

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1817 OF 2025

Gudipati Subrahmanyam

..Applicant

Versus

Union of India & Anr

...Respondents

Mr. Ayaz Khan, with Dilip Mishra, Zehra charania and Mallika Sharma, for the Applicant.

Mr. J.B. Mishra, with Abhishek R. Mishra & ROpesh Dubey, for Respondent No.1.

Mr. N.B. Patil, APP, for Respondent No.2-State.

CORAM: N. J. JAMADAR, J.

DATED : 11th AUGUST 2025

ORDER:

1. The Applicant, who is arraigned in NDPS Special Case No.1506 of 2023, arising out of CR No.F. No. CIU/INV-23/2022-23/ACC(G)/E-office and F. No GEN/ INV/ Misc/ 229/2023-CIU-O/o COMMR-CUS-GEN-Zone-III-Mumbai, registered at the instance of SIIB, Export, for the offences punishable under Sections 22(c), 23(c), 27A, 28, 29 and 30 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act, 1985”) has preferred this Application to enlarge him on bail.

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2. In fact, this is the second Application for bail. The first Application, being BA No. 4210 of 2023, preferred by the Applicant came to be rejected by an order dated 17th May 2024.

3. The Applicant challenged the aforesaid order before the Supreme Court in SLP No. S-12001 of 2024. By an order dated 9th September 2024, the said SLP came to be dismissed as withdrawn.

4. The gravamen of indictment against the Applicant (A1) is that he was the Chief Operating Officer of M/s First Wealth Solution (First Wealth), the consignor. The Applicant had placed the purchase order with M/s Safe Foundation Pvt Ltd to procure Tramadol Hydrochloride with brand name, 'Tamol-X'. The Applicant forged the documents and invoices raised by M/s. Safe Formulation Pvt. Ltd. under which the said drug was supplied for export purpose only, to change the description from Tramadol Hydrochloride to Calcium Carbonate.

5. On the basis of the intelligence input, one export consignment covered under Shipping Bill No. 7996704 dated 23rd February 2023 of M/s First Wealth Solution containing 10.5 lakhs tablets was intercepted by the Central Intelligence Unit (CIU) Air Cargo Complex, Sahar (ACC). In the search 9,99,500 tablets of Tamol-X were found, though the description on each packets was that of calcium carbonate. The goods were thus found to be misdeclared in terms of quantity and description.

Upon analysis, the test turned out positive for Tramadol, a psychotropic substance.

6. Mr. Ayaz Khan, the learned Counsel for the Applicant, submitted that since this Court has rejected the first Application for bail on merits, the Applicant may not urge the ground of inapplicability of the provisions contained in Rule 58 of the NDPS Rules. However, on the ground of prolonged period of incarceration of the Applicant with a very bleak chance of commencement of trial in near future, the Applicant deserves to be enlarged on bail.

7. Mr. Khan urged that the Applicant has been in custody since 11th March 2023. Out of the nine accused, two of the accused have been granted interim pre-arrest bail. Their Applications are yet to be decided finally. The prosecution has not proceeded against Accused No. 9, who has been granted pre-arrest bail by this Court. It is likely that the prosecution may file supplementary complaint against the accused who are enlarged on pre-arrest bail or who are on interim bail. The charge has yet not been framed. The prosecution has cited 88 witnesses. It is also likely that, post filing of the supplementary complaint, the prosecution may propose to examine more witnesses.

8. In the aforesaid circumstances, it is extremely unlikely that the trial can even commence, much less conclude, within a reasonable

period. Such prolonged period of incarceration without the prospect of trial impinges upon the right to life of the accused, submitted Mr. Khan.

9. Mr. Khan invited attention of the Court to an order passed by this Court in BA No. 4612 of 2024, whereby this Court released, Sangala Sridhar Reddy (A7)- a co-accused, by also taking into account the fact that he was incarcerated for over 22 months. The Applicant is in custody for almost 30 months. Therefore, the Applicant deserves to be enlarged on bail.

10. To buttress these submissions, Mr. Khan placed reliance on the orders of the Supreme Court in the cases of **Rafat Ali & Anr Vs The State of Assam**,¹ **Mukesh Yadav Vs The State of Assam**,² **Mohammad Roshan Vs Union of India**,³ **Anmol Singh Vs State of Punjab**⁴ and **Hiteshbhai Dhirubhai Olakiya Vs The State of Gujarat**.⁵

11. In opposition to this, Mr. Mishra, the learned Special PP for Respondent No.1, submitted that this Court has rejected the bail Application of the Applicant by recording elaborate reasons. The Supreme Court has declined to interfere with the said order. There is no significant change in the circumstances which would warrant afresh consideration of the prayer for bail. Mr. Mishra would further urge that

1 SLP (Cri) No. 2690 of 2025 decided on 15th April 2025.

2 Criminal Appeal No. 1966 of 2025, decided on 15th April 2025

3 SLP (Cri) No. 4517 of 2025, decided on 2nd May 2025.

4 SLP (Cri) No. 5568 of 2025, decided on 26th May 2025.

5 SLP (Cri) No. 4947 of 2025, decided on 24th July 2025.

having regard to the nature and gravity of the accusation and since the interdict contained in Section 37 of the NDPS Act 1985 operates with full force, the Applicant cannot be enlarged on bail on the count of long period of incarceration alone.

12. The Trial could not be commenced as the co-accused have been adopting dilatory tactics. The prosecution is not responsible for the delay. Thus, to address the concern of pro-longed period of incarceration, the Court may make the trial time-bound, urged Mr. Mishra.

