], the petitioner has preferred the instant special leave petition.

4 *Ankush Vipan Kapoor* v. *State of Gujarat*, 2022 SCC OnLine Guj 2772
2 *Ankush Kapoor* v. *State of Punjab*, 2021 SCC OnLine P&H 3097
1 *NIA* v. *Ankush Vipan Kapoor*, 2024 SCC OnLine P&H 233

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Writ Petition (Crl.) No. 168 of 2024

12. This writ petition was preferred by the petitioner challenging the action of the Central Government in issuance of Orders dated 29-6-2020, 28-6-2021 and 12-10-2021 by the Ministry of Home Affairs, CTCR Division, North Block, New Delhi, wherein the investigation of FIRs which were primarily registered under the NDPS Act has been entrusted to NIA in exercise of powers under Section 6(5) and Section 8 of the NIA Act.

13. At the outset, it is necessary to note that Section 3(2) of the NIA Act provides that subject to any Orders of the Central Government, the NIA shall have throughout India in relation to the investigation of scheduled offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers have in connection with the investigation of offences committed therein. Importantly, while the offences under the NDPS Act do not find a place under the NIA Act, UAPA is mentioned in the Schedule to the NIA Act. Therefore, if any provision of UAPA is attracted, the NIA could be directed to exercise jurisdiction to investigate the same.

14. The petitioner-accused is alleged to be one of the main accused operating an organised syndicate engaged in cross-border smuggling of drugs and narcotics substances allegedly making their way into India through Pakistan, Afghanistan and other countries. The petitioner-accused was first implicated only in FIR No. 20 of 2020 dated 29-1-2020 registered with PS STF, SAS Nagar, Mohali, Punjab under various provisions of the NDPS Act, but for a comprehensive view of the matter it is necessary to note that FIR No. 1 of 2018 dated 12-8-2018 registered with PS ATS, Ahmedabad, Gujarat is also relevant to the instant writ petition. It was borne out in investigation in FIR No. 1 of 2018 that Aziz Abdul Bhagad, Rafique Adam Sumra, Nazir Ahmed, Arshad Abdul Razaq Sota alias Raju Dubai, Manzoor Ahmed, Razak Aadam Sumra, Karim Md. Siraj and Sunil Vithal Barmase and some other accused persons had conspired to smuggle and distribute about 500 kg of heroin from Pakistan to Gujarat by sea. Charge-sheet in respect of FIR No. 1 of 2018 registered with PS ATS, Ahmedabad, Gujarat was filed on 9-1-2019.

15. Subsequently, on 29-1-2020, FIR No. 20 of 2020 was registered with PS STF, SAS Nagar, Mohali, Punjab on the statement of one Rachpal Singh, AIG, STF Border Range, Amritsar. The aforesaid FIR notes that secret information was received that one person named Sukhbir Singh alias Happy who supplies heroin in Punjab as well as other States was moving in his car with large quantity of heroin and illegal weapons. It was noted that the same person has links with smugglers in India as well as outside of India. Acting on the said information, the Special Task Force ("STF") arrested him and upon search, one revolver of .32 bore along with live cartridges and six boxes of heroin weighing 5.690 kg were recovered. During interrogation, Sukhbir Singh alias Happy revealed that the car he was found in belonged to the petitioner-accused herein. On the same day i.e. 29-1-2020, the petitioner-accused herein was arrested in pursuance of the statement of Sukhbir alias Happy. At the house of the petitioner-accused, the following items were recovered:

(*i*) heroin weighing 3.25 kg;

(*ii*) 3 transparent plastic bags along with a can containing ammonia solution;

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(*iii*) one plastic bag containing 500 g of codeine charcoal powder; and

(*iv*) 500 ml of hydrochloride acid.

16. Subsequently, on 31-1-2020, on the basis of the statement of Shri Rashpal Singh AIG, STF Border Range, Amritsar, FIR No. 23 of 2020 was registered with PS STF, SAS Nagar, Mohali, Punjab. It is alleged that secret information was received that the petitioner-accused along with companions Sukhwinder Singh, Major Singh, Tamana Gupta, Afghanistani Arman Bashar Mall, Simarjeet Singh Sandhu and others sell contraband drugs to customers for profit and to that end they had made a secret storage in the area of Sultanwind, Amritsar. Subsequent to the registration of FIR No. 23 of 2020, recovery of 188.95 kg dextromethorphan powder, 25.965 kg caffeine, 3 kg charcoal, 207.12 kg intoxicant liquid chemical and other instruments for preparation of heroin was effected from House No. 127-130, Akash Vihar, Sultanwind, Amritsar. It was alleged that the accused in the said FIR had established connections with smugglers from Dubai, Pakistan and Afghanistan.

17. On 11-6-2020, charge-sheet was filed in FIR No. 20 of 2020 under Sections 21, 25, 27-A, 29, 61, 85 of the NDPS Act and under Sections 30, 54, 59 of the Arms Act. Similarly, charge-sheet was filed in FIR No. 23 of 2020 under Sections 21, 25, 27-A, 29, 61, 85 of the NDPS Act. Both the above charge-sheets were, inter alia, against the petitioner herein. Notably, in both charge-sheets, at Column 2 i.e. "Accused who were not challaned" one "Simarjeet Singh Sandhu" is mentioned.

18. The Central Government upon receipt of information regarding FIR No. 1 of 2018 registered with PS ATS, Ahmedabad, Gujarat formed an opinion that a scheduled offence has been committed and Sections 17 and 18 UAPA — (scheduled offence under the NIA Act) — are attracted and therefore the Central Government in exercise of powers under Section 6(5) read with Section 8 of the NIA Act directed NIA to take up the investigation by Order dated 29-6-2020. This is the first Order impugned in this writ petition.

19. It is pertinent to note that although the offences attracted in the FIR and charge-sheet fall under various sections of the NDPS Act, the Central Government was of the opinion that Sections 17 and 18 UAPA were also attracted. Consequently, FIR No. 1 of 2018 dated 12-8-2018 was renumbered and reregistered as FIR No. RC 26/2020/NIA/DLI dated 2-7-2020. It is crucial that after two years of the first FIR i.e. FIR No. 1 of 2018 registered with PS ATS, Ahmedabad, Gujarat and some months after the registration of FIR No. 20 of 2020 and FIR No. 23 of 2020 in Punjab, the NIA was directed to investigate FIR No. 1 of 2018.

20. The renumbered FIR dated 2-7-2020 registered by NIA notes the following as wanted accused persons under Column 7:

"* * *

Wanted accused persons

(*9*) *Sahid Kasambhal Sumra, resident of Mandvi, Bandar Road, Bachu Harji na vada, Kutch-West.*

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(10) Simaranjitsingh Sarabjitsingh Sandhu, resident of A/288, Ranajeet Avenue, Amritsar, Punjab.

(11) Haji Sab Bhaijan, resident of Pakistan, whose full name and address not known.

(12) Pakistani citizen Nabibax, resident of Dubai, whose full name and address not known.

(13) Pakistani persons Haji sab alias Bhaijan; who brought the heroin in ship through sea route from Pakistan, their names and address not known." (emphasis supplied)

21. Notably, wanted Accused 10 in the re-numbered FIR registered by NIA on 2-7-2020 is a co-accused in the FIRs registered in Punjab and, as already noted, is marked as "Accused persons not challaned" in charge-sheets filed under Section 173 CrPC in both the cases.

22. Further investigation by NIA revealed a larger conspiracy of smuggling huge quantity of heroin from Pakistan to India that was funding terrorist activities. Therefore on 7-8-2020, charge-sheet was dispatched by NIA under Section 120-B IPC, Sections 8(*c*), 21(*c*), 24, 25, 27-A and 29 of the NDPS Act and Sections 17 and 18 UAPA in the Court of Special Judge at Ahmedabad, constituted under the NIA Act, 2008. The aforesaid charge-sheet listed Simarjeet Singh Sandhu as wanted Accused 2 as allegedly substantial quantity of heroin was delivered to his aides at a rented godown of Simarjeet Singh Sandhu at Aithor Village, near Unjha, Gujarat, where it was hidden for further transport to Amritsar, Punjab.

23. Thereafter, another Order was issued by the Ministry of Home Affairs on 28-6-2021 exercising its powers under Section 6(5) and Section 8 of the NIA Act to direct NIA to investigate FIR No. 23 of 2020 dated 31-1-2020. The Order notes that vide ID No. 18/PD/03cases/ATS/NIA/DLI/2020/(468)/7662 dated 18-6-2021, the NIA forwarded a report stating that FIR No. 23 of 2020 under Sections 21, 25, 27 and 29 of the NDPS Act is an offence connected to FIR No. 1 of 2018, which was already transferred to NIA, and therefore NIA should be directed to investigate FIR No. 23 of 2020 as well. This is the second Order impugned in this writ petition.

24. In the meanwhile, the petitioner-accused had moved the High Court of Punjab and Haryana seeking regular bail in connection with FIR No. 20 of 2020. On 5-7-2021[2], the petitioner was enlarged on bail by the High Court in connection with FIR No. 20 of 2020 and on 21-9-2021[3], the High Court similarly enlarged the petitioner on bail in connection with FIR No. 23 of 2020.

