

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 989 OF 2025

Mohammed Arif Bhujwala

.. Applicant

Versus

Union of India & Anr.

.. Respondents

.....

- Mr. Taraq Sayed a/w Mr. Aniesh Pereira & Ms. Ashwini Achari for Applicant
- Ms. Mahalakshmi Ganapathy, APP for Respondent No. 2 - State

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 8, 2025

P. C.:

1. Heard Mr. Sayed, learned Advocate for Applicant and Ms. Ganapathy, learned APP for Respondent No. 2 - State. None present for Respondent No. 1 - Union of India.

2. It is an irony that despite the order dated 02.04.2025 having been passed, learned Special Public Prosecutor for Respondent No. 1 – Union of India is not present when the matter is called out at 4.48 p.m. Prosecutors appearing in this Court in Bail Applications are under the impression that Court has to function like a government department from 10.30 a.m. to 04.30 p.m. only and orders for granting bail should only be passed during that time. Conduct of the learned Special Prosecutor in not appearing in the matter is strongly deprecated by the Court especially in the wake of the order dated

02.04.2025 passed by this Court. On 02.04.2025, the following order was passed:-

"1. Heard Mr. Sayed, learned Advocate for Applicant and Ms. Ganapathy, learned APP for State.

2. This Court has directed learned APP to ascertain the medical condition of the Applicant through the Chief Medical Officer of the Prison Hospital of the Central Prison, Thane in view of the health condition which was informed to the Court by learned Advocate for the Applicant.

3. Ms. Ganapathy, learned APP would submit that report of the Chief Medical Officer has been received and a copy of the same will be placed before the Court tomorrow. However, while reading of the report for the benefit of Court she would submit that it is stated in the report that Applicant was referred to J.J. Hospital for cardiac checkup and he has been advised to get himself admitted in the ICU ward for further treatment. In that view of the matter order dated 7th March, 2025 is worked out.

4. In view of the medical condition and long incarceration of the Applicant I am inclined to take up this matter for hearing on the next date.

5. I am also informed that today itself co-accused in the present crime has been released on bail by this Court. When the present matter is heard on the next adjourned date a copy of the order by which co-accused in the present crime has been released on bail shall be placed before the Court.

6. Contesting Respondent No.1 in the present case is the Union of India. When the matter is called out, none has appeared on behalf of the Union of India. I am informed that they have been served with a copy of the Application. Respondent No.1 – Union of India is directed by this Court to depute a responsible Advocate / Counsel to appear in the present Application. If required, Respondent No.1 – Union of India shall file its Affidavit-in-Reply positively within a period of two weeks from today.

7. It is clarified that on the next adjourned date, if Respondent No.1 – Union of India's Advocate does not remain present or their Affidavit is not filed, this Court shall not give any adjournment and shall proceed with the hearing of the Application and passing appropriate orders in accordance with law.

8. Copy of this order is directed be served on the Union of India by Applicant's Advocate.

9. Stand over to 2nd April, 2025 (F.O.B.)."

3. Affidavit on behalf of Respondent No. 1 – Union of India was tendered on the last occasion and it was the duty of the Special

Prosecutor to remain present today since the matter was listed under the caption **“for Medical Urgency Hearing”** in view of the Prisoner's Medical Report tendered by the learned APP for State on the previous occasion. Affidavit in reply filed on behalf of Respondent No. 1 is considered by the Court as the hearing of the Application cannot be protracted any further.

4. On the issue of merits, it is *prima facie* seen that Applicant has filed the present Application seeking bail. Co-accused in the present crime is released on bail as noted in previous order. According to prosecution, on receiving specific intelligence on 20.01.2021 that accused No. 1 was involved in drug trafficking and there would be a chance recovery of contraband of narcotic drugs from his residence, after compliance his house was raided and recovery of 2.9 grams of Heroine and 52.2 grams of MD was effected. Crime was registered. According to prosecution in the follow up action it was revealed that accused No. 1 procured the contraband MD from the present Applicant. In that view of the matter, 4 flats belonging to Applicant were raided leading to recovery of commercial quantity of contraband. Applicant is arrested on 25.01.2021. Chargesheet is filed in 2021. Admittedly record shows that Applicant is suffering from serious cardiovascular disease, therefore due to medical urgency the Application is heard by this Court on medical grounds as also

considered on merits as notified in the order dated 02.04.2025. Affidavit in reply filed by the Respondent No. 1 Union of India dated 02.04.2025 is considered. It is *prima facie* stated in the Affidavit in reply that the Applicant even though suffering from his medical ailments may withdraw the Application since the Court has ordered the trial Court to expedite the matter and has made it time bound upto May 2025. Hence the Application be rejected since it is filed before May 2025. Be that as it may, there is no denial about his medical condition certified by Doctors.

