

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.919 OF 2025

Noor Alam Mahboob Alam Chaudhary	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

-
- Mr. Milan Desai a/w. M. Ansari, Mr. Ahamed Ansari, D. N. Tahsidar, Mr. Sudeep Sharma, Mr. Sohail Khan and Mr. Rohan Naidu, Advocates for Applicant.
 - Mr. Hitendra J. Dedhia, APP for Respondent.
-

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 22, 2025

P.C.:

1. Heard Mr. Desai, learned Advocate for Applicant and Mr. Dedhia, learned APP for Respondent.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') seeking Bail in connection with C.R. No.25 of 2024 registered with Malvani Police Station for offences punishable under Section 8(c) read with Sections 20, 22, 22(b), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short '**NDPS Act**'). Applicant is arraigned as Accused No.2. He is arrested on 10.01.2024 and is incarcerated for 1 year 3 months 12 days.

3. Applicant is indicted in the present case for having been found in possession of 463 grams of the alleged contraband from

under the bed at the incident spot which is a room and 40 grams of Mephedrone from his conscious possession which is the prosecution case against Applicant. Applicant is arraigned as Accused No.2 in the present crime. The name of Applicant is disclosed by Accused No.1 in his disclosure statement in enquiry conducted under Section 67 of the NDPS Act through the prosecution Officer. The disclosure statement of Accused No.1 when seen *prima facie* names one “Aalam” as the person who is the supplier of the alleged contraband namely 1 gram of Mephedrone which was recovered from Accused No.1.

4. Learned APP would persuade the Court to consider that thereafter the prosecution received secret intelligence input from an informer which was intimated to the Superior Officer in compliance of Sub-Section (2) of Section 42 of the NDPS Act. In that regard, he has drawn my attention to page No.190 of the Application to contend that the intimation of the information received has been duly conveyed.

5. On reading the said letter, it is *prima facie* seen that secret intelligence input information was received by Assistant Police Inspector – Nilesh Salunkhe while on patrolling duty but the same has been conveyed by the Assistant Police Commissioner – Mr. Chimaji Aadhav, Senior Police Inspector.

6. *Prima facie*, an apparent transgression of Sub-Section (2) of Section 42 of the NDPS Act has occurred on the part of prosecution at

the inception stage itself. That apart, on being specifically asked as to whether the secret intelligence input information received by Assistant Police Inspector – Nilesh Salunkhe was entered into station house diary, the answer to the same is in the negative.

7. That apart, appraisal letter under Section 50 of the NDPS Act given to the Applicant before me appended at page No.78 of Application when *prima facie* seen is given by Police Inspector – Maroti Shelke and said letter does not bear the name of Applicant below his thumb impression and signature as also signature of one pancha which is a mandatory requirement under the provision of Section 50 of the NDPS Act is missing thereon thereby vitiating the prosecution case.

8. The aforesaid transgression having been noticed, case of prosecution against Applicant on merits in my opinion need not be gone into merits considering that it is argued that there is dichotomy in respect to the incident spot namely the room from where Applicant was apprehended and arrested according to prosecution case which is refuted by Mr. Desai. Be that as it may considering the above transgression of Section 42(2), Application is considered.

9. In the case of *Sanobar Shafiq Khotwal Vs. State of Maharashtra*¹, this Court has categorically considered a similar situation and has concluded that the person who receives the

¹ Cri. Bail Application No. 3337 of 2021 - Decided on 14.10.2022.

information must forward it to the superior officer by letter of intimation as contemplated under Section 42(2) of the NDPS Act. The Court held that in the case if the same has not been done by the person who received the information, it would be an infraction of the provisions of Section 42(2) of the NDPS Act as the person forwarding the information would be doing so on the basis of hearsay. This Court has thereafter while considering similar cases has also adverted to the said legal position in the case of *Mehadi Munavar Majid Vs. The State of Maharashtra*², *Shafi Jahir Shaikh Vs. State of Maharashtra*³, *Anil Kailashnath Choursiya Vs. The State of Maharashtra*⁴ and *Hareshwar Dnyaneshwar Patil Vs. The State of Maharashtra*⁵ on the basis of the Supreme Court decision in the case of *Sarija Banu Alias Janarthani Alias Janani and Anr. Vs. State through Inspector of Police*.

10. Supreme Court in the case of *Sarija Banu Alias Janarthani Alias Janani and Anr. Vs. State through Inspector of Police*⁶ has held that while considering violation of Section 42 and relevance thereof compliance of Section 42 is mandatory and it is a relevant fact required to be taken into account while considering a Bail Application.

11. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain

² Cri. Bail Application No. 3493 of 2021 - Decided on 14.10.2022.

³ Cri. Bail Application No. 5068 of 2024 - Decided on 04.02.2025.

