



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2581 OF 2023

Bhanudas Vasant Rao More @ Aditya Patil ...Applicant
vs.
Union of India and Another ...Respondents

**WITH
BAIL APPLICATION NO.2616 OF 2023**

Manish Mathurbhai Serasia @ Rawal ...Applicant
vs.
Directorate of Revenue Intelligence,
Mumbai Zonal Unit, Mumbai ...Respondent

Mr. Taraq Sayed a/w. Ms. Ashwini Achari and Ms. Alisha Parekh,
for the Applicants.
Mr. Advait Sethna a/w. Mr. Rangan Majumdar i/b. Mr. Raju
Thakker, for Respondent No. 1-UOI.
Mr. M.G. Patil, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.
DATE : FEBRUARY 5, 2024

P.C.:

1. The applicants who are arraigned in C.R. No. 43 of 2017 registered with D.R.I., Mumbai Zonal Unit for the offences punishable under sections 8(c), 22(c), 25, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act, 1985) seek to be enlarged on bail.

2. The applicants were arrested on 20th March, 2017. These applications are preferred primarily on the ground of long

incarceration of the applicants without a real prospect of the conclusion of the trial in NDPS Special Case No. 79 of 2017 arising out of C.R. No. 43 of 2017.

3. The applicants are in custody for more than six years. The applicants assert though charge has been framed in Special Case No. 79 of 2017 yet till date not a single witness has been examined by the prosecution. Therefore, the applicants deserve to be enlarged on bail.

4. The applicants have referred to a number of judgments of the Supreme Court, this Court and other High Courts to lend support to their claim that long incarceration without trial infringes their fundamental right under Article 21 of the Constitution of India and thus they deserve to be released on bail.

5. An affidavit in reply is filed (in BA No. 2581 of 2023) on behalf of the respondent No.1- UOI. The applicant Bhanudas More is alleged to be a known drug trafficker. He had been involved in many drug trafficking cases. He was convicted and was detained in prison till 2007. In another case, the applicant was declared an absconder.

6. The respondents contend that since both the applicants were found manufacturing Mephedrone (MD) and a huge quantity of contraband has been recovered from the possession of the applicants, the rigor contained in section 37 of the NDPC Act, 1985 operates with full force. There is no ground to believe that the applicants have not committed the alleged offences. Having regard to the antecedents of the applicants, especially that of Bhanudas More, the applicant in BA No. 2581 of 2023, the Court can not draw an inference that, if released on bail, the applicants will not commit identical offences. In the backdrop of the nature of the accusations and the material against the applicant, according to the respondents, mere long period of incarceration does not entitle the applicants to bail.

7. I have heard Mr. Taraq Sayed, the learned counsel for the applicants, Mr. Advait Sethna, the learned Spl. P.P. for respondent No. 1-UOI and Mr. M.G. Patil, learned APP, for the respondent-State.

8. To begin with, it may be necessary to note the nature of the indictment against the applicants. It is alleged a specific intelligence was received by the officers of DRI that the applicant Bhanudas More along with Manish Serasia @ Rawal, the applicant in BA No.

2616 of 2023 and his associates Rauf Lulania and Wazhul Chaudhary had hired a factory premises, Rainbow Paints, Palghar Taluka Industrial Estate, Boisar Road, Palghar and were clandestinely manufacturing Mephedrone (MD). A batch of MD in slurry form was likely to be removed from the said premises on 19th March, 2017. Pursuant thereto, a search was conducted at the premises of M/s. Rainbow Paints. 238.20 kgs. of slurry purported to be containing MD was found thereat. The co-accused Rauff Lulania (accused No. 3) and Manish Serasia (applicant/accused No. 4) were also present in the factory premises and they were apprehended.

9. A search was conducted at the residential premises of the applicant Bhanudas More at Pratik Row House, Rustomjee Global City, Virar (w). Eight silver foil packets containing 8.126 kg black coloured substance purported to be Ganja, 20 gms of brownish coloured powder purported to be MD, one plastic box containing brown coloured liquid and undissolved crystals purported to be MD, one plastic bag containing white coloured substance in lump form weighing 1.9 kg, which appeared to be raw material for manufacturing of MD, and other incriminating articles were seized. The applicants and co-accused came to be arrested on 20th March, 2017.

10. Indisputably, the applicants are in custody for almost seven years. Though charge has been framed in NDPS Special Case No. 79 of 2017, recording of evidence of witness has yet not commenced.

11. In the backdrop of aforesaid position, Mr. Taraq Sayed, learned counsel for the applicants, submitted that the prolonged period of incarceration without the possibility of conclusion of trial within a reasonable period has consistently been considered to be a ground to set an accused at liberty even in cases in which there are statutory restrictions in the matter of grant of bail, like under section 37 of the NDPS Act, 1985.