13. I have given careful consideration to the aforesaid submissions. Since this Court has rejected the first bail Application by recording elaborate reasons and the Applicant did not succeed before the Supreme Court, there is no reason to take a different view on the plea for bail on the merits of the case.

14. On the aspect of entitlement for bail on the count of prolonged period of incarceration, the legal position is fairly crystallized. A pro-longed period of incarceration without a realistic prospect of conclusion of the trial, impairs the right of the accused to speedy trial which is a facet of the right to life guaranteed under Article 21 of the Constitution of India. It is well recognized that the stringent restrictions in the matter of grant of bail under the Special enactments like NDPS Act, Unlawful Activities (Prevention) Act 1967, Maharashtra Control of Organized

Crime Act 1999, etc proceed on the premise that the trial would be concluded within a reasonable period. In a case where the accused is incarcerated for an inordinately long period as an under-trial prisoner, the statutory restrictions in the matter of bail do not preclude the Constitutional Courts from releasing the accused on bail. In such situations, it is held that, the statutory restrictions in the matter of grant of bail melt down and the conditional liberty overrides the statutory limitations.

15. A profitable reference, in this context, can be made to the judgment of the Supreme Court in the case of **Union of India Vs K.A. Najeeb**,⁶ wherein the Supreme Court has observed as under:

“17. It is thus clear to us that the presence of statutory restrictions like Section 43D(5) of UAPA perse does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of Page 11 the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would

6 AIR 2021 SC 713.

safeguard against the possibility of provisions like Section 43 D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

(emphasis supplied)

16. In the case of **Rabi Prakash Vs The State of Odisha**⁷ wherein the accused therein was in custody of more than three and half years, on the accusation of having committed the offences punishable under Section 20(b)(ii)(c) of the NDPS Act 1985, the Supreme Court observed as under:

“3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the

⁷ SLP (Cri) No. 4169 of 2023, decided on 13th July 2023.

statutory embargo created under Section 37(1) (b)
(ii) of the NDPS Act.”

(emphasis supplied)

17. In **Mohd Muslim Alias Hussain Vs State (NCT of Delhi)**,⁸ the Supreme Court reiterated that the grant of bail on the ground of undue delay in trial, cannot be said to be fettered by Section 37 of the NDPS Act given the imperative of Section 436A which is applicable to offences under the NDPS Act too. The laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.

18. Reverting to the facts of the case at hand, indeed the gravamen of accusation against the Applicant is serious. That consideration weighed with this Court in rejecting the Application for bail, at the initial stage, by adopting the approach delineated by the Supreme Court in the case of **K.A. Najeeb (Supra)**. However, after a period of almost 30 months of the arrest of the Applicant and remote possibility of even framing the charge, in the immediate future, the consideration of gravity of the accusation cannot be pressed into service with equal force. At this stage, the constitutional right of the accused to have a speedy trial, which stands on a higher pedestal than a statutory limitation, deserves due weight.

8 (2023) 3 SCR 697.

19. In circumstances of the case, the prospect of the conclusion of the trial within a reasonable period appears extremely bleak. As noted above, the Applications for pre-arrest bail of the two of the co-accused are, stated to be, yet to be finally decided. The prosecution has not proceeded against an accused who has been enlarged on pre-arrest bail. It does not appear that steps have been taken to conclude further investigation, if any, qua the accused who have been granted pre-arrest bail, or who are still on interim bail. Though a period of almost 30 months has elapsed, even the charge has not been framed. These hard facts give heft to the submission of Mr. Khan that it is extremely unlikely that the trial can commence, much less conclude, within a reasonable period.

20. Since the prosecution has cited, as of now, as many as 88 witnesses, even if the trial commences within a couple of months from today, which in itself seems very unlikely, the trial is not likely to conclude in a reasonably forceable future. Having regard to the nature of the accusation, the circumstances of the case, and number of accused, the prosecution may be required to examine a sizable number of witnesses, even if all the cited witnesses are not examined.

21. In this backdrop, I am of the considered view that, in the facts of this case, the statutory restrictions in the matter of grant of bail do melt down and the Applicant deserves to be enlarged on bail on the ground of

long period of incarceration, without a realistic prospect of the conclusion of the trial.

22. Hence, the following order:

: O R D E R :

- i] The bail application stands allowed.
- ii] The applicant Gudipati Subrahmanyam be released on bail in NDPS Special Case No.1506 of 2023, arising out of C.R. No.F. No. CIU/INV-23/2022-23/ACC(G)/E-office and F. No GEN/ INV/ Misc/ 229/2023-CIU-O/o COMMR-CUS-GEN-Zone-III-Mumbai, registered at the instance of SIIB, Export, on furnishing a P.R. Bond in the sum of Rs.1,00,000/- (one lakh) with one or two sureties in the like amount to the satisfaction of the learned Special Judge.
- iii] The applicant shall mark his presence at the Central Intelligence Unit, between 10.00 am. to 12.00 noon, on first Monday of every month, for the period of three years or till conclusion of the trial, whichever is earlier.
- iv] The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.
- v] On being released on bail, the applicant shall furnish his contact

number and residential address to the investigating officer and shall keep him updated, in case there is any change.

vi] The applicant shall surrender his passport before the Special Court, if not already surrendered. The applicant shall not leave India without prior permission of the learned Special Judge.

vii] The Applicant shall not indulge in any activity like the activities for which he has been arraigned in this case.

viii] The applicant shall regularly attend the proceedings before the jurisdictional Court.

ix] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

[N. J. JAMADAR, J.]