

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1740 OF 2025

Afzal Ajaniya Sayyed .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Mr. Sugat Ingle, Advocate for Applicant.
 - Mr. Rushikesh M. Pethe, APP for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 29, 2025

P.C.:

1. Heard Mr. Ingle, learned Advocate for Applicant and Mr. Pethe, 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.21 of 2022 registered with Anti-Narcotics Cell, Ghatkopar, Mumbai DCB-CID for offences punishable under Sections 8(c), 22(b), 22(c) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short '**NDPS Act**').

3. The present Bail Application seeks bail for Applicant who is incarcerated in prison since 20.03.2022 having been apprehended with alleged contraband namely 52 grams of Mephedrone (commonly known as MD). There are two Accused persons in the present crime who are apprehended and arrested. Accused No.1 is a woman who is

enlarged on bail on 20.04.2022 immediately after her arrest. In so far as Applicant is concerned, he has suffered incarceration for 3 years 1 month 9 days in custody pending trial.

4. Mr. Pethe, learned APP would vehemently object maintainability of present Application and would submit that in view of the order dated 07.10.2024 passed in Bail Application No.2781 of 2024 (Coram : Manish Pitale, J.), by which previous Bail Application filed by Applicant was dismissed on merits after consideration of all issues raised by Applicant, the present Bail Application is not maintainable before this Court.

4.1. Additionally, he would submit that in that order, this Court directed expedition of trial and therefore the only avenue now available for Applicant is to approach the Supreme Court since present Bail Application would amount to filing a Review Application before the same Court.

4.2. He would draw my attention to Section 403 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short '**BNSS**') and would submit that present Application is barred by provisions of Section 403 of BNSS in as much as Application is in the nature of a Review Application / Petition and this Court cannot review order dated 07.10.2024 which is passed on merits while rejecting previous Bail Application of Applicant.

5. *Prima facie*, learned APP is incorrect in making his submissions either in law as also on facts. Applicability of Section 403 of BNSS against maintainability of present Bail Application does not arise at all, since Section 403 of BNSS pertains to alteration of judgment where the said judgment has been signed by the Court and unless alteration or review of the same is for correcting a clerical or arithmetical error, the Court cannot alter the same. That is not the case here. This is a fresh Bail Application filed 6 months after rejection of his previous Bail Application by Applicant. It is unfathomable to understand as to how provisions of Section 403 of BNSS would apply against maintainability of the present Bail Application. In several Bail orders passed by me in the last five months, I have *prima facie*, opined that every day's incarceration in prison of an undertrial - accused would amount to his prolonged incarceration and hence that would be a change in circumstance and ground to enable him to approach the Bail Court by filing a Bail Application.

6. That apart, order dated 07.10.2024 rejecting previous Bail Application of Applicant on merits as argued by the learned APP though an appealable order, does not preclude Applicant from filing fresh Bail Application before this Court, considering the fact that Applicant is in prolonged incarceration and his trial is further protracted. This Court is a Constitutional Court and discretion of Court to consider Bail Application is unfettered.

7. The submissions made by learned APP cannot be countenanced for more than one reason. It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law since it is a constitutional guarantee. Article 21 which guarantees the right of personal liberty also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non-bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorized by law. But even persons accused of non-bailable offences are entitled to bail if the Court concerned comes to the conclusion that prosecution has failed to establish a *prima facie* case against the accused persons and if Court is satisfied for reasons to be recorded that in spite of existence of *prima facie* case there is a need to release such accused persons on bail where fact situations require it to do so.

8. In that process a person / under-trial accused whose Bail Application for enlargement on bail is once rejected is not precluded from filing a subsequent Application for grant of bail if there is a change in the fact situation. What is to be contemplated as change in the fact situation depends upon the circumstances then prevailing and the facts of each case. The principle of *res judicata* and such analogous

principles although are not applicable in criminal proceedings, judicial discipline is required to be adhered to. It is also argued by learned APP that findings of the coordinate bench of this Court in the previous rejection order must receive consideration at the hands of Court entertaining a fresh Bail Application at a later stage especially when bail is rejected earlier on merits. Undoubtedly so, but it cannot be argued by the learned APP that the subsequent / fresh Bail Application is not maintainable at all and Applicant will have to only approach the Supreme Court.

