

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.625 OF 2026

Zuby Ifeanyi Udoka

.. Applicant

Versus

The State of Maharashtra

.. Respondent

.....

- Mr. Paresh Patil i/by Ms. Swarali Joglekar, Advocates for Applicant.
- Mr. Shishir Hiray, CPP a/w. Mr. Sukanta Karmakar, APP for Respondent - State.

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 30, 2026

P.C.:

1. Heard Mr. Patil, learned Advocate for Applicant and Mr. Hiray, learned CPP for Respondent - State.

2. By this Bail Application, Applicant is seeking enlargement on bail in C.R. No.1089 of 2020 registered with Chakan Police Station for the offences punishable under Sections 8(c), 21(c), 22(c), 31A and 27A of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”).

3. The Applicant is one of the 22 accused persons, arraigned as Accused No.1. Applicant is a foreign national. The case of the prosecution is that on receiving secret information, Accused persons were arrested and a total of 132 kilograms were recovered from them. However no seizure of contraband was made from the present Applicant, except some cash amount. It is seen that all accused persons have been granted bail and the orders granting them bail are appended

at Exhibit "E" page No.305 to 350.

4. Further it is seen that Applicant has been incarcerated for the past 5 years 11 months 15 days. It is further seen that prosecution desires to examine 151 witnesses and therefore there is a high chance that the trial will take a long time to conclude.

5. The order passed in the case of *Chandrabhan Janardhan Yadav v. State of Maharashtra*¹ itself is a reminder to this, that the statutory provisions under NDPS Act are required to be scrupulously followed and adopted by the prosecution while effecting search and seizure.

6. Non compliance of Section 50 is another aspect which is *prima facie* seen in the present case when a Gazetted Officer is required to be part of the raiding team. Merely because Applicant is a foreigner and the trial has just commenced and prosecution seeks to examine 151 witnesses, it cannot be a ground to keep Applicant in jail when there is no progress shown in the trial. The Applicant is incarcerated for the past 5 years 11 months 15 days. The trial will take its own sweet time to conclude. In view of the above, Applicant has made out a case for grant of bail on the ground of long incarceration.

¹ 2025:BHC-AS:10527

7. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents which are required to be considered in such cases. However the metrics of judicial decision making gets amplified or rather shuttled to another facet when dealing with offences where Section 37 of NDPS Act is attracted. In such cases one has to satisfy itself with the rigors of the twin conditions as prescribed under Section 37 of the NDPS Act. Section 37 reads thus:-

“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 offences under section 19 or section 24 or section 27-A 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.”

8. From the reading of Section 37 of the NDPS Act, it becomes clear that the legislature intends to deny bail to accused alleged to be in possession of commercial quantity of contraband in absence of court subscribing to a contrary view, however therefore if seen it does not rule out the facet of discretion of Court to grant bail. Furthermore the Court must be satisfied that the accused is unlikely to re-offend. It is seen that while dealing with Bail Applications the material available for consideration and adjudication is limited. In such cases, if we look realistically the provisions of Section 37 leave limited room for a possibility of granting bail to the accused. However employing such limitation would create a dichotomy in the current scenario where one common grievance is made before this Court repeatedly in matter after matter. It is brought to the notice of the Court that trials are taking perpetuity to be concluded and prisons are also simultaneously overcrowded in some segments.

9. Argued before me is a case concerning liberty of an under-trial who has been incarcerated for almost 5 years 11 months 15 days, a situation impacting the rights of undertrial conferred by Article 21 of Constitution to speedy justice as also personal liberty. In so far as the power of High Courts to grant bail is concerned, when the case is such that involves a question of personal liberty of an undertrial who is incarcerated for a very long period, the powers are wide and unfettered by conditions, the principle rule being that bail is the rule

and refusal is the exception, allowing accused persons to better prepare their defense.

10. The Supreme Court has also held in a series of judgments and orders that in situations where the under-trial prisoner / accused persons have suffered incarceration rather long incarceration for considerable period of time and there is no possibility of the trial being completed within the foreseeable future, Constitutional Courts can exercise power to release the accused under-trial on bail, as bail is the rule and jail is the exception.

