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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1210 OF 2025

Karen Wanjiru Mbeere Mwaura .. Applicants
Versus
Union of India & Anr. .. Respondents

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- Mr. Ayaz Khan a/w. Mr. Dilip Mishra, Ms. Zehra Charania and Ms. Mallika Sharma, Advocates for Applicant.
- Mr. Saket Ketkar, SPP for Respondent No.1.
- Ms. Megha S. Bajoria, APP for Respondent No.2 – State.

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CORAM : MILIND N. JADHAV, J.
DATE : APRIL 24, 2025.

P.C.:

1. Heard Mr. Khan, learned Advocate for Applicant; Mr. Ketkar, learned Advocate for Respondent No.1 – Union of India and Ms. Bajoria, learned APP for Respondent No.1 – State.

2. This is an Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita seeking Regular Bail in connection with File No. DRI/MZU/C/INT-159/2023 registered by Directorate of Revenue Intelligence, Mumbai Zonal Unit culminated into Special Case No.1224 of 2024 pending before NDPS Special Court in Sessions Court, Mumbai for offences under Sections 8(c) readwith 21(c), 23(c), 28, 29, 30, 35 and 54 of the Narcotic and Psychotropic Drugs Act, 1985 (for short "**NDPS Act**").

3. Briefly stated prosecution case is that on 27.12.2023 Intelligence Officer of DRI received intelligence input that on 28.12.2023 at 05:30 hours Applicant would be arriving in Mumbai from Nairobi by flight and that she might be carrying some narcotic substances and accordingly the said information was forwarded in writing to the superior officer and arrangements made for raid. Accordingly on 28.12.2023 the Raiding team accosted Applicant and informed her about her right under Section 50 and as per her request, her search was conducted by a female gazetted officer. On search of one trolley bag of Applicant, two black coloured polythene packets containing two more black polythene packets were found concealed in two plastic bottles. As per prosecution case when the said packets were opened a white powdery substance alleged to be contraband cocaine weighing 1490 grams was recorded and same was seized pursuant to which crime was registered and Applicant was arrested. She is incarcerated for 1 year 3 months and 28 days pending trial.

4. The principal ground pleaded for grant of bail by Mr. Khan, learned Advocate for Applicant is that the allegedly seized contraband was destroyed by the DRI without making any Application to the Magistrate or without obtaining order of the learned Magistrate as also no notice of the same being given to Applicant prior to its destruction. He would submit that the same amounts to violation of provisions regarding disposal of seized contraband delineated under Chapter IV of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage and Disposal) Rules, 2022 (for short "**the NDPS Rules, 2022**"). He would submit that bare perusal of Rules 16, 17 and 18 would reflect that after the Chemical Analysis Report is received, the concerned officer is required to move an Application under Rule 18 vide Form 5 for obtaining order for destruction of the seized contraband. In support of this submission, he has referred to and relied upon the decisions of the Supreme Court in the case of ***Noor Aga Khan Vs. State of Punjab & Anr.***[1]; ***Union of India Vs. Jarooparam***[2] and ***Union of India Vs. Mohanlal***[3]. He would submit that identification of the alleged contraband is lost at the threshold because of such act of destroying the seized contraband which vitiates prosecution case.

4.1. Apart from the above ground, he would submit that there is delay of 23 days in drawing the inventory panchnama before the Magistrate and hence delay of tampering with the contraband cannot be ruled out. He would submit that the certificate issued by the Magistrate during inventory proceedings is not in consonance with Form 5 of the NDPS Rules, 2022. He would submit that there is no explanation for the fact as to how the C.R. number was affixed on the label during seizure proceedings as the crime is registered subsequent thereto and would submit that this Court has dealt with such an issue

1 [2008] 10 S.C.R. 379
2 AIR 2018 SC 1927
3 [2016] 1 S.C.R. 651

in its decision in the case of ***Sarfaraj Abdul Majid Ahmed Vs. The State of Maharashtra***[4].

4.2. He would submit that Applicant is a lady having no criminal antecedents to her discredit and incarcerated since 1 year 3 months and 28 days. He would submit that investigation of the case is completed and charge-sheet is filed however charges are not framed till date. He would submit that prosecution has cited 20 witnesses in the charge-sheet to be examined during trial and that the trial would take a long time to commence / conclude and hence the facet of long incarceration of the Applicant may also be considered by the Court while adjudicating the present Application. He would submit that passport of the Applicant has been seized by the DRI and hence the apprehension of her absconding is ruled out. Hence he would urge the Court to grant bail to the Applicant on *prima facie* consideration of the aforementioned submissions advanced by him.

