

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

CRIMINAL BAIL APPLICATION NO. 433 OF 2024

Vijay Mohan Pawara ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Aniket Vagal a/w Ms. Savvy Kolhekar, Mr. Kunal Pednekar,
Advocate for the Applicant.

Ms. Supriya Kak, APP for the Respondent – State.

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CORAM : ANIL S. KILOR, J.

DATE : 24th JUNE, 2024.

P.C.:

1. Heard.

2. By this application under Section 439 of the Code of Criminal Procedure, the applicant is seeking bail in Crime No.50 of 2018, registered with Malegaon Taluka Police Station, District: Nashik for the offences punishable under Sections 20(b), 22 and 27 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

3. Learned Counsel for the Applicant argues that Applicant is not involved in the alleged offence but he was hired as a driver in which the alleged contraband was found. It is submitted that he

is in jail from last six years and there is no progress in the trial despite twice directions were issued to expedite the trial. It is submitted that only one witness was examined and the evidence of PW-2 was partly recorded and thereafter the said witness is not attending the Court despite the warrant was issued to him.

4. It is submitted that there are about twenty witnesses to be examined by the prosecution and there is no possibility that in near future the trial will be concluded. He therefore submits that considering the role of the Applicant in the present matter and the period of incarceration, the Applicant may be released on bail.

5. Learned APP on the other hand strongly opposed the application and submits that delay in trial cannot be a ground to grant bail to the Applicant. As far as the fact that the only one witness has been examined, the APP is not disputing the same. She is also not disputing that the trial was expedited. However, she submits that there is a statement of the Applicant, which shows his *prima facie* involvement in the alleged offence. It is submitted that the offence is registered under a Special Act whereunder twin conditions are to be fulfilled while granting bail and thus it is prayed that this Court may not grant bail.

6. Having considered the charge-sheet and the material

collected by the Investigating Officer during the investigation, it is evident that the Applicant was hired as a driver. Though, it has come on record that on inquiry made by him about the material to be transported, it was told to him that it has a Ganja. However, because of greed for more money, he accepted to be a driver on the vehicle of the co-accused. Thus, from the allegation, it is evident that the contraband is not belonging to the Applicant. The vehicle was also not owned by him, but he was hired as a driver. There are no antecedents against the Applicant.

7. The Hon'ble Supreme Court of India in the case of Mohd Muslim @ Hussain V/s. State (NCT of Delhi) has observed thus :

“18. 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 Special Acts (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 co-operating 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, have 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 have to - in cases when accused of offences enacted under special laws - be balanced against the public interest.

19. 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.

20. 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, emphasized 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 Malik*). 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 (ref. *Satender Kumar Antil* supra). 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.”

8. In light of above referred observations of the Hon’ble Supreme Court of India and the material available on record against the Applicant coupled with the role attributed to the Applicant, I am of the opinion that there is a reasonable ground to believe that the Applicant is not guilty of the offences and there is no possibility that if the Applicant is released on bail, he would repeat the offence. In the circumstances, the Application is allowed.

ORDER

- i. Criminal Bail Application No. 433 of 2024 is allowed;
- ii. It is directed that the Applicant shall be released on bail

in Crime No.50 of 2018, registered with Malegaon Taluka Police Station, District: Nashik for the offences punishable under Sections 20(b), 22 and 27 of NDPS Act, on furnishing PR. Bond of Rupees Twenty Five Thousand with one solvent surety in the like amount;

iii. The Applicant shall attend the Police Station on 1st and 16th day of each month between 12:00 noon to 2:00 p.m. till conclusion of trial, except on the date of the trial;

iv. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;

v. Liberty is granted to the State for cancellation of bail if the Applicant commit similar offence;

vi. The Applicant shall attend the trial before the Trial Court regularly on every date unless exempted by the Trial Court for any reason.

vii. Application stands disposed off, accordingly.

(ANIL S. KILOR, J.)