

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

BAIL APPLICATION NO. 3423 OF 2024

Bhanudas Vasantrao More @ Aditya Patil ...Applicant
Versus
Union of India and anr. ...Respondents

Mr. Tabish Mooman, a/w Sahil Salaar and Farhin Ghanchi,
for the Applicant.

Ms. Raju Thakker, Special PP, a/w Sangeeta Yadav, for
Respondent No.1 - DRI.

Mr. A. A. Naik, APP for the State.

CORAM: N. J. JAMADAR, J.

DATED: 13th NOVEMBER, 2024

ORDER:-

1. The applicant, who is arraigned in NDPS Special Case No.79/2017 arising out of CR No.43 of 2017 registered with DRI, Mumbai Zonal Unit, for the offences punishable under Sections 22(c), 25, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act, 1985"), has preferred this application to enlarge him on bail.

2. The applicant was arrested on 20th March, 2017.

3. In fact, this is the second application for bail. The first application, being BA/2581/2023, was also preferred primarily on the ground of long period of incarceration as an under-trial prisoner. By an order dated 5th February, 2024,

the said application, alongwith BA/2616/2023 of co-accused Manish Serasia @ Rawal, came to be rejected with a view to provide an opportunity to the prosecution to substantiate the grave indictment against the accused. The trial in NDPS Case No.79 of 2017 arising out of CR No.43/2017 was directed to be concluded as expeditiously as possible and, preferably, within a period of six months from the date of communication of the said order.

4. The applicant has again approached this Court asserting that despite the direction by this Court to expeditiously conclude the trial by allotting time at least two to three days in a week for hearing the said NDPS case, there has not been any progress. Often the trial was required to be adjourned for non-availability of the Special Public Prosecutor. Since the applicant has been in custody for over seven and half years and there is no likelihood of conclusion of trial in the near future, the applicant deserves to be enlarged on bail.

5. Heard Mr. Mooman, the learned Counsel for the applicant, and Ms. Thakker, the learned Special PP, for respondent No.1 – DRI.

6. The learned Counsel for the applicant tendered a compilation of the *roznama* and the orders passed by the learned Special Judge recording *inter alia* that the Special PP before the trial court was not appearing regularly and DRI also was not taking effective steps to proceed with the trial. Mr. Mooman submitted that while rejecting the first application this Court had noted the competing interests of the society and the right of the accused to have a speedy trial and considered it appropriate to give one opportunity to the prosecution to lead evidence and conclude the trial. There has not been any progress in the trial and till date part examination-in-chief of PW-1 has been partly recorded.

7. The learned Counsel for the applicant placed reliance on the decisions of the Supreme Court in the cases of ***Javed Gulam Nabi Shaikh vs. State of Maharashtra*¹**, ***Mohd. Muslim @ Hussain vs. State (NCT of Delhi)*²**, ***Union of India vs. K. A. Najeeb*³** and ***V. Senthil Balaji vs. Deputy Director, Directorate of Enforcement*⁴**, to lend support to the submission that the constitutional guarantee under Article 21 overrides the statutory restrictions in the matter of grant of bail.

1 2024 SCC Online SC 1693.

2 AIR 2023 Supreme Court 1648.

3 AIR 2021 Supreme Court 712.

4 2024 SCC OnLine SC 2626.

8. Ms. Thakker, the learned Special PP, resisted the prayer for bail on the ground that the offences are of extremely grave nature. Inviting the attention of the Court to the orders passed by the learned Special Judge, Thane, dated 6th September, 2024, 13th September, 2024 and 11th October, 2024, the Special PP submitted that the trial could not proceed as the original documents were not forthcoming and the learned Special Judge requested the learned Sessions Judge to transfer the trial to the transferor court.

9. While rejecting first bail application, this Court had elaborately considered the submissions canvassed by the parties, the import of the interdict contained in Section 37 of the NDPS Act, 1985, the right of the accused to have a speedy trial and the consequences that ensue on account of prolonged period of incarceration. This Court had also noted the governing precedents. Ultimately the Court found it expedient in the interest of justice to provide one opportunity to the prosecution, especially in the backdrop of the gravity of the accusation.

10. The observations in paragraphs 25 to 38 in the said order read as under:

“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.**⁵ while granting bail in the case of Sujeet Khatua etc. V/s. Union of India, 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

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

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.”

11. The events that have unfolded in the trial, post the aforesaid order, render the possibility of expeditious conclusion of the trial extremely bleak. The copies of the *roznama* and the orders passed by the learned Special Judge indicate that the prosecution did not make earnest effort. In fact, the orders dated 24th April, 2022, 29th April, 2022 and 12th July, 2024 passed by the learned Special Judge record that there was non-cooperation on the part of the prosecution in diligently prosecuting the trial. The Special PP did not appear. The learned Special Judge was constrained to issue notices to the Director, DRI, to take steps for the

expeditious trial. The submission on behalf of the prosecution that on account of the non-availability of the original documents trial could not proceed does not mitigate the situation. On the contrary it is a manifestation of the unsatisfactory manner in which the trial has progressed. The fact remains that only one witness has been partly examined by the prosecution though the applicant has been in custody for more than seven and half years.

12. This Court has already noted the import of the judgments in the order, extracted above. Suffice to note, the statutory restrictions in the matter of granting bail, like the one under Section 37 of NDPS Act, 1985, melt down where the accused has been incarcerated for an inordinately long period without a real prospect of conclusion of the trial. The judgment of the Supreme Court in the case of *K. A. Najeed* (supra) emphasises that the statutory restrictions in the matter of grant of bail do not oust the authority of the Constitutional Courts to grant bail on the grounds of violation of Part-III of the Constitution.

13. In case of *Javed Shaikh* (supra) the Supreme Court emphasised the primacy of the constitutional guarantee of right to life and personal liberty, where the accused is

incarcerated for an inordinately long period without trial, in the following terse words:

“19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

(emphasis supplied)

14. In the case at hand, the prosecution proposes to examine 39 witnesses. Evidence of the first witness has been partly recorded. Having regard to the pace of the trial and the constraints which the learned Special Judge faced in the conduct of the trial, as is evident from the orders passed by the learned Special Judge, the submission of the learned Special PP that the prosecution would henceforth make an earnest endeavour to complete the trial expeditiously, does not induce necessary assurance.

15. I am, therefore, inclined to exercise discretion in favour of the applicant and release him on bail as a clear case of infringement of the fundamental right of the applicant has been made out.

16. Hence, the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant, Bhanudas Vasantrao More @ Aditya Patil, be released on bail in NDPS Special Case No.79/2017 arising out of CR No.43 of 2017 registered with DRI, Mumbai Zonal Unit, on furnishing a P.R. Bond of Rs.1,00,000/- with one or more sureties in the like amount to the satisfaction of the learned Special Judge.
- (iii) The applicant shall mark his presence at DRI, Mumbai Zonal Unit, on the first Monday of every month between 11.00 am. to 1.00 pm. for the period of three years or till conclusion of the trial, whichever is earlier.
- (iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.
- (v) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.
- (vi) The applicant shall not indulge in identical activities for which he has been arraigned in this case.

- (vii) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (viii) 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 co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application stands disposed.

[N. J. JAMADAR, J.]