5. Mr. Ketkar, learned SPP for Respondent No.1 – DRI has vehemently opposed the Bail Application and drawn my attention to Affidavit-in-Reply dated15.04.2025 filed by Deputy Director of DRI to submit that contraband seized from the Applicant is of commercial quantity and hence embargo of Section 37 of the NDPS Act would apply to the present case. He would submit that in so far as affixing of C.R. number at the time of seizure is concerned, it is a regular practice

4 BA No. 4954 of 2024 a/w connected matters decided on 24.03.2025.

followed by prosecution to obtain C.R. number from the concerned Police Station / office on the phone in advance. He would submit that Applicant has in her statement recorded under Section 67 of the NDPS Act confessed to procuring, smuggling and selling of the seized contraband and hence her complicity and involvement in the crime is established.

5.1. He has referred to and relied upon the decision of the Supreme Court in the case of ***Narcotics Control Bureau Vs. Kashif***[5] to submit that non-compliance of Section 52A of the NDPS Act which prescribes procedure for disposal of seized contraband does not invalidate the evidence nor does it automatically warrant bail for the accused. He has referred to and relied upon the decision of the Supreme Court in the case of ***Narcotics Control Bureau Vs. Mohit Aggarwal***[6] to harp on the non-obstante clause inserted in sub-section (1) and conditions imposed in sub-section (2) of Section 37 of the NDPS Act which are required to be satisfied for grant of bail in cases involving contraband in commercial quantity. Next he has referred to and relied upon the decision of the Supreme Court in the case of ***Union of India (NCB) Etc Vs. Khalil Uddin Etc***[7] wherein the Supreme Court on the basis of statement of Applicant record under Section 67 has cancelled the bail granted by the High Court to the Respondents

5 2024 INSC 1045
6 2022 SCC OnLine SC 891
7 SLP (Crl.) Nos.5505-5506/2022 decided on 21.10.2022

therein in view of the provisions of Section 37 of the NDPS Act.

5.2. He would submit that there is grave danger of the Applicant tampering with evidence, if released on bail as she is a foreign national. He would submit that there is every possibility that the Applicant may abscond and avoid trial if she is enlarged on bail. He would submit that the investigation of the matter has revealed that a larger international syndicate is involved in illegal import of narcotic substances in huge quantity in India through various people who are in need of money and such is the present case which is evident from the material placed on record in the charge-sheet. In view of his above submissions, he would urge the Court to reject the Bail Application.

6. Ms. Bajoria, learned App for Respondent No.2- State would adopt and support the submissions advanced by Mr. Ketkar and would submit that keeping in mind the object and purpose of the NDPS Act and the impact on Society as a whole, the Act will have to be applied literally and not liberally which may ultimately frustrate its object. She would submit that involvement of Applicant in the present crime cannot be ruled out. Hence, she would urge that present Application be rejected.

7. With the able assistance of the learned Advocates at the bar, I have perused the record of the case.

8. In the present case it is *prima facie* seen that there is transgression of provisions of Section 52A of the NDPS Act read with provisions of Chapter IV of the NDPS Rules, 2022 as the seized contraband has been destroyed without obtaining requisite order from the Magistrate and in absence of Applicant herein.

9. The Supreme Court in the case of ***Noor Aga*** (*supra*) while setting aside the order of conviction passed by the High Court held that the destruction of the seized substance in violation of Section 52A coupled with the omission on the part of the prosecution in producing either the substance itself prior to its disposal, the sample taken therefrom or the original seals on the container without any explanation along with several other significant discrepancies in its recovery and storage created serious doubt over the prosecution's case. The relevant observations made by the Court in paragraph Nos.96, 98 and 100 read as under:-

> *"96. Last but not the least, physical evidence relating to three samples taken from the bulk amount of heroin was also not produced. Even if it is accepted for the sake of argument that the bulk quantity was destroyed, the samples were essential to be produced and proved as primary evidence for the purpose of establishing the fact of recovery of heroin as envisaged under Section 52-A of the Act.*
>
> *97. .....*
>
> *98. We are not oblivious of the fact that a slight difference in the weight of the sample may not be held to be so crucial as to disregard the entire prosecution case as ordinarily an officer in a public place would not be carrying a good scale with him. Here, however, the scenario is different.* ***The place of seizure was an airport. The officers carrying out the search and seizure were from the Customs Department. They must be having good scales with them as a marginal increase or decrease of quantity of imported articles whether contraband or otherwise may make a***

