



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.419 OF 2025

Balem Nanaji @ Nani s/o Peddakaapu Balem
Vs.

State of Maharashtra, through Police Station Officer, Police Station Pardi,
Nagpur (N.D.P.S. Cell, Nagpur)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. K. Bhangde, Counsel along with Mr. N. K. Bhangde, Counsel for the
applicant.

Mr. Amit Madiwale, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 27/06/2025

1. The applicant came to be arrested on 16.11.2022 in connection with Crime No.383/2022 registered with Police Station Pardi, Nagpur for the offence punishable under Sections 8(c), 20b(ii)(C), 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2. The crime is registered on the basis of the information received on 15.11.2022 that one truck bearing No. AP-16-TA-7439 coming towards the Nagpur is transporting the alleged contraband ganja. Accordingly, the said truck was intercepted and on interception of the truck, the driver and the applicant were found. Both were from the Andhra Pradesh and knowing only Telugu language. After the inquiry, they have disclosed their names and on due search of

the said truck, it was carrying fertilizer bags and 71 bags were found in which alleged contraband ganja was kept. Total weight of ganja was 1195.670 grams. Therefore, the applicant and the other co-accused were arrested and now they are languishing in jail.

3. Heard learned Counsel for the applicant, who submitted that since 16.11.2022, the applicant is behind bar. There is no progress in the trial, even charges are not framed. Thus, there is an inordinate delay in the trial and, therefore, the right of the accused of speedy trial enshrined under Article 21 of the Constitution is affected and for that ground, the applicant be released on bail as he cannot be detained for an indefinite period.

4. Learned APP strongly opposed the said application on the ground that commercial quantity of ganja was found in possession of the present applicant and other co-accused. Due to the absence of the accused, the accused was not heard on the point of charge and, therefore, there is a delay in trial. Now, the case is already fixed for hearing on framing of charge on 10.07.2025, in view of that, the application deserves to be rejected.

5. Learned Counsel for the applicant in support of his contention placed reliance on the catena of decisions including **Ramlal Vs. State of**

Rajasthan reported in **2024 SCC OnLine SC 2594, V. Senthil Balaji Vs. The Deputy Director, Directorate of Enforcement** reported in **2024 ALL SCR (Cri) 1941, Criminal Application (BA) No.392/2025 [Mahendra Rupnarayan Solanki Vs. State of Maharashtra) dated 28.04.2025.**

6. On hearing both sides and on perusal of the entire investigation papers, it reveals that the applicant is found in possession of the said contraband ganja weighing of 1195.670 grams when they were transporting in a truck bearing No. AP-16-TA-7349. During investigation, the Investigating Officer has issued the notice under Section 42(1) as well as 50 of the NDPS Act. The seizure panchanama was drawn in presence of the panchas. The seized articles are also forwarded to the inventory and inventory was also carried out and after completion of the investigation, the charge-sheet is filed.

7. As far as the involvement of the present applicant in the alleged crime is concerned, there is no dispute that they were found in possession of the said contraband when they were transporting the fertilizers along with the said contraband. On seizure of the truck and during search, the said contraband article, which is of commercial quantity, was found. Thus, as far as the involvement of the present applicant in the alleged offence is concerned reveals from the investigation papers, and therefore, initially,

this Court has shown disinclination to grant bail. Now, this application is filed in a change in circumstance that the trial is not conducted and there is inordinate delay in the trial, therefore the status report from the trial Court was called, which is received from the Special Court which shows that still charges are not framed. The roznama shows that some of the accused remained absent and the Counsel of the accused is not heard on framing of the charge in view of compliance of Section 227 of the Code of Criminal Procedure, and therefore, charges are not framed. Considering the reasons assigned by the learned Special Court, it reveals that though the applicant is arrested on 16.11.2022 within three years charges are also not framed against the present applicant. Learned Counsel for the applicant has placed reliance on the catena of decision wherein the Article 21 of the Constitution of India was considered, in the case of **V. Senthil Balaji Vs. The Deputy Director, Directorate of Enforcement** (supra) the Apex Court has in detailed by referring the earlier judgment observed that "There are a series of decisions of this Court starting from the decision in the case of **Union of India Vs. K.A. Najeeb (2021) ALL SCR (Cri) 393** which hold that such stringent provisions for the grant of bail do not take away the power of Constitutional Courts to grant bail on the grounds of violation of Part III of the Constitution of India. We have already referred to paragraph 17 of the said decision, which lays down

