



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2126 OF 2025**

Umesh Purshottam Gaikwad ... Applicant
versus
The State of Maharashtra ... Respondent

Mr. Ayaz Khan with Mr. Dilip Mishra, Ms. Zehra Charania, Ms. Mallika Sharma, for Applicant.

Mr. A.R.Metkari, APP for State.

API Shri R. Rasam, Kalachowky Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 5 JANUARY 2026

P.C.

1. Heard the learned Counsel for the parties.
2. The Applicant (A3), who is arraigned in NDPS Special Case No.1 of 2023 arising out of C.R.No.12 of 2022 registered with ATS Kalachowky Unit , Mumbai, for the offences punishable under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act, 1985), has preferred this application to enlarge him on bail.
3. In fact, this is the second application for bail. First bail Application being BA No.2533 of 2022 was rejected by this Court by an order dated 30 April 2024 opining, inter alia, that the interdict contained in Section 37 of the NDPS Act, 1985, applied with full force and vigor. The Applicant had challenged the said order before the Supreme Court in Special Leave Petition (Crimina) Diary No(s). 39867 of 2024 which came to be dismissed by an

order dated 18 October 2024.

4. The Applicant has preferred this Application primarily on the ground of long period of incarceration. The Applicant was arrested on 5 July 2022. Charge came to be framed on 15 March 2025. Since then, the prosecution has examined only one witness, whose examination-in-chief is yet not complete. The prosecution proposes to examine as many as 21 witnesses.

5. Mr. Khan, learned Counsel for the Applicant, would urge that the applicant has been in custody for over three years and six months. Inviting attention of the Court to the roznama of the proceedings, Mr. Khan would urge, the prosecution has repeatedly sought adjournments and, as is evident, despite nine months of the framing of the charge, examination-in-chief of the first witness of the prosecution is yet incomplete. In these circumstances, the right of the accused to have a speedy trial is impaired, and, therefore, such long period of incarceration without a possibility of conclusion of the trial warrants release of the applicant on bail.

6. To lend support to these submissions, Mr. Khan placed reliance on the orders passed by the Supreme Court in the cases of **Rabi Prakash V/s. The State of Odisha**¹, **Tinku Tagadgiri V/s. The State of Odisha**², **Babor Ali Mondal V/s. The State of West Bengal**³, **Ankur Chaudhary V/s. State of**

1 SLP (Cri.) No.4169 of 2023 dated 13 July 2023

2 SLP (Cri) No.12844 of 2023

3 Criminal Appeal No.3349 of 2024 dated 13 August 2024

Madhya Pradesh⁴ and Vijay Singh V/s. Union of India⁵.

7. In opposition to this, Mr. Metkari, learned APP for the State, strongly opposed the prayer for bail. It was submitted that this Court has rejected the earlier bail application on merits and the said order has not been interfered with by the Supreme Court. Therefore, there is no propriety in entertaining the instant bail application.

8. On the aspect of the long period of incarceration and the slow pace of the trial, learned APP submitted that the trial Court may be directed to conclude the trial expeditiously and in a time-bound manner, instead of enlarging the applicant on bail.

9. At the outset, it is necessary to note that the applicant was allegedly found in possession of 1800 gms of Charas. The commercial quantity of Charas is 1 kilogram. This Court has recorded that the rigour of the provisions contained in Section 37 of the NDPS Act, 1985, operated with full force. Therefore, there is no propriety in entertaining the application on the merits of the matter.

10. On the aspect of the long period of incarceration, however, different considerations come into play. In a long line of decisions, the Supreme Court has emphasized that long period of incarceration without a real prospect of the conclusion of the trial impinges upon right of the accused to have a

4 SLP (Cri.) No.4648 of 2024 dated 28 May 2024

5 SLP (Cri.) No.43071 of 2024 dated 3 Dec. 2024

speedy trial which is a facet of right to life guaranteed under Article 21 of the Constitution of India. It is true that the interdict contained in Section 37 of the NDPS Act 1985 comes into play and before releasing accused on bail twin test envisaged therein is required to be satisfied. However, the statutory restrictions in the matter of grant of bail cannot be so construed as to impinge upon right of the accused under Article 21 of the Constitution of India. The Supreme Court has in terms ruled that the statutory restrictions in the matter of grant of bail melt down in the face of long period of incarceration and do not constitute a fetter on the power of the Constitutional Courts to grant bail.