> ***huge difference under the Customs Act****.*
>
> *99. .....*
>
> *100.* ***Physical evidence of a case of this nature being the property of the court should have been treated to be sacrosanct.*** *Non-production thereof would warrant drawing of a negative inference within the meaning of Section 114(g) of the Evidence Act. While there are such a large number of discrepancies, if a cumulative effect thereto is taken into consideration on the basis whereof the permissive inference would be that serious doubts are created with respect to the prosecution's endeavour to prove the fact of possession of contraband by the appellant."*

10. Next the Supreme Court in the case of ***Jarooparam*** (*supra*) in paragraph Nos.10 and 11 held as follows:-

> *"10. Omission on the part of the prosecution to produce the bulk quantity of seized opium would create a doubt in the mind of the Court on the genuineness of the samples drawn and marked as A, B, C, D, E, F from the allegedly seized contraband. However, the simple argument that the same had been destroyed, cannot be accepted as it is not clear that on what authority it was done. Law requires that such an authority must flow from an order passed by the Magistrate. On a bare perusal of the record, it is apparent that at no point of time any prayer had been made by the prosecution for destruction of the said opium or disposal thereof otherwise. The only course of action the prosecution should have resorted to is for its disposal is to obtain an order from the competent court of Magistrate as envisaged under Section 52-A of the Act. It is explicitly made under the Act that as and when such an application is made, the Magistrate may, as soon as may be, allow the application.*
>
> *11. There is no denial of the fact that the prosecution has not filed any such application for disposal/destruction of the allegedly seized bulk quantity of contraband material nor was any such order passed by the Magistrate. Even no notice has been given to the accused before such alleged destruction/disposal. It is also pertinent here to mention that the trial court appears to have believed the prosecution story in a haste and awarded conviction to the respondent without warranting the production of bulk quantity of contraband. But, the High Court committed no error in dealing with this aspect of the case and disbelieving the prosecution story by arriving at the conclusion that at the trial, the bulk quantities of contraband were not exhibited to the witnesses at the time of adducing evidence."*

11. In the decision in the case of ***Mohanlal*** (*supra*) the Supreme Court has in paragraph Nos.17 to 19 held as under:-

"Disposal of Drugs:

17. Section 52A as amended provides for disposal of the seized .. contraband in the manner stipulated by the Government under Clause I of that Section: Notification dated 16''' January, 2015 has, in supersession of the earlier notification dated JOlhMay, 2007 not only stipulates that all drugs and psychotropic substances have. to be disposed off but also identifies the officers who shall initiate action fur disposal and the procedure to be followed for such disposal. Para 4 of the Notification inter alia, provides that officer-in-charge of the Police Station shall within 30 days from the date of receipt of chemical analysis report of drugs, psychotropic substances or controlled substances apply to any Magistrate under Section 52A(2) in terms of Annexure 2 to the said Notification.

18. Sub-para (2) of Para (4) provides that after the Magistrate · allows the application under sub-section (3) of Section 52A, the officer mentioned in sub para (I) of Para (4) shall preserve the certified inventory, photographs and samples drawn in the presence of the Magistrate as primary evidence for the case and submit details of seized items to the Chairman of the Drugs Disposal committee for a decision by the Committee on the question of disposal. The officer shall also send a copy of the details along with the items seized to the officer in-charge of the godown. Para (5) of the notification provides for constitution of the Drugs Disposal Committee while para (6) specifies the functions which the Committee shall perform. In para (7) the notification provides for procedure to be followed with regard to disposal of the seized items, while para (8) stipulates the quantity or the value upto which the Drugs Disposal Committee can order disposal of the seized items. In terms of proviso to para (8) ifthe consignments are larger in quantity or of higher value than those indicated in the table, the Drugs Disposal Committee is required to send its recommendations to the head of the department who shall then order their disposal by a high level Drugs Disposal Committee specially constituted for that purpose. Para (9) prescribes the mode of disposal of the drugs, while para (10) requires the Committee to intimate to the head of the Department the programme of destruction and vest the head of the Department with the power to conduct a surprise check or depute an officer to conduct such checks on destruction operation. Para (11) deals with certificate of destruction while paras (12) and (13) deal with details of sale to be entered into the godown register and communication to be sent to Narcotic Control Bureau.