25. Notably, the first FIR registered with PS STF, SAS Nagar, Mohali, Punjab bearing No. 20/2020 was transferred to NIA later on 13-10-2021 vide Order of Ministry of Home Affairs, which notes that FIR No. 20 of 2020 is an offence connected to FIR No. 1 of 2018 and thereby in exercise of powers

2 *Ankush Kapoor* v. *State of Punjab*, 2021 SCC OnLine P&H 3097
3 *Ankush Kapoor* v. *State of Punjab*, 2021 SCC OnLine P&H 4697

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under Section 6(5) read with Section 8 of the NIA Act, the NIA was directed to investigate the same. This is the third FIR assailed in this writ petition.

26. In these circumstances, the petitioner-accused preferred Criminal Miscellaneous Application No. 13 of 2022 before the Court of Special Judge constituted under the NIA Act seeking anticipatory bail under Section 438 CrPC in connection with FIR No. 1 of 2018 registered by PS ATS, Ahmedabad, Gujarat renumbered as FIR No. RC 26/2020/NIA/DLI dated 2-7-2020. However, the same was rejected vide order dated 6-5-2022.

27. Furthermore, on 2-5-2023, respondent NIA filed application CRM-M No. 24743 of 2023 before High Court of Punjab and Haryana at Chandigarh seeking cancellation of regular bail granted to the petitioner in FIR No. 20 of 2020 registered at PS STF, SAS Nagar, Mohali, Punjab. Vide order dated 29-1-2024[1], the High Court allowed the application preferred by NIA and noted that the Gujarat case involving cross-border transportation of 500 kg of heroin and the cases registered in Punjab were linked and were both being investigated jointly by the NIA. It was also held that there is a need for thorough investigation, including custodial interrogation of the petitioner-accused. This was especially emphasised in light of the fact that additional offences under Sections 17 and 18 UAPA had been added against co-accused "Simarjeet Singh Sandhu".

28. Aggrieved by the order of the High Court cancelling bail, the petitioner-accused preferred SLP (Crl.) No. 2819/2024, wherein this Court granted[5] the petitioner-accused interim protection from coercive steps. In addition, the present writ petition has been preferred challenging the aforesaid three Orders of the Central Government entrusting upon the NIA to investigate the aforesaid offences under the NDPS Act as connected offences.

Submissions of the parties

29. Shri Siddhartha Dave, learned Senior Counsel appearing for the petitioner has premised his arguments on the basis of Article 21 of the Constitution of India which states that no person shall be deprived of his life or personal liberty except according to the procedure established by law. On the strength of Article 21, the petitioner herein has questioned the Orders at Annexures P-4, P-6 and P-9, dated 29-6-2020, 28-6-2021, 12-10-2021, respectively, passed by Respondent 1, as being illegal and *ultra vires* the provisions of the NIA Act. Shri Dave submitted that the petitioner also has the protection of laws under Article 14 of the Constitution. That in the instant case alleging offences said to have been committed by the petitioner under the NDPS Act which are non-scheduled offences, the petitioner is sought to be investigated and proceeded against under scheduled offences, namely, Sections 17 and 18 UAPA (under the provisions of the NIA Act). It was submitted that the investigation into the FIRs registered under the provisions of the NDPS Act vis-à-vis the petitioner, namely, FIR No. 20 of

1 *NIA* v. *Ankush Vipan Kapoor*, 2024 SCC OnLine P&H 233
5 *Ankush Vipan Kapoor* v. *NIA*, 2024 SCC OnLine SC 4004

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2020 dated 29-1-2020 and FIR No. 23 of 2020 dated 31-1-2020, vide Order dated 28-6-2021 (Annexure P-6) and Order dated 12-10-2021 (Annexure P-9), respectively, on the basis of Section 8 of the NIA Act, is illegal and *ultra vires* the provisions of Section 6 of the NIA Act.

30. In this context, the learned Senior Counsel drew our attention to Section 6 of the NIA Act and with particular reference to sub-sections (1) to (4) of Section 6 and sub-section (5) of Section 6 in order to contend that there are two ways in which investigation could be handed over to the NIA to investigate a scheduled offence under Section 6 of the NIA Act. That the Schedule to the NIA Act prescribes the offences under various Acts including some offences under the Penal Code, 1860 ("IPC"). That in the instant case, sub-section (5) of Section 6 was invoked by the Central Government to *suo motu* refer the investigation of the aforesaid offences registered against the petitioner herein under the NDPS Act by virtue of Annexures P-6 and P-9 which are non-scheduled offences by linking them to FIR No. 1 of 2018 dated 12-8-2018 registered at PS ATS, Ahmedabad, Gujarat, under Sections 8(*c*), 21(*c*), 24, 25, 27-A and 29 of the NDPS Act and Sections 17 and 18 UAPA against some other accused who have nothing to do with the petitioner herein. That merely because by Order dated 29-6-2020 (Annexure P-4) in light of the aforesaid FIR, Sections 17 and 18 UAPA being scheduled offences were said to have been attracted and the said FIR was directed to be investigated by the NIA, Section 8 could not have been invoked by the Central Government to link the offences registered against the petitioner under the NDPS Act with Sections 17 and 18 UAPA, thereby handing over the investigation of the offences which had been investigated by Punjab State Police to the NIA vide Annexures P-6 and P-9. Hence, Annexures P-4, P-6 and P-9 are assailed in the writ petitions.

31. It was contended that the investigation that was handed over to the NIA by the Central Government by virtue of Annexure P-4 Order dated 29-6-2020 was in respect of FIR No. 1 of 2018 dated 12-8-2018 registered at PS ATS, Ahmedabad, Gujarat under certain provisions of the NDPS Act on the premise that Sections 17 and 18 UAPA were also attracted in the case against certain accused persons. However, those accused persons are not accused in the FIR registered against the petitioner herein. In the absence of there being any connection either with the accused against whom offences have been registered by Gujarat State Police or with any scheduled offence being registered against the petitioner herein, Section 8 of the NIA Act could not have been invoked against the petitioner as if he had committed a scheduled offence.

32. Referring to Section 8, the learned Senior Counsel Shri Dave submitted that the said section would be available only when an accused who has been investigated for a scheduled offence can also be investigated for any other offence which the accused is alleged to have committed only if the other offence is connected with the scheduled offence. In the instant case, the petitioner was not being investigated by Punjab State Police for any scheduled offence but for non-scheduled offences under the provisions of the NDPS Act. The petitioner was not being investigated in respect of FIR No. 1 of 2018 dated 12-8-2018 registered at PS ATS, Ahmedabad, Gujarat which is also in respect of non-

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scheduled offences. However, while handing over the investigation of the aforesaid FIR to the NIA, the Central Government by Order dated 29-6-2020 invoked Sections 17 and 18 UAPA to connect the offences under the NDPS Act (non-scheduled offences) in order to enable the investigation of the accused named in FIR No. 1 of 2018 dated 12-8-2018 registered at PS ATS, Ahmedabad, Gujarat for the offences under the NDPS Act as well as under Sections 17 and 18 UAPA which are scheduled offences. It appears that while carrying out the investigation pursuant to Order dated 29-6-2020 (Annexure P-4), the NIA forwarded reports to the Central Government with regard to FIR No. 23 of 2020 dated 31-1-2020 at Police Station STF, District STF Wing, Amritsar, Punjab as well as FIR No. 20 of 2020 dated 29-1-2020 registered at PS STF SAS Nagar, Mohali, Punjab against the petitioner herein and consequently, under Section 8 of the NIA Act, Orders at Annexures P-6 and P-9 have been passed by invoking the offences under UAPA also against the petitioner herein. It was submitted that such a procedure is impermissible in the absence of there being any link or connection between the accused persons in FIR No. 1 of 2018 dated 12-8-2018 at PS ATS, Ahmedabad, Gujarat, registered under certain provisions of the NDPS Act and FIR No. 23 of 2020 dated 31-1-2020 at Police Station STF, District STF Wing, Amritsar, Punjab as well as FIR No. 20 of 2020 dated 29-1-2020 registered at PS STF, SAS Nagar, Mohali, Punjab registered under certain provisions of the NDPS Act against the petitioner herein.

33. It was further submitted that the offences alleged against the petitioner herein under the NDPS Act do not relate to the persons accused by Gujarat State Police and therefore there is no connection of the petitioner with any scheduled offence. It was submitted that the scheduled offences have been invoked as against the persons accused by Gujarat Police at the time of handing over of the investigation to the NIA but the same could not have been replicated insofar as the petitioner herein is concerned. It was contended that in the absence of there being any connection between the offences alleged against the petitioner herein with the offences alleged against the accused by Gujarat Police, the invocation of Section 8 of the NIA Act for passing of the impugned orders is illegal and arbitrary and in total violation of Articles 14 and 21 of the Constitution. The learned Senior Counsel submitted that the writ petitions may be allowed and the Orders issued at Annexures P-4, P-6 and P-9 insofar as the petitioner is concerned, may be quashed and set aside.

