

Laxmi Sontakke
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1856 OF 2025

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Date: 2025.05.07
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Uday Sunil Gavande

.. Applicant

Versus

Union of India & Ors.

.. Respondents

.....

- Mr. Ayaz Khan a/w Mr. Dilip Mishra, Ms. Zehra Charania and Ms. Mallika Sharma, Advocates for Applicant.
- Mr. Sukanta Karmakar, APP for the State.
- Ms. Karishma Rajesh a/w Mr. Nishad Mokashi i/b. Mr. Shriram Shirsat for NCB.

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CORAM : MILIND N. JADHAV, J.

DATE : MAY 05, 2025

P.C.:

1. Heard Mr. Khan, learned Advocate for Applicant, Mr. Karmakar, learned APP for Respondent-State and Ms. Rajesh for NCB.

2. Applicant - accused has filed the present Application for regular bail under in connection with F. No. NCB/MZU/CR-06/2025 registered with NCB.

3. The main question raised in the present case for seeking bail is of non compliance of statutory provisions under Sections 105 and 185 of the Bharatiya Nyaya Sanhita, 2023 (for short "BNS Act).

4. Mr. Khan, learned Advocate would persuade the Court to peruse the said provisions and submit that there is an effective check and balance envisaged under the aforesaid provisions with respect to

recording of search and seizure through audio and video electronic means which has not been complied with in the present case. As also he would draw my attention to Section 185(5) of the BNS Act and would contend that the reason for giving such directions is to obviate any tampering or improvisations by the prosecution officers.

5. He would make a larger point to the court for consideration. He would submit that invariably the aforesaid provisions are not complied with in many cases despite being on the statute for the past more than 10 months and would therefore persuade the Court to pass appropriate directions after calling for a reply from the prosecution so as to insulate the prosecution cases in future in similarly placed matters lest that would amount to transgression of statutory provision enabling bail.

6. Learned Prosecutor appearing on behalf of Union of India. Union of India is directed to take cognizance of the aforesaid and file appropriate affidavit in reply stating the reasons as to why the aforesaid provisions have not being complied with. *Prima facie*, the Court is of the opinion that if the aforesaid provisions are not complied with, the case of prosecution would stand vitiated at the outset itself.

7. Mr. Khan, learned Advocate would refer to the decision in the case of ***Bantu Vs. State Government Nct of Delhi***¹ in this regard.

¹ Bail Application No. 2287 of 2022, decided on 08.07.2024

The aforesaid decision delivered by the Single Judge of the Delhi High Court *prima facie* delineates the importance of the said provisions in the prosecution case realizing the need of the changing times and the legislative mandate given in the aforesaid provisions even though the prosecution may be regularly following the procedure since the same is already on the statute.

8. In the present case, there is *prima facie* violation which is noticed by the Court. Legislative mandate becomes more imperative and significant in view of the fact that in Section 105 of the said Act itself it is stated that audio video recording can be preferably done by mobile phone also since almost all mobile phones are compatible with video-graphy.

9. Another reason for implementing the said provisions is to aid the prosecution case which can be *prima facie* corroborated by audio video recording. The idea behind the legislative enhancement is designed to ensure more accountable approach in investigation with apprehensive emphasis on technical interrogation, hierarchy change in criminal justice system for promoting a system that is not transferrable and accountable but also fundamentally aligned with the principles of fairness to justice.

10. The affidavit in reply is directed to be filed within a period of four weeks from today.

11. List the matter on 9th June 2025 for directions and compliance.

Laxmi Sontakke

[MILIND N. JADHAV, J.]