19. There are two other aspects that need to be noted at this

> *stage. The first is that notification dated I 6" January, 2015 does not in terms supersede Standing Order No. I /89 insofar as the said Standing Order also prescribes the procedure to be followed for disposal of Narcotic Drugs and Psychotropic and controlled Substances and Conveyances. Specific overriding of the earlier Standing Order would have avoided a certain amount of confusion which is evident on account of simultaneous presence of Standing Order No. 1189 and notification dated 16" January, 2015. For instance in para (I) of Standing Order No. 1189 only certain narcotic drugs and psychotropic substances enumerated therein could be disposed of while notification dated l 6'h January, 2015 provides for disposal of all Narcotic Drugs and Psychotropic and controlled Substances and Conveyances. Again in terms of Standing Order No. I /89 the procedure for making of application was marginally different from the one stipulated in Notification dated 16'" January, 2015 not only insofar as the procedure related to the officers who could make the application is concerned but also in relation to the procedure that the DOC would follow while directing disposal. In both the notifications are prescribed the limits upto which the disposal could be directed. In case of excess quantity the disposal under the Standing Order No. 1/89 had to be done in the presence of the head of the Department whereas according to notification of2015 in the event of excess quantity or value the disposal has to be by a high level Drug Disposal Committee to be constituted by the head of the Department. Again while Standing Order No. 1/89 specifically required the approval of the Court for disposal, notification dated 16'" January, 2015 does not stipulate such approval as a specific condition. Be that as it may, to the extent the subsequent notification prescribes a different procedure, we treat the earlier notification/Standing Order No. 1/89 to have been superseded....”*

12. The above judicial pronouncements have been referred to and discussed by the Supreme Court recently in the case of ***Bharat Aambale Vs. The State Of Chhattisgarh***[8] wherein the Supreme Court after considering the above referred judgments has taken a different view by holding that Chapter V of the NDPS Act more particularly Sections 42 to 57 form a unique scheme of provisions that prescribe several procedural safeguards and conditions that have to be

8 2025 INSC 78

mandatorily adhered to right from the process of conducting search till the seizure and recovery of the contraband, its safe-keep and handling and delay or non-compliance of the same and would not result in the trial being vitiated or the entire case of prosecution crumbling. The Supreme Court has held that there has to be something more than mere non-compliance of procedure under Section 52A which would render the prosecution case doubtful. However in the present case investigation is complete and we are at the stage of bail. Trial is yet to commence. Prosecution can undoubtedly prove its case at trial. By this order, Court is not exonerating the Applicant.

13. In the present case, apart from the non-compliance and transgression of provisions of Section 52A of the NDPS Act readwith Rules under Chapter IV, the facet of long incarceration of the Applicant of almost 1 year and 4 months and the fact that Applicant is a lady having no criminal antecedents to her discredit is what impels me to consider her Application for grant of bail.

14. 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 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 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 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."*

15. From 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?"***

16. Argued before me is a case concerning liberty of an under-trial who has been incarcerated for almost 16 months, 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 very 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.

17. In the case of ***Emperor vs H.L. Hutchinson***[9] the Allahabad High Court, as far back as in the year 1931 held that power of granting bail conferred on High Court is entirely unfettered by any conditions. It held that legislature has given the High Court and the Court of Session discretion unfettered by any limitation other than that which controls all discretionary powers vested in a Judge, viz. that the discretion must be exercised judiciously. The Court has given primacy to the fact that accused person if granted bail will be in a much better position to defend himself. In this very case, it was delineated that grant of Bail is the Rule and refusal is an exception. This was in the famous Meerut Conspiracy case. Justice Mukerji writing for the Bench in paragraph No.9 held as under:-

> *"9. Speaking for myself, I think it very unwise to make an attempt to lay down any particular rules for the guidance of the High Court, having regard to the fact that the legislature itself left the discretion of the Court entirely unfettered. The reason for this action on the part of the legislature is not far to seek. The High Court might be safely trusted in this matter and it goes without saying that it would act in the best interests of justice whether it decides in favour of the prosecution or the defence. The variety of cases that may arise from time to time cannot be safely classified and it will be dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes."*

18. The Supreme Court in a landmark decision of 1978 in the case of ***Gudikanti Narasimhulu & Ors. v. Public Prosecutor, High Court of Andhra Pradesh***[10] *observed as under*:-

9 AIR 1931 ALL 356
10 1978 (1) SCC 240

> *"6. Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage and the* ***principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve sentence in the event of the court punishing him with imprisonment.*** *In this perspective…"* (emphasis supplied)

19. Thereafter the Supreme Court in a plethora of judgements has discussed the rights conferred by Article 21 qua grant of bail and that such rights cannot be taken away unless the procedure is reasonable and fair and in cases where there is unreasonable delay in trial it would undoubtedly impact the rights of an undertrial. Some of the important decisions of the Supreme Court and some of the High Courts are discussed hereinunder:-

19.1. In the landmark judgment of ***Maneka Gandhi V. Union of India***[11], Supreme Court held that the right to life and personal liberty under Article 21 is not limited to mere physical existence but includes the right to live with dignity. The court emphasized that the procedure established by law must be fair, just, and reasonable, and it cannot be arbitrary, oppressive, or unreasonable.