34. The learned Senior Counsel, Shri Dave, further submitted that the High Court which has granted bail to the petitioner herein vide order dated 5-7-2021[2] could not have, at the instance of NIA, cancelled the bail by the impugned order dated 29-1-2024[1]. He submitted that if the arguments advanced on behalf of the petitioner in the writ petition are accepted by this Court and the Orders at Annexures P-4, P-6 and P-9 assailed in the writ petition are quashed, then the impugned order of cancellation of bail by the High Court at the instance of the respondent NIA would have to be quashed. Consequently, the earlier order of

2 *Ankush Kapoor* v. *State of Punjab*, 2021 SCC OnLine P&H 3097
1 *NIA* v. *Ankush Vipan Kapoor*, 2024 SCC OnLine P&H 233

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the High Court granting bail would revive. The petitioner is willing to cooperate with the trial of the offences alleged against him under the NDPS Act before the Special Court in Punjab itself. Consequently, it is submitted that the transfer of the FIR and trial to Special Court, Ahmedabad would also have to be quashed. The learned Senior Counsel submitted that the arguments advanced in the writ petition be read as part and parcel of the arguments in the special leave petition and the impugned order of cancellation of the petitioner's bail may be set aside and the earlier order dated 5-7-2021[2] granting bail may be revived.

35. On the other hand, the learned ASG Ms Aishwarya Bhati appearing for respondent Union of India and NIA, with reference to the counter-affidavit filed on behalf of Union of India at the outset submitted that the writ petition is misconceived; that the impugned Order dated 29-6-2020 (Annexure P-4) was issued by the Central Government by invoking sub-section (5) of Section 6 of the NIA Act; the petitioner herein cannot have any grievance with regard to the said Order inasmuch as the petitioner is not named in FIR No. 1 of 2018 dated 12-8-2018; however, during the investigation of the scheduled offences under Sections 17 and 18 UAPA which are also connected with FIR No. 1 of 2018 dated 12-8-2018 at PS ATS, Ahmedabad, Gujarat, under certain provisions of the NDPS Act (non-scheduled offences), it emerged that the offences alleged against the petitioner herein in FIR No. 23 of 2020 and FIR No. 20 of 2020 were connected to the scheduled offences under Sections 17 and 18 UAPA which were already being investigated by the NIA and, therefore, Orders at Annexures P-6 and P-9 were issued.

36. With reference to the role of the petitioner, it was submitted by Ms Bhati that he is part of the narco-terror network of smuggling drugs into India, transporting from Gujarat to Punjab, storing the same and purifying in Amritsar and Ludhiana for further distribution to various parts of Punjab and the National Capital, New Delhi and its surrounding areas. That the petitioner is alleged to have received for purification 500 kg of narcotic drugs of heroin from Sukhbir Singh alias Happy (A-10) and his associates on the directions of Italy-based wanted accused Simarjeet Singh Sandhu (WA-2). The charge-sheet filed by Police Station STF, District STF Wing, Amritsar, Punjab in FIR No. 23 of 2020 reveals that the petitioner herein along with accused Sukhbir alias Happy (A-10) had brought chemicals at the behest of accused Simarjeet Singh Sandhu (WA-2) for refinement and purification of heroin at Amritsar.

37. With reference to the details in the counter-affidavit, it was pointed out by the learned ASG that the petitioner herein is closely associated with the kingpin and wanted accused Simarjeet Singh Sandhu (WA-2) and other accused which fact has been corroborated by the disclosure statements of other accused and the petitioner herein has received huge sums of money for distribution and transporting of narcotic drug heroin. That the NIA was already investigating FIR No. 1 of 2018 dated 12-8-2018 at PS ATS, Ahmedabad, Gujarat in respect

2 *Ankush Kapoor* v. *State of Punjab*, 2021 SCC OnLine P&H 3097

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of certain accused including Sukhbir Singh alias Happy (A-10) and during the course of the said investigation, the role of the petitioner was revealed, therefore, Orders at Annexures at P-6 and P-9 were issued. There is a clear link and connection between FIR No. 1 of 2018 dated 12-8-2018 registered at PS ATS, Ahmedabad, Gujarat which is registered against certain accused persons under certain provisions of the NDPS Act wherein the provisions of the UAPA Act are also attracted. Therefore, the Central Government directed the investigation of the aforesaid FIR in connection with Sections 17 and 18 UAPA which are scheduled offences; that the offences alleged against the petitioner herein are also under the provisions of the NDPS Act which are non-scheduled offences but those offences have a connection with Sections 17 and 18 UAPA which are scheduled offences inasmuch as the investigation by the NIA of the aforesaid scheduled offences has detected the link between the petitioner herein with the accused in FIR No. 1 of 2018 dated 12-8-2018 registered at PS ATS, Ahmedabad, Gujarat. That in respect of that FIR, the Central Government had already passed an Order on 26-9-2020 invoking Sections 17 and 18 UAPA which are scheduled offences. Consequently, there is a vital connection between the petitioner herein to the aforesaid scheduled offences also. Hence, Orders in Annexures P-6 and P-9 were issued transferring the investigation of FIR No. 23 of 2020 dated 31-1-2020 at Police Station STF, District STF Wing, Amritsar, Punjab as well as FIR No. 20 of 2020 dated 29-1-2020 registered at PS STF, SAS Nagar, Mohali, Punjab lodged against the petitioner to the NIA to further investigate the matter. Therefore, according to the learned ASG, Section 8 has been rightly applied in the case of the petitioner herein as the offences alleged against the petitioner and other accused have a connection with the scheduled offences under UAPA and there is no merit in this petition.

38. The learned ASG further submitted that Section 14 of the NIA Act empowers the Special Court to try any other offence which the accused may be charged as if the offence which is being tried is connected with any such other offence.

39. In light of the above discussions, the learned ASG prayed for dismissal of the writ petition.

40. The learned ASG further submitted that the arguments advanced in the writ petition may be read as part and parcel of the arguments in the special leave petition. Consequently, the NIA, having jurisdiction to investigate the scheduled offences along with connected offences (non-scheduled offences) in the instant case, was justified in applying for cancellation of bail granted to the petitioner herein. It is finally submitted that taking note of the circumstances of the case and the entire gamut of facts involved, the Punjab and Haryana High Court, by the impugned order[1], has rightly cancelled the bail granted to the petitioner herein and the same does not call for any interference by this Court as there are no merits in the special leave petition which may be dismissed.

1 *NIA* v. *Ankush Vipan Kapoor*, 2024 SCC OnLine P&H 233

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National Investigation Agency Act, 2008

41. Sections 3, 6, 7, 8 and 14 of the NIA Act are extracted as under:

"**3.** ***Constitution of National Investigation Agency***.—(1) Notwithstanding anything in the Police Act, 1861 (5 of 1861), the Central Government may constitute a special agency to be called the National Investigation Agency for investigation and prosecution of offences under the Acts specified in the Schedule.

(2) Subject to any orders which the Central Government may make in this behalf, officers of the Agency shall have throughout India in relation to the investigation of scheduled offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers have in connection with the investigation of offences committed therein.

(3) Any officer of the Agency of, or above, the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise throughout India, any of the powers of the officer-in-charge of a police station in the area in which he is present for the time being and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station.

* * *

6. ***Investigation of scheduled offences***.—(1) On receipt of information and recording thereof under Section 154 of the Code relating to any scheduled offence the officer-in-charge of the police station shall forward the report to the State Government forthwith.

(2) On receipt of the report under sub-section (1), the State Government shall forward the report to the Central Government as expeditiously as possible.

(3) On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within fifteen days from the date of receipt of the report, whether the offence is a scheduled offence or not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency.

(4) Where the Central Government is of the opinion that the offence is a scheduled offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence.

(5) Notwithstanding anything contained in this section, if the Central Government is of the opinion that a scheduled offence has been committed which is required to be investigated under this Act, it may, *suo motu*, direct the Agency to investigate the said offence.

(6) Where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency.

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(7) For the removal of doubts it is hereby declared that till the Agency takes up the investigation of the case it shall be the duty of the officer-in-charge of the police station to continue the investigation.

(8) Where the Central Government is of the opinion that a scheduled offence has been committed at any place outside India to which this Act extends, it may direct the Agency to register the case and take up investigation as if such offence has been committed in India.

(9) For the purposes of sub-section (8), the Special Court at New Delhi shall have the jurisdiction.

7. ***Power to transfer investigation to State Government.***—While investigating any offence under this Act, the Agency, having regard to the gravity of the offence and other relevant factors, may—

(*a*) if it is expedient to do so, request the State Government to associate itself with the investigation; or

(*b*) with the previous approval of the Central Government, transfer the case to the State Government for investigation and trial of the offence.

8. ***Power to investigate connected offences.***—While investigating any scheduled offence, the Agency may also investigate any other offence which the accused is alleged to have committed if the offence is connected with the scheduled offence.

* * *

14. ***Powers of Special Courts with respect to other offences.***—(1) When trying any offence, a Special Court may also try any other offence with which the accused may, under the Code be charged, at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or under any other law, the Special Court may convict such person of such other offence and pass any sentence or award punishment authorised by this Act or, as the case may be, under such other law."

