

Ajit Pathrikar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 73 OF 2025**

Ashraf Mustafa Shah ...Applicant
Versus
Union Of India and Anr. ...Respondents

**Ms. Ashwinii Achari a/w Anish Pereira i/b Taraq Sayed, for
the Applicant.**

Mr. Yogesh Dabke, APP for the Respondent-State.

Ms. Manisha Jagtap, for Respondent-NCB.

**CORAM Dr. Neela Gokhale, J.
DATED: 12th November 2025**

PC:-

1. The Applicant seeks his release on bail in connection with FIR No. 46 of 2020 dated 29th December 2020 registered with NCB for the offences punishable under Sections 8(c), 20(b)(ii)(c), 29 and 35 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “NDPS Act”).

2. The facts of the case, in brief, are that on 28th December 2020, NCB, Mumbai received specific intelligence regarding the Applicant reportedly being involved in illicit trafficking of Charas. Based on the intelligence, a team was constituted and

surveillance was set up near Gopal Ashram Hotel, MIDC Complex, Mulund, Thane (West). The Applicant was found on the said spot and was apprehended after complying with the statutory provisions of the NDPS Act. He was found to be carrying a blue bag containing 4 Kg of Charas. Panchanama was prepared as per the provisions of the Act. Thereafter, a search of the applicant's residence revealed 11 Kg of Ganja in the said premises. The same was recovered and seized. The CA report on record is positive for both the contraband; Charas as well as Ganja. Pursuant to the registration of the FIR, the Applicant was arrested on 29th December 2020.

3. The Applicant made a bail application before the Special Court, NDPS Court at Greater Bombay. However, by order dated 13th January 2022, the said application was rejected. Hence, the Applicant is before this Court for the relief as prayed.

4. Ms. Ashwinii Achari, learned Counsel for the Applicant, submits that the Applicant is in custody from 29th December

2020 and on the sole ground of long incarceration, he deserves to be released on bail. She submits that the Ganja recovered from the Applicant's house is of non-commercial quantity *albeit* the quantity of Charas recovered from his person is of commercial quantity. She submits that although there are antecedents against the Applicant in respect of FIR registered against him in 2015 and 2017, however, the said offences are bailable offences. In these circumstances, Ms. Achari prays that the Applicant be released on bail.

5. *Per contra*, Ms. Manisha Jagtap, learned SPJ, contests the Bail Application. She submits that this is a serious offence affecting the economy and young generation of this country. She submits that 4 Kg of Charas recovered from the person of the Applicant is of commercial quantity and the Applicant is very much complicit in commission of the said offence. She submits that the antecedents of the Applicant are pertaining to the year 2020. She thus submits that the Bail Application be rejected.

6. I have heard learned Counsel for the respective parties and perused the record with their assistance.

7. Admittedly, charges are framed on 3rd November 2023 and till date, the witnesses are not examined. The Apex court in a series of its decisions has observed that failure to conclude the trial within a reasonable time resulting in prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India, and as such conditional liberty overriding the statutory embargo created under Section 37 of the NDPS Act may in such circumstances be considered.

8. Having regard to the long incarceration suffered by the Applicant to the extent of almost as many as 4 years 10 months without there being any possibility of the trial being concluded within a near foreseeable future, I am of the view that the Applicant be enlarged on bail and it ordered as under:

ORDER

- i) The Applicant be enlarged on bail, on executing PR Bond in the sum of Rs.50,000/- with one or two local sureties in the like amount;
- ii) The Applicant shall attend the Trial Court concerned on each and every date as directed, till the conclusion of the trial, save and except if the Applicant is exempted from appearance by orders of the Trial Court;
- iii) If the Applicant has not deposited his passport, the Applicant shall deposit the same with the concerned Police Station, if any;
- iv) The Applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- v) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and / or change of residence or mobile details, if any, from

time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

vi) The Applicant to co-operate with the conduct of the trial;

vii) Any infraction of the aforesaid conditions shall entail cancellation of bail;

9. Application is allowed in the above terms and is accordingly disposed of.

10. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.

(Dr. Neela Gokhale, J)