

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

CRIMINAL APPLICATION (BA) NO. 953/2025
 (Shrawan Pancharam Bishnoi Vs. The State of Maharashtra)

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

Court's or Judge's orders

Mr. P.P. Kotwal, assisted by Mr. A.N. Shende & Mr. B. Gupta,
 Advocate for applicants.
 Mr. S.N. Bhattad, Sr. Standing Counsel for non-applicant/State.

CORAM: M. M. NERLIKAR, J.

DATED : 25/02/2026.

Heard.

2. By this application, the applicant is seeking bail in connection with Special Case No.202/2024 for the offence punishable under Sections 20, 28 and 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985 ("NDPS Act").

3. The brief facts of the prosecution story is that the non-applicant received a specific information from the Directorate of Revenue Intelligence, Lucknow Zonal Unit, whereby it was reported that a substantial quantity of contraband, namely cannabis/ganja was being illicitly transported in a truck bearing registration No. RJ-19-GB 4471. That pursuant to the receipt of such information, a operation was led by the officers of the non-applicant in pursuance of Section 42 of the NDPS Act, thereby resulting

in the interception of said vehicle at Borkhedi Toll Booth, Nagpur. That the present applicant along with the other co-accused who is said to be the helper was present in the said vehicle. That the initial searches at the spot of interception and subsequently at the office of the non-applicant situated at Seminary Hills, Nagpur, led to the discovery of a secret and well-engineered cavity containing 242 packets of the contraband, weighing about 520.20 kgs, with a market value of more than Rs. 1 Crore.

4. The learned counsel appearing for the applicant has agitated the present application on two grounds i.e. on merits so also 'delay in trial'. The applicant is the driver of the truck which was intercepted by the Directorate of Revenue Intelligence ("DRI") at Borkhedi Toll Plaza. He submits that for about five hours, the officers searched the truck at Borkhedi Toll Plaza however, they could not find the contraband. Thereafter, they asked the truck to be moved to the office of the department which is situated in Seminary Hill, Nagpur, where abruptly they found the contraband (ganja) that also in commercial quantity of about 520.20 kg. Accordingly, the inquiry was made and pursuant to the same, confessional statement of the

applicant was recorded, in which he has given the entire details along with two phone devices with three SIM cards having different numbers. The learned counsel submits that the applicant has been falsely implicated in the crime. He has nothing to do with the crime as he is only a driver. Even if it is presumed that the applicant is found in the conscious possession of the ganja, however, no steps are taken against the main culprit. They have neither been arrested nor arrayed as accused in the present case. As per the prosecution, it is alleged that the ganja was loaded in the truck at Chintur in Andhra Pradesh on 07.10.2023 and thereafter the applicant started the journey to Jodhpur, where it was to be delivered. However, there is no evidence in the entire charge-sheet to connect that the contraband was either loaded at Chintur or it was to be delivered in Jodhpur. On the contrary, it is a regular route which is followed by all truck drivers. There is no evidence in the entire charge sheet to connect the present applicant. Merely on the basis of the confessional statement, the applicant cannot be kept behind bar for an indefinite period, as he is in custody since 10.10.2023. He submits that he may be released on bail as co-accused namely

Shravan Phalagram Bishnoi, who was the cleaner who was present at the time when the truck was apprehended and therefore, he stands on the same footing, was released by the Judge, Special Court, NDPS Act, Nagpur, therefore he also claims parity.

5. Apart from merits, the learned counsel has also agitated this application on the ground of delay in trial. He submitted that the applicant is in Jail since 10.10.2023 i.e. for almost two and a half years. The trial has not started even the charges are not framed. Now the investigation is over and the charge sheet is filed and there is no possibility of trial being concluded in the near future. Therefore, he is also entitled to be released on bail on the ground of 'delay in trial'. To fortify the aforementioned argument, the reliance is placed on the judgments in cases of *Mohd. Muslim Alias Hussain Vs. State (NCT of Delhi)*, (2023) 18 SCC 166, *Ankur Chaudhary Vs. State of Madhya Pradesh*, 2024 SCC Online SC 2730, *Javed Ghulam Nabi Sheikh Vs. State of Maharashtra*, (2024) 9 SCC 813 and *Chitta Biswas Alias Subhash Vs. State of West Bengal*, 2020 SCC Online SC 1536.