42. A perusal of the aforesaid provisions and the long title of the NIA Act elucidates that the NIA Act was enacted to constitute a national level investigation agency to investigate and prosecute offences, inter alia, affecting the sovereignty, security and integrity of India, and security of the State.

43. Under Section 3(1), NIA has been constituted as "a special agency" for the investigation and prosecution of offences under the enactments specified in the Schedule to the NIA Act.

44. Importantly, Section 6 provides for the initiation of investigation of scheduled offences by the NIA. While sub-sections (1) to (4) lay down the framework for initiation of investigation by NIA after a report is received from the State Government by the Central Government, an exception to the procedure found in sub-sections (1) to (4) is provided by sub-section (5). By way of Section 6(5), Parliament has entrusted overriding power to the Central Government to *suo motu* direct NIA to investigate an offence if the Central

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Government is of the opinion that a scheduled offence has been committed under the NIA Act and that such scheduled offence is required to be investigated by NIA.

45. Sub-section (1) of Section 3 begins with a non obstante clause as notwithstanding anything in the Police Act, 1861, the Central Government may constitute a special agency to be called the National Investigation Agency (NIA) for investigation and prosecution of offences under the Acts specified in the Schedule.

46. Sub-section (2) of Section 3 states that subject to any Orders which the Central Government may make, NIA shall have throughout India and subject to any international treaty or domestic law of the authority concerned, in relation to the investigation of scheduled offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers have in connection with the investigation of offences committed therein. Sub-section (3) of Section 3 states that subject to any Orders which the Central Government may make, any officer of the NIA, of or above the rank of a Sub-Inspector, may exercise throughout India, any of the powers of the officer-in-charge of a police station in the area in which he is present for the time being and when so exercising such powers shall, subject to any such Orders as aforesaid, be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station.

47. The superintendence of the NIA vests in the Central Government vide sub-section (1) of Section 4 of the NIA Act. The NIA is headed by Director General appointed by the Central Government akin to the powers exercised by a Director General of Police in respect of the police force in a State, as the Central Government may specify in that behalf vide sub-section (2) of Section 4.

48. Sub-sections (1) to (4) of Section 6 relate to receipt of information and recording thereof under Section 154 CrPC relating to any scheduled offence under the NIA Act by any officer-in-charge of a police station being forwarded to the State Government. The State Government would then forward the report to the Central Government and on receipt of such a report from the State Government, the Central Government would determine whether the offence is a scheduled offence or not and having regard to the gravity of the offence and other relevant factors, whether it is a fit case to be investigated by the NIA.

49. However, sub-section (5) of Section 6 is akin to an exception to sub-sections (1) to (4) of Section 6. It is a *suo motu* power vested with the Central Government to direct investigation of a scheduled offence which has been allegedly committed and which is required to be investigated under the said Act by the NIA. This power is dehors the power to be exercised by the Central Government under sub-sections (3) and (4) of Section 6. That is why sub-section (5) of Section 6 begins with a *non obstante* clause and it is notwithstanding anything contained in Section 6 that the *suo motu* power can be exercised by the Central Government by forming an opinion. Sub-section (8) of Section 6 states that where the Central Government is of the opinion that a scheduled offence has been committed at any place outside India to which

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the said Act extends, it may direct the NIA to register the case and take up investigation as if such offence has been committed in India. The powers under sub-section (5) are reserved to the Central Government to be exercised by it *suo motu* when a scheduled offence has been committed in India or overseas to which the said Act applies, when it can on the basis of its opinion formed, direct the NIA to investigate the said offence. In fact, in the case of an offence committed outside India to which the NIA Act extends, the Central Government can direct the NIA to register the case as well as take up investigation as if such offence has been committed in India.

50. Section 8 states that while investigating any scheduled offence the NIA may also investigate any other offence which the accused is alleged to have committed if the offence is connected with the scheduled offence. The key words in Section 8 are "connected with the scheduled offence". Therefore, what is necessary to confer power on the NIA to investigate any other offence apart from a scheduled offence which has been directed to be investigated by it, "is the connection of" any other offence with the scheduled offence. The expression "any other offence" is wide and expansive in nature. The connection with the scheduled offence could be by any other scheduled offence under the NIA Act or any other offence which may not be a scheduled offence under the provisions of the NIA Act but nevertheless has a connection with the scheduled offence under the provisions of the NIA Act.

Unlawful Activities (Prevention) Act, 1967

51. Under the Schedule to the NIA Act, inter alia, the offences under UAPA are scheduled offences. Section 2(1)(*g*) of the NIA Act defines "scheduled offence" to mean an offence specified in the Schedule to the NIA Act.

52. UAPA in Chapter IV defines a "terrorist act" in Section 15 and punishment for raising fund for a terrorist act in Section 17 while punishment for a terrorist act is under Section 16. Section 18 UAPA speaks about punishment for conspiracy. Sections 15, 16, 17 and 18 UAPA are extracted as under:

> "**15.** ***Terrorist Act.***—(1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,
>
> (*a*) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological, radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—
>
> (*i*) death of, or injuries to, any person or persons; or
>
> (*ii*) loss of, or damage to, or destruction of, property; or
>
> (*iii*) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

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(*iii-a*) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or

(*iv*) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(*b*) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(*c*) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organisation or any other person to do or abstain from doing any act;

or commits a terrorist act.

Explanation.—For the purpose of this sub-section,

(*a*) "public functionary" means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;

(*b*) "high quality counterfeit Indian currency" means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.

(2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.

16. ***Punishment for terrorist act***.—(1) Whoever commits a terrorist act shall,

(*a*) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine;

(*b*) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

* * *

17. ***Punishment for raising funds for terrorist act***.—Whoever, in India or in a foreign country, directly or indirectly, raises or provides funds or collects funds, whether from a legitimate or illegitimate source, from any person or persons or attempts to provide to, or raises or collects funds for any person or persons, knowing that such funds are likely to be used, in full or in part by such person or persons or by a terrorist organisation or by a terrorist gang or by an individual terrorist to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

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Explanation.—For the purpose of this section—

(*a*) participating, organising or directing in any of the acts stated therein shall constitute an offence;

(*b*) raising funds shall include raising or collecting or providing funds through production or smuggling or circulation of high-quality counterfeit Indian currency; and

(*c*) raising or collecting or providing funds, in any manner for the benefit of, or, to an individual terrorist, terrorist gang or terrorist organisation for the purpose not specifically covered under Section 15 shall also be construed as an offence.

18. ***Punishment for conspiracy, etc***.—Whoever conspires or attempts to commit, or advocates, abets, advises or incites, directs or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine."

Analysis

53. Thus, if the provisions of Sections 17 and 18 UAPA are attracted in a given case being scheduled offences under the NIA Act, the Central Government, if it is of the opinion that such offences have been committed which are required to be investigated under the Act, may under sub-section (5) of Section 6 of the said Act, in exercise of its *suo motu* power direct the NIA to investigate the scheduled offences. But while investigating such scheduled offences, the NIA can also investigate any other offence which the accused is alleged to have committed provided the other offence is connected with a scheduled offence. Applying the aforesaid provision to the facts of the present case, it is held that while investigating the offences under Sections 17 and 18 UAPA (scheduled offences) by virtue of sub-section (5) of Section 6, under Section 8 any other offence such as an offence under the NDPS Act connected with the scheduled offences (Sections 17 and 18 UAPA in the instant case) could also be investigated. But, such other offence must have a connection with the scheduled offence.

54. Furthermore, in our view, the investigation could also be of a person accused of an offence which has a connection with a scheduled offence which is being investigated on the basis of Section 8 of the NIA Act. Then, the Central Government may also direct any such offence also to be investigated on receipt of a report from the NIA as against any accused when it is already investigating a scheduled offence against a certain accused, as in the instant case provided that offence has a connection with the scheduled offence. Also, the NIA has been conferred wide powers under Section 8 of the NIA Act to also investigate into any other offence committed by the accused in respect of whom a scheduled offence is being investigated provided the offence is connected with the scheduled offence under the Schedule to the NIA Act.

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55. The interpretive challenge that has come to the forefront in this case is due to the fact that there are certain co-accused persons who are present in FIR No. 20 of 2020 and FIR No. 23 of 2020 who are not accused under the prior FIR No. 1 of 2018 registered in the State of Gujarat. Therefore, the question is whether, the NIA can investigate only the same accused who is present in the NIA investigation qua scheduled offences and for non-scheduled offence by virtue of Section 8 of the NIA Act. In other words, can the NIA investigate any other accused person who, although not being investigated for any scheduled offences could be investigated by NIA because there exists a link between the two, namely, scheduled and non-scheduled offences, thereby connecting every co-accused.

56. On a plain reading of Section 8, it is clear that the said section has to be read in continuation of what has been stated in sub-section (5) of Section 6 of the NIA Act. Once the Central Government directs the NIA to investigate a scheduled offence and during the course of such investigation of a scheduled offence against an accused, it becomes necessary for the NIA to also investigate any other offence which the said accused is alleged to have committed, then such offence could also be investigated provided that other offence to be investigated is connected with the scheduled offence.

