IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1873 OF 2026

George Fofana ... Applicant
V/s.
State of Maharashtra ... Respondent

Mr. Shekhar Bhandary, for the Applicant
Mr. Yogesh Nakhwa, APP for the Respondent - State.
Mr. Deepak karande, PSI, Nhava Sheva Police Station.

CORAM : MILIND N. JADHAV, J.

DATED : OCTOBER 13, 2026

P.C.:

1. Heard Mr. Shekhar Bhandary, learned Advocate for Applicant and Mr. Yogesh Nakhwa, learned APP for Respondent.

2. This is an Application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking bail in connection with C.R. No.197 of 2024 registered with Nhava Sheva Police Station for offences punishable under Sections 8(C), 21(C) and 22(C) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for Short "NDPS").

3. The notice under Section 50 appended at page 62 dated 13 December 2024 is prima facie on the face of record incongruous and contrary to the settled decisions of this Court in the case of *Chandrabhan Janardhan Yadav v. State of Maharashtra*[1] which itself is a reminder to the fact that the statutory provisions under NDPS Act are

[1] 2025:BHC-AS:10527

required to be scrupulously followed and adopted by the prosecution while effecting search and seizure.

4. The Senior Inspector of Police has identified himself as a Gazetted Officer, which ought not to have been done. In the circumstances, the Applicant ought to have been informed of his right under Section 50 of the NDPS Act to be searched before a Gazetted Officer or the nearest Magistrate.

5. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents which are required to be considered in such cases. However the metrics of judicial decision making gets amplified or rather shuttled to another facet when dealing with offences where Section 37 of NDPS Act is attracted. In such cases one has to satisfy itself with the rigors of the twin conditions as prescribed under Section 37 of the NDPS Act. Section 37 reads thus:-

> *"**37. Offences to be cognizable and non-bailable.:-** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--*
>
> *(a) every offence punishable under this Act shall be cognizable;*

> *(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless:-*
>
> *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and*
>
> *(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.*
>
> *(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."*

6. 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.

7. Argued before me is a case concerning liberty of an under-trial who has been incarcerated for almost 1 years 11 months a situation impacting the rights of undertrial conferred by Article 21 of Constitution to speedy justice as also personal liberty. In so far as the power of high courts to grant bail is concerned, when the case is such that involves a question of personal liberty of an undertrial who is incarcerated for a very long period, the powers are wide and unfettered by conditions, the principle rule being that bail is the rule and refusal is the exception, allowing accused persons to better prepare their defense.

8. In the following decision of this Court concerning such long detention and imprisonment of undertrial prisoner / accused on being apprehended with commercial quantity of various contrabands, the Court has in the backdrop of the aforementioned propositions exercised its unfettered jurisdiction in releasing an undertrial on bail on account of long incarceration by using its discretionary powers:-

9. In the case of ***Mohd. Mobin Jahurul Hasan Manihar Vs. State of Maharashtra***[2] - this Court on 20.01.2025 considering long incarceration of the under-trial accused granted bail to him who was incarcerated for

[2] BA No.713 of 2024 decided on 20.01.2025

1 year 11 months. The contraband in question was 220 gms of MD , the commercial quantity of which is 50 gms.

10. In that view of the matter, considering that the Applicant has been incarcerated for 1 year and 11 months and is a foreign national, I am inclined to consider the case of the Applicant for grant of bail, as the trial has not commenced and the possibility of its conclusion in the near foreseeable future is extremely bleak.

11. Hence, in view of above *prima facie* observations and findings, Bail Application of Applicant is allowed subject to the following terms and conditions:-

(i) Applicant is directed to be immediately released from prison in connection with CR. No.197 of 2024;

(ii) Applicant is directed to be released on bail on furnishing P.R. Bond of Rs.50,000/- (Rs. Fifty Thousand only) with one or two sureties in the like amount; It is clarified that no bail bond in respect of an accused of a non-bailable offence who is a foreign national such as in the present case, shall be executed by a Licensed Professional Bail Bondspersons save with the express permission of the concerned Court accepting bail and surety bond.

This condition is added in view of the decision of the Supreme Court in the case of ***Union of India Vs. Chidiebere Kingsley Nawchara & Ors.***[3]

(iii) Applicant shall report to the Investigating Officer at concerned Police Station, once every month, on the first Monday of the month between 10:00 a.m. to 12:00 p.m. until commencement of trial and thereafter shall attend all dates of hearing before the Trial Court;

(iv) Applicant shall cooperate with the conduct of the trial and remain present before the Trial Court on all dates, unless specifically exempted. Applicant shall not seek unnecessary adjournments. Any such conduct shall entitle the prosecution to apply for cancellation of bail;

(v) Applicant shall not leave the country without prior permission of the Trial Court;

(vi) Applicant shall deposit his passport with the Trial Court within a period of one week from his release from prison;

[3] SLP (Cri) No(s). 14185 of 2025

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

(viii) Applicant shall keep the Investigating Officer informed of his current residential address and mobile telephone number and shall forthwith inform the Investigating Officer of any change in his residential address or mobile telephone number, as and when such change occurs; and

(ix) Any breach or infraction of any of the aforesaid conditions shall entail cancellation of the bail granted to the Applicant.

(x) The concerned prosecuting Agency shall immediately communicate this order of grant of bail to the concerned Registration Officer appointed under Rule 3 of the Registration of Foreigners Rules, 1992 within the meaning of the Foreigners Act, 1946. This condition is added in view of the decision of the Supreme Court in the case of ***Frank Vitus v. Narcotics Control Bureau & Ors.***[4].

[4] Criminal Appeal No.2814-2815 of 2024 decided on 06.01.2025.

6. It is clarified that the observations made in this order are limited for the purpose of granting bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the prima facie observations made hereinabove in this order.

7. Bail Application is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]