6. On the other hand, the learned Sr. Standing counsel Mr. Bhattad vehemently opposes the application and invited my attention to the confessional statement made by the applicant. He further submits that a specific information was received from the Lucknow office to the office of the DRI Nagpur, that a truck bearing No. RJ-19-GB-4471 was transporting huge quantity of cannabis (ganja), hidden in a specially built cavity of the truck and the said truck would reach Borkhedi Toll Plaza in the midnight or early morning of 09.10.2023. This message was received on 08.10.2023 by DRI, Nagpur. Admittedly, the applicant is the truck driver of the said truck in which 520.20 kg of ganja was found. Therefore, according to him, it is the applicant who has loaded the ganja at Chintur and therefore, since inception he was in the conscious possession, having every knowledge of contraband being hidden in the truck. He submits that the mobile numbers which are registered on the name of the present applicant, those have not been used. However, the call detail records and history of fast tag demonstrate the movement of the truck which shows that the route though Chintur was only used to load the ganja. In fact, from Rajahmundry, there

was another short route available. However, the applicant has chosen to go to Chintur which is the hub of ganja, therefore he submits that the applicant was in conscious possession of the contraband, therefore, he may not be granted bail. He further submits that so far as the release of the other accused Shravan Phalagaram, Bishnoi is concerned who was a cleaner, he at the time of loading of ganja was sleeping, therefore he was not having any knowledge about the contraband being present in the truck, therefore the Court below granted bail, however, the present applicant is not standing on the same footing.

7. On the ground of 'delay in trial' it has been submitted by the learned counsel appearing for the non-applicant/DRI that merely trial has not started, that by itself is no ground to release the applicant on bail. The matter is listed for framing of the charge and even the draft charge is filed by the prosecution. However, on the last occasion, the applicant has sought time, therefore, he submits that even on the ground of delay in trial the bail cannot be granted. Further, an assurance is given that they will conclude the examination of prosecution witnesses within three months, therefore on this count also, bail may

not be granted. He relied on the judgment of the Supreme Court in case of ***Union of India Vs. Md. Nawaz Khan, 2021 ALL SCR (CrI) 1706,***

“26.. With regard to the statement under Section 67 of the NDPS Act, the High Court has placed abundant reliance on the inclusion of Mohd. Arif Khan's name in place of the respondent's name in the endorsement of translation on the statement of the respondent. In Tofan Singh (supra), a three judge Bench of this Court held that a statement under Section 67 of the NDPS Act is inadmissible. The ASG submitted that independent of the statement, there are valid reasons to deny bail on the basis of the material which has emerged at this stage.

27. Another submission that has been raised by the counsel for the respondent both before the High Court and this Court is that due to non-compliance of the procedural requirement under Section 42 of the NDPS Act, the respondent should be granted bail. Section 42 provides that on the receipt of information of the commission of an offence under the statute, the officer will have to write down the information and send it to a superior officer within 72 hours. It has been submitted by the respondent that though the information was received by the Zonal Director, the information was put down in

writing by an officer who was a part of the team constituted on the receipt of the information. The written information was then sent to the Zonal Director. This Court in Karnail Singh v. State of Haryana, (2009) 8 SCC 539 held that though the writing down of information on the receipt of it should normally precede the search and seizure by the officer, in exceptional circumstances that warrant immediate and expedient action, the information shall be written down later along with the reason for the delay:

"35. [...] (c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency

(d) While total non-compliance with requirements of subsections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may

result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001."

28. Further, it was held that the issue of whether there was compliance of the procedure laid down under Section 42 of the NDPS Act is a question of fact. The decision in Karnail Singh (supra) was recently followed by this Court in Boota Singh v. State of Haryana, 2021 SCC OnLine SC 324.

29. In the complaint that was filed on 16 October 2019 it is alleged that at about 1400

hours on 26 March 2019, information was received that between 1500-1700 hours on the same day, the three accused persons would be reaching Uttar Pradesh. The complaint states that the information was immediately reduced to writing. Therefore, the contention that Section 42 of the NDPS Act was not complied with is prima facie misplaced. The question is one that should be raised in the course of the trial.

30. The following circumstances are crucial to assessing whether the High Court has correctly evaluated the application for bail, having regard to the provisions of Section 37:

(1) The respondent was travelling in the vehicle all the way from Dimapur in Nagaland to Rampur in Uttar Pradesh with the co-accused;

(i) The complaint notes that the CDR analysis of the mobile number used by the respondent indicates that the respondent was in regular touch with the other accused persons who were known to him;

(iii) The quantity of contraband found in the vehicle is of a commercial quantity, and

(iv) The contraband was concealed in the vehicle in which the respondent was traveling with the co-accused.”

The learned counsel also relied on the judgment of the Supreme Court in case of ***Vijaysinh Chandubha Jadeja Vs.***

State of Gujarat 2011(1) SCC 609.