57. However, in our view, the expression "the accused" in Section 8 of the NIA Act needs to be interpreted contextually. The learned Senior Counsel for the petitioner submitted that the said expression has to be read narrowly and as per its plain meaning as referring to only "the accused" in respect of whom a scheduled offence is being investigated by the NIA and if such an accused has committed any other offence which is connected to the scheduled offence then such other offence could also be investigated by the NIA provided there is a connection with the scheduled offence. In other words, the argument was, that in the first place, the investigation must be of "the accused" who is accused of a scheduled offence and not any other accused. Next, it is only in respect of such an accused if any other offence is alleged to have been committed by him which is connected with the scheduled offence, which could also be investigated by the NIA on the strength of Section 8 of the NIA Act.

58. We do not think that such a narrow interpretation could be given to the expression "the accused" in Section 8 of the NIA Act to not include any other accused. The expression "*Agency may also investigate any other offence which the accused is alleged to have committed*" has no doubt to be read with the rigour of "*if the offence is connected with the scheduled offence*". In other words, if any other offence is connected with the scheduled offence, then the NIA may investigate such other offence which the accused is alleged to have committed provided there is a connection of such other offence with the scheduled offence.

59. The question is, whether, the expression "the accused" in Section 8 of the NIA Act has to refer to only the accused in respect of whom a scheduled offence is being investigated or it could include any other accused whose name would emerge during the course of investigation of a scheduled offence and

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who has committed an offence which has a connection with the scheduled offence. In our view, the expression "the accused" in Section 8 of the NIA Act cannot be restricted in its meaning and connotation to only the accused in respect of whom investigation is being carried out pursuant to sub-sections (4) and (5) of Section 6 of the NIA Act in respect of a scheduled offence. It could also include any other accused who has committed any other offence provided that other offence committed by any other accused has a connection or a nexus with the scheduled offence which is detected during the course of investigation of any scheduled offence. More importantly, in the case of any other accused, the offences alleged need not be scheduled offences, it could be any offence but must necessarily have a connection with the scheduled offence. In such an event, on the basis of Section 8 of the NIA Act, a report may be made to the Central Government which can direct investigation against any other accused (i.e. an accused other than the accused who is being investigated) provided it has a connection with the scheduled offence. In such a contingency, the Central Government while invoking sub-section (5) of Section 6 read with Section 8 of the NIA Act can direct investigation of any other accused alleging he has committed an offence which is connected with the scheduled offence already being investigated. On such a direction by the Central Government the NIA can assume jurisdiction to investigate any other accused on the basis that he has committed an offence which has to be investigated along with the scheduled offence already under investigation.

60. The reasons for holding so shall be discussed. One reason being that Section 8 of the NIA Act applies not only when it is acting under sub-section (5) of Section 6 of the NIA Act; it also applies to sub-section (4) of Section 6 of the NIA Act where the Central Government acts on the receipt of a report from the State Government when information received by the officer-in-charge of the police station relates to any scheduled offence and the State Government has forwarded the report to the Central Government. Then, the Central Government, having regard to the gravity of the offence and other relevant factors, if is of the opinion that the offence is a scheduled offence and it is fit to be investigated by the NIA, a direction would be issued to the NIA to investigate the said scheduled offence. Irrespective of the contingency under which the NIA is directed to investigate a scheduled offence under Section 6, Section 8 would apply. In either case, while carrying out the investigation in respect of the accused alleged to have committed a scheduled offence, information may emerge that there are other accused who have committed any other offence which is connected with the scheduled offence committed by the accused in respect of whom investigation is being made by the NIA on the basis of Section 6 of the NIA Act.

61. Therefore, owing to the connection of any other offence with the scheduled offence committed by any other accused in respect of whom investigation is necessary, steps could be taken to investigate the said other accused also. This is because the offence said to have been committed by any other accused has a connection with the scheduled offence. One cannot determine the manner in which such information may emanate while carrying

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out an investigation in respect of the accused who is alleged to have committed a scheduled offence and who may have also committed any other offence (non-scheduled offence) which could be along with any other accused in respect of whom no direction may yet have been issued to carry on an investigation by the NIA under Section 6(5) of the NIA Act but exercise of jurisdiction under Section 8 may become necessary. Therefore, during the course of investigation of an accused alleged to have committed a scheduled offence, if, it emerges or it is detected that the said accused along with any other accused has committed other offence(s), then investigation with regard to any other offence committed by some other accused along with the accused said to have committed the scheduled offence could also be carried out by requesting the Central Government for a direction to investigate the other accused. Such other accused may have committed an offence which has a connection with the scheduled offence of the accused who is being investigated and therefore Section 8 provides such a contingency.

62. Therefore, the nexus or connection between any other offence and the scheduled offence is of critical importance and must be present in order to enable the NIA to investigate any other offence committed by an accused in connection with the scheduled offence. The connection between a scheduled offence and any other offence being established would enable the NIA to investigate the accused of committing any other offence which is connected with the scheduled offence. Once there is such a connection between a scheduled offence and a non-scheduled offence then, for all practical purposes the non-scheduled offence would come within the connection of a scheduled offence. Therefore, it is held that the accused who may have committed a non-scheduled offence having a connection with a scheduled offence can be investigated by the NIA in respect of a non-scheduled offence.

63. It is reiterated that, while investigating the accused regarding scheduled offences, if the NIA submits a report about some other accused who may have also committed certain offences connected with the scheduled offences under investigation then, the Central Government on a consideration of such a report may exercise *suo motu* powers and direct the NIA to also investigate the other accused also provided the offences alleged against the other accused are offences, having a connection with the scheduled offence already under investigation. Thus, on the aforesaid basis NIA would be enabled to also carry out an investigation of any other accused who has committed an offence connected with the scheduled offence already being investigated. This would be in the realm of a joint investigation into scheduled offences which may have occurred in different parts of the country but having a connection with other offences also.

64. Thus, the expression "the accused" would have to be given an expansive and enlarged meaning in the above context having regard to the object and purpose of Section 8 of the NIA Act and the context in which provision has to be interpreted.

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65. The word "the" used before a noun "accused" in Section 8 of the NIA Act has a particularising effect, as opposed to "a" or "an". However, "a" and "the" sometimes have to be interchangeably interpreted having regard to the context in which it is found and in order to give it a contextual connotation so as to advance the object and purpose of the provision. Section 8 of the NIA Act has to be given a purposive and meaningful interpretation and one which would advance the object of Section 6 and other provisions of the Act and cannot be read in a curtailed and narrow fashion as submitted by the learned Senior Counsel for the petitioner.

66. We have interpreted Section 8 of the NIA Act in such a way that while investigating the accused of a scheduled offence, any other accused could also be investigated on the strength of Section 8 provided the following condition precedents are applicable:

66.1. The NIA is of the opinion that during an investigation, any other accused who is alleged to have committed an offence having a connection with the scheduled offence has also to be investigated. In other words, there is a connection between the scheduled offence under investigation and any other offence committed by any other accused;

66.2. A report by the NIA is submitted incorporating the aforesaid opinion to the Central Government;

66.3. The Central Government on consideration of such a report, in exercise of its *suo motu* powers under sub-section (5) of Section 6 read with Section 8 of the NIA Act directs the investigation to be carried out in respect of any other accused also; and

66.4. The said investigation of any other accused must be carried out jointly as far as practicable with the investigation of the accused already under progress owing to the connection between the scheduled offence and any other offence.

67. On a holistic reading of Section 8, the expression "the accused" cannot be restricted to only the accused in respect of whom investigation is being carried out by the NIA for any scheduled offence. The NIA, which is carrying on an investigation into any scheduled offence, can also investigate any other offence which any other accused may have committed provided such other offence is also an offence connected with the scheduled offence under investigation.

68. Thus, so long as the connection between any offence committed by any other accused and the scheduled offence committed by the accused in respect of whom investigation has been handed over by the Central Government to the NIA is established, the NIA would be empowered to conduct an investigation of any other accused in respect of a scheduled offence which is connected with the scheduled offence committed by the accused in respect of whom the Central Government has handed over or directed the investigation to be conducted by it. Therefore, the scope of the powers of the NIA under Section 8 of the NIA Act has to be interpreted expansively and not in a narrow manner.

69. While the learned counsel for the petitioner would submit that the correct course would be for the NIA to add those accused under FIR No. 20 of

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2020 and FIR No. 23 of 2020 as accused persons under the NIA investigation rather than treating other offences as connected, we find that such a course would lose sight of the salutary statutory intent to investigate and prosecute at a national level and, in particular, Section 6(6) of the Act which clearly envisions culling of any duplicity of investigation. By allowing the NIA to investigate those accused under different FIRs registered in different States, an enlarged scope is provided to the investigation into the scheduled offences.

70. As already noted in the preceding discussion we must be alive to the statutory intent for an actual realisation of the statutory scheme. In that regard, it is noteworthy that the Act, especially Section 6 of the NIA Act, is offence-centric and not accused-centric. The Act revolves around effective investigation of scheduled offences. Similarly, the central concern of Section 8 of the NIA Act is defining the scope of offences that can be investigated by the NIA and on what basis and not who are the accused.

