

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4939 OF 2024

Emeka Cyprian	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

WITH
BAIL APPLICATION NO.54 OF 2025

Chukwu Joseph	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Gorakh Liman, Advocate for Applicant in Bail Application No.4939 of 2024.
 - Mr. Sukanta A. Karmakar, APP for Respondent in Bail Application No.4939 of 2024.
 - Ms. Zehra Charania a/w. Mr. Ayaz Khan, Mr. Dilip Mishra and Ms. Mallika Sharma, Advocates for Applicant in Bail Application No.54 of 2025.
 - Mr. Dinesh J. Haldankar, APP for Respondent in Bail Application No.54 of 2025.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 15, 2025

P.C.:

1. Heard Mr. Liman, learned Advocate for Applicant in Bail Application No.4939 of 2024; Mr. Karmakar, learned APP for Respondent in Bail Application No.4939 of 2024; Ms. Charania, learned Advocate for Applicant in Bail Application No.54 of 2025 and Haldankar, learned APP for Respondent in Bail Application No.54 of 2025.

2. These are Applications under Section 439 of Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') seeking Bail in connection with C.R.No.19 of 2020 registered with Bangur Nagar Police Station and thereafter transferred to ANC, Kandivli Unit, Mumbai bearing C.R. No.38 of 2020 for offences punishable under Sections 8(c), 21(c) and 29 of the Narcotics and Psychotropic Substances Act, 1985 (for short '**NDPS Act**') and Section 14A(b) of the Foreigners Act, 1946.

3. These are two Bail Applications decided together by this common order. Applicant in Bail Application No.4939 of 2024 is arraigned as Accused No.3 and Applicant in Bail Application No.54 of 2025 is arraigned as Accused No.2. They were arrested on 03.12.2020 and are in long incarceration pending trial for past 4 years 4 months 12 days.

4. I am informed by learned Advocates for Applicants that charge has not been framed and trial has not commenced. Both Applicants are foreign nationals.

5. On 24.02.2025, after hearing learned Advocate for Applicant and learned APP in Bail Application No.54 of 2025, following order was passed:-

"1. Heard.

2. Applicant is indicted in an NDPS offence for possessing commercial quantity of alleged contraband and has been in

incarceration for 4 years in custody.

3. Ms. Charania, learned Advocate for Applicant would submit that prosecution at the time of carrying out the seizure of the alleged contraband has mixed the contraband seized from various packets. This prima facie is impermissible in view of the following decisions of the Courts:-

- 1) U.O.I. Vs. Bal Mukund & Ors.¹,*
- 2) Shabbir Usman Shaikh Vs. the Union of India & Anr.²,*
- 3) Sameer Rais Shaikh Vs. the State of Maharashtra³,*
- 4) Mukesh Kumar Saha Vs. the State of Maharashtra⁴ and*
- 5) Zaheer Gayasuddin Shaikh Vs. the State of Maharashtra and Anr.⁵*

4. Learned APP shall take appropriate instructions on the aforesaid submissions made by the learned Advocate for Applicant regarding mixing and apprise the Court of all details on the next adjourned date.

5. In that view of the matter, Application would be taken up for hearing on the next adjourned date on merits of the case.

6. Stand over to 25th March, 2025. To be listed on Supplementary Board.”

6. Aforesaid defence equally applies to the case of Accused

No.3 also.

7. Today when the matter is called out, both learned APPs would persuade the Court to consider the ground of long incarceration for grant of bail rather than opine any opinion on merits of matter qua the question which has been raised by the Court in its order dated 24.02.2025 lest it would affect the trial of the prosecution case in the Trial Court. Undoubtedly the incarceration of Applicants is long enough considering that charge has not been framed and present offence been under the Special Act. Indictment of Applicants is on the ground of they having been apprehended with alleged contraband

Cocaine while patrolling duty and on intelligence input.

8. However without going into merits of the case, I am inclined to decide the Applications on the ground of long incarceration of Applicants pending trial. That apart, there is also another ground of non-compliance of procedure contemplated under Section 52A of the NDPS Act pleaded by both Applicants. The complicity of Applicants and prosecution case can be proved by prosecution at the time of trial. Solely on the ground of long incarceration pending trial, charge not having been framed and Applicants facing the ignominy of being incarcerated without trial and trial not been commenced and no possibility of trial being concluded in the near foreseeable future, entitle the Applicants for grant of bail.

9. In view of the above considering long incarceration of Applicants in jail for 4 years 4 months 12 days pending trial, both Bail Applications are allowed subject to the following terms and conditions:-

- (i) Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- each with one or two sureties in the like amount;
- (ii) Before their actual release from jail, Applicants shall furnish their addresses where they proposes to reside after their release from jail to the concerned Police Station and also to the trial Court;

- (iii) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;
- (iv) Applicants shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark their presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicants shall mark presence on the next working day;
- (v) Applicants 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 they do so, it will entitle the prosecution to apply for cancellation of this order;
- (vi) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicants shall not influence with any of the witnesses or tamper with the evidence in any manner; and
- (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.

(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.

10. 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.

11. Bail Application No.4393 of 2024 and Bail Application No.54 of 2025 are allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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