

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 822 OF 2025

Azhar Musaveer Rais

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Anil Lalla, a/w Roshil Alag, Yash Polekar, Yasvi Jain, i/b
Lulla & Lulla, for the Applicant.

Mr. K. C. Shinde, APP for the State – Respondent No.1.

Mr. Vinod Chavan, API Nizampura Police Station, Bhiwandi,
Thane City, present.

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CORAM: N. J. JAMADAR, J.

DATED: 18th DECEMBER, 2025

ORDER:-

1. Heard the learned Counsel for the parties.
2. This is an application to enlarge the applicant on bail.
3. The Applicant is arraigned in NDPS Special Case No.1176 of 2023 arising out of CR No.151 of 2022 registered with Nizampura Police Station, Thane, for the offences punishable under Sections 328, 273 and 276 of the Indian Penal Code, 1860 ("the Penal Code") and Sections 18A, 18(a)(iv), 18(c), 27(b)(ii) and 27(d) of the Drugs and Cosmetics Act, 1945 and Section 22 read with Section 8(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act").

4. The accused was arrested on 23rd June, 2022, pursuant to an intimation that, the applicant was to arrive at Millat Nagar, Bhivandi, to sell syrup containing narcotic substance. In the search of the dickey of the car, which the applicant was driving, nylon bag containing 146 bottles pasted with a label (RX Codine Phosphate and Chlorpheniramine Maleate Syrup) “RJT-Care Premium” COUGH LINCTUS, 100 ml., and another bag containing 156 bottles pasted with a label, (RX Codine Phosphate and Chlorpheniramine Maleate Syrup) “MediTek” COFEX COUGH SYRUP, 100 ml., were found.

5. In fact, this is a second application for bail before this Court.

6. The first application for bail i.e. BA/1039/2023 was rejected by this Court by an order dated 31st January, 2024. While rejecting the said application, having regard to the nature of the accusation and the then period of incarceration of the applicant, the learned Special Judge seized with Special Case No.927 of 2022 arising out of CR No.151 of 2022 was requested to make an endeavour to commence and conclude the trial in Special Case No.927 of 2022 as expeditiously as possible and, preferably, within a period of one year from the date of the communication of the said order.

7. Mr. Lalla, the learned Counsel for the applicant, submitted that the learned Special Judge has framed charge against the accused on 5th December, 2025. The applicant has been in custody for over three and half years. Considering the pace of the proceeding before the learned Special Judge and the pendency of other proceedings before the learned Special Judge, it is extremely unlikely that the trial can be concluded within a reasonable period, though charge has been framed against the applicant on 5th December, 2025. It was submitted that prolonged incarceration of the accused without the possibility of conclusion of trial within a reasonable period violates the right of the accused to have a speedy trial. To lend support to this submission, Mr. Lalla placed reliance on the judgment of the Supreme Court in the case of ***Javed Gulam Nabi Shaikh vs. State of Maharashtra and another***¹.

8. In opposition to this, Mr. Shinde, the learned APP, resisted the prayer for release of the applicant on bail. It was submitted that, since with the framing of the charge, the trial has commenced, the accused does not deserve to be enlarged on bail. The trial Court can be directed to conclude the trial within a time frame.

¹ (2024) 9 Supreme Court Cases 813.

9. It is trite, the prolonged incarceration of an accused without a realistic prospect of the conclusion of trial impinges upon the 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.

10. 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*², 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)*³, *Babba v/s. State of Maharashtra*⁴ and *Umarmia v/s. State of Gujarat*⁵ 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 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

² AIR 2021 SC 712.

³ (1999) 9 SCC 252.

⁴ (2005) 11 SCC 569.

⁵ (2017) 2 SCC 731.

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)

11. In the context of the prosecution for the offence punishable under NDPS Act, in the case of ***Mohd Muslim @ Hussain vs. State (NCT of Delhi)***⁶, the Supreme Court emphasised the necessity of expeditious conclusion of the trial in cases where there are statutory restrictions in the matter of grant of bail. The observations in paragraphs 21 to 23 read as under:

“21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry’s response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

22. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in *A Convict Prisoner v. State reported in 1993 Cri LJ 3242*, as “a radical transformation” whereby the prisoner:

“loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any

autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”

23. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal” (also see *Donald Clemmer’s ‘The Prison Community’ published in 1940*). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”

12. In the case of *Rabi Prakash vs. State of Odisha*⁷ 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 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.”

13. In the case of *Javed Gulam* (supra), wherein the accused was arraigned for the offence punishable under the provisions of the Unlawful Activities (Prevention) Act 1967 (for short ‘UAPA’), the Supreme Court enunciated that the guarantee under Article 21 applies irrespective of the nature of the crime. The observations in paragraph 19 read as under:

⁷ 2023 SCC Online SC 1109.

“19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

14. Applying the aforesaid principles to the facts of the case at hand, it becomes evident that the applicant is in custody for almost three and half years. Having regard to the pace of the trial before the learned Special Judge, where the charge could only be framed after almost 23 months of the direction to commence and conclude the trial expeditiously, it appears very unlikely that the trial can be concluded within a reasonable period. Therefore, this Court is inclined to exercise the discretion in favour of the applicant and enlarge him on bail on the count of the prolonged period of incarceration, and the resultant infringement of constitutional right to speedy trial.

15. 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.1176 of 2023 arising out of CR No.151 of 2022 registered with Nizampura Police Station, Thane, 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 Nizampura Police Station, Thane, 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) Upon 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 not indulge in identical activities for which he has been arraigned in this case.

- (vii) The applicant shall regularly attend the proceedings before the jurisdictional Court.

Application disposed.

[N. J. JAMADAR, J.]