71. Additionally, we might also note that the phraseology of Section 8 of the NIA Act also establishes that the NIA can only widen its investigation to a non-scheduled offence only "while investigating any scheduled offence". Importantly, the NIA has not been given unbridled power to initiate investigation of a connected and non-scheduled offence in the absence of an investigation of any scheduled offence. In our opinion, this speaks to Parliament's wisdom to build safeguards within the text of the NIA Act.

72. Therefore, the submission of the learned Senior Counsel Shri Dave to read Section 8 of the NIA Act in a restrictive fashion and not expansively, does not advance the object and purpose of the Act and particularly Section 6 thereof and hence, is rejected.

Analysis on facts of these cases

73. The prayers sought in the writ petition have been noted. The petitioner has assailed Annexures P-4, P-6 and P-9 which are Orders passed by Respondent 1 so as to seek a declaration that the actions taken pursuant to the aforesaid Orders are void and illegal. For ease of reference, the aforesaid Orders are extracted as under:

Annexure P-4

"No. 11011/44/2020/NIA
Government of India
Ministry of Home Affairs
CTR Division

North Block, New Delhi
Dated, 29-6-2020

ORDER

Whereas, the Central Government has received information regarding the registration of Crime No. 01/2018 dated 12-8-2018 at PS ATS, Gujarat under Sections 8(*c*), 21(*c*), 24, 25, 27-A and 29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act relating to seizure of 4.949 kg

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of heroin worth approximately Rs 15 crores by Gujarat ATS from Salaya Village, District Devbhoomi Dwarka of Gujarat, from the possession of arrested accused Aziz Abdul Bhagad r/o Salaya Check Post, District Dwarka;

And whereas, the aforesaid arrested accused had brought total 300 kg of heroin in two rounds through sea route in his own ship and gave it to accused Rafik Adham Sumra r/o Mandvi, Kutch;

And whereas, Sections 17 and 18 of the Unlawful Activities (Prevention) Act, 1967 attracted in this case;

And whereas, the Central Government is of the opinion that scheduled offence under the National Investigation Agency Act, 2008 has been committed and, having regard to the gravity of the offence and grave national and international ramifications it is required to be investigated by the National Investigation Agency in accordance with the National Investigation Agency Act, 2008.

Now therefore in exercise of the powers conferred under sub-section (5) of Section 6 read with Section 8 of the National Investigation Agency Act, 2008 the Central Government whereby directs the National Investigation Agency to take up investigation of the aforesaid case.

(Dharmender Kumar)
Under-Secretary to the Government of India

To

The Director General,
National Investigation Agency,
CGO Complex, Lodhi Road, New Delhi
Chief Secretary, Government of Gujarat
DGP Gujarat"

Annexure P-6

"No. 11011/44/2020/NIA
Government of India
Ministry of Home Affairs
CTCR Division

In FIR No. 23 of 2020

North Block, New Delhi
Dated, 28-6-2021

ORDER

Whereas, in exercise of the powers conferred under sub-section (5) of Section 6 read with Section 8 of the NIA Act, 2008, the Central Government has, by Order No. 11011/44/2020/NIA dated 29-6-2020, directed the NIA to take up investigation of Case Crime No. 01/2018 dated 12-8-2018 registered at PS ATS, Gujarat under Sections 8(*c*), 21(*c*), 24, 25, 27-A and 29 of the Narcotic Drugs and Psychotropic Substances

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(NDPS) Act relating to seizure of 4.949 kg of heroin worth approximately Rs 15 crores by Gujarat ATS from Salaya Village, District Devbhoomi Dwarka of Gujarat, from the possession of arrested accused Aziz Abdul Bhagad r/o Salaya Check Post, District Dwarka;

And whereas, the NIA, vide its ID No. 18/PD/03cases/ATS/NIA/DLI/2020/(468)/7662 dated 18-6-2021, has forwarded a report stating that FIR No. 23 of 2020 dated 31-1-2020 registered at PS STF, Amritsar, Punjab, under Sections 21, 25, 27 & 29 of the NDPS Act is a connected offence.

Whereas, Section 8 of the NIA Act, 2008 provides that "While investigating any scheduled offence, the Agency may also investigate any other offence which the accused is alleged to have committed, if the offence is connected with the scheduled offence".

And therefore, in continuation of Order No. 11011/44/2020/NIA dated 29-6-2020, which directs the NIA to take up the investigation under Section 6(5) read with Section 8 of the NIA Act, 2008, the NIA may investigate FIR No. 23 of 2020 dated 31-1-2020 as per the provision of Section 8 of the National Investigation Agency Act, 2008.

sd/-
(Kshitish Kumar)
Under-Secretary to the Government of India

To

1. The Director General, National Investigation Agency, CGO Complex, Lodhi Road, New Delhi.

2. The Chief Secretary to the Government of Punjab.

3. DGP, Punjab."

Annexure P-9

"No. 11011144/2020/NIA
Government of India
Ministry of Home Affairs
CTCR Division

North Block, New Delhi
Dated, 12-10-2021

ORDER

Whereas, in exercise of the powers conferred under sub-section (5) of Section 6 read with Section 8 of the NIA Act, 2008, the Central Government has, by Order No. 11011/44/2020/NIA dated 29-6-2020, directed the NIA to take up investigation of Case Crime No. 01/2018 dated 12-8-2018 registered at PS ATS, Gujarat under Sections 8(*c*), 21(*c*), 24, 25, 27-A & 29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 relating to seizure of 4.949 kg of heroin worth approximately Rs 15 crores by Gujarat ATS from Salaya Village, District Devbhoomi Dwarka of Gujarat, from the possession of arrested accused

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Aziz Abdul Bhagad r/o Salaya Check Post, District Dwarka. The NIA re-registered the abovesaid case as RC/26/2020/NIA/DLI dated 2-7-2020 under Sections 8(*c*), 21(*c*), 24, 25, 27-A & 29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 and Sections 17 and 18 of the Unlawful Activities (Prevention) Act, 1967;

And whereas, the NIA, vide its ID No. 18/PD/03cases/ATS/NIA/D11/2020/(468)/7662 dated 18-6-2021, had forwarded a report stating that FIR No. 23 of 2020 dated 31-1-2021 registered at PS STF, Amritsar, Punjab, under Sections 21, 25, 27 & 29 of the NDPS Act is a connected offence with RC/26/2020/NIA/DLI dated 2-7-2020 of the NIA and the case was transferred to the NIA, vide Order of even No., dated 28-6-2021;

And whereas, the NIA, vide its ID No. 18/PD/03cases/ATS/Gujarat/NIA/DLI/2020/(468)/1613 6 dated 28-9-2021, has forwarded a report stating that FIR No. 20 of 2020 dated 29-1-2020 registered at PS STF, SAS Nagar, Amritsar, Punjab, under Sections 21 of the NDPS Act and 25 of the Arms Act, is a connected offence with RC/26/2020/NI/DLI dated 2-7-2020 of the NIA;

Whereas, Section 8 of the NIA Act, 2008 provides that "While investigating any scheduled offence, the Agency may also investigate any other offence which the accused is alleged to have committed, if the offence is connected with the scheduled offence".

And therefore, in continuation of Order No. 11011/44/2020/NIA dated 29-6-2020 and 28-6-2021, which directs the NIA to take up the investigation under Section 6(5) read with Section 8 of the NIA Act, 2008, the NIA may investigate FIR No. 20 of 2020 dated 29-1-2020 registered at PS STF, SAS Nagar, Amritsar, Punjab, as per the provision of Section 8 of the National Investigation Agency Act, 2008.

sd/-
(Rajeev Kumar)
Under-Secretary to the Government of India

To

1. The Director General, National Investigation Agency, CGO Complex, Lodhi Road, New Delhi.

2. Chief Secretary to the Government of Punjab.

3. DGP, Punjab."

74. Annexure P-4 is an Order dated 29-6-2020 by which, the first respondent, on receipt of information regarding the registration of FIR No. 1 of 2018 dated 12-8-2018 at Police Station Anti-Terrorist Squad (PS ATS), Ahmedabad, Gujarat under Sections 8(*c*), 21(*c*), 24, 25, 27-A and 29 of the NDPS Act relating to seizure of 4.949 kg of heroin worth approximately Rs 15 crores by Gujarat ATS from the possession of the arrested accused Aziz Abdul Bhagad who, having brought a total 300 kg of heroin in two rounds through the sea route in his own ship had given it to another accused, was of the opinion that Sections 17 and 18 UAPA are attracted to the case. The offences under

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Sections 17 and 18 UAPA being scheduled offences under the NIA Act, the Central Government was of the opinion that the said offence had grave national and international ramifications and therefore, it was required to be investigated by the NIA in accordance with the NIA Act. Therefore, in exercise of the powers conferred under sub-section (5) of Section 6 of the NIA Act, the Central Government directed the NIA to take up investigation of the aforesaid case i.e. under Sections 17 and 18 UAPA which are scheduled offences and in respect of which the offences registered under FIR No. 1 of 2018 dated 12-8-2018 at PS ATS, Ahmedabad, Gujarat are connected with the scheduled offences.

