

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2017 OF 2024

Ezobiyalo Ugochukwu Sunday

.. Applicant

Versus

The State of Maharashtra

.. Respondent

.....

- Mr. Gorakh Hanumant Liman, Advocate for Applicant.
- Mr. Sukanta A. Karmakar, APP for Respondent.
- PSI – Amol Suryavanshi, Mumbra Police Station, Thane City.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 28, 2025

P.C.:

1. Heard Mr. Liman, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking Bail in connection with C.R. No.1224 of 2021 registered with Mumbra Police Station for offences punishable under Sections 8(c), 22(b), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

3. Applicant is a foreign national having been incarcerated in prison since 18.12.2021 for past 3 years 4 months 10 days pending trial. He is arraigned as Accused No.1 in the present crime having been apprehended with 100 grams of alleged contraband namely

‘Mephedrone’.

4. Last Roznama indicates that matter is placed for re-conciliation before Court and the fact that the charge is framed or not is not clear.

5. Be that as it may, considering aforesaid long incarceration of Applicant pending trial case of Applicant deserves immediate consideration on facet of long incarceration pending trial.

6. Case of Applicant has been duly considered by this Court (Coram : Manish Pitale, J.) by order dated 02.09.2024 and subsequently by this Court on 27.03.2025. The order dated 27.03.2025 reads thus:-

“1. Heard Mr. Liman, learned Advocate for Applicant and Ms. Ganapathy, learned APP for Respondent.

2. Applicant is a foreign national. He is incarcerated in jail pursuant to his arrest on 18.12.2021 of the past more than 3 years 3 months and 9 days pending trial.

3. Mr. Liman draws my attention to the order dated 02.09.2024. He would submit that when this Bail Application was listed before this Court, this Court recorded the contentions of the Applicant and gave certain directions. One of the direction pertains to the Applicant requiring to file an additional affidavit giving certain information as stated in that order.

4. Mr. Liman today would contend that the time for filing the Affidavit as granted by the Court has expired and Affidavit has not been filed till date. He would contend that he has answers to the information sought for by the Court in that order, but desires to argue his case orally across the bar.

5. The Court is not interested in hearing the Applicant’s Advocate orally on any of the grounds for which he was directed by the Court to file the Affidavit. Further if the Applicant does not have the desired information or if Applicant is having inadequate information he should categorically state so on Affidavit to enable the Court to consider his case as directed by the Court. Since Applicant was in jail,

the Affidavit could not be filed.

6. *By taking a stand that Advocate for Applicant desires to only argue across the bar will not be considered by the Court once the Court has applied its mind, given substantial reasons and only thereafter directed the Applicant to file the Affidavit as per the previous order. Hence, at the request of the learned Advocate for Applicant, the time to file Affidavit is extended by a further period of two weeks from today.*

7. *Considering his long incarceration pending trial this Court is inclined to hear the present Applicant and decide the same on the next adjourned date.*

8. *Stand over to 09th April, 2025. To be placed under the caption 'First on Board' on the 'Supplementary Board'."*

7. In view of the above and the reasons stated in paragraph Nos.5 to 7 of the aforesaid order, the case of Applicant is allowed for grant of bail on the ground of long incarceration pending trial and he having substantially complied with the order dated 02.09.2024 passed by Court.

8. In view of the above, Applicant is therefore directed to be released on bail subject to following terms and conditions:-

(i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

(ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;

- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (v) Applicant shall co-operate with the conduct of trial and attend the trial Court on all 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;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail; and

(ix) The concerned prosecuting Agency shall immediately communicate this order of grant of bail to the concerned Registration Officer appointed under Rule 3 of the Registration of Foreigners Rules, 1992 within the meaning of the Foreigners Act, 1946. This condition is added in view of the decision of the Supreme Court in the case of *Frank Vitus v. Narcotics Control Bureau & Ors.*¹.

9. It is clarified that the observations made in this order are limited for the purpose of granting Bail only. They shall not be construed as observations on merit. The trial shall be adjudicated on the strength of evidence led by parties and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

10. Bail Application No.2017 of 2024 is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

1 Criminal Appeal No.2814-2815 of 2024 decided on 06.01.2025.