9. The question before Court would be whether Court must give due weight to the grounds which weighed with the former Court while rejecting the Bail Application. Ordinarily speaking the issue/s which had been canvassed earlier would not be permitted to be re-agitated on the same grounds as the same would lead to speculation and uncertainty in the administration of justice and may lead to forum hunting. However in a given case if the Court finds that a material ground for consideration of Applicant's case was not at all dealt with by the predecessor Court while rejecting the Bail Application earlier, then would that still preclude the Applicant from filing the Bail Application or for that matter preclude the Bail Court to consider the said ground for grant of bail. Hence, submissions of learned APP that present Bail Application is in the nature of a review petition is therefore not acceptable.

10. In my opinion, learned Judge hearing the second Bail Application does not lose his jurisdiction to grant bail. What is crucial for the Court to note is that what is the change in circumstances. In my opinion the adage "change in circumstances" does not mean some external changes which the Applicant / accused person will have to demonstrate before the Court because if there has to be ascribed any specific meaning to the term "change in circumstances", then it would virtually preclude the accused persons from maintaining the second Bail Application thereby jeopardizing their constitutional right for seeking bail. In my opinion in the case of confinement in prison, each day's delay and each day's detention of Applicant amounts to his prolonged incarceration and in a given case can be considered as change in circumstances and can be considered as relevant consideration while considering the subsequent Bail Application. In the present case after rejection of the previous bail Application, Applicant has filed this Application after a period of six months from the date of rejection which in my opinion is a reasonable period which would enable the Applicant to approach the Bail Court for bail.

11. That apart, in the present case there is a valid statutory ground not considered earlier for considering case of Applicant for grant of bail. Though learned APP has vehemently argued that each and every issue on merit was considered, he has failed to show and neither it is reflected in the previous rejection order as to whether the

statutory right of Applicant under Section 50 of NDPS Act of he requiring to be apprised of his right to search himself before the nearest Magistrate or nearest Gazetted Officer and the fact about the Magistrate or Gazetted Officer was informed to him in the manner in which it is required to be informed for the purpose of complying with the procedure contemplated under the NDPS Act and whether his endorsement was obtained on the appraisal form.

12. The learned APP has vehemently argued that case of Applicant on merits has been rejected by the Court by order dated 07.10.2024. However there is an important transgression which is *prima facie* observed by the Court which is not considered in the earlier order. This transgression goes to the root of the matter. FIR dated 20.03.2022 is appended at page No. 50 filed by one Ms. Deepali G. Pawar Police Sepoy (Constable). It is stated in the FIR that secret Intelligence Input Information of Applicant and Accused No.1 (Ugandan National) arriving with contraband was received inside NCB Office from a secret informer by Police Hawaldar Mr. Dattatray Chaugule at 9:30 hours on 20.03.2022. Thereafter it is stated that Police Hawaldar - Mr. Chaugule made an entry of the information received in his information register. Thereafter it is stated that he brought it to the notice of his Superior namely Police Inspector Ms. Lata Sutar simultaneously while making an entry in the Station House Daily Dairy. Thereafter it is stated that Police Inspector Ms. Lata Sutar

contacted her Superior / Competent Authority / Officer on phone and informed about it to them on over the phone and sought further action / instructions. Thereafter it is stated that Police Inspector Ms. Lata Sutar and her team received instructions to carry out the interception and raid. However letter of intimation addressed to the Superior Officer dated 20.03.2022 appended at page No. 36 if seen shows that the said letter of intimation is addressed by Mr. Nilesh Bhalerao, Police Sub- Inspector and it is endorsed by Ms. Lata Sutar.

13. This letter of intimation is conveyed to the Superior-Assistant Police Commissioner by Mr. Niesh Bhalerao who has not received the Intelligence Input Information. It is stated in the letter of intimation that secret Intelligent Input Information was received by Police Hawaldar Mr. Dattatray Chaugule and after he making the necessary entry, intimation is conveyed. *Prima facie* it is seen that neither Mr. Nilesh Bhalerao, Police Sub- Inspector nor Ms. Lata Sutar – Police Inspector have received the secret Intelligent Input Information. The receipt of the secret Intelligent Input Information is by Police Hawaldar Mr. Dattatray Chaugule according to FIR and the letter of intimation. The said Police Hawaldar Mr. Dattatray Chaugule has not addressed the letter of intimation to the Superior Officer. It is seen that both the persons who have addressed the Intelligent Input Information did not receive it. Their knowledge of the said information is purely hearsay. This is impermissible in law and *prima facie* transgression of

Sub-Section (2) of Section 42 of the NDPS Act is observed.

