



**THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.785 OF 2024

Yasin Ali s/o Mujjafar Ali

..VS..

**State of Maharashtra, through Railway Police Station Officer,
Police Station Ner, District Yavatmal**

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

**Shri A.K.Bhangde, Counsel and Shri N.K.Bhangde, Advocate for the
Applicant.
Shri S.V.Narale, Additional Public Prosecutor for NA/State.**

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 19/10/2024

PRONOUNCED ON : 23/10/2024

1. By this application, the applicant seeks regular bail in connection with Crime No.282/2021 registered with the non-applicant/police station for offences punishable under Sections 20(C), 22(c), 25, and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act).

2. The applicant is arrested on 18.8.2021 and since then he is in jail.

3. The crime is registered on the basis of a report lodged by Assistant Police Inspect Shri Vivek Ramrao

Deshmukh (the informant), attached to the Local Crime Branch at Yavatmal.

4. As per the report, when the informant was performing his official duty on 18.8.2021, he received a secret information that at Gram Zombadi, taluka Ner, near a house adjacent to "Jama Masjid", a contraband stock has been carried and brought in an "Innova Car". By reducing the same information into writing and informing to his superior officers, he conducted a raid in presence of a Gazetted Officer and panchas and intercepted "Innova Car" bearing registration No.MH-12/NB/1147. A person, standing in front of the said Car, got suspected and informed others that the police reached and he fled away from the spot of the incident. The raiding party surrounded the said house and in front of one room, three men and one woman were found filing material in white sack. The said persons were also intercepted and "Ganja" weighing 190.14 kilograms was found with them and the said "Ganja" was seized. After following a due procedure, samples were obtained. The applicant was also arrested. After completion of investigation, chargesheet came to be filed against the applicant.

5. The application is filed mainly on ground of delay in trial.

6. Learned counsel Shri A.K.Bhangde for the applicant, submitted that since 18.8.2021, the applicant is behind bars and there is no progress in the trial. In fact, charges are also not framed. He submitted that due to the delay in trial, right of the applicant as to speedy trial is affected. In view of that, the applicant be released on bail.

7. In support of his contentions, learned counsel for the applicant placed reliance on following decisions:

1. V.Senthil Balaji vs. Deputy Director, Directorate of Enforcement, reported in 2024 SCC OnLine SC 2626;

2. Special Leave to Appeal (Cri.) No.4648/2024 (Ankur Chaudhary vs. State of Madhya Pradesh) decided by the Hon'ble Supreme Court on 28.5.2024;

3. Special Leave to Appeal (Cri.) No.4169/2023 (Rabi Prakash vs. The State of Odisha) decided by the Hon'ble Supreme Court on 13.7.2023;

4. Bail Application No.2713/2023 (Jamila Khatun Rahim Khan vs. The State of Mah.) decided by this court on 11.9.2024, and

5. Mohd.Muslim alias Hussain vs. State (NCT of Delhi), 2023 SCC OnLine SC 352.

8. Learned counsel submitted that in all these decisions cited supra, aspect of delay in trial is considered by the Hon'ble Apex Court and accused persons therein are released on bail.

9. Learned Additional Public Prosecutor Shri S.V.Narale for the State, strongly opposed the application on ground that commercial quantity of contraband was found with the applicant. Though the trial is not commenced, now, charge is already framed and the matter is ready for recording of evidence. Considering the nature of evidence, the same shows that commercial quantity of contraband was found. Rigour under Section 37 of the NDPS Act attracts and the application deserves to be rejected.

10. Having heard both sides and perused investigation papers, it shows that material collected during investigation sufficiently shows involvement of the applicant in the aforesaid crime.

11. It is held by the Hon'ble Apex Court that Judges of the Constitutional Courts have vast experience. Based on facts on record, if Judges conclude that there is no possibility of a trial conducting in a reasonable time, powers

of granting bail can always be exercised on grounds of violation of Part-III of the Constitution of India notwithstanding statutory provisions.

12. In the case of **Ankur Chaudhary** *supra*, commercial quantity of contraband was found. However, while releasing accused on bail on ground of delay in trial, the Hon'ble Apex Court observed that failure to conclude the trial within a reasonable time resulting in prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India, and as such, conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered.

13. In the case of **Rabi Prakash** *supra*, accused therein found along with 247 kilograms of "Ganja", who was in custody more than three and a half years, was released on bail by the Hon'ble Apex Court observing precious fundamental right guaranteed under Article 21 of the Constitution of India.

14. In the present case, admittedly, involvement of the applicant in the alleged incident reveals, however,

considering incarceration of the applicant is more than three years, his fundamental right under Article 21 of the Constitution of India is affected.

15. In view of observations of the Hon'ble Apex Court in various decisions, rigour under Section 37 of the NDPS Act would not come into play.

16. In this view of the matter, following order is passed:

ORDER

(1) The Criminal Application is **allowed**.

(2) Applicant - Yasin Ali s/o Mujjafar Ali be released on bail, in connection with Crime No.282/2021 registered with the non-applicant/police station for offences punishable under Sections 20(C), 22(c), 25, and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on his executing a P.R.Bond in the sum of Rs.1.00 lac with one solvent surety of the like amount.

(3) He shall attend the police station twice a month i.e. 1st and 15th of every month and the investigating officer shall record his presence.

(4) He shall not leave jurisdiction of Yavatmal District without prior permission of the Yavatmal District Court.

(5) He shall attend proceedings before the Sessions Court without seeking any exemption, unless there are exceptional circumstances.

(6) He shall not directly or indirectly make any inducement and threat or promise to any of witnesses of the crime in question.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!