

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 4166 OF 2024

Ganesh Appaji Sonawane ...Applicant
Versus
State of Maharashtra ...Respondent

Mr. Advait Tamhankar, i/b Kamlesh M. Satre, for the Applicant.
Mr. P. V. Devkar, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.
RESERVED ON: 30th JANUARY 2025
PRONOUNCED ON: 21st FEBRUARY 2025

ORDER:-

1. Heard the learned Counsel for the parties.
2. The Applicant, who is arraigned in NDPS Special Case No. 498 of 2023 arising out of CR No. 177 of 2022 registered with Anti Narcotic Cell (ANC), Azad Maindan Unit, Mumbai, for the offences punishable under Section 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act"), has preferred this application to enlarge him on bail.
3. On the night intervening of 17th and 18th October 2022, while the ANC police were on patrolling duty at about 0.20 am near Alex Cottage, LBS Marg, Kurla, Mumbai, the Applicant was found moving suspiciously. The Applicant was accosted. The Applicant was apprised of his right under Section 50 of the NDPS At. Thereafter, in the presence of

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the public witnesses, personal search of the Applicant was conducted. In the right pocket of the trouser of the Applicant a transparent polythene bag was found. It contained a white powdery substance, which appeared to be Mephedrone (MD). It weighed 210 gm. The contraband substance was seized and sealed.

4. During the course of investigation, Karim Shaikh (A2), a co-accused, came to be arrested. Post completion of investigation, charge-sheet came to be lodged.

5. In fact, this is the second application for bail. The first Application, BA No. 4228 of 2023, was withdrawn on 2nd April 2024. However, having regard to the period of incarceration of the Applicant, by the said order, the learned Special Judge seized with NDPS Special Case No. 498 of 2023 was requested to make an endeavour to conclude the trial as expeditiously as possible.

6. The learned Counsel for the Applicant submitted that there has not been any progress in the trial. Charge could not be framed as the co-accused, who has been enlarged on bail, did not appear. The Applicant has been in custody since 18th October 2022. Having regard to the fact that charge has not yet been framed, the trial is not likely to be concluded within a reasonable period. Therefore, the Applicant deserves to be enlarged on bail on the ground of long period of incarceration.

7. To lend support to the aforesaid submission, Mr. Tamhankar, learned Counsel for the Applicant, placed a strong reliance on an order passed by this Court in BA No. 713 of 2024 (**Mohd. Mobin Jahurul Hassan Manihar Vs State of Maharashtra**).

8. The learned APP resisted the prayer for bail. It was urged that the Applicant was found in possession of 210 gms of MD and, therefore, the interdict contained in Section 37 of the NDPS Act comes into play. Since this Court did not entertain the prayer for bail and the first Application was, thus, withdrawn, the instant Application also deserves to be rejected as no *prima facie* case for exercise of discretion in favour of the Applicant is made out. The learned APP, however, could not controvert the fact that charge has not yet been framed.

9. Ordinarily, when this Court has declined to entertain a prayer for bail and, consequently, the Application stood withdrawn, afresh consideration of the prayer for bail, in the absence of any change in circumstances, does not merit countenance. However, in the backdrop of the long period of incarceration, without a realistic prospect of the conclusion of the trial, especially in the light of the fact that this Court had already requested the learned Special Judge to commence and conclude trial expeditiously, the application deserves consideration from the perspective of the right of the accused for speedy trial.

10. In the case at hand, the Applicant has been incarcerated for two and half year.

11. Despite direction to commence and conclude the trial and the earnest endeavour of the learned Special Judge to commence the trial, as is evident from the Roznama of Special Case No. 498 of 2023 placed for the perusal of the Court by the learned Counsel for the Applicant, even charge could not be framed.

12. In a long line of decisions, the Supreme Court has emphasized that long period of incarceration without a real prospect of the conclusion of the trial impinges upon right of the accused to have a speedy trial which is a facet of right to life guaranteed under Article 21 of the Constitution of India. It is true that the interdict contained in Section 37 of the NDPS Act 1985 comes into play and before releasing accused on bail twin test envisaged therein is required to be satisfied. However, the statutory restriction in the matter of grant of bail cannot be so construed as to impinge upon right of the accused under Article 21 of the Constitution of India. The Supreme Court has in terms ruled that the statutory restrictions in the matter of grant of bail melt down in the face of long period of incarceration and do not constitute a fetter on the power of the Constitutional Courts to grant bail.

13. A useful reference, in this context, can be made to the decision of the Supreme Court in the case of **Union of India Vs K. A. Najeeb**¹ wherein the accused was facing trial for the offences punishable under the Unlawful Activities Prevention Act and the rigours of Section 43-D(5) of the said Act, were attracted. The Supreme Court observed 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 (“NDPS”) which too have somewhat rigorous conditions for grant of bail, this Court in *Paramjit Singh v. State (NCT of Delhi)*² , *Babba v/s. State of Maharashtra*³ and *Umarmia v/s. State of Gujarat*⁴ 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.

....

17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of UAPA per-se does not oust the ability of Constitutional Courts to

1 AIR 2021 SC 712.

2 (1999) 9 SCC 252.

3 (2005) 11 SCC 569.

4 (2017) 2 SCC 731.

grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

(emphasis supplied)

14. In the case of **Rabi Prakash V/s. State of Odisha**⁵ the Supreme Court has observed as under :

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned Counsel for the Respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged

5 2023 SCC Online SC 1109

incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b) (ii) of the NDPS Act.”

15. In the case of **Mohd Mobin Jahurul Hasan Manihar (Supra)**, a learned Single Judge of this Court, after an extensive survey of the judgments in which the accused have been enlarged on bail on the count of long period of incarceration, was persuaded to release the accused therein, who was allegedly found in possession of 220 gm MD, and had been in custody for one year and 11 months.

16. Reverting to the facts of the case, it is imperative to note that the Applicant has been in custody since 18th October 2022. Charge has not yet been framed. It is extremely unlikely that the trial can be commenced and concluded within a reasonable period. Further detention of the Applicant, in the circumstances of the case, would impinge upon the right of the accused to have a speedy trial.

17. I am, therefore, inclined to exercise the discretion in favour of the Applicant.

18. Hence the following order:

: O R D E R :

(i) The Application stands allowed.

- (ii) The Applicant be released on bail in NDPS Special Case No.498 of 2023 arising out of CR No.177 of 2022 registered with Anti Narcotic Cell, Azad Maidan Unit, Mumbai, on furnishing a PR bond in the sum of Rs.1,00,000/- and one or two sureties in the like amount to the satisfaction of the Special Court.
- (iii) The applicant shall mark his presence before Anti Narcotic Cell, Azad Maidan Unit, Mumbai, on the first Monday of every month between 10.00 am to 12.00 noon for a period of three years or till the conclusion of the trial, whichever is earlier.
- (iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.
- (v) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.
- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an

expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

[N. J. JAMADAR, J.]