

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.5227 OF 2024

Mayur Subhash Koli & Anr.	...Applicants
<i>Versus</i>	
The State of Maharashtra	...Respondent

Mr. Balaji Salunke, for the Applicants.
Ms. A. S. Gotad, APP, for the Respondent-State.

CORAM: MADHAV J. JAMDAR, J.
DATED : 7th APRIL 2025

PC:-

1. Heard Mr. Salunke, learned Counsel appearing for the Applicants and Ms. Gotad, learned APP appearing for the Respondent-State.

2. This is a second Bail Application filed under Section 439 of the *Code of Criminal Procedure, 1973*.

3. By order dated 8th March 2024, the first Bail Application bearing Bail Application No.2813 of 2023 has been allowed to be withdrawn by this Court, as this Court was not inclined to grant bail. However, by the said order dated 8th March 2024 liberty has

been granted to the Applicants to file a fresh Bail Application after a period of 9 months, if there is no substantial progress in the trial. Pursuant to the said liberty the present Bail Application is filed.

4. The relevant details are as follows:

1.	C. R. No.	72 of 2023
2.	Date of registration of F.I.R.	22/02/2023
3.	Name of Police Station	Sangli Rural Police Station
4.	Section/s invoked	8(c), 20(b), (ii), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS Act”)
5.	Date of incident	22/02/2023
6.	Date of arrest	23/02/2023
7.	Date of filing of Charge-sheet	18/04/2023
8.	Section/s invoked in Charge-sheet	8(c), 20(b),(ii), (C) and 29 of the NDPS Act.

5. At the outset, Mr. Salunke, learned Counsel appearing for the Applicants submits that the Applicants are not seeking bail on merits and only seeking bail on the ground of violation of the Applicants’ right of speedy trial. On the other hand, Ms. Gotad, learned APP submits that as the offence is very serious the Bail Application be dismissed.

6. As already noted herein above, the earlier Bail Application has been allowed to be withdrawn, as this Court was not inclined to grant bail. Thus, on merits the Applicants are not entitled to be released on bail. However, admittedly both the Applicants were arrested on 23rd February 2023. Although the chargesheet is filed on 18th April 2023, till date there is no progress in the trial, except framing of the charge on 23rd January 2025. As per the chargesheet there are 33 witnesses proposed to be examined by the prosecution. Accordingly, the trial will take considerable time to conclude.

7. Speedy trial is one of the facets of right to life and liberty guaranteed under Article 21 of the Constitution of India. Speedy trial is an essential ingredient of “reasonable, fair and just” procedure guaranteed by Article 21 and it is the constitutional obligation of the State to devise such a procedure as would ensure speedy trial to the Accused.¹ Therefore, the Applicant is entitled for bail. If the Applicant’s detention continues, it will amount to an infringement of his fundamental right under Article 21 of the Constitution of India of speedy trial.

1 Hussainara Khatoon (IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98

8. Section 37 of the NDPS Act is as follows:

“37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) 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.

(2) The 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 (2 of 1974) or any other law for the time being in force on granting of bail.”

(Emphasis added)

Thus, as per Section 37 of the NDPS Act, following requirements are mandatorily to be complied with before releasing the Accused on bail:

“(i) The Public Prosecutor is to be given an opportunity to oppose the application seeking bail;

(ii) Where the Public Prosecutor opposes the application:-

(a) The court is required to record satisfaction that there are reasonable grounds for believing that the Applicant is not guilty of such offence;

(b) The Court is required to record satisfaction that the Applicant is not likely to commit any offence while on bail.”

9. Although Section 37 of the NDPS Act provides that bail should not be granted to an accused unless the accused is able to satisfy twin conditions i.e. reasonable ground for believing that the accused is not guilty of such an offence and that the accused would not commit an offence or is not likely to commit an offence, if granted bail, the Supreme Court in the case of ***Rabi Prakash vs. The State of Odisha***² has held as follows:

*“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.**”*

(Emphasis added)

Thus, the Supreme Court has held 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.

10. As the Applicants are incarcerated since more than 2 years and 2 months and trial has not yet commenced and as per the chargesheet, prosecution is proposed to examine 33 witnesses, therefore, the trial will take considerable time to conclude.

Accordingly, the Applicants are entitled to be released on bail on the ground of breach of the fundamental right of the Applicants of speedy trial.

11. As far as the Applicant No.1 is concerned, there are no antecedents against the Applicant No.1(Accused No.3). As far as Applicant No.2 (Accused No.4) is concerned, there is one antecedent wherein, the offence under Section 379 of the Indian Penal Code, 1860 is registered against the Applicant No.2 bearing C.R. No.133 of 2021. However, the Applicant No.2 has been released on bail in that case.

12. Thus, in view of the above discussion, both the Applicants are not entitled to be released on bail on merits, however, as there is delay in conducting the trial, the Applicants are entitled to be released on bail by imposing the stringent conditions.

13. In view thereof, the following order:

ORDER

(a) The Applicant No.1- Mayur Subhash Koli and

Applicant No.2-Matin Rafiq Pathan be released on bail in connection with C.R. No.72 of 2023 registered with the Sangli Rural Police Station, District - Sangli on their furnishing PR. Bond of Rs.1,00,000/-each with one or two local solvent sureties each in the like amount.

- (b) On being released on bail, the Applicants shall furnish their cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (c) The Applicants shall report to the Sangli Rural Police Station, District – Sangli once every week, on every Sunday between 10:00 a.m. and 01:00 p.m. till the conclusion of the trial.
- (d) The Applicants 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 such a person from disclosing the facts to the Court or

to any Police personnel.

- (e) The Applicants shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (f) The Applicants shall attend the trial regularly. The Applicants shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.
- (g) The Applicants shall surrender their passport, if any, to the Investigating Officer.

14. The Bail Application is disposed of accordingly.

15. It is clarified that the learned Trial Court shall decide the case on its merits, uninfluenced by the *prima facie* observations made in this order.

[MADHAV J. JAMDAR, J.]