

Ajay

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

BAIL APPLICATION No. 713 OF 2024

Mohd. Mobin Jahurul Hasan Manihar	.. Applicant
Versus	
State of Maharashtra	.. Respondent

-
- Mr. Ashok Mundargi, Senior Advocate i/b Ms. Shradha Sawant for Applicant.
 - Ms. Shilpa Gajare – Dhumal, APP for Respondent – State.
 - API - R.V. Londhe, Anti Narcotic Cell, Ghatkopar Unit, Mumbai - Present.

.....

CORAM : MILIND N. JADHAV, J.
DATE : JANUARY 20, 2025

JUDGEMENT:

1. This Application is filed under Section 439 of the Code of Criminal Procedure, 1973 for seeking regular bail in C.R. No.12 of 2023 registered with Anti Narcotic Cell, Ghatkopar Unit, Mumbai for offences under Sections 8(c), r/w 22(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “**NDPS Act**”).

2. The brief facts of the case are that on 05.02.2023, a Police team led by Police Inspector Lata Suthar, acting on orders from superiors, proceeded in a government vehicle for conducting raids against persons dealing with Narcotic substances. It is when the team

reached under the Dockyard Railway Station bridge at about 8:30 p.m. they noticed Applicant – Accused behaving suspiciously.

3. On noticing the Police Officials Applicant attempted to flee but was detained on the spot. On questioning about his details Applicant gave evasive answers which led the police to call for panch witnesses in order to search the Applicant. On search, 220 grams of Mephedrone (for short “**MD**”), a psychotropic substance / contraband was found was found in possession of Applicant and he was arrested. Small quantity under the NDPS Act is 2 grams and commercial quantity is 50 grams.

4. Mr. Mundargi, learned Senior Advocate for the Applicant-Accused, at the outset disputes the Prosecution narrative. He would submit that there is serious non-compliance of procedure in the fact that after seizure of the contraband it ought to have been sent immediately for forensic without delay but in this case there is an unexplained delay of 15 days and further there is a dichotomy in the colour of the packets of the samples which were drawn and those sent to the Magistrate. He would submit that the scope of his submissions before me would not be limited to the aspect of non-compliance but also and more importantly on the ground of long incarceration of Applicant – Accused being in prison without trial proceeding in the matter. He would submit that Applicant-Accused aged 22 years and

having no prior antecedents and he has been in custody for a period of 1 year and 11 months. He would submit that keeping him in custody for further indefinite period would be detrimental to his future as there is no hope of trial being proceeded with in the near foreseeable future. He would submit that the Applicant – Accused used to work as a cobbler prior to being arrested and the nature of his profession makes it incumbent upon him to engage in his work regularly in order to sustain himself and his family. He would thus pray for grant of bail to the Applicant.

4.1. In support of his contentions, he has referred to and relied upon the following decisions and urged the Court to consider them:-

- (i) *Sukhvinder Singh Bittu Vs. State Punjab*¹
- (ii) *Rabi Prakash Vs. The State of Odisha*² and
- (iii) *Tinku Vs. State (NCT of Delhi)*³

5. **PER-CONTRA**, Ms. Gajare – Dhumal, learned APP appearing on behalf of Respondent – State would vehemently oppose the present Bail Application. She would submit that recovery of 220 grams of MD i.e. the contraband is above commercial quantity and therefore the bar of Section 37 of the NDPS Act must be overcome by

¹ Criminal Appeal No. 1204 of 2024 – decided on 26.02.2024

² 2023 SCC OnLine SC 1109

³ 2024 SCC OnLine Del 9132

the Applicant. She would submit that the Court while granting bail must be fully satisfied that there are reasonable grounds for believing that Applicant – Accused is not guilty of such offence and that he is not likely to commit any offence while on bail. She would submit that offences such as this are offences against the society at large and there is reasonable apprehension that Applicant who is alleged to have been apprehended with commercial quantity of the contraband may resume indulging in such activities if granted bail. Hence he would submit that the Application be rejected.