14. In the case of *Sanobar Shafiq Khotwal Vs. State of Maharashtra*¹, this Court has categorically considered a similar situation and has held that the person who receives the information must forward it to the superior officer by letter of intimation as contemplated under Section 42(2) of the NDPS Act. This Court held that in the case if the same has not been done by the person who has 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*.

15. This is one more ground on merit which deserves consideration at the bail stage which was not considered during hearing of the earlier Bail Application. Hence the learned APP is

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

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.

mistaken when he submits that the entire case is considered on merits by the Court in the order dated 07.10.2024. Rather in view of the decision of the Supreme Court in the case of *Sarija Banu Alias Janarthani Alias Janani and Anr. Vs. State through Inspector of Police*⁶ it is held that while considering violation of Section 42 of the NDPS Act 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.

16. The bail Court must not forget that it has a discretion to grant bail and unless very strong evidence is produced before Court personal liberty should not be interfered by unnecessarily keeping an accused person in jail. A judge while deciding Bail Application should not derive a sadistic pleasure in keeping the person in jail and he should not reject the Application merely on the ground of an earlier rejection. In my opinion Court while considering Bail Application again should look into the facts, nature of allegations, character, *prima facie* evidence placed on record and should see whether allegations made / make out a *prima facie* case against the accused person or allegations on their face entitle the accused person to bail. In a given case in a subsequent Bail Application the accused person may even be in a position to persuade the Judge to admit him on bail. Case before me is where admittedly the previous bail Application did not deal with or

6 (2004) 12 SCC 266

determine the statutory right of Applicant under provisions of Section 50 as also the transgression under Section 42(2) of the NDPS Act, 1985. In this case, the Court in its previous order directed expedition of trial. Applicant was in incarceration for 2 years and 7 months pending trial at that time. The same situation regards status of trial prevails even today after 3 years 1 month and 9 days in prison. This is one more ground for consideration of this Bail Application. Hence the submissions made by learned APP are unacceptable to the Court even otherwise.

17. Mr. Ingle informs the Court that trial has not progressed at all and it is at a stand-still which was the same position when the order dated 07.10.2024 was passed. This itself is a very shocking circumstance. Can this not qualify as a change in circumstance due to prolonged incarceration for consideration of the Applicant's case for bail is the question before the Court. Right to speedy trial and personal liberty are ingrained and intertwined for an under-trial accused person in such circumstances.

18. Submission made by learned APP is that since the order dated 07.10.2024 in the previous Bail Application rejecting it is passed on merits on all issues, it is not open to Applicant to now agitate or re-agitate any fresh issue before this Court. If such a preposterous submission is accepted, then on the one hand trial will never ever

progress and incarceration of the Applicant will be prolonged and on the other hand prosecution will never be answerable at all despite the order of the Court to expedite the trial. If Prosecution is such rigid in its stand and does not proceed with the trial despite order of expedition of the Court, it is high time that strictures should be passed if the Prosecutor appearing before the Bail Court behaves in an obstinate manner like in the present case and opposes a bail Application on this ground alone. It is made clear that this Court will not hesitate to pass appropriate strictures in a given case which shall be noted by the prosecution. A copy of this order shall be placed before the learned Public Prosecutor for his information and appropriate action.

19. *Prima facie*, this Court has observed that the appraisal letter issued under Section 50 of the NDPS Act appended at page No.49 of Application is the *sine qua non* for indicting Applicant prior to he been apprehended and arrested. The said appraisal letter on the face of record is not in consonance with the provisions of Section 50 of the NDPS Act.

20. The arrest of Applicant on the basis of invoking action under Section 50 of the NDPS Act by giving him the appraisal letter is *prima facie* illegal since the letter does not bear written endorsement of Applicant in his own handwriting about appraisal of his right to him

and his election thereof.

