

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 2658 OF 2025

Ahmed Saleh Hasan @ Aldosky ...Applicant
Versus
Union of India and anr. ...Respondents

Mr. Sherali Khan, a/w Afzar Khan, for the Applicant.
Ms. Neha Patil, Special PP for the UOI – Respondent No.1.
Mr. Kiran Shinde, APP for the State – Respondent No.2.

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CORAM: N. J. JAMADAR, J.
DATED: 22nd DECEMBER, 2025

ORDER:-

1. Heard the learned Counsel for the parties.
2. 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.
3. This is the second application for bail. The first application, being BA/4160/2023, was rejected by this Court by

an order dated 17th May, 2024, along with bail application of Gudipati Subramaniam (A1).

4. The learned Counsel for the applicant submitted that after the rejection of the said bail application, there have been developments, which warrant afresh consideration of the prayer of the applicant for bail. Firstly, Gudipati Subramaniam (A1) the principal accused has been enlarged on bail by this Court by an order dated 11th August, 2025 in BA/1817/2025 on the ground of long incarceration. Secondly, all other accused, except the applicant, have been enlarged on pre-arrest or regular bail. Thirdly and most importantly, the applicant has been in custody since 5th May, 2023 and the charge has yet been framed. Thus, it is unlikely that the trial can be concluded within a reasonable period. In these circumstances, the applicant deserves to be enlarged on bail.

5. In opposition to this, the learned Special PP for the respondent would submit that the long period of incarceration cannot be pressed into service as a ground to enlarge an accused on bail where the interdict contained in Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act, 1985"), comes into play. Unless the twin conditions envisaged by Section 37 are satisfied, an accused does not

deserve to be enlarged on bail. Secondly, the accused is an Iraqi National and, once released on bail, it would be difficult to secure the presence of the applicant at the trial. Thirdly, the charge could not be framed as the co-accused, who are on bail, did not appear before the Special Court on one or the other pretext. Therefore, the applicant does not deserve to be enlarged on bail.

6. The first application was rejected by this Court as the Court had found that there was material to indicate that the applicant had not only arranged the foreign purchasers but also received hefty commission. There was material to indicate that the applicant had advised Gudipati (A1) not to write Tramadol and also suggested the name of the product to be used as a disguise for the psychotropic substance.

7. At this juncture, however, the subsequent development deserve to be taken into account. Gudipati (A1) was alleged to be the prime offender. By an order dated 11th August, 2025, in BA/1817/2025, this Court, after adverting to the pronouncements of the Supreme Court, was persuaded to exercise the discretion in favour of Gudipati (A1) on account of the long period of incarceration and bleak possibility of

expeditious commencement and conclusion of the trial. This Court had observed, *inter alia*, as under:

“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***,¹ 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 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)

1 AIR 2021 SC 713.

16. In the case of **Rabi Prakash Vs The State of Odisha**² 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 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)**,³ 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.

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

3 (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.”

8. The aforesaid reasons which weighed with this Court in releasing Gudapati (A1) apply with even greater force to the case of the applicant. The applicant has been in custody since 5th May, 2023. The role attributed to Gudipati (A1) is more serious. The charge in the special case has yet not been framed. Having regard to the pace of the proceedings before the trial Court and, especially, in the light of the fact that, the prosecution proposes to examine as many as 88 witnesses, even

if the trial commences in near future, it is extremely unlikely that the trial can be concluded within a reasonable period.

9. Ms. Patil was justified in canvassing a submission that since the interdict contained in Section 37 of the NDPS Act, 1985, comes into play, the twin test needs to be satisfied before a person accused of the offences in relation to the commercial quantity is enlarged on bail. However, a different approach is warranted where on account of long period of incarceration the constitutional guarantee of speedy trial is impaired. In that context, the statutory restrictions in the matter of grant of bail yield to the constitutional guarantee. The constitutional right of the accused to have a speedy trial, in such a situation, stands on a higher pedestal than statutory limitations in the matter of grant of bail.

10. Moreover, since all the co-accused have been enlarged on pre-arrest or regular bail, including Gudipati (A1), on the principle of parity as well, the applicant deserves to be enlarged on bail. Since the Passport of the applicant is stated to be in the custody of the Investigating Agency, the fact that the applicant is an Iraqi National may not operate as an impediment in granting bail, subject to stringent conditions.

11. Hence the following order:

: O R D E R :

- (i) The bail application stands allowed.
- (ii) The applicant Ahmed Saleh Hasan @ Aldosky 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/- 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.]