

HIGH COURT OF ALLAHABAD**Bench: Hon'ble Justice Krishan Pahal****Date of Decision: 16th May 2024**

Case No.:

CRIMINAL MISC. BAIL APPLICATION No. 15416 of 2020

APPLICANT(S):**MANJEET SINGH AND ANOTHERApplicants****VERSUS****RESPONDENT(S):****UNION OF INDIA THROUGH INTELLIGENCE OFFICER N.C.B. LUCKNOW
.....Respondent****Legislation:**

Sections 8/20/29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act

Section 42, 50, 52-A of the NDPS Act

Section 100 of the Code of Criminal Procedure (Cr.P.C.)

Article 21 of the Constitution of India

Subject: Application for bail in a case involving the alleged possession and transportation of 221 kg of Ganja concealed in a truck, raising questions of compliance with statutory procedures under the NDPS Act and the Cr.P.C., as well as the fundamental rights of the accused under Article 21.

Headnotes:

Bail Application – NDPS Act – Allegations of transporting 221 kg of Ganja – Applicants, driver and co-driver, argue false implication and non-compliance with statutory provisions – No independent public witnesses, contraband owner not applicants – Special Acts necessitate timely trial – Bail granted due to prolonged incarceration and trial delay – Reference to Supreme Court judgments on bail in similar cases [Paras 1-24].

Statutory Compliance – NDPS Act – Non-compliance with Sections 42, 50, 52-A NDPS Act – Importance of proper procedure in seizure and sampling of contraband – Failure to involve independent witnesses as per Section 100 Cr.P.C. – Applicants' prolonged custody without timely trial violates Article 21 [Paras 10-14, 17-24].

Decision: Bail Granted – Held – Considering prolonged custody, non-compliance with procedural requirements, and slow trial progress – Applicants to be released on bail with conditions to ensure presence during trial and prevent tampering with evidence [Paras 25-28].

Referred Cases:

- Vishwajeet Singh v. State (NCT of Delhi) 2024:DHC:1554
- Mohammed Khalid and another v. The State of Telangana 2024 INSC 158
- Man Mandal & Another v. The State of West Bengal 2023 SCC OnLine SC 1868
- Badsha Sk. v. The State of West Bengal 2023 SCC OnLine SC 1867
- Dheeraj Kumar Shukla v. State of Uttar Pradesh 2023 SCC OnLine SC 918
- Narcotics Control Bureau v. Mohit Aggarwal 2022 SCC OnLine SC 891
- Union of India through Narcotics Control Bureau v. Mohd. Nawaj Khan AIR 2021 SC 4476
- Mohd Muslim @ Hussain v. State (NCT of Delhi) 2023 SCC OnLine 352

Representing Advocates:

For the Applicants: Hirdesh Kumar Yadav, Rajesh Pratap Singh, Sushma Yadav

For the Respondent: Ashish Pandey, Pranay Krishna

ORDER:

Hon'ble Krishan Pahal, J.

1. List has been revised.

2. Heard Sri O.P. Singh, learned Senior Counsel assisted by Sri Rajesh Pratap Singh, learned counsel for the applicants and Sri Vipul Pandey,

Advocate holding brief of Sri Ashish Pandey, learned counsel for the NCB and also perused the material available on record.

3. Applicants seek bail in Case Crime No. 34 of 2019, under Sections 8/20/29 of NDPS Act, Chalani Police Station - NCB Lucknow, Police Station - Mohammdabad, District - Mau, during the pendency of trial.

PROSECUTION STORY:

4. As per prosecution story, an information was received by Shri Kaushik Kundu, Intelligence Officer, NCB, Lucknow from Shri Parmesh Shukla, Deputy SP., STF, Lucknow that one truck bearing Regn. No. MP 09 HG 4594 coming from Assam having 200 - 250 kg of Ganja and is going to pass through Sutrahi Crossing, SH 34 within the jurisdiction of P.S. Muhammadabad Gohana Kotwali, Mau between 05:30 PM to 07:30 PM on 24.08.2019. The names of the persons travelling in it were stated to be Manjeet Singh, Balen Goyari and Laxmi Narayan Thakur. The said contraband Ganja is stated to have been sent by one Junail Bhairakunda, Udalguri, Assam and was purported to be delivered to one Awadhesh Yadav at Mau.