12. Mr. Taraq Sayed urged that the slow pace of the trial can be gauged from the fact that the charge came to be framed prior to six months ago only and till date no witness has been examined. The prosecution proposes to examine as many as 39 witnesses. It is extremely unlikely that the trial can be concluded within a reasonable period. In such a situation, conditional personal liberty must out weigh the statutory restrictions in the matter of grant of bail, urged Mr. Sayed.

13. To bolster up this submission, Mr. Sayed placed reliance on a

number of judgments of the Supreme Court and this Court. Making reference thereto, it was urged that this Court has exercised the discretion to release the accused on bail even in cases where the period of incarceration of the applicant was relatively less. Mr. Sayed would urge that the alleged gravity of the offences and antecedent of Bhanudas More sought to be pressed into service on behalf of respondent No. 1 do not preclude the Court from exercising its discretion.

14. It was submitted by Mr. Sayed that in NDPS Special Case No. 49 of 2001, in which the applicant Bhanudas More was convicted by the Special Judge, this Court by a judgment and order dated 31st January, 2018 has set aside the conviction and acquitted the applicant Bhanudas More. In Special Case No. 226 of 2015 arising out of C.R. No. 64 of 2015, the learned Special Judge has released the applicant Bhanudas on bail, on merits. Therefore, the alleged gravity of the offences and antecedents of the applicant Bhanudas cannot be pressed into service to further curtail the personal liberty of the applicant Bhanudas. Mr. Sayed would further urge that there is no antecedent to the discredit of the applicant Manish Serasia. Resultantly, it can be inferred that the applicant Manish would not indulge in identical offences if released on bail.

15. Mr. Sayed placed reliance, inter alia, on the judgments of the Supreme Court in the cases of :

- (i) **Rabi Prakash vs. The State of Odisha**¹;
- (ii) **Mohd. Muslim @ Hussain vs. State (NCT of Delhi)**²
- (iii) **Jitendra Jain vs. NCB and Anr.**³
- (iv) **Tapan Das vs. Union of India**⁴
- (v) **Supreme Court Legal Aid Committee Representing Undertrial Prisoners vs. Union of India and Others**⁵

And the decisions of this Court in the cases of

- (i) **Ellangal Shimjid vs. The State of Maharashtra**⁶
- (ii) **Peter Okonkwo Igwedimma vs. The State of Maharashtra**⁷
- (iii) **Ranjit Laxman Tanpure vs. Intelligence Officer and Anr.**⁸
- (iv) **Ugochukwu Duke Ogboke vs. The State of Goa and Ors.**⁹
- (v) **Pramod Krishna Pandey vs. The State of Maharashtra**¹⁰

16. In opposition to this, Mr. Sethna, learned Spl.P.P. for respondent No. 1 laid emphasis on the fact that the nature of the accusations against the applicants is grave. It is not a case of conscious possession, but of manufacturing of contraband articles. A huge quantity of MD was recovered from the factory premises of Rainbow Paints, where the applicants were manufacturing MD.

1 Sp.L.to Appeal (Cri.) No.4169 of 2023, Dt.13/07/23.

2 2023 SCC OnLine SC 352.

3 Sp.L.to Appeal (Cri.) No.8900/2022 Dt.16/12/22.

4 Sp.L.to Appeal (Cri) No.5617/2021, Dt. 07/10/21

5 (1994) 6 Supreme Court Cases, 731.

6 BA No.2635/2022 Dt.19/07/2023

7 BA No.2197/2022 Dt.07/01/2023.

8 BA No.3062/2021 Dt.06/12/2022

9 BA No.647/2021, Dt.24/02/2022.

10 BA No.2103/2021 Dt.03/08/2021

Moreover, contraband articles were also recovered from the residence of the applicant Bhanduas More. Release of the applicants on bail, in such circumstances, would run counter to the legislative object of prescribing the restrictions under section 37 of the NDPS Act, 1985 in the matter of grant of bail.

17. Mr. Sethna laid emphasis on the fact that the rigor contained in section 37 of the NDPS Act, 1985 operates with full force and there is no ground for which the Court would be justified in recording a finding that the applicants are not guilty of the offences for which they have been charged and would not indulge in identical offences if released on bail. On the contrary, the antecedents of the applicant Bhanudas More suggest that there is a strong possibility of accused again indulging in drug trafficking.