8. I have considered the rival submissions. It appears from the record that the DRI at Nagpur has received information on 08.10.2023 that a truck bearing registration number RJ-19- GB- 4471 is being used for transporting huge quantity of cannabis, (ganja), hidden in a specially built cavity of the truck and accordingly it was informed that the said truck would reach in the midnight or early morning on 09.10.2023 at Borkhedi Toll Plaza, Nagpur and accordingly the truck was intercepted. Thereafter, the search was carried out. However, initially nothing was found in the truck and later on the said truck was moved to the office of Deputy Director, DRI, Nagpur and a further search was made and in that 520.20 kg of ganja was found. It appears that the confessional statement of the applicant was recorded, in the course of which two mobile handsets were handed over by the applicant having three SIM cards. Perusal of documents would reveal that the truck was unloaded at Vijayawada, Andhra Pradesh. Then after unloading on 05.10.2023, the return journey was started by the applicant and he had halted at Rajahmundry on 06.10.2023. Thereafter, again he has

started the journey from Rajahmundry to Jodhpur via Chintur and Nagpur. It further appears that the truck of the applicant was intercepted at Borkhedi Toll Plaza, Nagpur and thereafter the truck was brought at the premises of the department where the contraband was seized.

9. No doubt, prima facie it appears that the applicant was having knowledge about the fact that he is carrying ganja which could be gathered from circumstances, as the ganja was found in the truck which could be regarded as a conscious possession. Though there is some prima facie material available against the applicant, however, one fact cannot be ignored that the applicant is behind bar since 10.10.2023. More than two years have lapsed. Till today, even the charges are not framed. So far as the case relied on by the non-applicant is concerned, there is no dispute regarding observations of the Supreme Court. Even this court in the earlier paragraphs has observed that there is a prima facie case against the applicant. Therefore, the judgments which were cited by the non-applicant those observation are on merits, however I am inclined to grant bail on ground of

undue delay in trial. Even the Supreme Court in the case of Mohammad Muslim @ Hussain Vs State (NCT of Delhi) (*supra*) has observed that rigour of Section 37 would not come in the way of the applicant when there is undue 'delay in trial' and accordingly the Supreme Court has granted bail.. It is imperative to reproduce paragraph Nos. 16 and 22 which are as under:-

"16. In the most recent decision, Satender Kumar Antil v. CBI prolonged incarceration and inordinate delay engaged the attention of the Court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 of the NDPS Act. The Court expressed the opinion that Section 436 (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply: (SCC p. 127, para 80)

80.We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not

come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code."

22..... Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the Imperative of Section 436-A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil Vs CBI, (2022) 10 SCC 51."

Further, in the case of **Ankur Chaudhary Vs. State of Mandhya Pradesh [SLP (Cri) No. 4648/2024 decided on 02.01.2024]**, the Supreme Court has granted bail on the ground that the applicant is in jail since two years. It is further observed that failure to conclude the trial within reasonable time resulting in prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India and as such, conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act

may, in such circumstance be considered bail.

10. So far as the present case is concerned, the applicant is in jail since 10.10 2023 i.e. more than two years and four months are over. However, till today not even the charges are framed. Under such circumstance, the Supreme Court in catena of judgments including Javed Gulam Nabi Shaikh (supra), while also considering Section 37 of the NDPS Act has held in paragraph Nos. 17 and 18 as under:-

“17. 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.

18. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.”

Therefore, so far as consideration of delay in trial is

concerned while granting bail, the act or the crime committed by applicant is immaterial. Considering observations of the Apex Court, I am of the considered opinion that the present applicant deserves to be enlarged on bail, hence the following order:-

ORDER

- (i) Criminal application is allowed and disposed of.
- (ii) The applicant/accused Shrawan Pancharam Bishnoi be released on bail in connection with Special Case No.202/2024 for the offence punishable under Sections 20, 28 and 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985 ("NDPS Act") on his furnishing P.R. Bond of Rs. 25,000/- with two sureties in the like amount i.e. one local surety and another having permanent residence in Beroo Jodhpur, Rajasthan.
- (iii) The accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- (iv) The accused shall provide his residential address and cell number to the concerned Police Station and shall not change his place of residence without prior intimation to the concerned Investigating Officer.
- (v) The applicant/accused shall attend each and every date of trial regularly. If he fails to attend the trial for two consecutive dates or fails to comply with the aforesaid

conditions, his default would entails the State to ask for cancellation of bail.

(M. M. NERLIKAR, J.)

Gohane