19.2. In the case of ***Hussainara Khatoon Vs. Home Secy., State of Bihar***[12] the Supreme Court held as under:-

> *"Now obviously procedure prescribed by law for depriving a person of liberty cannot be "reasonable, fair or just" unless that*

11 1978 (1) SCC 248

12 (1980) 1 SCC 81

> *procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21."*

19.3. The Supreme Court in the case of ***Union of India v. K. A. Najeeb***[13] while commenting upon the possibility of early completion of trial and extended incarceration held 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 ("the NDPS Act") which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), Babba v. State of Maharashtra and Umarmia v. State of Gujarat 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."*

20. Applicant in present case has been in custody for almost 16 months. There is no possibility of the trial commencing in near future. Detaining an under-trial prisoner for such an extended period further violates his fundamental right to speedy trial flowing from Article 21 of the Constitution. At this juncture I deem it appropriate to list certain observations of the Supreme Court shedding light on concerns underlying the "Right to speedy trial" from the point of view of an

13 Criminal Appeal No. 98 of 2021

accused in custody whose liberty is affected. In the case of ***Abdul Rehman Antulay & Ors. Vs R.S. Nayak & Anr.***[14] the Supreme Court held as under:-

> *"86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:*
>
> *(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.*
>
> *(2) Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.*
>
> ***(3) The concerns underlying the Right to speedy trial from the point of view of the accused are:***
>
> ***(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;***
>
> ***(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and***
>
> ***(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise."***
>
> *(4) – (11) -------x-------* *(emphasis supplied)*

21. The Supreme Court has also held in a series of judgments and orders that in situations where the under-trial prisoner / accused persons have suffered incarceration rather long incarceration for considerable period of time and there is no possibility of the trial being

14 1992 (1) SCC 225

completed within the foreseeable future, Constitutional Courts can exercise power to release the accused under-trial on bail, as bail is the rule and jail is the exception.

21.1. In the case of ***Supreme Court Legal Aid Committee (Representing undertrial prisoners) Vs. Union of India***[15] the Supreme Court has held that:-

> *"17.We are conscious of the fact that the menace of drug trafficking has to be controlled by providing stringent punishments and those who indulge in such nefarious activities do not deserve any sympathy. But at the same time we cannot be oblivious to the fact that many innocent persons may also be languishing in jails if we recall to mind the percentage of acquittals. Since harsh punishments have been provided for under the Act, the percentage of disposals on plea of guilt is bound to be small; the State Government should, therefore, have realised the need for setting up sufficient number of Special Courts immediately after the amendment of the Act by Amendment Act 2 of 1989. Even after the Division Bench of the Bombay High Court refused to grant en bloc enlargement on bail on 1-2-1993 in Criminal Application No. 3480 of 1992 and B.D. Criminal No. 565 of 1992, no substantial improvement in the pendency is shown since new cases continue to pour in, and, therefore, a one-time exercise has become imperative to place the system on an even keel. We also recommend to the State Government to set up Review Committees headed by a Judicial Officer, preferably a retired High Court Judge, with one or two other members to review the cases of undertrials who have been in jail for long including those released under this order and to recommend to the State Government which of the cases deserve withdrawal. The State Government can then advise the Public Prosecutor to move the court for withdrawal of such cases. This will not only. help reduce the pendency but will also increase the credibility of the prosecuting agency. After giving effect to this order the Special Court may consider giving priority to cases of those undertrials who continue in jail despite this order on account of their inability to furnish bail."*

15 (1995) 4 SCC 695

21.2. In the case of ***Babor Ali Mondal Vs. State of West Bengal***[16] the Supreme Court considering the long incarceration granted bail to an undertrial-accused who was incarcerated for 1 year and 4 months.

21.3. In the case of ***Sukhvinder Singh Bittu Vs. State of Punjab***[17] 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.

22. In view of my above *prima facie* observations based on the aforementioned judicial decisions, Bail Application is allowed on the following terms and conditions:-

(i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount;

(ii) Before her actual release from jail, Applicant shall furnish her address where she proposes to reside after her release from jail to the concerned Police Station and also to the trial Court;

(iii) After her release from jail, Applicant shall report to the Investigating Officer as and when called for;

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17 Cri. Appeal No.1204 of 2024

(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 her 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 she 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;

(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; and

(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.***[18].

23. 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.

24. Bail Application No.1210 of 2025 is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY TRAMBAK UGALMUGALE

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