

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 1618 OF 2022

Mohamed Sikander Cheemu	...Applicant
vs.	
Union Of India And Anr.	...Respondents

Mr. Ayaz Khan - Advocate for the Applicant

Mr. Advait M. Sethna a/w Mr. Rangan Majumdar i/by Ms. Ruju
R. Thakker - Advocate for the Respondent No. 1-UI

Mr. S. R. Agarkar - APP for the Respondent - State

CORAM : S. M. MODAK, J.

DATE : 20th DECEMBER, 2023

P. C. :-

1. I have already heard learned Senior Advocate Shri Mundargi for the Applicant and learned Advocate Shri Sethna for the Union of India (DRI).
2. As per Order dated 12/07/2023 report was called from the judge seized of the matter on two aspects. One is stage of Special Case No. 352 of 2020 and second how many under-trial prisoners cases are pending in that Court.
3. It is true that when the matter was argued earlier, apart from long incarnation, one more ground was taken about not conducted the seizure panchnama at the spot, it was prepared

in the office of the DRI and another ground about delay in sending the samples before learned Magistrate as contemplated under Section 52-A of the Narcotic Drugs and Psychotropic Substances Act.

4. Today learned Advocate Shri Sethna submitted that he is restricting his arguments on the point of delay in trial.

5. It is true that report dated 26/07/2023 is received from the trial court about factual aspects. The report mentions that :-

a) Charge is framed and there are in all 222 cases of under trial prisoners.

6. There is subsequent development. In fact this Court *vide* Order dated 28/07/2023 passed in Criminal Application No. 563 of 2023 filed by co-accused Wasim Mehmood Abrehani has set aside the Order of the framing of the charge in present case. It is for the reason that the accused were not heard at the time of the framing of the charge. Now direction is given to the trial Court to follow the provisions of the Sections 226, 227, 228 of the Criminal Procedure Code. Thereafter, it is submitted that in spite of the Order dated 28/07/2023, charge is not framed.

7. Today, learned Advocate Shri Sethna apprised me about

the factual observations made by the Hon'ble Supreme Court and other Courts in the compilation filed on the last date.

8. So also learned Advocate Mr. Ayaz Khan also apprised me about the factual observations made in the judgments relied upon by him.

9. It is true that the Hon'ble Supreme Court has granted bail in some of the matters on the ground of period of detention in jail. It is true that in some of the judgments even the Hon'ble Supreme Court has referred the provisions of Section 37 of the NDPS Act which deals the embargo on granting of bail. It is true that in some of the judgments relied upon by learned Advocate Mr. Sethna, the Hon'ble Supreme Court has even expedited the trial of the cases.

10. It is also true that in some of these orders while refusing the bail or granting bail, the Hon'ble Supreme Court has also considered the fact that the trial has started. It is also true that in few of the matters bail is refused as period of the detention is only two years and trial has started. Whereas in few of the matters bail is granted when accused is behind bar for more than two years. It is true that the High Court of Kerala in case of **Nandakumar N. Vs. State of Kerala** in Criminal Application No. 5596 of 2022, delivered on 03/08/2023 has

refused the bail. The observations in case of **Narcotics Control Bureau Vs. Mohit Aggarwal**¹ (consisting of three judges) is considered in para no. 8. So also observations in case of **Mohd Muslim @ Hussain's case** were also considered in para no. 9.

11. Learned Judge was pleased to observe that in case of **Mohd Muslim @ Hussain's** there are no observations that rigour under Section 37 of the NDPS Act can be ignored. Further more, it is observed that the intensity of the rigour under Section 37 of the NDPS Act would be lesser but in no circumstances it can be avoided.

12. After considering all these judgments, what I find is that depending upon the facts of each case and the stage of the trial those observations are made.

13. Considering the voluminous judgments filed by both the sides, supporting the individual contentions, I am supposed to decide the prayer for bail. So issue is more about which of the observations are to be followed by this Court rather than facts of the case.

14. It is true that in case of **Mohit Aggarwal** (supra), the Hon'ble Supreme Court has cancelled the bail granted by the

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High Court. It was for the reason that the High Court while granting the bail has not considered the rigour under Section 37 of the NDPS Act.

15. Whereas in case of **Union of India Vs. Ajay Kumar Singh** in Criminal Appeal No. 952 of 2023, dated 28.03.2023, the two different judges of the Hon'ble Supreme Court have cancelled bail granted earlier. The date of the arrest is 11/01/2021 and on 13/02/2023, he was granted bail. This judgment was delivered on 28/03/2023, whereas the Hon'ble Supreme Court on the same date has granted bail on the ground of long incarceration. (two different judges of the Hon'ble Supreme Court).

16. So when all these judgments are considered, what I gather is that ultimately that is discretion to be exercised by this Court while dealing with the prayer for bail on the ground of long incarceration and stage of the case. It is true that one of the accused is granted bail by this Court. The present Applicant is behind bar since January, 2020 and four years will be completed in January, 2024. It is claimed that there are 40 witnesses.

17. Learned Advocate Shri Sethana submitted that he is urging the Court to expedite trial. In support of that he has also

relied upon few of the judgments.

18. I have not burdened this order by referring to each and every judgment quoted by both the sides, instead of that I have quoted the conclusion drawn by way of summary manner.

19. On this background, when copy of the complaint filed by DRI before the Sessions Judge on page no 85 is perused, we may find that the present Applicant is accused no. 1, the prosecution is for an offence under Sections 22(c), 27A, 28 and 29 of the NDPS Act. No doubt it is commercial quantity, I am inclined to give one chance to the prosecution by ordering expedite hearing of the matter instead of granting him bail at this stage.

20. So I intend to pass following order:-

ORDER

- a) Let the trial of the NDPS Special Case No. 352 of 2020 pending before learned NDPS Court at Thane be expedited.
- b) Let trial Court to take decision on the framing of charge within three weeks from placing the copy of the Order before the Court.
- c) after taking decision of the framing of the charge, the trial Court is directed to dispose of the case within six months.
- d) Even the trial Court is at liberty to request learned Principal

District Judge to ask for allocation of this case to some other Court, if he find that it is difficult to adhere time limit.

e) Let learned Principal District Judge also consider the said request.

f) If the trial will not be finished within six months as mentioned above, the Applicant is at liberty to reiterate the prayer for bail.

21. Bail application is disposed of.

[S. M. MODAK, J.]