HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3866 OF 2025

Iyi Ugochukwu Emmanuel .. Applicant

Versus

The State of Maharashtra .. Respondent

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- Mr. Kunal Aher, Advocate for Applicant.
- Ms. Sangeeta E. Phad, APP for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 13, 2026

P.C.:

1. Heard Mr. Aher, learned Advocate for Applicant and Ms. Phad, 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.333 of 2022 registered with Chaturshrungi Police Station for offences punishable under Sections 8(c), 22(c), 21(c) and 29 of the Narcotic Drugs and Psychotropic Substances, 1985.

3. The Applicant is arrested on 26.07.2022 and is in jail and is a foreign national.

4. Considering the ignominy of the trial has not having commenced, and that the trial will be not be concluded in the near foreseeable future, on the ground of long incarceration pending trial, I am inclined to consider the case of the Applicant for bail who has

already spent more than 4 years 3 months in custody.

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 4 years 2 months 18 days 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 decisions of the Supreme Court and various High Courts concerning such long detention and imprisonment of undertrial prisoner / accused on being apprehended with commercial quantity of various contrabands, the Courts have 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:-

8.1. In the case of ***Vijay Singh Vs. Union of India***[1] the Supreme Court granted bail to an undertrial-accused who was incarcerated for a period of **4 years and 1 Month** holding that Article 21 of the Constitution overrides Section 37 of NDPS Act if there is undue delay in completion of trial on the part of prosecution.

8.2. In the case of ***Rabi Prakash Vs. State of Odisha***[2] the Supreme Court, considering the long incarceration of an undertrial accused who

1 Special Leave Petition (Criminal) Diary No. 43071/2024

2 2023 SCC OnLine SC 1109

was incarcerated for **3 years and 6 months** granted him bail. The contraband in question was Ganja, the commercial quantity of which is 20 Kilograms. In this case recovery of 247 Kilograms was allegedly made from the accused despite which the court invoking the right to speedy justice flowing from Article 21 and forceeable delay in trial granted bail to the accused.

8.3. In the case of ***Dheeraj Kumar Vs. State of Uttar Pradesh***[3] the Supreme Court considering long incarceration granted bail to an undertrial-accused who was incarcerated for **2 years and 6 months** granted him bail. The contraband in question was Ganja the commercial quantity of which is 20 Kilograms. In this case recovery of 65 Kilograms was allegedly made from the accused despite which, the Court invoking the right to speedy justice flowing from Article 21 and forceeable delay in trial granted bail to the Accused.

8.4. In the case of ***Balkishan Vs. State of Madhya Pradesh***[4] the Supreme Court considering long incarceration of an undertrial-accused who was incarcerated for **2 years and 5 months** granted him bail. The contraband in question was Poppy Straw, the commercial quantity of which is 50 kilograms when recovery of 80 kilograms was allegedly made from the accused.

8.5. In the case of ***Badsha Sk. Vs. State of West Bengal***[5] the

3 2023 SCC OnLine 918
4 Petition for Special Leave to Appeal (Cri) No. 8415 of 2024

Supreme Court considering long incarceration of an undertrial-accused who was incarcerated for **2 years and 4 months** granted him bail. The contraband in question was Codeine Phosphate, the commercial quantity of which is 1 kilograms when recovery of 100 bottles each of 100 ml. was allegedly made from the accused.

8.6. In the case of ***Man Mandal and Anr. Vs. State of West Bengal*** [6] the Supreme Court considering long incarceration of an undertrial-accused who was incarcerated for **2 years** granted him bail despite being alleged to be in possession of commercial quantity of contraband.

8.7. In the case of ***Ankur Chaudhary Vs. State of Madhya Pradesh***[7] the Supreme Court considering long incarceration of an undertrial-accused granted him bail to an undertrial-accused who was incarcerated for about 2 years.

8.8. In the case of ***Tinku Vs. State (NCT of Delhi)***[8] the Delhi High Court considering the long incarceration of an undertrial-accused granted him bail who was incarcerated for 2 years and 5 months. The contraband in question was Heroin, the commercial quantity of which is 250 grams. In this case recovery of 945 grams was allegedly made from the accused despite which the High Court invoking the right to

5 2023 SCC OnLine SC 1867
6 2023 SCC OnLine SC 1868
7 Petition for Special Leave to Appeal (Cri) No. 4648 of 2024
8 2024 SCC OnLine Del 9132

speedy justice flowing from Article 21 of the Constitution and forceeable delay in trial granted bail to the accused.

8.9. In the case of ***Kulwinder Singh Vs. State of Punjab***[9] the Punjab and Haryana High Court considering long incarceration of an undertrial-accused granted him bail who was incarcerated for 2 years and 8 months. The contraband in question was Etizolam Salt, the commercial quantity of which is 2.5 grams. In this case recovery of 99.876 grams was allegedly made from accused despite which the High Court invoking the right to speedy justice flowing from Article 21 of the Constitution and delay in trial granted bail to the accused.

8.10. In the case of ***Amey Sanjay Jadhav Vs. State of Maharashtra***[10] this Court on 03.01.2025 considering long incarceration of the undertrial-accused has granted bail to the undertrial accused who was incarcerated for 2 years and 11 months. The contraband in question was 1.3 kilograms of Charas, the commercial quantity of which is 1000 grams.

8.11. In the case of ***Mohd. Mobin Jahurul Hasan Manihar Vs. State of Maharashtra***[11] - this Court on 20.01.2025 considering long incarceration of the under-trial accused granted bail to him who was incarcerated for 1 year 11 months. The contraband in question was

9 CRM-M-26704 of 2024

10 BA No.911 of 2024 decided on 03.01.2025

11 BA No.713 of 2024 decided on 20.01.2025

220 gms of MD , the commercial quantity of which is 50 gms.

9. In all the above cases the right to speedy justice flowing from Article 21 of the Constitution of India and the foreseeable delay trial were considered as imminent grounds for grant of bail apart from the rigours of Section 37 of the NDPS Act in the facts of the said case.

10. Considering the aforesaid, Applicant has made out case for grant of bail subject to following conditions:-

(i) Applicant is directed to be immediately released from prison in connection with Crime No. 333 of 2022;

(ii) Applicant is directed to be released on bail on furnishing P.R. Bond of Rs. 50,000/- (Rupees Fifty Thousand only) with one or two sureties of 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.***[12]

12 SLP (Cri) No(s). 14185 of 2025

(iii) Applicant shall report to the Investigating Officer at the concerned Police Station, once every month on the first Monday of the month between 10:00 a.m. to 12:00 p.m.;

(iv) 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 revocation of this order;

(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;

(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 address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable; and

(ix) Any infraction of the conditions shall entail cancellation of 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.***[13].

11. 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.

12. Bail Application is allowed and disposed of in the above terms.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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Date: 2026.10.14 10:15:32 +0530

13 Criminal Appeal No.2814-2815 of 2024 decided on 06.01.2025.