5. The STF Team along with the team of NCB mounted surveillance at the spot and asked the members of the public to become independent witnesses of the said purported recovery but the members of public at large refused to do so. Then the SHO Chandra Bhasker Dwivedi was asked to call two persons apart from the raiding party for the purpose of being the witness of the search, as such, two home-guards, namely, Rambriksh Ram and Ramyash Singh arrived there and agreed with the proposal.

6. The said truck bearing No. MP 09 HG 4594 was intercepted at 06:30 PM on 24.08.2019. Three persons, namely, Manjeet Singh, Balen Goyari and Laxmi Narayan Thakur @ Raju Thakur were apprehended, who confessed that they are carrying ganja being transported by concealing inside the truck. As the place and time was not suitable for conducting the entire search-cum-seizure process, the accused persons along with truck were brought to the nearby Police station Muhammadabad Gohana, Kotwali.

7. During search, it was found that the back side of the truck was empty. The packets of contraband were recovered from the driver's cabin kept under tarpauline and from the roof of the cabin. The alleged packets were first wrapped in old newspaper and then were wrapped with polythene and further wrapped with polythene sheet and the packets were finally sealed with brown colour cello tape.

8. 13 packets were wrapped with blue colour polythene sheet and 13 packets were in black colour polythene sheet. Little quantity of dried flowering tops of a plant, packed in all the packets were taking out for testing with field drug detection kit. The test was positive indicating the presence of Ganja. The said truck was found registered in the name of Dhiraj Kumar S/O Ram Bilas Singh, which were registered at Indore, Madhya Pradesh.

9. The packets wrapped in blue colour polythene sheet were weighed separately and found to be about 8 kg each. The packets wrapped in black colour polythene sheet were found to be 9 kg each. Thus, the total weight of the contraband was found to be 221 Kg (13 packets X 8 Kg + 13 packets X 9

kg). All the packets were divided into two lots and the blue colour packing and the black packing were respectively marked as L1 and L2. Subsequently, one sample in duplicate of 24 grams each from each lot was drawn and marked as L1S1 (original) L1D1 (duplicate) drawn from L1. Likewise, the sample drawn from L2 was marked as L2S1 (original) L2D1 (duplicate). The sample was sealed and put in separate envelopes. The contraband was re-sealed and taken into possession. The statements of the accused persons were taken and the accused Bolen Goyari revealed that the contraband were loaded by Junail, Bhairakunda, Udalguri Assam and was destined to be handed over to Awadhesh Yadav at Chiraiyakot, Mau, U.P. The contraband and the truck were seized and the formalities were completed.

RIVAL CONTENTION:

Arguments on behalf of the applicants:

10. It is argued that the applicants are innocent and have been falsely implicated in the present case. They have nothing to do with the said offence as alleged in the FIR. It is further stated that the applicant no.1 Manjeet Singh is the driver of the alleged truck and the applicant no.2 Laxmi Narayan Thakur @ Raju Thakur is the co-driver (conductor). They are not the owner of the said contraband. Both of them are the resident of Indore, Madhya Pradesh and poor persons. The said recovery is a farce. It is also argued that the provisions of Sections 42, 50 & 52-A of NDPS Act have not been complied with. Even there is no compliance of Section 100 of Cr.P.C. as no independent person of public is a witness.

11. The samples have not been taken as per the provisions of Section 52-A of NDPS Act. To buttress his argument, learned Senior Counsel has relied upon the judgement of Delhi High Court passed in Vishwajeet Singh Vs. State (NCT of Delhi) 2024:DHC:1554 and the judgement of Supreme Court passed in Mohammed Khalid and another Vs. The State of Telangana 2024 INSC 158, whereby the accused persons were granted bail due to lack of compliance of Section 52-A of NDPS Act.