18. Mr. Sethna, further submitted that despite accused having been incarcerated for a long period, the Supreme Court and the High Courts have declined to exercise the discretion in favour of the accused where there is strong material to implicate them. Mr. Sethna, placed reliance on the decisions of the Supreme Court in the cases of

(i) **Narcotics Control Bureau vs. Mohit Aggarwal**¹¹

¹¹ MANU/SC/899/2022

- (ii) **Sheru vs. Narcotics Control Bureau**¹²
- (iii) **Union of India vs. Ajay Kumar Singh @ Pappu**¹³
- (iv) **Union of India vs. Sujeet Khatua Etc.**¹⁴
- (v) **Narcotics Control and Bureau vs. Bal Mukund Kumar Nirala @ Rahul and Anr.**¹⁵

19. To bolster up the submission that an accused who is charged for the offences punishable under section NDPS Act, 1985 in respect of commercial quantity, cannot be released on bail without recording a satisfaction that the twin test envisaged by section 37 of the NDPS Act, 1985 stands satisfied, Mr. Sethna placed reliance on the judgment of **Mohit Aggarwal** (supra).

20. Mr. Sethna would urge that though the applicants have been incarcerated for more than six years yet the prosecution deserves an opportunity to make an effort to expeditiously conclude the trial. In the circumstances of the case, according to Mr. Sethna, this Court would be justified in expediting the trial instead of releasing the accused on bail. To lend support to this submission, Mr. Sethna invited attention of the Court to the decisions of the Supreme Court in the cases of:

12 MANU/SC/814/2020.

13 Supreme Court, Cr.A.No.952/2023 Dt.28/03/2023

14 Sp.L.to Appeal (Cri) Diary No. 34587/2023 Dt. 27/09/23

15 Sp.L.to Appeal (Cri) No. 2521/2018.

(i) **Union of India (NCB) Etc. vs. Khalil Uddin Etc.**¹⁶

(ii) **Sabit Ali Mondal vs. The State of West Bengal**¹⁷

And the decisions of this Court, in the cases of

(i) **Dhananjay Braj Narayanlal Srivastav vs. Union of India & Anr.**¹⁸

(ii) **Mohamed Sikander Cheemu vs. Union of India and Anr.**¹⁹

And the decision of Kerala High Court in the case of **Nandakumar N. vs. State of Kerala**²⁰

21. Section 37 of the NDPS Act, 1985 which begins with *non-obstante* clause contains an interdict against releasing a person accused of committing offences punishable under sections 19 or section 24 or section 27-A and also for offences involving commercial quantity, unless the public prosecutor has been given an opportunity to oppose the application for such release and 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.

22. Sub section (2) of Section 37 further emphasises that the

16 Cr.A. No. 1841-1842/ 2022 Dt.21/10/2022.

17 SLP (Cri) Diary No. 20289/2023, Dt. 29/05/2023

18 BA No.2950/2022 Dt.31/01/2023.

19 BA No.1618/2022, Dt.12/07/2023.

20 BA No.5596/2022 Dt. 03/08/2023.

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 or any other law for the time being in force, on granting of bail.

23. Parliament has incorporated such restrictions in the matter of grant of bail to the person accused of grave offences under NDPS Act, 1985 keeping in view the deleterious effect and devastating impact those offences have on society. Satisfaction of the Court that the accused will not indulge in identical offence becomes necessary as there is an apprehension that the person released on bail may again indulge in the nefarious activity of trafficking in drugs. Parliament has thus used the expression, “reasonable ground” which implies something more than prima facie ground. In the case of **State of Kerala vs. Rajesh and Others**²¹ the Supreme Court expounded the connotation of term, “reasonable grounds’ in the context of restrictions contained in section 37 of the NDPS Act, 1985, as under:-

The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the

21 MANU/SC/0084/2020.

provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.

24. By a catena of judgments, the legal position is fairly crystallized that the Court has no jurisdiction to grant bail to an accused whose case falls within the ambit of section 37(1) of the NDPS Act, 1985 without recording a finding that the twin test envisaged by sub clause (b) of sub section (1) of Section 37 of the NDPS Act, 1985, adverted to above, stands satisfied.

25. In the case at hand, as noted above, the applicants are seeking bail primarily on the ground of long incarceration. Even otherwise, the allegations and material pressed into service against the applicants are such that the interdict contained in section 37 of the NDPS Act, 1985 is clearly attracted. In this proceeding, no endeavour is made on behalf of the applicants to demonstrate that the applicants may not be guilty of the offence for which they stand

charged. The claim for bail rests solely on prolonged incarceration.

