

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3361 OF 2026

Kingsley Emeka Ukwueze

.. Applicant

Versus

Union of India & Anr.

.. Respondents

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- Mr. Advait Tamhankar, Advocate for Applicant
- Ms. Manisha Jagtap a/w Ms. Sairuchita Chowdhary, Advocates for Respondent No. 1- NCB
- Mr. Sukanta A. Karmakar, APP for State

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CORAM : MILIND N. JADHAV, J.**DATE : SEPTEMBER 28, 2026****P. C.:**

1. Heard Mr. Tamhankar, learned Advocate for Applicant; Ms. Jagtap along with Ms. Chowdhary, learned Advocates for Respondent No. 1 - NCB and Mr. Karmakar, learned APP for State.

2. This is an Application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Bail in connection with FNo. NCB/MZU/CR-80/2021 registered at the instance of the Narcotics Control Bureau, Mumbai Zonal Unit, Mumbai for the offences punishable under Sections 8(c) read with 20(b)(ii)(A), 22(c), 28 and 29 of the Narcotic Drug and Psychotropic Substances Act, 1985 (for short "NDPS Act") [NDPS Special Case No. 23 of 2022 pending before the NDPS Spl. Sessions Court, Panvel]

3. Applicant is a foreign national having been found in possession of the alleged contraband i.e. 155 grams of Mephedrone (MD) and 25 grams of Ganja. Applicant is behind bar for 5 years and 1 month after his arrest on 27.08.2021. Trial has not commenced before the Trial Court.

4. Learned Advocate appearing for the prosecution namely the NCB would draw my attention to the affidavit-in-reply filed by Mr. Rohit Gaikwad, Sub-Inspector, NCB, Mumbai, dated 28.09.2026 and contend that in the first instance at the threshold itself, the present Bail Application is not maintainable since the previous bail application of the Applicant has been rejected on merits by a Coordinate Bench of this Court by order 23.02.2026 and therefore, filing of the present Bail Application upon change of roster is nothing but a sheer abuse of the due process of law and this Court should not therefore entertain such an application and dismiss it.

5. They would submit that there is no change in circumstances and also the fact that all successive Bail Applications of the Applicant have been rejected by this Court on merits and therefore instead of challenging the said order before the superior Court namely the Supreme Court, the Applicant has once again filed a Bail Application which, in our opinion, is a review of the earlier order and therefore, a fresh Bail Application cannot lie.

6. On merits, they would submit that filing of a successive Bail Application when the earlier Bail Applications have been rejected on merits is nothing but to review and recall the same Application which has been adjudicated earlier and this is in the absence of legally recognizable change in circumstances or any other exceptional circumstances warranting reconsideration by the Applicant before the Court. They would submit that all substantial procedural requirements have been complied with and therefore, the indictment of the Applicant is certain in view of the evidence on record.

7. They would submit that long incarceration in itself does not confer an absolute or indefeasible right to bail and more so particularly in NDPS cases where rigor of Section 37 get attracted. They would submit that even prolonged custody cannot dilute strict conditions and therefore, unless the Court is fully satisfied that there are reasonable grounds for believing that the accused is not guilty and not likely to reoffend, the bail should be rejected. Hence, they would submit that present bail application be rejected.

8. I have considered the submissions advanced by learned Advocate for the Applicant and the learned Advocates appearing on behalf of NCB and perused the record of the case.

9. What strikes at the root of the matter is the long incarceration of the Applicant for over 5 years 1 month without the trial having commenced. Though it is argued by the prosecution that in such matters notwithstanding the long incarceration, Section 37 rigor would apply, I am afraid I am unable to accept the same.

10. The right to speedy trial is ingrained in the constitutional principle advanced under Article 21 of the Constitution of India which by itself applies to the present case. There is no reason for the prosecution not to have concluded the trial if the prosecution is certain that the applicant can certainly be convicted. A long period of 5 years 1 month in a special offense where the statute itself prescribes a timeframe of 1 year to complete the trial is on the face of the record unacceptable. The constitutional right of the Applicant for a speedy trial coupled with the long incarceration of the Applicant prompts me to consider the case of the Applicant for grant of bail. The Applicant cannot be indefinitely kept languishing in prison, especially when the State is ineffective and unable to even commence the trial. The prosecution may have its own problems for not conducting the trial especially in the present case where there is a co-accused involved but nothing of that sort has been placed before the Court by the prosecution to show any special circumstances which would disentitle the Applicant to seek bail.

