

Amberkar

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

CRIMINAL BAIL APPLICATION NO. 3931 OF 2024

Mohammad Faisal Khatib

.. Applicant

Versus

The State of Maharashtra

.. Respondent

.....

- Mr. Ayaz Khan a/w Mr. Dilip Mishra, Ms. Zehra Charania and Ms. Mallika Sharma, Advocates for Applicant.
- Mr. R.M. Pethe, APP for State.

.....

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 10, 2025

P. C.:

1. This Application is filed seeking regular bail in connection with F.I.R. No.249 of 2023 registered with Nerul Police Station. The offence is under Section 8, 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985¹.

2. The case of prosecution is that Accused was found to be in possession of commercial quantity of LSD² when he was intercepted based on secret information. It is alleged by the prosecution that 60 blot papers each weighing 0.016 gm and admeasuring 0.5cm x 0.5 cm was recovered fro personal search of Applicant. Applicant came to be arrested on 31.05.2023 has been in custody for a period of over 21 months.

¹ "NDPS Act"

² A non-propreitory name for (+)LYSEERGIDE, a Narcotic Drug and Psychotropic Substance listed at Sr. No.133 of the Table as per *clause (viiia) of Section 2* of the NDPS Act having 'small quantity' as 0.002 gm and 'commercial quantity' as 0.1 gm.

3. Mr. Khan, learned Advocate appearing on behalf of Applicant would at the outset, raise the ground of non-compliance of Section 50 of the NDPS Act. He would submit that the contents of Section 50 are not reflected in the Panchanama as well as the FIR. That apart, he would further raise the ground of violation of Section 52A of the NDPS Act. He would submit that Applicant has no antecedents and has a degree in Architecture to his name and was also pursuing a Masters Degree in Tourism and Travel Management on the date of his arrest. He would submit that charge has not been framed in the Trial Court even after considerable time having elapsed since the Applicant's arrest and thus would pray for the Applicant to be set at liberty since his indictment has brought his future prospects at a standstill.

4. Mr. Pethe, learned APP represents Respondent – State of Maharashtra. He would ardently argue against the submissions of Mr. Khan. He would submit that provisions of Section 42 of the NDPS Act has been complied with and non-compliance of procedure is not a sufficient ground to grant bail in cases where Section 37 of the NDPS Act is attracted. He would submit that the quantity recovered from the Applicant is commercial quantity. He would submit that the offences under the NDPS Act affects the society at large and destroy the socioeconomic fabric of the nation, in such circumstances individual interests such as grounds of education of the Applicant pleaded by Mr.

Khan have to make way in the larger interest of the society. He would thus pray for rejection of the Application.

5. Heard Mr. Khan and Mr. Pethe and with their able assistance, perused the record of the case including the additional Affidavit dated 11.02.2025 filed by Mr. Khan containing details of the educational qualifications of the Applicant. The Affidavit when seen shows that Applicant has graduated in Architecture from University of Mumbai on 26.10.2020. Thereafter he has joined Christ deemed to be University, Bangalore, an autonomous Educational Institution for pursuing his Masters Degree in Tourism and Travel Management.

6. The learned Advocates at both sides are at variance with regards to the compliance of procedural requirements of the NDPS Act. Rigours of Section 37 is attracted in the present case³. Be that as it may, in the facts of the present case, I deem it apposite to adjudicate the Application based on the fundamental cornerstone of Bail Jurisprudence i.e. to ascertain whether the Applicant will subject himself for trial. This is because despite the rigors of Section 37, the incarceration of Applicant for over 21 months and slim likelihood of

3 Under provisions of Section 37 of NDPS Act, if Bail Application is opposed by Public Prosecutor, then only if Court is satisfied of below mentioned twin conditions, bail may be granted to an under-trial accused–

(i) that there are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) that the accused is not likely to commit any offence while on bail.

trial concluding in the near foreseeable future is an infringement of Applicant's right to speedy trial flowing from Article 21. This makes me deem it appropriate to exercise the unfettered powers conferred upon High Courts to grant bail despite any conditions such as one under Section 37 of the NDPS Act. That apart, I am also *prima facie* considering the educational pursuits of the Applicant and hope that he shall continue pursuing his studies which were halted due to his incarceration.

7. 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 famous Meerut Conspiracy case. Justice Mukherjee 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

4 AIR 1931 ALL 356

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.”

8. In the following decisions of the Supreme Court concerning 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:-

8.1. In the case of ***Nitish Adhikary alias Bapan Vs. State of West Bengal***⁵ 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.

8.2. In the case of ***Babor Ali Mondal Vs. State of West Bengal***⁶ the Supreme Court considering the long incarceration granted bail to an undertrial-accused who was incarcerated for 1 year and 4 months.

8.3. In the case of ***Sukhvinder Singh Bittu Vs. State of Punjab***⁷ the Supreme Court considering long incarceration of an undertrial-accused

5 2022 SCC OnLine SC 2068

6 Criminal Appeal No. 3349 of 2024

7 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.

9. Applicant is a young man aged about 27 years who is incarcerated for more than 21 months. He has no antecedents and was a student pursuing higher studies in Masters Degree in Tourism and Travel Management from Christ University, Bangalore the time of his arrest. There is no reason for me to have a belief that he will not subject himself for trial. The fate of charges attracted against him would be ultimately decided at the stage of trial. At this stage, I am inclined to release the Applicant on Bail on the above *prima facie* observations from the record considering the delay in trial as well as his future prospects. This Court believes that even in a case where Applicant is found to be guilty later, at the stage of trial, his eventual re-integration into the society would be better served if he is released on bail at this stage, especially where an accused is studying his Masters Degree from a prestigious University after his graduation in Architecture.

10. In view of the above, present Application is allowed in terms of prayer clause (a) subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond of Rs.50,000/- (Rs. Fifty Thousand only) with one or two sureties of the like amount;

- (ii) Applicant shall report to the Investigating Officer at Nerul Police Station, as and when called by the Investigating Officer;
- (iii) 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;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (v) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (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;
- (vii) Any infraction of the conditions shall entail prosecution to apply for cancellation of bail granted to the Applicant.

11. 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 proceed uninfluenced by the present order.

12. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Amberkar

RAVINDRA
MOHAN
AMBERKAR

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2025.03.13
14:51:02 +0530