11. In the following decisions of the Supreme Court and various High Courts concerning such long detention and imprisonment of undertrial prisoner / accused on being apprehended with commercial quantity of various contrabands, the Courts have in the backdrop of the aforementioned propositions exercised its unfettered jurisdiction in releasing an undertrial on bail on account of long incarceration by using its discretionary powers:-

11.1. In the case of *Rabi Prakash Vs. State of Odisha*² the Supreme Court, considering the long incarceration of an undertrial accused who was incarcerated for 3 years and 6 months granted him bail. The contraband in question was Ganja, the commercial quantity of which is 20 Kilograms. In this case recovery of 247 Kilograms was allegedly

² 2023 SCC OnLine SC 1109

made from the accused despite which the court invoking the right to speedy justice flowing from Article 21 and foreseeable delay in trial granted bail to the accused.

11.2. In the case of *Dheeraj Kumar Vs. State of Uttar Pradesh*³ the Supreme Court considering long incarceration granted bail to an undertrial-accused who was incarcerated for 2 years and 6 months granted him bail. The contraband in question was Ganja the commercial quantity of which is 20 Kilograms. In this case recovery of 65 Kilograms was allegedly made from the accused despite which, the Court invoking the right to speedy justice flowing from Article 21 and forceable delay in trial granted bail to the Accused.

11.3. In the case of *Balkishan Vs. State of Madhya Pradesh*⁴ the Supreme Court considering long incarceration of an undertrial-accused who was incarcerated for 2 years and 5 months granted him bail. The contraband in question was Poppy Straw, the commercial quantity of which is 50 kilograms when recovery of 80 kilograms was allegedly made from the accused.

11.4. In the case of *Badsha Sk. Vs. State of West Bengal*⁵ the Supreme Court considering long incarceration of an undertrial-accused who was incarcerated for 2 years and 4 months granted him bail. The contraband in question was Codeine Phosphate, the commercial

³ 2023 SCC OnLine 918

⁴ Petition for Special Leave to Appeal (Cri) No. 8415 of 2024

⁵ 2023 SCC OnLine SC 1867

quantity of which is 1 kilograms when recovery of 100 bottles each of 100 ml. was allegedly made from the accused.

11.5. In the case of *Man Mandal and Anr. Vs. State of West Bengal*⁶ the Supreme Court considering long incarceration of an undertrial-accused who was incarcerated for 2 years granted him bail despite being alleged to be in possession of commercial quantity of contraband.

11.6. In the case of *Ankur Chaudhary Vs. State of Madhya Pradesh*⁷ the Supreme Court considering long incarceration of an undertrial-accused granted him bail to an undertrial-accused who was incarcerated for about 2 years.

11.7. In the case of *Nitish Adhikary alias Bapan Vs. State of West Bengal*⁸ the Supreme Court considering long incarceration of an undertrial-accused granted him bail to an undertrial-accused who was incarcerated for 1 year and 7 months despite being alleged to be in possession of commercial quantity of contraband.

11.8. In the case of *Babor Ali Mondal Vs. State of West Bengal*⁹ the Supreme Court considering the long incarceration granted bail to an undertrial-accused who was incarcerated for 1 year and 4 months.

⁶ 2023 SCC OnLine SC 1868

⁷ Petition for Special Leave to Appeal (Cri) No. 4648 of 2024

⁸ 2022 SCC OnLine SC 2068

⁹ Criminal Appeal No. 3349 of 2024

11.9. In the case of *Sukhvinder Singh Bittu Vs. State of Punjab*¹⁰ the Supreme Court considering long incarceration of an undertrial-accused granted him bail who was incarcerated for 1 year despite being alleged to be in possession of commercial quantity of poppy straw.

11.10. In the case of *Tinku Vs. State (NCT of Delhi)*¹¹ the Delhi High Court considering the long incarceration of an undertrial-accused granted him bail who was incarcerated for 2 years and 5 months. The contraband in question was Heroin, the commercial quantity of which is 250 grams. In this case recovery of 945 grams was allegedly made from the accused despite which the High Court invoking the right to speedy justice flowing from Article 21 of the Constitution and forceable delay in trial granted bail to the accused.