6. I have heard Mr. Mundargi, learned Senior Advocate for Applicant and Ms. Gajare – Dhumal, learned APP for Respondent – State and with their able assistance perused the record of the case.

7. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents which are required to be considered in such cases. However the metrics of judicial decision making gets amplified or rather shuttled to another facet when dealing with offences where Section 37 of NDPS Act is attracted. In such cases one has to satisfy

itself with the rigors of the twin conditions as prescribed under Section 37 of the NDPS Act. Section 37 reads thus:-

“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.”

8. From the reading of Section 37 of the NDPS Act, it becomes clear that the legislature intends to deny bail to accused alleged to be in possession of commercial quantity of contraband in absence of court subscribing to a contrary view, however therefore if seen it does not rule out the facet of discretion of Court to grant bail. Furthermore the Court must be satisfied that the accused is unlikely to re-offend. It is seen that while dealing with Bail Applications the material available for consideration and adjudication is limited. In such cases, if we look realistically the provisions of Section 37 leave

limited room for a possibility of granting bail to the accused. However employing such limitation would create a dichotomy in the current scenario where one common grievance is made before this Court repeatedly in matter after matter. It is brought to the notice of the Court that trials are taking perpetuity to be concluded and prisons are also simultaneously overcrowded in some segments. This Court regularly deals with Bail Applications of under-trials who have been in custody for long incarceration, and is also equally aware of the conditions of our prisons. To give an example in the city of Mumbai, recently in one of the cases before me, a Report dated 12.12.2024 made by the Superintendent of Mumbai Central Prison addressed to the Chief Government Pleader was placed before me by the Public Prosecutor which stated that the Mumbai Central Prison (Arthur Road Jail) is overcrowded beyond its sanctioned capacity by more than 5 – 6 times and every barrack sanctioned to house 50 inmates, as on date houses anywhere between 220 – 250 inmates. This situation is inhumane, but it also cannot be forgotten that addiction of drugs is also a serious issue qua the society at large, and therefore provisions such as Section 37 act as a deterrent to prospective wrongdoers. Such an incongruity leads us to answer the proposition: ***“How can Courts find a balance between the two polarities?”***

9. Argued before me is a case concerning liberty of an under-trial who has been incarcerated for almost 2 years, a situation impacting the rights of undertrial conferred by Article 21 of Constitution to speedy justice as also personal liberty. In so far as the power of high courts to grant bail is concerned, when the case is such that involves a question of personal liberty of an undertrial who is incarcerated for a very long period, the powers are wide and unfettered by conditions, the principle rule being that bail is the rule and refusal is the exception, allowing accused persons to better prepare their defense.

9.1. In the case of *Emperor vs H.L. Hutchinson*⁴ the Allahabad High Court, as far back as in the year 1931 held that power of granting bail conferred on High Court is entirely unfettered by any conditions. It held that legislature has given the High Court and the Court of Session discretion unfettered by any limitation other than that which controls all discretionary powers vested in a Judge, viz. that the discretion must be exercised judiciously. The Court has given primacy to the fact that accused person if granted bail will be in a much better position to defend himself. In this very case, it was delineated that grant of Bail is the Rule and refusal is an exception. This was in the

4 AIR 1931 ALL 356

famous Meerut Conspiracy case. Justice Mukherjea writing for the Bench in paragraph No.9 held as under:-

“9. Speaking for myself, I think it very unwise to make an attempt to lay down any particular rules for the guidance of the High Court, having regard to the fact that the legislature itself left the discretion of the Court entirely unfettered. The reason for this action on the part of the legislature is not far to seek. The High Court might be safely trusted in this matter and it goes without saying that it would act in the best interests of justice whether it decides in favour of the prosecution or the defence. The variety of cases that may arise from time to time cannot be safely classified and it will be dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes.”

