

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1958 OF 2025

Rafik Musa Shiakh

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Amol M. Thombre, Advocate for Applicant.
- Ms. Megha S. Bajoria, APP for Respondent.
- PSI – Jarande, Nirmal Nagar Police Station.

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CORAM : MILIND N. JADHAV, J.

DATE : MAY 09, 2025

P.C.:

1. Heard Mr. Thombre, learned Advocate for Applicant and Ms. Bajoria, learned APP for Respondent.

2. This is an Application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking Bail in connection with C.R. No.160 of 2017 registered with Nagpada Police Station for offences punishable under Section 8(c) and Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

3. Applicant in the present case is arrested on 21.08.2024 and is incarcerated in NDPS Special Case No.72 of 2017. Special Case was instituted in the year 2017, Applicant was arrested on 24.04.2017 initially and released on bail on 27.10.2017. Charge is framed on

13.11.2024.

4. Trial was to begin but Applicant did not make himself available. In that view of the matter, Non-Bailable Warrant (for short 'NBW') was issued against Applicant and therefore he was arrested.

5. Mr. Thombre would plead to the Court that Applicant was arrested for being in conscious possession of intermediate quantity of the alleged contraband and therefore he was enlarged on bail in the year 2017. He would fairly submit that due to Applicant's dereliction by not remaining present before the Trial Court it led to issuance of NBW and subsequent arrest of Applicant. Hence, he would persuade the Court to consider his release on bail.

6. Ms. Bajoria, learned APP would *prima facie* submit that though Applicant was admittedly released on bail in the year 2017 in the present crime, it was his duty to ensure that he remained present before the Trial Court for trial as it was one of the condition precedent in the grant of bail order. That not having been done in the case of Applicant, he was arrested. She would also inform the Court that during the interregnum, in 2018 Applicant was also indicted and arrested in another offence punishable under the NDPS Act in the State of Jammu and trial therein is also going on.

7. She has drawn my attention to the order appended at page No.102 to Application, *inter alia*, rejecting successive Bail Application

of Applicant. On the perusal of the said order, it is *prima facie* seen that Court has considered the dereliction and conduct of Applicant and he having shown disregard for the legal process as principal ground for rejecting his Bail Application. Court has also *prima facie* observed that Applicant stayed away from Trial Court for more than six years after he was enlarged on bail in the year 2017 and only the ground which he pleaded was on the account of illness of his mother. Court held that if that was the ground, it was duty of Applicant to seek appropriate exemption but even that was not sought by Applicant and therefore Court was constrained to issue NBW to ensure Applicant's attendance in trial in view of the fact that Court had already taken steps to expedite the trial.

8. Primarily Applicant's conduct of staying away from the Court and abscondance were considered to be chief reasons for issuance of NBW against him on the ground of he having evaded trial which was expedited by the Trial Court.

9. I have heard Mr. Thombre, learned Advocate for Applicant and Ms. Bajoria, learned APP for Respondent and with their able assistance perused the record of the case. Submissions made by them have received due consideration of the Court.

10. On question being specifically asked with respect to the base of Applicant, learned Advocate for Applicant would submit that

Applicant is working in the fruit market at Byculla and is resident of Nagpada, Central Mumbai and has deep roots in Soceity. He would submit that considering the fact that Applicant was already enlarged on bail during the interregnum, by virtue of his dereliction he is incarcerated in prison once again for the past 8 months and 19 days. This submission *prima facie* deserves consideration especially in view of the fact that Applicant was released on bail for being found in conscious possession of intermediate quantity of the alleged contraband in the year 2017. One of the reason for grant of bail is also to ensure that the Applicant / Accused person commits to trial.

11. 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?”***

12. Considering the fact that Applicant was already enlarged on bail and because of his conduct he was re-arrested but he has now assured the Court that he will attend and commit himself to trial, I am of the opinion that present Application deserves consideration.

13. In view of my aforesaid *prima facie* observations, Bail

Application is allowed subject to the following conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs.25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed
- (iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) Applicant shall attend the trial Court on first Saturday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Saturday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next

working day;

(vi) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;

(vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court; This condition shall be strictly followed as trial is ripe for evidence; If the Applicant desires to travel to Jammu to attend the other case where he is arraigned as accused, he will take permission of the Trial Court and if any Application for / on such a ground is made, the Trial Court shall consider it expressly and grant the same so that Applicant can attend the trial in Jammu;

(viii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

14. 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.

15. Bail Application No.1958 of 2025 is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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