

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.5302 OF 2024

Nwachiyaso Israel @ Sam S/o. Nwachukwu .. Applicant

Versus

Union of India and Anr. .. Respondents

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- Mr. Ayaz Khan a/w. Ms. Zehra Charania and Ms. Mallika Sharma, Advocates for Applicant.
 - Ms. Aruna Pai, SPP for Respondent No.1.
 - Ms. Mahalakshmi Ganapathy, APP for Respondent No.2.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 04, 2025

P.C.:

1. Heard Mr. Khan, learned Advocate for Applicant; Ms. Pai, learned SPP for Respondent No.1 and Ms. Ganapathy, learned APP for Respondent No.2.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') seeking Bail in connection with F. No.NCB/ MZU/CR – 82/2021 registered with Narcotic Control Bureau for offences punishable under Sections 8(c) read with Sections 21(b), 22(c), 23, 27A, 28, 29, 32B and 35 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short '**NDPS Act**').

3. Perused the order dated 19.03.2025. Considering the facts in the present case, Ms. Pai, learned SPP would persuade the Court to consider that if the present Application is heard and decided by the

Court on the ground of *prima facie* observations on merits of the prosecution case, it would hamper the prosecution's case in trial.

4. She would submit that prosecution is relying on strong circumstantial evidence for indicting the Applicant and therefore would persuade the Court to refrain from commenting upon any of the facts which would otherwise entail to the benefit of the Applicant in the trial. On the ground of long incarceration she would submit that Applicant is in jail for around 3 years 7 months pending trial.

5. In view of the submissions made by Ms. Pai, learned SPP I am of the opinion that the long incarceration of Applicant pending trial for the period in excess of 3 years and 7 months and the probability of prosecution examining 45 witnesses in the Trial as stated in the charge-sheet, would *prima facie* and undoubtedly protract the trial resulting in protraction of custody of the Applicant in jail. Hence on this ground itself the Application for bail can be decided.

6. One of the significant issue in an offence under the Special Act is also the right of Accused to a speedy trial. In that view of the matter, case of Applicant is considered for bail on the basis of his long incarceration pending trial and uncertainty of the trial being commenced or completed in the near foreseeable future and hence Applicant can be released on bail subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount;
- (ii) 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;
- (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 Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark 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 does 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) 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; and
- (ix) The concerned prosecuting Agency shall immediately communicate this order of grant of bail to the concerned Registration Officer appointed under Rule 3 of the Registration of Foreigners Rules, 1992 within the meaning of the Foreigners Act, 1946. This condition is added in view of the decision of the Supreme Court in the case of *Frank Vitus v. Narcotics Control Bureau & Ors.*¹.

7. It is clarified that the observations made in this order are limited for the purpose of granting Bail only. They shall not be construed as observations on merit. The trial shall be adjudicated on the strength of evidence led by parties and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

¹ Criminal Appeal No.2814-2815 of 2024 decided on 06.01.2025.

8. Bail Application No.5302 of 2024 is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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