21. Learned APP would still insist that on page No.45 of the Memorandum / Seizure Panchanama, the reason for not recording the endorsement is stated, however forgetting the imprimatur of the Supreme Court in paragraph Nos.65 and 66 in the case of ***Ranjan Kumar Chadha Vs. The State of Himachal Pradesh***⁷ which is repeatedly endorsed by this Court in several of its orders, *inter alia*, with respect to implementation of provisions of Section 50 of the NDPS Act. It is seen that the alleged reason stated in the seizure panchanama is not even endorsed and signed by the witnesses in the appraisal letter. This is the reason why the appraisal letter therefore becomes a suspect. *Prima facie*, there is clear transgression of the provision of Section 50 of the NDPS Act at the threshold by prosecution by not recording the endorsement of appraisal in the hand-writing of the Applicant when he has signed the said letter which is impermissible in law. If prosecution is allowed to take its own course of action *sans* the statutory provisions, Court will have to step in.

22. In that view of the matter, the argument advanced by learned APP with respect to maintainability of Bail Application, as also on the issue on merits is rejected by this Court. When such *prima facie* transgression is noticed by Court at the threshold itself with respect to apprehending and arrest of Applicant without the statutory written

⁷ 2023 SCC OnLine SC 1262

endorsement in the handwriting of Applicant on the appraisal letter, the Court has to step in as case of Prosecution stands vitiated and becomes a suspect. Prosecution cannot give an explanation in the seizure panchanama for not recording the endorsement in the Memorandum Panchnama without that very reason being endorsed by the panchas and the I.O. on the appraisal letter itself to believe the prosecution case.

23. Paragraph No.65 and Requirement (ii) read with Requirement No.(vi) and Requirement (ix) is directed to be read by the prosecutor appearing in the matter in order to understand the essence and ethos of recording the endorsement under Section 50 of the NDPS Act on the appraisal letter in paragraph No.66 of the decision of the Supreme Court in the case of ***Ranjan Kumar Chadha*** (*supra*) which are reproduced below:-

“65. However, we propose to put an end to all speculations and debate on this issue of the suspect being apprised by the empowered officer of his right under Section 50 of the NDPS Act to be searched before a Gazetted Officer or Magistrate. We are of the view that even in cases wherein the suspect waives such right by electing to be searched by the empowered officer, such waiver on the part of the suspect should be reduced into writing by the empowered officer. To put it in other words, even if the suspect says that he would not like to be searched before a Gazetted Officer or Magistrate and he would be fine if his search is undertaken by the empowered officer, the matter should not rest with just an oral statement of the suspect. The suspect should be asked to give it in writing duly signed by him in presence of the empowered officer as well as the other officials of the squad that “I was apprised of my right to be searched before a Gazetted Officer or Magistrate in accordance with Section 50 of the NDPS Act, however, I declare on my own free will and volition that I would not like to exercise my right of being searched before a

Gazetted Officer or Magistrate and I may be searched by the empowered officer.” This would lend more credence to the compliance of Section 50 of the NDPS Act. In other words, it would impart authenticity, transparency and credit worthiness to the entire proceedings. We clarify that this compliance shall henceforth apply prospectively.

66. *From the aforesaid discussion, the requirements envisaged by Section 50 can be summarised as follows:—*

- (i) Section 50 provides both a right as well as an obligation. The person about to be searched has the right to have his search conducted in the presence of a Gazetted Officer or Magistrate if he so desires, and it is the obligation of the police officer to inform such person of this right before proceeding to search the person of the suspect.*
- (ii) **Where, the person to be searched declines to exercise this right, the police officer shall be free to proceed with the search. However, if the suspect declines to exercise his right of being searched before a Gazetted Officer or Magistrate, the empowered officer should take it in writing from the suspect that he would not like to exercise his right of being searched before a Gazetted Officer or Magistrate and he may be searched by the empowered officer.***
- (iii) Before conducting a search, it must be communicated in clear terms though it need not be in writing and is permissible to convey orally, that the suspect has a right of being searched by a Gazetted Officer or Magistrate.*
- (iv) While informing the right, only two options of either being searched in presence of a Gazetted Officer or Magistrate must be given, who also must be independent and in no way connected to the raiding party.*
- (v) In case of multiple persons to be searched, each of them has to be individually communicated of their right, and each must exercise or waive the same in their own capacity. Any joint or common communication of this right would be in violation of Section 50.*
- (vi) Where the right under Section 50 has been exercised, it is the choice of the police officer to decide whether to take the suspect before a Gazetted Officer or Magistrate but an endeavour should be made to take him before the nearest Magistrate.*
- (vii) Section 50 is applicable only in case of search of person of the suspect under the provisions of the NDPS Act, and would have no application where a search was conducted under any other statute in respect of any offence.*
- (viii) Where during a search under any statute other than the NDPS Act, a contraband under the NDPS Act also happens to be recovered, the provisions relating to the NDPS Act shall*