that the rigours of such provisions will melt down where there is no likelihood of trial being completed in a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. One of the reasons is that if, because of such provisions, incarceration of an undertrial accused is continued for an unreasonably long time, the provisions may be exposed to the vice of being violative of Article 21 of the Constitution of India.”

8. It is further observed by the Hon’ble Apex Court that “Considering the gravity of offences in such statutes, expeditious disposal of trials for the crimes under these statutes is contemplated. Moreover, such statutes contain provisions laying down higher threshold for the grant of bail. The expeditious disposal of the trial is also warranted considering the higher threshold set for the grant of bail. Hence, the requirement of expeditious disposal of cases must be read into these statutes. Inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together. It is a well settled principle of our criminal jurisprudence that “bail is the rule, and jail is the exception.” This stringent provisions regarding the grant of bail, such as Section 45(1)(iii) of PMLA, cannot become a tool which can be used to incarcerate the accused without trial for an unreasonably long time.” The further observation of the Hon’ble Apex Court shows that

over a period of time, the trial Courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment.

9. In view of the above observation of the Hon'ble Apex Court and by considering the report of learned Special Judge, it reveals that though the applicant was arrested on 16.11.2022, merely because the other accused have filed various applications and some of the accused remained absent without taking steps to secure the presence, the matter was adjourned simply and till today the charges are not framed. Thus, the right of the present applicant of a speedy trial enshrined under Article 21 of the Constitution was affected. The Hon'ble Apex Court has considered the fundamental right of an accused to have a speedy trial under Article 21 of the Constitution of India in various judgments.

10. In the case of **Javed Gulam Nabi Sheikh Vs. State of Maharashtra and another [2024 SCC OnLine SC 1693]** wherein the Hon'ble Apex Court has observed as under:

"If the State or any prosecuting agency including the Court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the

plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."

11. Here in the present case, the applicant is behind bar since 16.11.2022, the charges are not framed today. The report nowhere shows that any special efforts are taken by the Court to secure the presence of accused persons, who were remained absent and for the production of these accused before the Court for framing of charge. Thus, considering all these aspects, as the fundamental right of an accused to have a speedy trial enshrined under Article 21 of the Constitution of India is affected and it is the duty of the Court to protect the said right. Admittedly, the crime committed is serious, but in view of the observation of the Hon'ble Apex Court and in view of Article 21 of the Constitution, the accused cannot be kept behind bar for indefinite period. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(i) The application is allowed.

(ii) The applicant **Balem Nanaji @ Nani s/o Peddakaapu Balem** shall be released on bail in connection with Crime No.383/2022 registered with Police Station Pardi, Nagpur for the offence punishable under Section 8(c), 20(b)(ii)(C), 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on executing

PR Bond in the sum of Rs.1,00,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned Police Station (N.D.P.S. Cell) twice in a month on 1st and 15th of every month and the N.D.P.S. cell, Nagpur shall record his presence before it.

(iv) The applicant shall attend the proceeding before the Special Court without seeking any exemption unless there are exceptional circumstances.

(v) The failure of the accused/applicant to attend the proceeding before the trial Court would lead to the cancellation of bail.

(vi) The applicant shall furnish his detailed address along with the address proof with the names of two relatives along with their address proof.

(vii) The applicant shall not induce, threat of promise any witnesses who are acquainted with the facts of the case.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)