

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

BAIL APPLICATION NO.2635 OF 2022

Ellangal Shimjid

...Applicant

Versus

The State of Maharashtra

...Respondent

...

Mr. Taraq Sayyed with Ms Dipti Karadkar for the Applicant.

Ms Ruju Thakker with Mr. Advait M. Sethna and Mr. Ranjan Mujumdar
for Respondent -DRI

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

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 19th JULY, 2023.

P. C. :-

1. The Applicant, who is facing trial in NDPS Special Case No.193 of 2018 pending on the file of learned Special Judge, NDPS Court, Greater Bombay, seeks bail under Section 439 of the Cr.P.C. The aforesaid case arises from File No.DRI /MZU/C/Int-64/2018 for the offences punishable under Sections 8(c), 22, 23, 28 and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985.

2. It is alleged that on 17/05/2018 the Respondent had received specific information that the Applicant, who was to fly to Riyadh from Mumbai with Jet Airways was carrying 3 kg of

psychotropic substance called Phencyclidine (PCP). The investigating team complied with all the mandatory statutory provisions and proceeded to the Airport alongwith two panchas. They apprehended the Applicant and recovered and seized 2.5 kg of contraband, which was concealed in the false cavity of the travel bag. The Applicant was placed under arrest on 18/05/2018. The representative sample was taken and the same was forwarded to the CFSL and the sample has tested positive to Tramadol, which has been brought within the ambit of the NDPS Act. The investigation followed and the complaint was filed on 12/11/2018.

3. The Applicant seeks bail mainly on the ground of delay in trial. Learned counsel for the Applicant has relied upon the decision of the Hon'ble Supreme Court in ***Rabi Prakash Vs. The State of Odisha, Special Leave to Appeal (crl. No(s).4169 of 2023.*** The accused in the said case was in custody for more than three and a half years . The Apex Court while releasing the Applicant on bail observed that “*The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.*”

4. Per contra, learned counsel for the Respondent has relied upon the three Judge Bench decision of the Apex Court in ***Narcotics Contro Bureau Vs. Mohit Aggarwal , 2022 SCC Online SC 891*** wherein it was observed that the parameters of bail available under Section 37 of the Act were not satisfied. The accused in the said case was in custody for less than two years. In such circumstances, it was observed that 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.

5. It may be mentioned that the Apex Court has time and again emphasized that deprivation of the personal liberty without ensuring speedy trial would not be in consonance with the right guaranteed by Article 21 of the Constitution of India. In the instant case, the Applicant is in custody since 18/05/2018 i.e. over a period of 5 & 1/2 years . It is stated that the evidence of the first witness was concluded about 4 months ago. The evidence of the second witness commenced on 02/05/2023 and till date examination-in-chief is being recorded. Learned counsel for the Respondent, under instructions

states that 6 to 7 witnesses are yet to be examined. It is thus evident that the trial is not likely to be concluded within a reasonable time. It is not the case of the prosecution that the Applicant is responsible for the delay in trial. In such circumstances, prolonged detention of the Applicant, without there being any possibility of expeditious trial, would be violative of right guaranteed by Article 21 of the Constitution of India.

6. Under the circumstances and in view of the reasons supra, in my considered view this is a fit case for grant of bail. Hence, the application is allowed on the following terms and conditions:-

(i) The Applicant, who is facing trial in NDPS Special Case No.193 of 2018 pending on the file of learned Special Judge, NDPS Court, Greater Bombay, is ordered to be released on bail on furnishing bail bonds in the sum of Rs.1,00,000/- with one or two sureties to the like amount.

(ii) The Applicant shall report Directorate of Revenue Intelligence, Marine Lines, once in three months on the first Monday of the month between 11.00 a.m. to 2.00 p.m.

- (iii) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.
- (iv) The Applicant shall not leave the State of Maharashtra and the Country without prior permission of the Trial Court.
- (v) The Applicant shall handover his passport to the Investigating Officer;
- (vi) The Applicant shall not interfere with the witnesses or tamper with the evidence in any manner.
- (vii) The Applicant shall keep the Investigating Officer informed of his current address and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.

7. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)