forthwith start applying, although in such a situation Section 50 may not be required to be complied for the reason that search had already been conducted.

(ix) The burden is on the prosecution to establish that the obligation imposed by Section 50 was duly complied with before the search was conducted.

(x) Any incriminating contraband, possession of which is punishable under the NDPS Act and recovered in violation of Section 50 would be inadmissible and cannot be relied upon in the trial by the prosecution, however, it will not vitiate the trial in respect of the same. Any other article that has been recovered may be relied upon in any other independent proceedings.”

(emphasis supplied)

24. Perusal of the above shows that in order to put an end to all speculations and debate on the issue of an accused person being apprised by the empowered officer of his right under Section 50 of the NDPS Act to be searched before a gazetted officer or magistrate, the Supreme Court has held that whatever the suspect states, the matter should not rest with just an oral statement of the suspect (emphasis supplied). According to prosecution, Applicant - suspect in present case informed the empowered officer that he does not know how to write and he could only write his name in hindi and therefore the empowered officer accepted his oral statement as it is and obtained his signature only without any endorsement. The Supreme Court in the above case has also noted the nature of endorsement required to be taken on the appraisal letter as follows in paragraph No.65 thereof:-

“I was apprised of my right to be searched before a Gazetted Officer or Magistrate in accordance with Section 50 of the

NDPS Act, however, I declare on my own free will and volition that I would not like to exercise my right of being searched before a Gazetted Officer or Magistrate and I may be searched by the empowered officer.”

25. The Supreme Court has immediately clarified next that this compliance shall henceforth apply prospectively. Thereafter Supreme Court has listed down specific requirements in respect of compliance / endorsement in paragraph No.66 of the same decision. Guideline No. (ix) states that burden is on the prosecution to establish that the obligation imposed by Section 50 was duly complied with before the search was conducted.

26. In that view of the matter if according to prosecution, Applicant did not know how to write in Hindi, what is expected of the empowered officer is to immediately notify and clarify the said position in the presence of independent witnesses and the Applicant so as to lend credence to compliance of Section 50 of NDPS Act so that his such act would impart authenticity, transparency and credit worthiness to the entire proceedings before conducting the search. Merely obtaining signature of suspect / Applicant herein before search is conducted and subsequently in the seizure panchnama stating the reason for not taking his endorsement is in my opinion *prima facie* transgression of Section 50 of the NDPS Act.

27. Further it is seen from the Seizure panchanama that alleged contraband seized is Mephedrone (Entry No.238F) whereas in the C.A. Report appended at page No.135 of the Application it is identified as Methamphetamine (Entry No.159). This is because the field testing kit was not available with the prosecution team as stated in the Seizure panchanama and they assumed the contraband to be MD. This is despite the letter of requisition dated 20.03.2022 appended at page No.37 of the Application which seeks the field testing kit also. Thus, if the field testing kit for MD was not available, then prosecution ought to have tested the contraband which was later certified in C.A. Report as Methamphetamine. Why this field testing was not done is unexplained?

28. This reason apart, what is the justification by the Prosecution for not proceeding with the trial in the present case despite the order of expedition is not even paid heed to. Long incarceration of 3 years 1 month pending trial writs large on the face of record. I am also of the opinion that reasons for delay in trial cannot be solely attributed to the Prosecution Role. There are multiple reasons for delay in trial which are beyond the control of prosecution which also needs to be acknowledged. Therefore, as a Constitutional Court when faced with such a situation, the Court needs to step in and exercise its discretion judiciously.