75. Thereafter, Annexure P-6 Order dated 28-6-2021 was passed by the Central Government in exercise of power under sub-section (5) of Section 6 read with Section 8 of the NIA Act in the backdrop of Order dated 29-6-2020 and in continuation thereof. During the course of investigation as per the aforesaid Order, NIA had forwarded a report vide ID No. 18/PD/03cases/ATS/NIA/DLI/2020/(468)/7662 dated 18-6-2021 stating that FIR No. 23 of 2020 dated 31-1-2020 registered at PS STF, Amritsar, Punjab under Sections 21, 25, 27 and 29 of the NDPS Act is an offence connected with the scheduled offence. That having regard to Section 8 of the NIA Act and in continuation of Order No. 11011/44/2020/NIA dated 29-6-2020, it was ordered by the Central Government that the NIA may investigate FIR No. 23 of 2020 dated 31-1-2020 as per Section 8 of the NIA Act.

76. In the same vein, the Central Government, by its Order dated 12-10-2021, in continuation of the Orders dated 29-6-2020 and 28-6-2021, on the basis of the report forwarded by NIA vide its ID No. 18/PD/03/cases/ATS/Gujarat/NIA/DLI/2020/(468)/16136 dated 28-9-2021 stating that FIR No. 20 of 2020 dated 29-1-2020 registered at Police Station STF, District STF Wing, Amritsar, Punjab is a connected offence with RC/26/2020/NI//DLI dated 2-7-2020 of the NIA by invoking Section 8 directed that the NIA may investigate FIR No. 20 of 2020 dated 29-1-2020 registered at PS STF, SAS Nagar, Mohali, Punjab.

77. For ready reference, the relevant details as to the accused under the three FIRs and charge-sheets filed before the transfer of FIR No. 23 of 2020 to the NIA are culled out from the record as under:

Accused in first information reports

FIR No. 1 of 2018 dt. 12-8-2018 *PS ATS, District Ahmedabad, Gujarat*	*FIR No. RC 26 of 2020/NIA/ DLI dt. 2-7-2020 (renumbered FIR No. 1 of 2018) PS NIA Hqrs, New Delhi*	*FIR No. 20 of 2020 dt. 29-1-2020* *PS STF, SAS Nagar, Mohali, Punjab*	*FIR No. 23 of 2020 dt. 31-1-2020* *PS STF, Amritsar, Punjab*
Aziz Abdul Bhagad	Aziz Abdul Bhagad	Happy	**Ankush Kapoor**
	Rafik Adham Sumra		Sukhwinder Singh

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	Nazir Ahmad		Major Singh
	Arshad alias Raja Dubai		Tamanna Gupta
	Manzoor Ahmad		Afghanistani Arman Basher Mul
	Razak Adam Sumra		**Simarjeet Singh Sandhu**
	Sunil Vithal Ukandrao		
	Karim Md. Siraj		
	Wanted accused person: Sahid Kasambhal Sumra		
	Wanted accused person: Simaranjit Singh Sarabjit Singh Sandhu		
	Wanted accused person: Haji Sab Bhaijaan		
	Wanted accused person: Pakistani national — Nabibax		
	Wanted accused person: Pakistani persons Haji sab alias Bhaijan, who brought the heroin in ship through sea route from Pakistan, their names and address not known		

(emphasis supplied)

Accused in charge-sheets

Charge-sheet dt. 11-6-2020 in FIR No. 20 of 2020	*Charge-sheet dt. 18-7-2020 in FIR No. 23 of 2020*	*Supplementary Charge-sheet No. 18/2020 dt. 7-8-2020 filed by NIA in FIR No. RC-26/2020/ NIA/DLI*	*Supplementary Charge-sheet No. 18(A)/2021 dt. 24-5-2021 filed by NIA in FIR No. RC-26/2020/ NIA/DLI*
Sukhbir Singh alias Happy (Accused 1)	Arman Bashar Mall (Accused 1)	Aziz s/o Abdul Bhagad (Accused 1)	**Indresh Kumar (Accused 9)**

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Ankush Kapoor (Petitioner) (Accused 2)	Sukhwinder Singh (Accused 2)	Rafik (Accused 2)	
Sukhwinder Singh (Accused 3)	Major Singh (Accused 3)	Nazir Ahmad (Accused 3)	
Major Singh (Accused 4)	Miss Tamanna Gupta (Accused 4)	Arshad alias Raja Dubai (Accused 4)	
Mantej Singh (Accused 5)	Mantej Singh (Accused 5)	Manzoor Ahmad (Accused 5)	
Tamanna Putri Rakesh Gupta (Accused 6)	**Indresh Kumar (Accused 6)**	Razak (Accused 6)	
Arman Bashar Mall (Accused 7)	**Sukhbir Singh alias Happy (Accused 7)**	Karim (Accused 7)	
Kuldeep Singh (Accused 8)	**Ankush Kapoor (Accused 8)**	Sunil Vithal Barmase (Accused 8)	
Malkit Singh (Accused 9)	Hanitpal Singh (Accused 9)	Shahid Kasam Sumra (Wanted Accused 1)	
Accused which were not challaned: Simranjit Singh Sandhu	Sahil Sharma (Accused 10)	**Simranjit Singh Sarabjit Singh Sandhu** (Wanted Accused 2)	
Accused which were not challaned: Tanveer Singh Bedi	Gagandeep Singh	**Indresh** (Wanted Accused 3)	
Accused which were not challaned: Baijaan	Anwar Masih	Haji Sab alias Bhaijaan (Wanted Accused 4)	
	Accused who were not challaned: Simranjit Singh Sandhu	Pakistani national — Nabibaksh (Wanted Accused 5)	
	Accused who were not challaned: Tanvir Singh	10 Pakistani nationals of Haji saab alias Bhaijan, whose names and addresses are not known, who transported smuggled narcotic drug heroin in	

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		the Pakistani vessel to India	
	Accused who were not challaned: Sunil Vithal Baramas		
	Accused who were not challaned: Karim Mohammad Siraj		
	Accused who were not challaned: Razaq Adam Sumra		
	Accused who were not challaned: Arjan		
	Accused who were not challaned: Bhaijaan		

(emphasis supplied)

78. The connection that is sought to be made between FIR No. 23 of 2020 dated 31-1-2020 registered at Police Station STF, District STF Wing, Amritsar, Punjab and FIR No. 20 of 2020 dated 29-1-2020 registered at PS STF, SAS Nagar, Mohali, Punjab is with FIR No. 1 of 2018 dated 12-8-2018 at PS ATS, Ahmedabad, Gujarat in respect of which Sections 17 and 18 UAPA were invoked which are scheduled offences.

79. The common thread between the aforesaid three Orders issued by the Central Government in exercise of powers under sub-section (5) of Section 6 read with Section 8 of the NIA Act is that all these offences relate to various provisions of the NDPS Act, namely, Sections 8(*c*), 21(*c*), 24, 25, 27-A and 29 as well as Sections 21, 25, 27 and 29 of the NDPS Act. Therefore, the offences registered in FIR No. 1 of 2018 dated 12-8-2018 at PS ATS, Ahmedabad, Gujarat (Gujarat case) and the offences registered against the petitioner herein under FIR No. 20 of 2020 dated 29-1-2020 and under FIR No. 23 of 2020 dated 31-1-2020 all being under the NDPS Act and in view of the connectedness of the offence under the NDPS Act with the scheduled offence in Gujarat FIR No. 1 of 2018 in respect of which the Central Government was of the opinion that the provisions of Sections 17 and 18 UAPA (scheduled offences under the NIA Act) were also attracted as a result, the Central Government directed the NIA to investigate into the scheduled offences (Sections 17 and 18 UAPA) on the basis of the initial Order passed under sub-section (5) of Section 6 of the NIA Act on 29-6-2021.

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80. Accordingly, when the NIA was investigating into the scheduled offences in the Gujarat case, it forwarded reports to the Central Government in respect of FIR No. 23 of 2020 registered at Police Station STF, District STF Wing, Amritsar, Punjab dated 31-1-2020 and FIR No. 20 of 2020 dated 29-1-2020 registered at PS STF, SAS Nagar, Mohali, Punjab under the provisions of the NDPS Act. On a consideration of the said reports and on the strength of Section 8 of the NIA Act, the Central Government passed Orders to investigate into the offences alleged against the petitioner herein on the premise that those offences have a connection with the scheduled offences.

81. It is apparent that before the date of directing NIA to investigate FIR No. 23 of 2020 i.e. 28-6-2021, two supplementary charge-sheets had been filed by the NIA. One on 7-8-2020, wherein Simarjeet Singh Sandhu and Indresh Kumar were arrayed as WA-2 and WA-3, respectively. Another supplementary charge-sheet was filed on 24-5-2021, wherein Indresh Kumar, who is ascribed the role of driver of the truck which was apprehended by STF Amritsar, was transposed from WA-3 to Accused 9. Therefore, before the Order dated 28-6-2021 passed by the Central Government and invocation of powers under Section 6(5) read with Section 8 of the NIA Act directing investigation of FIR No. 23 of 2020 dated 31-1-2020, there were at least two accused persons in the ongoing investigation of the scheduled offences who were also named in the aforesaid FIRs filed in the State of Punjab.