9.2. The Supreme Court in a landmark decision of 1978 in the case of ***Gudikanti Narasimhulu & Ors. v. Public Prosecutor, High Court of Andhra Pradesh***⁵ observed as under:-

“6. Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage and the principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve sentence in the event of the court punishing him with imprisonment. In this perspective...” (emphasis supplied)

10. Thereafter the Supreme Court in a plethora of judgements have discussed the rights conferred by Article 21 qua grant of bail and that such rights cannot be taken away unless the procedure is reasonable and fair and in cases where there is unreasonable delay in trial it would undoubtedly impact the rights of an undertrial. Some of

5 1978 (1) SCC 240

the important discussions of the Supreme Court and some of the High Courts as discussed hereinunder:-

10.1. In the case of ***Hussainara Khatoon Vs. Home Secy., State of Bihar***⁶ the Supreme Court held as under:-

“Now obviously procedure prescribed by law for depriving a person of liberty cannot “reasonable, fair or just” unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as “reasonable, fair or just” and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21.”

10.2. The Hon’ble Supreme Court in the case of ***Shaheen Welfare Association vs Union Of India***⁷ dealing with a Public Interest Litigation seeking reliefs for undertrial prisons charged under the Terrorist and Disruptive Activities (Prevention) Act, 1987 held as under:-

“10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh’s case (supra), on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.”

6 (1980) 1 SCC 81

7 1996 SCC (2) 616

10.3. The Supreme Court in case of ***Union of India v. K. A. Najeer***⁸ while commenting upon the possibility of early completion of trial and extended incarceration held as under:-

“12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), Babba v. State of Maharashtra and Umarmia v. State of Gujarat enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.”

11. Applicant in present case has been in custody for almost two years (1 Year 11 Months and 16 Days). There is no possibility of the trial been commencing in near future. Detaining an under-trial individual for such an extended period and further violates his fundamental right to speedy trial flowing from Article 21 of the Constitution. At this juncture I deem it appropriate to list certain observations of the Supreme Court shedding light on concerns underlying the “Right to speedy trial” from the point of view of an accused in custody whose liberty is affected. In the case of ***Abdul Rehman Antulay & Ors. Vs R.S. Nayak & Anr.***⁹ the Supreme Court held as under:-

“86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all

⁸ Criminal Appeal No. 98 of 2021

⁹ 1992 (1) SCC 225

situations. Nor is it possible to lay down any hard and fast rules. These propositions are:

(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the Right to speedy trial from the point of view of the accused are:

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.”

(4) – (11) -----X----- (emphasis supplied)

12. The Supreme Court has also simultaneously laid down in a series of judgments and orders that in situations where the under-trial / accused persons have suffered incarceration rather long incarceration for considerable period of time and there is no possibility of the trial being completed within the foreseeable future, Constitutional Courts can exercise power to release the accused under-trials on bail, as bail is the rule and jail is an exception.

13. In the case of *Supreme Court Legal Aid Committee (Representing undertrial prisoners) Vs. Union of India*¹⁰ The Supreme

Court has held that:-

“17. We are conscious of the fact that the menace of drug trafficking has to be controlled by providing stringent punishments and those who indulge in such nefarious activities do not deserve any sympathy. But at the same time we cannot be oblivious to the fact that many innocent persons may also be languishing in jails if we recall to mind the percentage of acquittals. Since harsh punishments have been provided for under the Act, the percentage of disposals on plea of guilt is bound to be small; the State Government should, therefore, have realised the need for setting up sufficient number of Special Courts immediately after the amendment of the Act by Amendment Act 2 of 1989. Even after the Division Bench of the Bombay High Court refused to grant en bloc enlargement on bail on 1-2-1993 in Criminal Application No. 3480 of 1992 and B.D. Criminal No. 565 of 1992, no substantial improvement in the pendency is shown since new cases continue to pour in, and, therefore, a one-time exercise has become imperative to place the system on an even keel. We also recommend to the State Government to set up Review Committees headed by a Judicial Officer, preferably a retired High Court Judge, with one or two other members to review the cases of undertrials who have been in jail for long including those released under this order and to recommend to the State Government which of the cases deserve withdrawal. The State Government can then advise the Public Prosecutor to move the court for withdrawal of such cases. This will not only help reduce the pendency but will also increase the credibility of the prosecuting agency. After giving effect to this order the Special Court may consider giving priority to cases of those undertrials who continue in jail despite this order on account of their inability to furnish bail.”

