

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3923 OF 2024

Badshaha Mohammad Rafiq Ansari .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Mr. Amin Solkar a/w. Ms. Faiza Gawandi and Misbaah Solkar, Advocates for Applicant.
 - Mr. Hitendra J. Dedhia, APP for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 24, 2025

P.C.:

1. Heard Mr. Solkar, learned Advocate for Applicant and Mr. Dedhia, 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.102 of 2021 registered with DCB, CID, ANC Worli Unit for offences punishable under Sections 8(c) and 22(c) of the Narcotics and Psychotropic Substances Act, 1985 (for short '**NDPS Act**') apprehended with 85 grams of alleged contraband 'Mephedrone'. Date of arrest is 10.12.2021 and he is in incarceration for 3 years 3 months and 14 days.

3. Mr. Solkar would persuade the Court that even though Applicant has been apprehended and arrested while in possession of alleged contraband, considering his long incarceration, no antecedents

and pace of the trial been slow and its completion being an distinct impossibility in the near foreseeable future, release the Applicant on bail.

4. Mr. Dedhia, learned APP would persuade the Court to consider that Applicant has been arrested with commercial quantity of alleged contraband and thus rigors of Section 37 of the NDPS Act would apply. This Court is aware of the fact that in the case of commercial quantity having been recovered, rigors of Section 37 of NDPS Act would apply in a very stringent condition and Court would also have to record the finding to the effect that Applicant has not committed the crime but discretionary power of this Court to grant bail is unfettered especially in the case where the trial has been progressing abysmally, slowly as pointed out by Mr. Solkar.

5. Mr. Dedhia, learned APP would also inform that till date 2 witnesses on behalf of prosecution side have been examined and in that view of the matter the discretionary power of this Court would be unfettered for grant of bail despite the rigors of Section 37 of the NDPS are applicable. The right to speedy trial is a fundamental right as envisaged and enshrined under Article 21 of the Constitution of India. This Court has also considered the same while releasing undertrials and accused persons in proceedings under NDPS Act for being in incarceration for a long time pending trial. Hence without delineating

into merits of the matter, on the ground of long incarceration of Applicant pending trial, the case of Applicant is considered by the Court for releasing him on bail.

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

7. In the case of *Nitish Adhikary alias Bapan Vs. State of West Bengal*¹ the Supreme Court considering long incarceration of an undertrial-accused granted him 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.

8. In the case of *Babor Ali Mondal Vs. State of West Bengal*² the Supreme Court considering the long incarceration granted bail to an undertrial-accused who was incarcerated for 1 year and 4 months.

9. In the case of *Sukhvinder Singh Bittu Vs. State of Punjab*³ the Supreme Court considering long incarceration of an undertrial-accused

1 2022 SCC OnLine SC 2068

2 Criminal Appeal No. 3349 of 2024

3 Cri. Appeal No.1204 of 2024

granted him bail who was incarcerated for 1 year despite being alleged to be in possession of commercial quantity of poppy straw.

10. In the case of *Mohd. Mobin Jahurul Hasan Manihar Vs. State of Maharashtra*⁴ - this Court on 20.01.2025 considering long incarceration of the under-trial accused granted bail to him who was incarcerated for 1 year 11 months. The contraband in question was 220 gms of MD , the commercial quantity of which is 50 gms.

11. From the above, it is apparent that inspite of the stringent test to be met by the Accused person under Section 37 of the NDPS Act for being released on bail, it has been held that the same does not fetter grant of Bail to the Accused person on the ground of undue delay in the completion of trial. It has been held that incarceration for substantial period of time generally militates against the right to life and liberty guaranteed under Article 21 of the Constitution of India and hence the conditional liberty must override the statutory embargo under Section 37 of the NDPS Act.

12. In the above *prima facie* facts and circumstances of the case the Applicant before me has made out a case for bail. In the absence of criminal antecedents, investigation being completed and chargesheet being filed completion of trial in the near foreseeable future being doubtful, it entitles the Applicant for grant

⁴ BA No.713 of 2024 decided on 20.01.2025

of bail in above 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) Applicant is permitted to furnish provisional cash bail of Rs.25,000/- each for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;
- (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 Monday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Monday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark his 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 do 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) 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; and
- (ix) 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.

13. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall be adjudicated on the basis of the evidence led by the parties uninfluenced by the present order and strictly in accordance with law.

14. Bail Application No.3923 of 2024 are allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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HARSHADA
HANUMANT
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Date: 2025.03.24
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