

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

BAIL APPLICATION NO. 2221 OF 2021

Ayub Akbarsha Makandar ..Applicant

v/s.

The Inspector of Customs & Anr. ..Respondents

Mr. Mithilesh Mishra a/w. Raju Mate for the Applicant.

Mr. Amit Munde, Spl. P.P. for the Customs.

Mr. S.H.Yadav, APP for the State.

**WITH
BAIL APPLICATION NO. 2833 OF 2022**

Nazir Ahmed Sange ..Applicant

v/s.

The State of Maharashtra . ..Respondents

Mr. B.A.Lawate for the Applicant.

Mr. S.H.Yadav, APP for the State.

**WITH
BAIL APPLICATION NO. 2905 OF 2022**

Ravindra Konduskar ..Applicant

v/s.

The State of Maharashtra & Anr. ..Respondents

Mr. Dinesh Tiwari a/w. Mikhail Dey, Ankita Bhatia, Pulkeshi
Gaikwad for the Applicant.

Mr. S.H.Yadav, APP for the State.

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CORAM : ANUJA PRABHUDESSAI, J.
DATED : 26th JUNE, 2023.

P.C.

1. The Applicants herein are facing trial in Special Case No. 31 of 2015 pending on the file of NDPS Special Judge, Pune for offences punishable under Section 8(c), 22(c), 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The case of the prosecution is that on 09.03.2015 one Etios Car bearing no. MH 06-J-9490 was intercepted at Talegaon Toll Plaza, Mumbai Pune Express highway. It is alleged that 50 kg of mephedrone was seized from the car. The Applicants were arrested, crime was investigated and chargesheet has been filed.

3. The Applicants have sought bail mainly on the ground that the delay in concluding the trial. Reliance has been placed on the decision of the Hon'ble Court in ***S.C. Legal Aid Committee representing Undertrial Prisoners vs. Union of India and Ors. (1994) 6 SCC 731, Sagar Tatyaram Gorkhe & Anr. vs. State of Maharashtra, Indrayani Mukherjee vs. CBI & Anr. 2022 SCC Online SC 695***, as well as some of the decisions of this Court in Bail applications.

4. Per contra, Learned Counsel for the Respondent submits that the Applicants are involved in commission of a serious crime. He submits that the Applicant is not entitled for bail in the light of the embargo contained in Section 37 of the NDPS Act. Reliance has been placed on the decision of the Apex Court in ***Narcotics Control Bureau vs. Mohit Aggarwal 2022 SCC Online 891***.

5. I have perused the records and considered the submissions advanced by learned Counsel for the respective parties. The records reveal that the Applicants herein were found to be in possession of commercial quantity of the contraband. Section 37(1) (b) of the NDPS Act inter alia provides that no person accused of an offence involving commercial quantity shall be released on bail 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. The question for consideration whether despite the bar under Section 37, the Applicants would be entitled for bail on the ground of delay in conducting the trial.

6. In ***Sachin Vartak vs. The State of Maharashtra, Bail Application No.430 of 2021***, on the similar set of facts, this Court (Coram Prakash D. Naik, J.), upon considering the provisions under Section 37 of NDPS Act, Section 436A of Cr.P.C. and several decisions of the Apex Court has observed that “*the settled principle of law is that prolonged custody affects fundamental right under Article 21 of Constitution of India. The conflict at the most could be in the directions issued in the case of Supreme Court Legal Aid Committee and Section 436A of Cr.P.C.; since the criteria for releasing the accused is based on sentence and mathematical calculation of period of custody. However, there is no debate that incarceration in custody for long period without trial or completion of trial affects personal liberty guaranteed under Article 12 of Constitution of India.*” It is further observed that the right to speedy trial is supreme and embargo under provisions of special Act like Section 37 of NDPS Act, Section 20(8) of TADA and Section 21(4) of MCOC Act shall not be an impediment in grant of bail on the ground of incarceration for a long time.

7. In the instant case the offence alleged to have been committed

by the Applicants is punishable with rigorous imprisonment for a term not less than 10 years, which may extend to 20 years. It is not in dispute that the accused were arrested on 9th / 10th March, 2015 and are in custody till date. It is stated that out of 27 witnesses cited by the prosecution, only one witness (P.W.1) has been examined. Learned Counsel for the Applicant has placed on record copy of the roznama, a perusal of which shows that the Applicants herein are not responsible for delaying the trial. In fact, the records reveal that the Applicants had filed an application to record the evidence in their absence and to conduct day to day trial, which request has been rejected by the learned Special Judge. The minimum punishment prescribed for the offence is 10 years. The Applicants are in custody for eight years, which is more than half of the minimum prescribed punishment. Considering the large pendency, the trial is not likely to conclude in immediate future. Suffice to say, such prolonged incarceration infringes Article 21 of the Constitution of India. On this ground alone, the Applicants would be entitled for bail despite the embargo under Section 37 of the NDPS Act. Hence the Applications are allowed on the following terms and conditions:-

- (i) The Applicants who are facing trial in Special Case No. 31 of 2015 pending on the file of NDPS Special Judge, Pune are ordered to be released on bail on furnishing provisional cash bail of Rs.1,00,000/- (Rupees One Lakh Only) each for a period of two weeks;
- (ii) The Applicants shall within the said period of two weeks furnish bail bonds in the sum of Rs.1,00,000/- (Rupees One Lakh Only) each with one or more solvent sureties in the like amount;
- (iii) The Applicants shall appear before the Special Judge, Pune on each and every date of hearing, unless exempted;
- (iv) The Applicant shall not leave the State of Maharashtra without prior permission of the Special Judge, Pune;
- (v) The Applicants shall deposit their passport, if any, before the Special Court;
- (vi) The Applicants shall not tamper with evidence in any manner;
- (v) The Applicants shall keep the Investigating Officer informed

of their permanent as well as temporary address, if any, and contact details, and/or change of residence or mobile details from time to time.

(ANUJA PRABHUDESSAI, J.)