5. There is no doubt that Applicant is suffering from medical ailments. It is stated by Respondent No. 1 in the Affidavit in reply that if this Court considers the plea of medical interim bail, it may open flood gates and may lead to deluge of petitions for release of inmates from jail on health grounds. This statement is a highly irresponsible statement made in the affidavit. The Prisoner's Medical Report was called for by the Court and only thereafter the case is considered on medical grounds. It is further stated that the health condition of the Applicant as stated in the Bail Application is a matter of medical examination. However appended to the Application by the Applicant from page Nos.15 to 31 are the medical examination papers of the Applicant when the Applicant was referred to Sir J.J. Hospital. It is stated in the said hospital report that Applicant has unstable angina

and needs immediate admission on SOS basis. He has been counselled by the hospital Doctors, but even after repeated counselling, he is not willing to be admitted. If the papers are not appended, what further medical examination is being talked about by the Union of India is not understood.

6. It is stated in the report that considering the risk and complications his negative consent in language known to him should be taken. There is a precise reason for taking such a negative consent from an undertrial accused who is suffering from an ailment and refuses to get admitted or treated, lest something may happen to him in custody. He has once again been examined on 01.02.2025 i.e. recently. The advice given by the Doctors of Sir J.J. Hospital is that he should be admitted in the ICCU but he is not willing for admission through jail. *Prima facie* one thing is certain from the record and that is the fact that Applicant has a medical condition. Even though case of the prosecution is considered that he has refused to get himself admitted in the hospital still his precarious medical condition prevails.

7. In that view of the matter, even though *prima facie* if the prosecution submits that rigors of Section 37 of the NDPS Act will apply to the Applicant's case his long incarceration of more than 4 years and 2 months cannot be disregarded and Bail Application cannot be rejected. I am not inclined to accept the submissions made

by the prosecution namely the Union of India in its Affidavit in reply. I am also of the opinion that granting bail to Applicant on medical grounds in the present case cannot be compared to a situation leading a deluge of petitions for release of inmates from jail on health grounds. The referral of Applicant before me which is *prima facie* seen from the prisoner's medical report dated 11.03.2025 shows that he was referred to Sir J.J. Hospital, Mumbai twice in the year 2021, 6 times in the year 2022, once in the year 2023, twice in the year 2024 and twice in the current year 2025 till date. *Prima facie* even from the Chief Medical Officer, Thane Central Prison report dated 11.03.2025 placed before me wherein Applicant is lodged, it is confirmed that Applicant is suffering from cardiovascular issues and the said report also states that he is advised for admission in the ICCU for further investigation / management of his medical ailments. Hence the Union of India is warned from making irresponsible statements in Affidavits without examining the facts of the case.

8. In that view of the matter having considered the submissions of the prosecution in their Affidavit in reply dated 02.04.2025 the case of the Applicant is considered for grant of bail on medical grounds and his long incarceration pending trial due to his health condition. Prosecution is yet to examine several witnesses which would certainly protract the trial for a long period of time.

9. Considering the above *prima facie* reasons which are given in the order dated 02.04.2025 it is seen that the Applicant is incarcerated for the past 4 years 2 months in a NDPS offence pending trial and ignominy of the Applicant who has to suffer despite his medical condition in view of the fact that 7 or 11 more witnesses are yet required to be examined in the trial, Applicant has made out a case for grant of bail. Hence, Bail Application is allowed 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.25,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs.25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;
- (iii) 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;

- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) 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;
- (vi) 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;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and
- (ix) 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.

10. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

11. Bail Application is allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
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