11.11. In the case of *Kulwinder Singh Vs. State of Punjab*¹² the Punjab and Haryana High Court considering long incarceration of an undertrial-accused granted him bail who was incarcerated for 2 years and 8 months. The contraband in question was Etizolam Salt, the commercial quantity of which is 2.5 grams. In this case recovery of 99.876 grams was allegedly made from accused despite which the High Court invoking the right to speedy justice flowing from Article 21 of the Constitution and delay in trial granted bail to the accused.

¹⁰ Cri. Appeal No.1204 of 2024

¹¹ 2024 SCC OnLine Del 9132

¹² CRM-M-26704 of 2024

11.12. In the case of *Amey Sanjay Jadhav Vs. State of Maharashtra*¹³ this Court on 03.01.2025 considering long incarceration of the undertrial-accused has granted bail to the undertrial accused who was incarcerated for 2 years and 11 months. The contraband in question was 1.3 kilograms of Charas, the commercial quantity of which is 1000 grams.

11.13. In the case of *Mohd. Mobin Jahurul Hasan Manihar Vs. State of Maharashtra*¹⁴ - this Court on 20.01.2025 considering long incarceration of the under-trial accused granted bail to him who was incarcerated for 1 year 11 months. The contraband in question was 220 gms of MD , the commercial quantity of which is 50 gms.

12. In all the above cases the right to speedy justice flowing from Article 21 of the Constitution of India and the foreseeable delay trial were considered as imminent grounds for grant of bail apart from the rigours of Section 37 of the NDPS Act in the facts of the said case.

13. In view of the above *prima facie* observation and judicial pronouncements, Bail Application is allowed subject to the following terms and conditions:-

(i) Applicant is directed to be immediately released from prison in connection with C.R. No. 1089 of 2020;

(ii) Applicant is directed to be released on bail on

¹³ BA No.911 of 2024 decided on 03.01.2025

¹⁴ BA No.713 of 2024 decided on 20.01.2025

furnishing P.R. Bond of Rs. 50,000/- (Rupees Fifty Thousand only) with one or two sureties of the like amount. It is clarified that no bail bond in respect of an accused of a non-bailable offence who is a foreign national such as in the present case, shall be executed by a Licensed Professional Bail Bondspersons save with the express permission of the concerned Court accepting bail and surety bond. This condition is added in view of the decision of the Supreme Court in the case of *Union of India Vs. Chidiebere Kingsley Nawchara & Ors.*¹⁵

- (iii) Applicant shall report to the Investigating Officer at the concerned Police Station, once every month on the first Monday of the month between 10:00 a.m. to 12:00 p.m. to mark his presence;
- (iv) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates, unless specifically exempted and will not take any unnecessary adjournments, if he does so it will entitle the prosecution to apply for revocation of this order;

¹⁵ SLP (Cri) No(s). 14185 of 2025

- (v) Applicant shall not leave the country without prior permission of the Trial Court;
- (vi) Applicant shall deposit his passport with the Trial Court within a period of one week from his release from prison;
- (vii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (viii) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable; and
- (ix) Any infraction of the conditions shall entail cancellation of bail granted to the Applicant;
- (x) The concerned prosecuting Agency shall immediately communicate this order of grant of bail to the concerned Registration Officer appointed under Rule 3 of the Registration of Foreigners Rules, 1992 within the meaning of the Foreigners Act, 1946. This condition is added in view of the decision of the Supreme Court in the case of *Frank Vitus v. Narcotics Control Bureau & Ors.*¹⁶.

¹⁶ Criminal Appeal No.2814-2815 of 2024 decided on 06.01.2025.

14. It is clarified that the observations made in this order are limited for the purpose of granting bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made hereinabove in this order.

15. Bail Application is allowed and disposed of in the above terms.

[MILIND N. JADHAV, J.]

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