

Shabnoor

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

BAIL APPLICATION NO.4823 OF 2024

Jaybharat Rupsingh Rathod	... Applicant
V/s.	
Union of India & Anr.	... Respondents

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Mr. Taraq Sayed alw Mr. Anish Pereira a/w Ms. Ashwini Acharli, for the applicant.

Mrs. Aruna Pai, for respondent No.1 (NCB) (UOI).

Mrs. Mahalakshmi Ganapathy, APP for the State – respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : JULY 28, 2025

P.C.:

1. The present application is filed by the applicant under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, thereby seeking his release on bail in connection with Crime Register No.43 of 2021, registered with the Narcotics Control Bureau, Mumbai. The applicant is facing prosecution for offences punishable under Sections 8(c) read with Sections 20(b)(ii)(C), 25, 27A, 28, and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act").

2. As per the case put forth by the prosecution, on 24th April 2021, at around 18:00 hours, the Zonal Unit of Narcotics Control Bureau, Mumbai, received specific and reliable information that a

vehicle parked near Building No.2, Mhada Colony, BSUP, Sambhaji Nagar, Badlapur (East), contained a consignment of contraband (Ganja), which was allegedly concealed in a specially created cavity of the said vehicle. The information further revealed that the contraband was kept there by one Sunil Bhandari and was to be trafficked by him in association with the present applicant–Jaybharat Rathod–on 25th April 2021, at around 9:30 a.m.

3. Acting on the said information, and after obtaining due authorization as per the provisions of the NDPS Act, a trap was laid at the indicated spot. During surveillance, a Toyota Innova vehicle was found parked and unattended. Thereafter, the present applicant, Jaybharat Rathod, arrived at the location and opened the door of the vehicle, at which point the NCB officials carried out a raid. Upon search of the vehicle, a total of 28 kilograms of Ganja was found, concealed in a cavity and under the bonnet. A panchnama was prepared on the spot as per legal requirements. Following this, an offence was registered, and the applicant was placed under arrest on 25th April 2021. The applicant had earlier moved an application for bail before the learned Sessions Court, which came to be rejected. Aggrieved by the same, he has now approached this Court seeking bail.

4. Learned Advocate appearing for the applicant submitted that the applicant has been in custody since 25th April 2021 and has undergone incarceration for a period of more than three years. He placed reliance on an order passed by the Supreme Court in Special Leave to Appeal (Criminal) No.13471 of 2024, dated 6th December 2024, whereby bail was granted to the co-accused in the

present case on the ground of prolonged custody. It is contended that the case of the present applicant stands on an equal footing as that of the co-accused, and, therefore, the applicant is also entitled to be enlarged on bail by applying the principle of parity. It is further submitted that there is no likelihood of early conclusion of the trial, and continued incarceration would amount to pre-trial punishment. Hence, it is prayed that the applicant be released on bail.

5. On the other hand, learned Additional Public Prosecutor and the learned Special Public Prosecutor appearing for the NCB have vehemently opposed the grant of bail. It is submitted that although the co-accused was released on bail by the Supreme Court, the NCB was not given an opportunity to present its case before the Apex Court. It is also brought to the notice of this Court that the NCB has already moved an application before the learned Trial Court seeking cancellation of bail of the said co-accused, on the ground that he has, after being released, involved himself in another offence under the NDPS Act. It is apprehended that if the present applicant is also released on bail, he may again indulge in similar unlawful activities, thereby posing a threat to public safety and defeating the purpose of stringent provisions under the NDPS Act. It is, therefore, prayed that the present application may be rejected.

6. Upon perusal of the material placed on record and more particularly the order dated 6th December 2024 passed by the Supreme Court, it is evident that the co-accused, who was arrested in the same crime and alleged to have played a similar role as the

present applicant, has been granted bail on the ground of prolonged incarceration. Merely because the Narcotics Control Bureau (NCB) was not represented before the Supreme Court at the time of hearing, that by itself does not amount to a distinguishing circumstance unless substantive and material factual differences between the two accused are brought on record. In fact, the law is well settled that if the prosecuting agency was not heard at the time of grant of bail, the appropriate course is to approach the same court for cancellation of bail, rather than using such absence as a ground to oppose bail for another similarly placed co-accused. Therefore, unless any substantial material distinction is shown between the role of the co-accused and the present applicant, the principle of parity shall apply.

7. Further, it is brought to the notice of this Court that the NCB has filed an application before the Trial Court for cancellation of bail granted to accused No.2, alleging that he has been involved in a fresh offence under the NDPS Act after being released. However, such subsequent conduct or supervening circumstances concerning accused No.2 are individual and specific to him, and cannot be held against the present applicant, unless similar allegations are made against him. At present, no such allegation is made against the applicant. The mere filing of such application cannot deprive the applicant of the right to be considered for bail on the ground of prolonged detention and parity. It is also well established that delay in commencement or conclusion of trial, especially when not attributable to the accused, is a relevant factor for considering bail, even under statutes like the NDPS Act. Therefore, the subsequent

conduct of accused No.2 is not a legally sustainable ground to deny bail to the applicant.

8. Considering the above discussion, including the fact that the applicant has remained in custody since 25th April 2021, that the trial is yet to commence, and that the co-accused with a similar role has already been granted bail by the Supreme Court, this Court finds no justifiable reason to deny the applicant the benefit of bail on the ground of parity and prolonged incarceration. It is, therefore, directed that the applicant shall be released on bail on the same terms and conditions as imposed on co-accused No.2 by the Supreme Court.

9. In view of the above discussion, the following order is passed:

(i) The Bail Application is allowed.

(ii) The applicant shall be released on bail in connection with Crime Register No. 43 of 2021 registered with Narcotics Control Bureau, Mumbai for offences punishable under Sections 8(c) read with 20(b)(ii)(c), 25, 27A, 28 and 29 of NDPS Act, upon furnishing a Personal Bond of ₹50,000/- (Rupees Fifty Thousand only) along with one or more solvent sureties in the like amount, to the satisfaction of the learned Trial Court, subject to the following conditions:

(a) The applicant is directed to give attendance to the Office of NCB, Mumbai on last Monday of the month of September and March of every year from 10.00 a.m. to 12.00 noon till completion of trial.

(b) The applicant shall not threaten the prosecution witnesses.

(c) The applicant shall regularly attend the proceedings before the trial Court.

(d) Needless to say, violating of the condition above will make the applicant liable for cancellation of bail.

10. It is also made clear that, as observed by the Supreme Court in its order that, the applicant shall continue to cooperate in the trial and in the event, the Trial Court or the prosecution finds that the applicant is delaying the conclusion of trial, it will be open for them to approach this Court of the same for appropriate orders.

11. With this, the Bail Application stands disposed of in aforesaid terms.

(AMIT BORKAR, J.)