29. 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.”

30. 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?”***

31. Argued before me is a case concerning liberty of an under-trial who has been incarcerated for almost 3 years 1 month 9 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 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.

32. In the case of *Emperor vs H.L. Hutchinson*⁸ 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

8 AIR 1931 ALL 356

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 Mukherji 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.”

33. In the case of *Satender Kumar Antil Vs. Central Bureau of Investigation*⁹, in paragraph Nos.6 to 15 the Supreme Court considered the prevailing situation of prisons in India, definition of trial and bail, principle of presumption of innocence and reiterated the well recognised principle that bail is the rule and jail is the exception in bail jurisprudence on the touchstone of Article 21 of the Constitution of India. Paragraph Nos.6 to 15 of the said judgement read as under:-

“Prevailing situation

9 (2022) 10 SCC 51

6. *Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.*

Definition of trial

7. *The word “trial” is not explained and defined under the Code. An extended meaning has to be given to this word for the purpose of enlargement on bail to include, the stage of investigation and thereafter. Primary considerations would obviously be different between these two stages. In the former stage, an arrest followed by a police custody may be warranted for a thorough investigation, while in the latter what matters substantially is the proceedings before the court in the form of a trial. If we keep the above distinction in mind, the consequence to be drawn is for a more favourable consideration towards enlargement when investigation is completed, of course, among other factors.*

8. *Similarly, an appeal or revision shall also be construed as a facet of trial when it comes to the consideration of bail on suspension of sentence.*

Definition of bail

9. *The term “bail” has not been defined in the Code, though is used very often. A bail is nothing but a surety inclusive of a personal bond from the accused. It means the release of an accused person either by the orders of the court or by the police or by the investigating agency.*

10. *It is a set of pre-trial restrictions imposed on a suspect while enabling any interference in the judicial process. Thus, it is a conditional release on the solemn undertaking by the suspect that he would cooperate both with the investigation and the trial. The word “bail” has been defined in Black's Law Dictionary, 9th Edn., p. 160 as:*

“A security such as cash or a bond; esp., security required by a court for the release of a prisoner who must appear in court at a future time.”

11. Wharton's Law Lexicon, 14th Edn., p. 105 defines "bail" as:

"to set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and at a place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves or become bail for his due appearance when required, in order that he may be safely protected from prison, to which they have, if they fear his escape, etc. the legal power to deliver him."

Bail is the rule

12. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India. This Court in *Nikesh Tarachand Shah v. Union of India* [*Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC 1 : (2018) 2 SCC (Cri) 302] , held that : (SCC pp. 22-23 & 27, paras 19 & 24)

"19. In Gurbaksh Singh Sibbia v. State of Punjab [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] , the purpose of granting bail is set out with great felicity as follows : (SCC pp. 586-88, paras 27-30)

'27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra Nath Chakravarti, In re [Nagendra Nath Chakravarti, In re, 1923 SCC OnLine Cal 318 : AIR 1924 Cal 476] , AIR pp. 479-80 that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the "Meerut Conspiracy cases" observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [K.N. Joglekar v. Emperor, 1931 SCC OnLine All 60 : AIR 1931 All 504] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there

was no hard-and-fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. H.L. Hutchinson [Emperor v. H.L. Hutchinson, 1931 SCC OnLine All 14 : AIR 1931 All 356] , AIR p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is 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. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. Public Prosecutor [Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240 : 1978 SCC (Cri) 115] that : (SCC p. 242, para 1)

“1. ... the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of “procedure established by law”. The last four words of Article 21 are the life of that human right.”

29. In Gurcharan Singh v. State (Delhi Admn.) [Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the Court, that : (SCC p. 129, para 29)

“29. ... There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the

exercise of judicial discretion in granting or cancelling bail.”

30. *In American Jurisprudence (2nd Edn., Vol. 8, p. 806, para 39), it is stated:*

“Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.”

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.’

* * *

24. *Article 21 is the Ark of the Covenant so far as the Fundamental Rights Chapter of the Constitution is concerned. It deals with nothing less sacrosanct than the rights of life and personal liberty of the citizens of India and other persons. It is the only article in the Fundamental Rights Chapter (along with Article 20) that cannot be suspended even in an emergency [see Article 359(1) of the Constitution]. At present, Article 21 is the repository of a vast number of substantive and procedural rights post Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] .”*

13. *Further this Court in Sanjay Chandra v. CBI [Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] , has observed that : (SCC p. 52, paras 21-23)*

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."