⁴ Cri. BA. Nos.4148 of 2024 and 703 of 2025 – Decided on 24.03.2025.

⁵ Cri. Bail Application No. 1224 of 2024 0- Decided on 03.04.2025.

⁶ (2004) 12 SCC 266

whether the Accused is likely to appear before the Court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents which are required to be considered in such cases. However the metrics of judicial decision making gets amplified or rather shuttled to another facet when dealing with offences where Section 37 of NDPS Act is attracted. In such cases one has to satisfy itself with the rigors of the twin conditions as prescribed under Section 37 of the NDPS Act. Section 37 reads thus:-

“37. Offences to be cognizable and non-bailable.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless:-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

12. From the reading of Section 37 of the NDPS Act, it becomes clear that the legislature intends to deny bail to accused alleged to be in possession of commercial quantity of contraband in absence of court

subscribing to a contrary view, however therefore if seen it does not rule out the facet of discretion of Court to grant bail. Furthermore the Court must be satisfied that the accused is unlikely to re-offend. It is seen that while dealing with Bail Applications the material available for consideration and adjudication is limited. In such cases, if we look realistically the provisions of Section 37 leave limited room for a possibility of granting bail to the accused. However employing such limitation would create a dichotomy in the current scenario where one common grievance is made before this Court repeatedly in matter after matter. It is brought to the notice of the Court that trials are taking perpetuity to be concluded and prisons are also simultaneously overcrowded in some segments. This Court regularly deals with Bail Applications of under-trials who have been in custody for long incarceration, and is also equally aware of the conditions of our prisons. To give an example in the city of Mumbai, recently in one of the cases before me, a Report dated 12.12.2024 made by the Superintendent of Mumbai Central Prison addressed to the Chief Government Pleader was placed before me by the Public Prosecutor which stated that the Mumbai Central Prison (Arthur Road Jail) is overcrowded beyond its sanctioned capacity by more than 5 – 6 times and every barrack sanctioned to house 50 inmates, as on date houses anywhere between 220 – 250 inmates. This situation is inhumane, but it also cannot be forgotten that addiction of drugs is also a serious issue

qua the society at large, and therefore provisions such as Section 37 act as a deterrent to prospective wrongdoers. Such an incongruity leads us to answer the proposition: ***“How can Courts find a balance between the two polarities?”***

13. Argued before me is a case concerning liberty of an under-trial who has been incarcerated for almost 1 year 3 months 12 days, a situation impacting the rights of undertrial conferred by Article 21 of Constitution to speedy justice as also personal liberty. In so far as the power of high courts to grant bail is concerned, when the case is such that involves a question of personal liberty of an undertrial who is incarcerated for a long period, the powers are wide and unfettered by conditions, the principle rule being that bail is the rule and refusal is the exception, allowing accused persons to better prepare their defense.

14. In the following decisions of the Supreme Court concerning such long detention and imprisonment of undertrial prisoner / accused on being apprehended with commercial quantity of various contrabands, the Courts have in the backdrop of the aforementioned propositions exercised its unfettered jurisdiction in releasing an undertrial on bail on account of long incarceration by using its discretionary powers:-

14.1. In the case of *Babor Ali Mondal Vs. State of West Bengal*⁷ the Supreme Court considering the long incarceration granted bail to an undertrial-accused who was incarcerated for 1 year and 4 months.

14.2. In the case of *Sukhvinder Singh Bittu Vs. State of Punjab*⁸ the Supreme Court considering long incarceration of an undertrial-accused granted him bail who was incarcerated for 1 year despite being alleged to be in possession of commercial quantity of poppy straw.

15. In all the above cases the right to speedy justice flowing from Article 21 of the Constitution of India and the foreseeable delay trial were considered as imminent grounds for grant of bail apart from the rigours of Section 37 of the NDPS Act in the facts of the said case.

16. Considering the above observations and findings and in view of the above judicial pronouncements coupled with the transgression of statutory provisions of Section 42 of the NDPS Act as delineated above and long incarceration for 1 year 3 months 12 days and ignominy of Applicant being incarcerated further and no hope of trial being completed in the near foreseeable future, I am of the opinion that Applicant can be released on bail.

17. In view of above, Applicant is released on bail subject to following conditions:-

(i) Applicant is directed to be released on bail on

⁷ Criminal Appeal No. 3349 of 2024

⁸ Cri. Appeal No.1204 of 2024

furnishing P.R. Bond in the sum of Rs.25,000/- 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 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.

18. 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.

19. Bail Application No.919 of 2025 is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA
HANUMANT
SAWANT
Digitally signed
by HARSHADA
HANUMANT
SAWANT
Date: 2025.04.23
14:03:39 +0530