82. We therefore find that the impugned Orders of the Central Government are in accordance with sub-section (5) of Section 6 read with Section 8 of the NIA Act. This is because on a reading of the impugned Orders, we find there is a connection, nexus and a link which has been brought out between the scheduled offences investigated by the NIA under Sections 17 and 18 UAPA pursuant to Order dated 29-6-2020 and subsequently under the Orders dated 28-6-2021 and 12-10-2021 insofar as the offences alleged against the petitioner herein under the provisions of the NDPS Act are concerned. It is precisely for circumstances such as in the present case that Section 8 enables the NIA to investigate into even non-scheduled offences or any other offence of which an accused has been alleged to have been committed provided they are connected with any scheduled offence (Sections 17 and 18 UAPA in the instant case) vide the Schedule to the NIA Act.

83. Hence, in this case, Annexures P-6 and P-9 have been issued by the Central Government by exercising power under sub-section (5) of Section 6 read with Section 8 of the NIA Act and in continuation of Annexure 'P-4'. Therefore, we do not find any reason to quash the impugned Orders at Annexures P-4, P-6 and P-9 issued by Respondent 1. The writ petition is hence liable to be dismissed and is dismissed.

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84. In view of the aforesaid discussion, we find that the NIA was justified in seeking cancellation of bail granted to the petitioner herein by the High Court in respect of the offences alleged against him under the provisions of the NIA Act in the State of Punjab. This is because the said offences are now being investigated by the NIA and there is also transfer of the trial from the Special Court concerned in the State of Punjab to the Special Court in the State of Gujarat, to be tried along with scheduled offences under Sections 17 and 18 UAPA as per Section 14 of the NIA Act. Therefore, the special leave petition is also liable to be dismissed and is dismissed. The interim relief granted to the petitioner vide order dated 7-3-2024[5] and extended from time to time stands vacated.

Epilogue

The ripple effects of illicit drug trade and drug abuse

85. Before parting with these cases, although we are mindful that the present matter concerns cancellation of bail and challenge to the Central Government Orders directing the NIA to investigate certain offences under the provisions of the NDPS Act against the petitioner here, we would like to record our earnest disquiet about the proliferation of substance abuse in India.

86. The ills of drug abuse seem to be shadowing the length and breadth of our country with the Central and every State Government fighting against the menace of substance abuse. The debilitating impact of drug trade and drug abuse is an immediate and serious concern for India. As the globe grapples with the menace of escalating substance use disorders ("SUD") and an ever accessible drug market, the consequences leave a generational imprint on public health and even national security. Article 47 of the Constitution makes it a duty of the State to regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. The State has a responsibility to address the root causes of this predicament and develop effective intervention strategies to ensure that India's younger population, which is particularly vulnerable to substance abuse, is protected and saved from such menace. This is particularly because substance abuse is linked to social problems and can contribute to child maltreatment, spousal violence, and even property crime in a family.

87. Despite the efforts of the State, an unprecedented scale of coordination and profit seeking has sustained this menace so hard-hitting and multifaceted that it causes suffering cutting across age groups, communities, and regions. Worse than suffering and pain, is the endeavour to profit from it and use the proceeds thereof for the committing of other crimes against society and

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the State such as conspiracy against the State and funding terrorist activities. Profits from drug trafficking are increasingly used for funding terrorism and supporting violence.

88. From heroin and synthetic drugs to prescription medication abuse, India is grappling with an expanding drug trade and a rising addiction crisis. The Ministry of Social Justice and Empowerment's 2019 Report ("the MoSJE 2019 Report") on "Magnitude of Substance Use in India" revealed that nearly 2.26 crore people use opioids in India. It was also borne out that substance use exists in all the population groups; however, adult men bear the brunt of substance use disorders. After alcohol, cannabis and opioids are the next most commonly used substances in India. About 2.8% of the population (3.1 crore individuals) reported having used cannabis and its products, of which 1.2% (approximately 1.3 crore persons) was illegal cannabis and its products.

89. Alarmingly, the rate of opioid dependence is pacing at an alarming rate, partly due to the ongoing narcotic trade across the country's borders and their consequent ease of availability. According to the MoSJE 2019 Report, there are approximately 77 lakhs problem opioid users — the Report defines "problem users" as those using the drug in harmful or dependent pattern in India. More than half of 77 lakhs problem opioid users in India are spread throughout the States of Uttar Pradesh, Punjab, Haryana, Maharashtra, Madhya Pradesh, Delhi, Andhra Pradesh, West Bengal, Rajasthan and Orissa.

90. Studies across the globe suggest that easy access to narcotic substances, peer pressure, and mental health challenges particularly in the context of academic pressure and family dysfunction could be significant contributors to this disturbing trend. Addiction at a young age can derail academic, professional and personal aims, leading to long-term socio-economic instability of almost an entire generation. The psychological impact of drug abuse, including depression, anxiety, and violent tendencies, further exacerbates the problem.

91. The reasons behind this rise in juvenile addiction are complex. Peer pressure, lack of parental affection, care and guidance, stress from academic pressures and the easy availability of drugs contribute to this alarming trend. In many cases, adolescents resort to drugs as a form of escapism, trying to cope with personal and emotional issues.

92. Preventing drug addiction among adolescents requires a concerted effort from multiple stakeholders: parents and siblings, schools and the community. Given the disturbing rise in adolescent drug use, urgent interventions are needed.

93. The MoSJE 2019 Report found that only one among four persons suffering from dependence on illicit drugs had ever received any treatment and only one in twenty persons with illicit drug dependence ever received any in-patient treatment. Given the scale of the issue, there is need for a more comprehensive view of the solutions to the grave problem.

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Parents

94. Parents have a crucial role in the prevention of drug abuse among adolescents. Parental awareness, communication, and support are key in mitigating the risk of drug addiction. The first step in the effective preventive leap should start within the household. In our view, the most important yearning of children is love and affection and a sense of security emanating from parents and family. Domestic violence and discord between parents; lack of time being spent by parents with children due to various reasons and compensating the same by pumping pocket money are some of the reasons why young adolescents are being veered towards escapism and substance abuse. Affectionate and friendly conversations between parents and children and a continuous assessment of the direction in which a child is proceeding is a duty which each parent must undertake. This is to build a sense of emotional security around a child for, in our view, an emotionally secure child would not become vulnerable and be lured towards substance abuse as a possible path towards seeking what is lacking in life. No longer should drug abuse be treated as a taboo that parents disengage from. Instead, open discussions about drug use and its ill consequences will provide parents and children a safe space and equip children with the knowledge to help themselves out of peer pressure.

Schools and colleges

95. Of equal importance is the need for schools and colleges to aid the government programmes in educating students about the perils of drug abuse. They must include prevention of drug abuse in their curriculum, focusing on the physical, emotional, and legal consequences of drug abuse. Naturally, all efforts should be backed by scientific evidence and experiential learning. It is an urgent need that the Ministry of Social Justice and Empowerment's framework of National Action Plan for Drug Demand Reduction and other programmes are given a boost and truly imbibed in drug education programmes run by schools and colleges in the country.

Local communities and NGOs

96. Local communities should work with NGOs and law enforcement agencies to create awareness campaigns that address the risks of drug abuse with a special focus on schools and youth centres. Either through awareness campaigns, community outreach or peer education, communities can play a critical role in creating knowledgeable safe space that curb the use of drugs.

NALSA

97. The National Legal Services Authority and State Legal Services Authorities must devise awareness programmes and implement them particularly in vulnerable regions of the States and territories more exposed to drug menace.

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NCPCR and NCB

98. There is a need for more synergies along the lines of Joint Action Plan on "Prevention of Drugs and Substance Abuse among Children and Illicit Trafficking" developed by the National Commission for Protection of Child Rights ("NCPCR") in collaboration with Narcotics Control Bureau ("NCB").

To the youth of India

99. For youngsters just beginning to explore the world, the consumption of drugs in popular culture has propelled the cultural push towards a dangerous lifestyle, one that incorrigibly applauds drugs use as "cool" and a fashionable display of camaraderie. We implore the youth to take charge of their decisional autonomy and firmly resist peer pressure and desist from emulation of certain personalities who may be indulging in drugs.

100. It is sad that vulnerable children turn to drugs as an escapism from emotional distress and academic pressures or due to peer pressure. The unfortunate reality is that victims of substance abuse are not limited to the unfortunate ones who have fallen prey to it but also include their family and peers. Our approach towards the victims of drug abuse must not be to demonise the victims but to rehabilitate them.

101. Deep-rooted in our constitutional philosophy and social fabric is the vision to facilitate every citizen to be a constructive citizen, the best they can be. This vision hopes that the State's obligation is met with a commitment to contribute as constructive citizens to the nation's development. Part and parcel of this constructive citizenship is the positive aspect of uplifting oneself and those around towards a more participative polity and dynamic economy. Inextricably linked to this commitment is also the negative aspect of constructive citizenship, that is, to actively refrain from contributing against the interest of the community and the nation. It is a need of the times that the end consumers of the illicit drug trade exercise community-friendly decision making and refuse to sustain the bottom-line of drug traffickers.

102. The arc and web of drug trade cannot be permitted to corrode the shine of the youth of India!