11. In **Union of India V/s. K.A.Najeeb**⁶, where the accused was facing trial for the offences punishable under the Unlawful Activities Prevention Act and the rigours of Section 43-D(5) of the said Act, were attracted, the Supreme Court, observed as under :

“12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS”) which too have somewhat rigorous conditions for grant of bail, this Court in *Paramjit Singh v. State (NCT of Delhi)*⁷, *Babba v/s. State of Maharashtra*⁸ and *Umarmia v/s. State of Gujarat*⁹ enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such

6 (2021) 3 SCC 713.

7 (1999) 9 SCC 252

8 (2005) 11 SCC 569

9 (2017) 2 SCC 731

special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

.....

17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of UAPA per-se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statute 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)

9. In the case of **Mohd. Muslim @ Hussain V/s. State (NCT of Delhi)**¹⁰ the Supreme Court again reiterated the importance of the expeditious completion of the trial where there are restrictions on the grant of bail, as under :

“13. When provisions of law curtail the right of an accused to

10 2023 SCC online SC 352

secure bail, and correspondingly fetter judicial discretion (like Section 37 of the NDPS Act, in the present case), this court has upheld them for conflating two competing values, i.e., the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest – as observed in Vaman Narain Ghiya V. State of Rajasthan¹¹ (“the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal....”). They are, at the same time, upheld on the condition that the trial is concluded expeditiously. The Constitution Bench in Kartar Singh V/s. State of Punjab¹² made observations to this effect. In Shaheen Welfare Association (supra), again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly.”

10. In the case of **Rabi Prakash V/s. State of Odisha**¹³ the Supreme Court observed as under :

“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

¹¹ (2009) 2 SCC 281

¹² (1994) 3 SCC 569

¹³ 2023 SCC Online SC 1109

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.”

11. In the case of **Vijay Singh V/s. Union of India**¹⁴, the Supreme Court enunciated that :

“4. We are conscious of the fact that in offences relating to NDPS, the Courts should be loath in granting bail, more particularly having regard to the provision of Section 37 of the Act.

5. However, time and again, this Court has reminded different States as well as the Narcotic Control Bureau that Article 21 of the Constitution of India over-rides Section 37 of the Act. If there is an undue delay on the part of the prosecution in concluding the trial and that too for no fault on the part of the accused, then accused cannot be kept in jail for indefinite period of time.

6. In the case on hand, the Petitioner is in custody since 2-11-2020. So far, only two witnesses have been examined by the prosecution.

7. In such circumstances, the interim bail, which was earlier granted by this court on 4-10-2024 is made absolute, subject to further terms and conditions that the Trial Court may deem fit to impose.” (emphasis supplied)

14 SLP (Cri) No.43071 of 2024 dated 3 December 2024

12. In the case at hand, charge was framed on 15 March 2025. It seems that, though the matter was listed before the learned Special Judge at an interval of a fortnight, on an average, yet the examination-in-chief of the first prosecution witness could not be completed till 12 December 2025. The prosecution proposes to examine 21 witnesses. With the pace at which the trial is proceeding, it is extremely unlikely that the trial can be concluded within a reasonable period.

13. It is necessary to note that, in view of the decision of the Supreme Court in the case of **Union of India V/s. K.A.Najeeb (supra)**, the approach of the Court, at this juncture, is required to be different than the one which the Court had adopted when the first application for bail was rejected. At that stage, this Court had given due weight to the statutory restrictions in the matter of grant of bail. At this stage, the Court is enjoined to take into account the fact that, despite three and half years of incarceration, the prosecution could examine only its first witness. The constitutional guarantee of speedy trial, in a situation of this nature, outweighs the statutory restrictions in the matter of grant of bail. I am, therefore, inclined to exercise the discretion in favour of the Applicant.

14. Hence, the following order :

ORDER

- (i) The Application stands allowed.
- (ii) The Applicant – Umesh Purshottam Gaikwad be released on bail in C.R.No.12 of 2022 registered with ATS Kalachowky Unit, Mumbai, on furnishing a PR bond in the sum of Rs.1,00,000/- and one or two sureties in the like amount to the satisfaction of the Special Court.
- (iii) The applicant shall mark his presence before ATS Kalachowky Unit, Mumbai, on first Monday of every month in between 11 am to 1 pm for a period of three years or till the conclusion of the trial.
- (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 regularly attend the proceedings before the jurisdictional Court.
- (vii) 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 trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N.J.JAMADAR, J.)