Presumption of innocence

14. Innocence of a person accused of an offence is presumed through a legal fiction, placing the onus on the prosecution to prove the guilt before the court. Thus, it is for that agency to satisfy the court that the arrest made was warranted and enlargement on bail is to be denied.

15. Presumption of innocence has been acknowledged throughout the world. Article 14(2) of the International Covenant on Civil and Political Rights, 1966 and Article 11 of the Universal Declaration of Human Rights, 1948 acknowledge the presumption of innocence, as a cardinal principle of law, until the individual is proven guilty."

34. 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:-

"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**

¹⁰ 1978 (1) SCC 240

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)

35. Thereafter the Supreme Court in a plethora of judgements have 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:-

35.1. 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.

35.2. 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 procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a

¹¹ 1978 (1) SCC 248

¹² (1980) 1 SCC 81

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.”

35.3. The Supreme Court in the case of ***Shaheen Welfare Association vs Union Of India***¹³ dealing with a Public Interest Litigation seeking relief for undertrial prisoners charged under the Terrorist and Disruptive Activities (Prevention) Act, 1987 due to gross delay in disposal of cases qua Article 21 of the Constitution of India held as under:-

“10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh’s case (supra), on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.”

35.4. The Supreme Court in the case of ***Union of India v. K. A. Najeeb***¹⁴ 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

13 1996 SCC (2) 616

14 Criminal Appeal No. 98 of 2021

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.”

35.5. Applicant in present case has been in custody for almost 3 years 1 month 9 days. 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 accused in custody whose liberty is affected. In the case of ***Abdul Rehman Antulay & Ors. Vs R.S. Nayak & Anr.***¹⁵ 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:

¹⁵ 1992 (1) SCC 225

(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)

36. 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 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.

37. In the case of *Supreme Court Legal Aid Committee (Representing undertrial prisoners) Vs. Union of India*¹⁶ 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

¹⁶ (1995) 4 SCC 695

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.”

38. In the present case, it appears that possibility of the trial being completed in the near foreseeable future is doubtful. It is also an admitted position that Applicant has suffered incarceration for about 3 years 1 month 9 days.

39. In the following decisions of the Supreme Court and various High Courts 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:-

39.1. In the case of *Vijay Singh Vs. Union of India*¹⁷ the Supreme Court granted bail to an undertrial-accused who was incarcerated for a

¹⁷ Special Leave Petition (Criminal) Diary No. 43071/2024

period of 4 years and 1 Month holding that Article 21 of the Constitution overrides Section 37 of NDPS Act if there is undue delay in completion of trial on the part of prosecution.

39.2. In the case of *Rabi Prakash Vs. State of Odisha*¹⁸ the Supreme Court, considering the long incarceration of an undertrial accused who was incarcerated for 3 years and 6 months granted him bail. The contraband in question was Ganja, the commercial quantity of which is 20 Kilograms. In this case recovery of 247 Kilograms was allegedly made from the accused despite which the court invoking the right to speedy justice flowing from Article 21 and forceable delay in trial granted bail to the accused.

39.3. In the case of *Dheeraj Kumar Vs. State of Uttar Pradesh*¹⁹ the Supreme Court considering long incarceration granted bail to an undertrial-accused who was incarcerated for 2 years and 6 months granted him bail. The contraband in question was Ganja the commercial quantity of which is 20 Kilograms. In this case recovery of 65 Kilograms was allegedly made from the accused despite which, the Court invoking the right to speedy justice flowing from Article 21 and forceable delay in trial granted bail to the Accused.

39.4. In the case of *Balkishan Vs. State of Madhya Pradesh*²⁰ the Supreme Court considering long incarceration of an undertrial-accused

18 2023 SCC OnLine SC 1109

19 2023 SCC OnLine 918

20 Petition for Special Leave to Appeal (Cri) No. 8415 of 2024

who was incarcerated for 2 years and 5 months granted him bail. The contraband in question was Poppy Straw, the commercial quantity of which is 50 kilograms when recovery of 80 kilograms was allegedly made from the accused.