14. In the present case, it is an admitted position that even charge has not been framed. It appears that the possibility of the trial being completed in the foreseeable future is doubtful. It is also an admitted position that the Applicant has suffered incarceration for about two years.

¹⁰ (1995) 4 SCC 695

15. In the following decisions of the Supreme Court and various High Courts concerning detention and imprisonment on being apprehended with commercial quantity of various contrabands, the Courts have considered the aforementioned propositions and exercised its jurisdiction in releasing an undertrial on bail on account of long incarceration by using its discretionary powers:-

15.1. In the case of *Vijay Singh Vs. Union of India*¹¹ the Supreme Court granted bail to an undertrial-accused who was incarcerated for a period of 4 years and 1 Month holding that Article 21 of the Constitution overrides Section 37 of NDPS Act if there is undue delay on the part of prosecution.

15.2. In the case of *Rabi Prakash Vs. State of Odisha*¹² the Supreme Court, considering the long incarceration has granted bail to an undertrial accused who was incarcerated for 3 years and 6 months. The contraband in question was Ganja, the commercial quantity of which is 20 Kilograms. In this case recovery of 247 Kilograms was allegedly made from the accused despite which the court invoking the right to speedy justice flowing from Article 21 and delay in trial granted bail to the accused.

¹¹ Special Leave Petition (Criminal) Diary No. 43071/2024

¹² 2023 SCC OnLine SC 1109

15.3. In the case of ***Dheeraj Kumar Vs. State of Uttar Pradesh***¹³ the Supreme Court considering long incarceration granted bail to an undertrial-accused who was incarcerated for 2 years and 6 months. The contraband in question was Ganja the commercial quantity of the contraband is 20 Kilograms. In this case recovery of 65 Kilograms was allegedly made from the accused despite which, the Court invoking the right to speedy justice flowing from Article 21 and delay in trial granted bail to the Accused.

15.4. In the case of ***Balkishan Vs. State of Madhya Pradesh***¹⁴ the Supreme Court considering long incarceration granted bail to an undertrial-accused who was incarcerated for 2 years and 5 months. The contraband in question was Poppy Straw, the commercial quantity of which is 50 kilograms but, recovery of 80 grams was allegedly made from the accused.

15.5. In the case of ***Badsha Sk. Vs. State of West Bengal***¹⁵ the Supreme Court considering long incarceration has granted bail to an undertrial-accused who was incarcerated for 2 years and 4 months. The contraband in question was Codeine Phosphate, the commercial quantity of which is 1 kilograms, but recovery of 100 bottles each of 100 ml. was allegedly made from the accused.

¹³ 2023 SCC OnLine 918

¹⁴ Petition for Special Leave to Appeal (Cri) No. 8415 of 2024

¹⁵ 2023 SCC OnLine SC 1867

15.6. In the case of *Man Mandal and Anr. Vs. State of West Bengal*¹⁶ the Supreme Court considering the long incarceration granted bail to an undertrial-accused who was incarcerated for 2 years despite being alleged to be in possession of commercial quantity of contraband.

15.7. In the case of *Ankur Chaudhary Vs. State of Madhya Pradesh*¹⁷ the Supreme Court considering the long incarceration granted bail to an undertrial-accused who was incarcerated for about 2 years.

15.8. In the case of *Nitish Adhikary alias Bapan Vs. State of West Bengal*¹⁸ the Supreme Court considering the long incarceration granted bail to an undertrial-accused who was incarcerated for 1 year and 7 months despite being alleged to be in possession of commercial quantity of contraband.

15.9. In the case of *Babor Ali Mondal Vs. State of West Bengal*¹⁹ the Supreme Court considering the long incarceration granted bail to an undertrial-accused who was incarcerated for 1 year and 4 months.