12. It is further stated that the disclosure memo itself discloses that the owner of the said ganja is Junail, Bhairakunda, Udalguri Assam, as such, it does not belong to the applicants as they were running the said truck on rent. It is also stated that only two witnesses have been examined as the witnesses have regularly been absent on the dates as is evident from the order-sheet. The trial is moving at a snail's pace. It is also stated that the Special Acts provide special power to the authorities but they are also to take utmost care for conclusion of trial within a reasonable time. The applicants are in custody for more than four years and eight months, thus, their fundamental rights enshrined under Article 21 of the Constitution of India stand violated.

13. In support of his submission, learned Senior Counsel has placed much reliance upon the judgement of Supreme Court passed in Man Mandal & Another Vs. The State of West Bengal 2023 SCC OnLine SC 1868; Badsha Sk. Vs. The State of West Bengal 2023 SCC OnLine SC 1867; and Dheeraj Kumar Shukla Vs. State of Uttar Pradesh 2023 SCC OnLine SC 918, whereby the accused persons were granted bail on the ground of period of incarceration and that too was less than three years in all the cases.

14. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. There is no criminal history of the applicant. The applicant is languishing in jail since 26.08.2019. In case, the applicant is released on bail, he will not misuse the liberty of bail and shall cooperate with trial.

Arguments on behalf of the NCB:

15. The bail application is vehemently opposed on the ground that the quantity of contraband was commercial and heavy and, as such, the rigors of Section 37 of NDPS Act applies. The applicants were having the conscious and constructive possession of the said contraband as they were the driver and conductor of the said truck and it was concealed in the cabin and in the roof of the said cabin itself.

16. It is further argued that the CDRs of the applicants were matched with the owner of the alleged contraband and the person to whom it was delivered as they had regular talk with them. Learned counsel has relied upon the judgement of Supreme Court passed in Narcotics Control Bureau Vs. Mohit Aggarwal 2022 SCC OnLine SC 891 and the relevant paragraph nos. 16, 17 & 18 of the said judgement read as under:-

“16. Coming back to the facts of the instant case, the learned Single Judge of the High Court cannot be faulted for holding that the appellant- NCB could not have relied on the confessional statements of the respondent and the other co-accused recorded under Section 67 of the NDPS Act in the light of law laid down by a Three Judges’ Bench of this Court in Tofan Singh (supra), wherein as per the majority decision, a confessional statement recorded under Section 67 of the NDPS Act has been held to be inadmissible in the trial of an offence under the NDPS Act. Therefore, the admissions made by the respondent while in custody to the effect that he had illegally traded in narcotic drugs, will have to be kept aside. However, this was not the only material that the appellant- NCB had relied on to oppose the bail application filed by the respondent. The appellant-NCB had specifically stated that it was the disclosures made by the respondent that had led the NCB team to arrive at and raid the godown of the co-accused, Promod Jaipuria which resulted in the recovery of a large haul of different psychotropic substances in the form of tablets, injections and syrups. Counsel for the appellant-NCB had also pointed out that it was the respondent who had disclosed the address and location of the co-accused, Promod Jaipuria who was arrested later on and the CDR details of the mobile phones of all co-accused including the respondent herein showed that they were in touch with each other.

17. Even dehors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant-NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by the submission made by learned counsel for the respondent and the observation made in the

impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage.

18. In our opinion, the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”

CONCLUSION:-

17. In terms of the arguments raised by the counsels across the bar, as noted above, this Court is to decide whether a case for grant of bail is made out or not. Before going into the merits of the contention, it is essential to note that across the line of precedents settled by the Supreme Court, it is well settled that for grant of bail in respect of commercial quantity, the conditions as prescribed under Section 37 of the Act have to be taken into consideration before granting of the bail. Section 37 of the Act is reproduced as under:-

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

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

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

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

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

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

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]”

18. In terms of the mandate of Section 37(1)(b)(ii), it is mandatory that the public prosecutor should be heard and it is also essential that the Court should record its satisfaction that there are “reasonable grounds” for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. The word 'reasonable ground' for believing that the accused is not guilty came up for interpretation and the consistency in so far as the phrase 'reasonable ground' is concerned was summarized by the Hon'ble Supreme Court in the case of Union of India through Narcotics Control Bureau vs. Mohd. Nawaj Khan AIR 2021 SC 4476. The relevant paras are as under:

"19 The standard prescribed for the grant of bail is 'reasonable ground to believe' that the person is not guilty of the offence. Interpreting the standard of 'reasonable grounds to believe', a two-judge Bench of this Court in Shiv Shanker Kesari (supra), held that:

"7. The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word "reasonable".

