

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

BAIL APPLICATION NO. 3822 OF 2024

Haris Faizanullah Khan ... Applicant
Versus
The Union of India and Anr. ... Respondents

Adv. Taraq Sayed a/w Anish Pereira and Ashwini Achari for the Applicant.

Mr. Shreeram Shirsat a/w Ms. Karishma Rajesh APP for Respondent No.1-NCB.

Mr. Ajay Patil, APP for Respondent-State.

**CORAM: MANISH PITALE, J.
DATE : 16th JANUARY 2025**

P.C. :

. This is the second bail application of the applicant herein. The earlier bail application bearing Bail Application No. 332 of 2022 was decided on merits and dismissed by this Court by an order dated 19th August 2024.

2. This bail application has been filed and it is being pursued on the basis that with passage of time, the applicant has undergone 1/3rd of the maximum sentence that can be imposed upon him, even if he is to be convicted for the offences with which he has been charged. In this regard, the learned counsel for the applicant relies upon Section 479(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

3. It is also sought to be indicated that the trial is not progressing appreciably and that only the second witness is now being examined by the prosecution.

4. On the other hand, the learned counsel appearing for the respondent-NCB submits that the prayer made on behalf of the applicant cannot be entertained in the light of Section 479(2) of the BNSS, which prohibits entertaining such an application, if the applicant-accused is facing investigation/enquiry or trial in more than one offence or if multiple cases are pending against such an applicant.

5. In that regard, attention of this Court is invited to details of the 12 cases, in which the applicant is facing prosecution. One of the cases pertains to offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 and others pertain to body offences. On this basis, it is submitted that this second bail application filed on behalf of the applicant ought not to be entertained.

6. The learned counsel for the applicant has not seriously disputed the pendency of the aforementioned cases against the applicant. Taking the aforesaid fact into account, reference can be made to Section 479 of the BNSS. Undoubtedly, sub-Section (1) of the said provision indicates that an accused/under-trial can be released on bail, if he has already undergone $\frac{1}{2}$ of the maximum imprisonment specified for the offence with which he is charged

and of he is a first time offender, he can be released on bond by the Court, if he has undergone detention for a period extending upto 1/3rd of the maximum period of imprisonment.

7. This Court is of the opinion that since sub-Section (2) of the aforesaid provision starts with a non-obstante clause, the contents thereof are absolutely clear. Section 479 (2) of the BNSS, reads as follows :

“Section 479 – Maximum period for which under-trial prisoner can be detained.

(1) *****

(2) Notwithstanding anything in sub-section (1), and subject to the third proviso thereof, where an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court.

(3) ***** ”

8. In the present case, it is undisputed that the applicant is facing investigation/trial in 12 cases, one of which pertains to offence under the NDPS Act. Considering the plain language of Section 479(2) of the BNSS quoted hereinabove, the prayer made on behalf of the applicant in the facts of the present case cannot be entertained.

9. In this connection, reliance placed on order in the case of ***Appasaheb Ramchandra Deshmukh v/s. Directorate of Enforcement and Anr.*** (order dated 10th December 2024 passed in Criminal Bail Application No. 4140 of 2024) on behalf of the

respondent-NCB, is justified. In the said order, this Court took note of Section 479(2) of the BNSS, in the context of Section 479(1) thereof to hold that even in cases where the applicant was arraigned as accused as an office bearer of an institution, the prohibition under Section 479(2) of the BNSS would apply with full force.

10. In the facts of the present case, this Court is of the opinion that this bail application of the applicant cannot be entertained. Accordingly, it is dismissed.

MANISH PITALE, J.