39.5. In the case of *Badsha Sk. Vs. State of West Bengal*²¹ the Supreme Court considering long incarceration of an undertrial-accused who was incarcerated for 2 years and 4 months granted him bail. The contraband in question was Codeine Phosphate, the commercial quantity of which is 1 kilograms when recovery of 100 bottles each of 100 ml. was allegedly made from the accused.

39.6. In the case of *Man Mandal and Anr. Vs. State of West Bengal*²² the Supreme Court considering long incarceration of an undertrial-accused who was incarcerated for 2 years granted him bail despite being alleged to be in possession of commercial quantity of contraband.

39.7. In the case of *Ankur Chaudhary Vs. State of Madhya Pradesh*²³ the Supreme Court considering long incarceration of an undertrial-accused granted him bail to an undertrial-accused who was incarcerated for about 2 years.

39.8. In the case of *Nitish Adhikary alias Bapan Vs. State of West*

²¹ 2023 SCC OnLine SC 1867

²² 2023 SCC OnLine SC 1868

²³ Petition for Special Leave to Appeal (Cri) No. 4648 of 2024

*Bengal*²⁴ the Supreme Court considering long incarceration of an undertrial-accused granted him bail to an undertrial-accused who was incarcerated for 1 year and 7 months despite being alleged to be in possession of commercial quantity of contraband.

39.9. In the case of *Babor Ali Mondal Vs. State of West Bengal*²⁵ the Supreme Court considering the long incarceration granted bail to an undertrial-accused who was incarcerated for 1 year and 4 months.

39.10. In the case of *Sukhvinder Singh Bittu Vs. State of Punjab*²⁶ 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.

39.11. In the case of *Tinku Vs. State (NCT of Delhi)*²⁷ the Delhi High Court considering the long incarceration of an undertrial-accused granted him bail who was incarcerated for 2 years and 5 months. The contraband in question was Heroin, the commercial quantity of which is 250 grams. In this case recovery of 945 grams was allegedly made from the accused despite which the High Court invoking the right to speedy justice flowing from Article 21 of the Constitution and forceable delay in trial granted bail to the accused.

²⁴ 2022 SCC OnLine SC 2068

²⁵ Criminal Appeal No. 3349 of 2024

²⁶ Cri. Appeal No.1204 of 2024

²⁷ 2024 SCC OnLine Del 9132

39.12. In the case of *Kulwinder Singh Vs. State of Punjab*²⁸ the Punjab and Haryana High Court considering long incarceration of an undertrial-accused granted him bail who was incarcerated for 2 years and 8 months. The contraband in question was Etizolam Salt, the commercial quantity of which is 2.5 grams. In this case recovery of 99.876 grams was allegedly made from accused despite which the High Court invoking the right to speedy justice flowing from Article 21 of the Constitution and delay in trial granted bail to the accused.

39.13. In the case of *Amey Sanjay Jadhav Vs. State of Maharashtra*²⁹ this Court on 03.01.2025 considering long incarceration of the undertrial-accused has granted bail to the undertrial accused who was incarcerated for 2 years and 11 months. The contraband in question was 1.3 kilograms of Charas, the commercial quantity of which is 1000 grams.

39.14. In the case of *Mohd. Mobin Jahurul Hasan Manihar Vs. State of Maharashtra*³⁰ - this Court on 20.01.2025 considering long incarceration of the under-trial accused granted bail to him who was incarcerated for 1 year 11 months. The contraband in question was 220 gms of MD , the commercial quantity of which is 50 gms.

40. In all the above cases the right to speedy justice flowing from Article 21 of the Constitution of India and the foreseeable delay in trial

²⁸ CRM-M-26704 of 2024

²⁹ BA No.911 of 2024 decided on 03.01.2025

³⁰ BA No.713 of 2024 decided on 20.01.2025

are 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.

41. In view of my above *prima facie* observations and considering the long incarceration of Applicant which is also writ large on the face of record pending trial, I am of the opinion that the present Application is maintainable and prosecution cannot object grant of bail to the Applicant.

42. 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.50,000/- 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.

43. 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.

44. Bail Application No.1740 of 2025 is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]