"7. ... In Stroud's Judicial Dictionary, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word 'reasonable'. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy."

(See Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar [(1987) 4 SCC 497] (SCC p. 504, para 7) and Gujarat Water Supply and Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd.(1989) 1 SCC 532]

[...]

10. The word "reasonable" signifies "in accordance with reason". In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd. [(2003) 6 SCC 315]

11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty."

(emphasis supplied)

20 Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed."

19. On a plain reading of Section 37 (1) (b) (ii), to form an opinion that reasonable grounds exists for believing that he is not guilty, beside the test as laid down by Supreme Court and as recorded above, the grounds for forming opinion or view is that reasonable ground exists that he may not be held guilty in the trial.

20. The Supreme Court had the occasion to deal with the aspect of Section 37 and the conditions prescribed therein in the case of Mohd Muslim @ Hussain vs. State (NCT of Delhi) reported in 2023 SCC OnLine 352. While dealing with the scope of Section 37, it observed as under:-

"19. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is "not guilty of such offence" and that he is not likely to commit any offence while on bail. What is meant by "not guilty" when all the evidence is not before the court? It can only be prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws – be balanced against the public interest.

20. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

21. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore,

emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India vs. Ratan Malik 2009 (2) SCC 624). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having 19 (2009) 2 SCC 624 regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail."

21. In the present case, the applicant is charged with illegal 'possession' of the drug and the prosecution, has to take steps for punishing the applicant for 'possession' and imposition of punishment prescribed under Section 8, 20 & 29 of NDPS Act.

22. The Act provides the manner in which the power for determining the commissioning of offence under Section 8 of the Act is prescribed in chapter V of the said Act. Section 42 of the said Act confers the power on the Officers defined therein to enter and search any building conveyance or place and to seize the drug or substances in the manner prescribed. Section 42(2) of the Act further places an embargo on the Officer concerned to record grounds for his belief and send a copy thereof within a time span of 72 hours to the immediate official superior. Section 50 of N.D.P.S. Act with which we are primarily concerned in the present case provides as under:-

"50. Conditions under which search of persons shall be conducted.—

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.”

23. The Supreme Court in the judgement of Mohd. Muslim (supra) has categorically opined regarding the incarceration of the delinquent as follows:-

“22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry’s response to Parliament, the National Crime Records Bureau had recorded that as on 31 st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country²⁰. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

23. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in *A Convict Prisoner v. State*²¹ as “a radical transformation” whereby the prisoner:

“loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”

24. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal” (also see Donald Clemmer’s ‘The Prison Community’ published in 1940). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.

24. The ratio of aforesaid judgement of Supreme Court i.e. Mohd. Muslim (supra) clearly applies to the case of the applicants as only two witnesses have been examined till date as the witnesses are regularly absent on the date so fixed by the trial court and there is no likelihood of early conclusion of trial, I find it a fit case to enlarge the applicants on bail.

25. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, pending trial and considering the complicity of accused, severity of punishment and also the case law laid down in the aforesaid judgements referred, at this stage, without expressing any opinion on the merits of the case, the Court is of the view that the applicants have made out a case for bail. The bail application is allowed.

26. Let the applicants- Manjeet Singh and Laxmi Narayan Thakur @ Raju Thakur, who are involved in aforementioned case crime be released on bail on their furnishing a personal bond and two sureties each in the like amount

to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicants shall not tamper with evidence.

(ii) The applicants shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the Trial Court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

27. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

28. It is made clear that observations made in granting bail to the applicants shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

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