11. The submission of the prosecution on maintainability also cannot be accepted, since, in the opinion of this Court, every passing day that an undertrial prisoner suffers in jail has to be considered as a change in circumstance. There is nothing in law which prevents the Applicant to approach this Court even though liberty may not be granted to the Applicant to seek bail.

12. 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:-

13. In the case of *Nitish Adhikary alias Bapan Vs. State of West Bengal*¹ 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.

14. In the case of *Babor Ali Mondal Vs. State of West Bengal*² the Supreme Court considering the long incarceration granted bail to an undertrial-accused who was incarcerated for 1 year and 4 months.

¹ 2022 SCC OnLine SC 2068

² Criminal Appeal No. 3349 of 2024

15. In the case of *Sukhvinder Singh Bittu Vs. State of Punjab*³ 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.

16. In the case of *Mohd. Mobin Jahurul Hasan Manihar Vs. State of Maharashtra*⁴ - 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.

17. From the above, it is apparent that inspite of the stringent test to be met by the Accused person under Section 37 of the NDPS Act for being released on bail, it has been held that the same does not fetter grant of Bail to the Accused person on the ground of undue delay in the completion of trial. It has been held that incarceration for substantial period of time generally militates against the right to life and liberty guaranteed under Article 21 of the Constitution of India and hence the conditional liberty must override the statutory embargo under Section 37 of the NDPS Act.

3 Cri. Appeal No.1204 of 2024

4 BA No.713 of 2024 decided on 20.01.2025

18. Attention of this Court is drawn to the observations made in paragraph Nos. 19 to 24 by the Supreme court in the case of **Mohd.**

Muslim alias Hussain v. State (NCT of Delhi)⁵ which reads thus:-

"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 a *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 the Special Acts (the 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 cooperating 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, has 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 has 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, emphasised 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 v. Rattan Mallik (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 436-A which is applicable to offences under the NDPS Act too (Satender Kumar Antil v. CBI, (2022) 10 SCC 51 : (2023) 1 SCC (Cri) 1]). Having 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.*

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 31-12-2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 prisoners in the country. Of these 1,22,852 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 - 1993 SCC OnLine Ker 127 : 1993 Cri LJ 3242] as "a radical transformation" whereby the prisoner :*

"13. ... 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 and 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" [Working Papers - Group on Prisons & Borstals - 1966 U.K.] (also see Donald Clemmer's "The Prison Community" published in 1940 [Donald Clemmer, The Prison Community(1968) Holt, Rinehart & Winston, which is referred to in Tomasz Sobecki, "Donald Clemmer's Concept of Prisonisation", available at: <https://www.tkp.edu.pl/wpcontent/uploads/2020/12/Sobecki_sklad.pdf> (accessed on 23-3-2023).]). 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.”

19. In the above *prima facie* facts and circumstances of the case the Applicants before me have made out a case for bail. Hence considering the period of long incarceration for 5 years and 1 month and the trial not commencing and for that matter not concluding in the near foreseeable future persuades me to allow the Application. Hence, Applicant is released on bail on the following terms and conditions:-

- (i) Applicant is directed to be immediately released on bail from prison in connection with F. No. NCB/MZU/CR-80/2021 (NDPS Special Case No. 23 of 2022);
- (ii) Applicant is directed to be released on bail on furnishing P.R. Bond of Rs. 50,000/- (Rs. Fifty Thousand Only) with one or two sureties in 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 v. *Chidiebere Kingsley Nawchara & Ors.*⁶

- (iii) Applicant shall report to the Investigating Officer at concerned Investigating Agency, once every month on the first Sunday of the month between 10:00 a.m. to 12:00 p.m.;
- (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;
- (v) Applicant shall not leave the country without prior permission of the Trial Court. Applicant is directed to deposit his passport, if, any with the Trial Court within a period of one week of their release from prison.
- (vi) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (vii) 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
- (viii) Any infraction of the conditions shall entail cancellation

⁶ SLIP (Cri) No.(s). 14185 of 2025

of bail granted to the Applicant;

(ix) 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.*⁷

20. Needless to state that the above observations will not come in the way of trial as they are prima facie in nature based on the submissions made and the material placed before this Court.

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

Amberkar

[MILIND N. JADHAV, J.]

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⁷ Criminal Appeal No. 2814-2815 of 2024 decided on 06.01.2025