26. Undoubtedly, there is a definite legislative purpose in providing additional restrictions in the matter of grant of bail, having regard to the gravity of the offences and the necessity to arrest the menace of drug trafficking. The restrictions in the matter of grant of bail under NDPS Act, 1985 and other enactments like MCOCA and UAPA etc., are based on the premise that the trial in such matters ought to be concluded expeditiously and that premise has been held to constitute a justification for such stringent provisions in the matter of grant of bail.

27. As against this interest of society, long incarceration of an accused, without a real prospect of conclusion of trial within a reasonable period, gives rise to a competing interest of the accused an account of unjustified deprivation of personal liberty for an unreasonably long period as an under trial prisoner.

28. It is in the context of these competing interests, it has been held that the deprivation of right to speedy trial infringes the right to life and personal liberty guaranteed under Article 21 of the Constitution of India. The statutory restrictions in the matter of

grant of bail melt down in the face of unreasonably long period of incarceration.

29. A useful reference in this context can be made to the decision of the Supreme Court in the case of **Supreme Court Legal Aid Committee** (supra) wherein the Supreme Court directed the release of under trial prisoners who were accused of the offences punishable under NDPS Act, 1985, albeit as a one time direction, with clarification that those directions were not intended to interfere with the Special Court's power to grant bail under section 37 of the NDPS Act, 1985. It was, inter alia, observed that-

(ii) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for like amount.

30. In the case of **Mohd. Muslim @ Hussain** (supra), the Supreme Court, inter alia, observed that 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 436A which is applicable to offences under the NDPS Act too.

31. In the case of **Rabi Prakash** (supra), the Supreme Court observed as under:-

4] As regard to the twin conditions contained in section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. 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.

32. As against this, there is a body of judgments, on which reliance was placed by Mr. Sethna, wherein, it has been observed that mere long period of incarceration cannot be a ground for grant of bail in the face of statutory restrictions. In the case of **Sheru vs. NCB** (supra) the Supreme Court, in the context of suspension of sentence of a convict, observed that mere passage of time cannot be a reason for bail.

33. In the case of **Union of India V/s. Sujeet Khatua Etc.**²² while granting bail in the case of Sujeet Khatua etc. V/s. Union of India,

22 Petition(s) for Special Leave to Appeal (Cri.) Diary No.34587 of 2023 dt. 27 September 2023

the High Court had made the following observations :

“..... To make it clear, the provision contained in Section 436-A of Code would apply to the special acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act, would not come in the way in such a case as we are dealing with the liberty of a person....”

34. In the context of the aforesaid observations, the Supreme Court observed as under :

“Though we are not interfering with the impugned order on merits, we make it clear that we have not approved the aforesaid observations.”

35. In a situation of this nature, in my considered view, the gravity of the offences and the peculiar facts of the case must enter the determination. The accusation against the Applicants deserves to be kept in view. It is alleged, the applicants were involved in manufacturing of MD and a large quantity of contraband was recovered from the factory premises where the applicants were allegedly manufacturing MD.

36. I find substance in the submission of Mr. Sethna that it is not a case where a drug peddler is found in possession of a commercial quantity of the contraband. The gravity of the allegations can be gauged from the fact that the applicants were allegedly indulging in

manufacturing of MD for a period of time before they were allegedly apprehended. The alleged activity had, going by the allegations of the prosecution, an element of continuity and repetitiveness with the potential of having manufactured and supplied large quantity of the contraband and thereby defeated the object of the Act, 1985

37. In the aforesaid view of the matter, though the period of incarceration is inordinate, the prosecution deserves an opportunity to lead evidence to substantiate the grave indictment against the applicants before they are released.

38. In the totality of the circumstances, a direction for expeditious conclusion of the trial with liberty to the applicants to again move for bail in the event the trial is not concluded within the stipulated period would be in consonance with the object of the Act, 1985.

39. Hence, the following order :

ORDER

- 1] The applications stand rejected.
- 2] The learned Special Judge seized with NDPS Case No.79 of 2017 arising out of C.R.No.43 of 2017 registered with D.R.I. Mumbai Zonal Unit is requested to conclude the trial in the said NDPS Case as expeditiously as possible and preferably within a period of six months from the date of communication of this order.

3] The learned Special Judge is requested to give due priority for hearing of the said NDPS Case having regard to the long period of incarceration of the applicants, and, if possible, allocate time on at least 2 to 3 days in a week for hearing of the said NDPS Case.

4] The prosecution shall keep all the material witnesses present for examination and shall not seek any adjournment.

5] The accused shall also co-operate with the expeditious conclusion of the trial and shall not seek adjournment.

6] In the event the trial is not concluded within the said period of six months, the applicants shall have the liberty to renew the prayer for bail before this Court.

7] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

(N. J. JAMADAR, J.)