¹⁶ 2023 SCC OnLine SC 1868

¹⁷ Petition for Special Leave to Appeal (Cri) No. 4648 of 2024

¹⁸ 2022 SCC OnLine SC 2068

¹⁹ Criminal Appeal No. 3349 of 2024

15.10. In the case of ***Sukhvinder Singh Bittu Vs. State of Punjab***²⁰ the Supreme Court considering the long incarceration granted bail to an undertrial-accused who was incarcerated for 1 year despite being alleged to be in possession of commercial quantity of poppy straw.

15.11. In the case of ***Tinku Vs. State (NCT of Delhi)***²¹ the Delhi High Court considering the long incarceration granted bail to an undertrial-accused who was incarcerated for 2 years and 5 months. The contraband in question was Heroin, the commercial quantity of which is 250 grams. In this case recovery of 945 grams was allegedly made from the accused despite which the High Court invoking the right to speedy justice flowing from Article 21 and delay in trial granted bail to the Accused.

15.12. In the case of ***Kulwinder Singh Vs. State of Punjab***²² the Punjab and Haryana High Court considering the long incarceration granted bail to an undertrial accused who was incarcerated for 2 years and 8 months. The contraband in question was Etizolam Salt, the commercial quantity of which is 2.5 grams. In this case recovery of 99.876 grams was allegedly made from the accused despite which the

²⁰ Cri. Appeal No.1204 of 2024

²¹ 2024 SCC OnLine Del 9132

²² CRM-M-26704 of 2024

High Court invoking the right to speedy justice flowing from Article 21 and delay in trial granted bail to the Accused.

15.13. In the case of *Amey Sanjay Jadhav Vs. State of Maharashtra*²³ this Court very recently on 03.01.2025 considering the long incarceration of the accused has granted bail to the undertrial accused who was incarcerated for 2 years and 11 months. The contraband in question was 1.3 kilograms of Charas, the commercial quantity of which is 1000 grams.

16. Needless to state that when such orders are passed they are also considered from the touchstone of Right to liberty flowing from Article 21 of the Constitution and the discretionary power of the Court in the facts of the case.

17. Applicant before me is an individual of a fairly young age having limited financial means, likelihood of trial concluding in the near future is slim; there is an undue delay of 1 Year 11 Months and 16 Days in commencing with the trial, right of Accused to speedy justice is an important facet that needs to be considered in such a situation. Considering the irregularities in compliance of mandatory procedure provided in the NDPS Act as delineated hereinabove while recording the submissions of the Advocates as well as the position of law discussed in the foregoing paragraphs and long incarceration of

²³ BA No.911 of 2024 decided on 03.01.2025

Applicant-accused and the facts of the present case, I am inclined to grant bail to the Applicant – Accused on the following terms:-

- (i) Applicant – Mohd. Mobin Jahurul Hasan Manihar is directed to be released on bail on furnishing P.R. Bond of Rs.1,00,000/- (Rs. One Lakh only) with one or two sureties of the like amount;
- (ii) Applicant shall not influence any witness or tamper with the evidence in any manner;
- (iii) Applicant shall attend interrogation if called for by the Investigating Officer since chargesheet is already filed;
- (iv) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all hearing dates, unless specifically exempted and will not take any unnecessary adjournments. If he does so it will entitle the prosecution to apply for cancellation of this order;
- (v) Applicant shall not leave the State of Maharashtra without prior permission of Trial Court. He shall deposit his passport, if any, with the Trial Court within one week of his release from prison.

- (vi) Applicant shall keep the Investigating officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable; and
- (vii) Any infraction of the above conditions shall entail prosecution to apply for cancellation of bail granted to the Applicant.

18. It is clarified that the observations in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case.

19. Application is allowed and disposed.

Ajay

[MILIND N. JADHAV, J.]

AJAY
TRAMBAK
UGALMUGALE

Digitally signed by
AJAY TRAMBAK
UGALMUGALE
Date: 2025.01.20
16:03:03 +0530