



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

CRIMINAL WRIT PETITION No.265 OF 2026.

Satish Ghanshyam Rathi,
Aged 43 years, Occupation
Service, resident of Ward No.1,
Motala, Taluka Motala, District
Buldhana (Presently at District
Prison, Buldhana).

... **PETITIONER.**

VERSUS

State of Maharashtra,
through Police Station Officer,
Police Station Borakhedi,
District Buldhana.

... **RESPONDENT.**

Mr. R.M. Daga, Advocate for the Petitioner.
Ms S.N. Thakur, A.P.P. for the Respondent/State.

CORAM : M.M. NERLIKAR, J.

DATE : APRIL 18, 2026.

ORAL JUDGMENT :

Heard. Rule. Rule is made returnable forthwith, and by

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consent of learned Counsel for the parties, the matter is taken up for final disposal.

2. The present Criminal Writ Petition is filed by the petitioner under Article 227 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), challenging the order below Exh.170 in Regular Criminal Case No.62/2023 dated 06.01.2026 passed by the Judicial Magistrate First Class, Court No.1, Motala, District Buldhana, whereby the application filed by the petitioner under Section 437[6] of the Code of Criminal Procedure was rejected by the learned Magistrate. The petitioner is also challenging the order dated 17.02.2026 passed by the Additional Sessions Judge, Malkapur in Criminal Bail Application No.17/2026, by which the Additional Sessions Judge has upheld the above rejection of bail.

3. The learned Counsel for the petitioner submits that in order to give liberal meaning to Section 437[6] of the Code of

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Criminal Procedure, the learned Magistrate and the learned Sessions Court ought to have considered the application of the petitioner and ought to have released him on bail. Section 437[6] of the Code of Criminal Procedure provides a statutory right to the accused to be released on bail, in case the trial is not concluded within 60 days from the first date fixed for taking evidence. The petitioner is behind bars since 11.02.2023, with no fault on his part, and the trial is not concluded within 60 date from the first date fixed for taking evidence, therefore, he ought to have been released on bail. To support his contention, he has relied on the judgment of Supreme Court in case of **Subhelal @ Sushil Sahu .vrs. State of Chhattisgarh – (2025) 5 SCC 140.**

4. On the other hand, the learned A.P.P. vehemently opposes the petition and supports the impugned order. She submits that reasons are assigned for not releasing the petitioner while rejecting his application under Section 437[6] of the Code of Criminal Procedure, and this Court cannot sit in appeal over the said orders, as scope of

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Article 227 of the Constitution of India is very limited. She submits that the findings arrived by the Courts below is on the basis of facts, which cannot be disturbed. It is submitted that though the petitioner is in jail since 11.02.2023, that by itself is not sufficient to release him, when charge against him amongst others is framed under Section 409 of the Indian Penal Code which provides life imprisonment. So far as the judgment in case of Subhelal [supra], is concerned, the Supreme Court in specific terms has stated that said provision is not mandatory. It is not an absolute right of the accused to claim bail under Section 437[6] of the Code of Criminal Procedure. The trial Court has also attributed fault on the part of the petitioner for delay in trial, therefore, both the Courts below are justified in rejecting the application of the petitioner. Lastly it is submitted that there is no merit in the petition and the same deserves to be dismissed.

5. I have heard the rival contentions of the parties and perused the impugned orders passed by both the Courts below. I have also gone through the judgment of Subhelal [supra]. The Supreme

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Court while interpreting Section 437[6] of the Code of Criminal Procedure has specifically stated that it is not an absolute right of the accused to claim bail under Section 437[6] of the Code of Criminal Procedure, in view of the fact that it is not a mandatory provision and further in case there are reasons assigned by the trial Court, in that circumstances the applicant would not be entitled to bail. It is further to be noted that following are the factors which are laid down by the Supreme Court while so as to consider bail application under Section 437[6] of the Code of Criminal Procedure. Paragraph no.15 of the said judgment reads as under :-

“15. In our view, following factors would be relevant:

- 1. Whether the reasons for being unable to conclude trial within sixty days from the first date fixed of taking evidence, are attributable to the accused?*
- 2. Whether there are any chances of the accused tampering with evidence or causing prejudice to the case of the prosecution in any other manner?*

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3. *Whether there are any chances of abscondence of the accused on being bailed out?*
4. *Whether accused was not in custody during the whole of the said period?*

6. Further it would also be useful to refer to paragraph no.19 of the aforesaid judgment, which reads as under :

“19. This Court is of a considered view that applications under Section 437 (6) have to be given a liberal approach and it would be a sound and judicious exercise of discretion in favour of the accused by the Court concerned more particularly where there is no chance of tampering of evidence e.g. where the case depends on documentary evidence which is already collected; where there is no fault on part of the accused in causing of delay; where there are no chances of any abscondence by the accused; where there is little scope for conclusion of trial in near future; where the period for which accused has been in jail is substantial in comparison to the sentence prescribed for the offence for which he is tried. Normal parameters for deciding bail application would also be relevant while deciding application under Section 437(6) of the Code, but not with that rigour as

they might have been at the time of application for regular bail.”

7. Upon consideration of the above observations of the Supreme Court it leaves no doubt in my mind that Section 437[6] of the Code of Criminal Procedure is not a mandatory provision and does not give an absolute right to seek bail. However, it is further necessary to consider whether the petitioner is responsible for the delay in trial. After going through the record and the impugned orders, even the Courts below have accepted that the petitioner is behind bars since 11.02.2023. It is also accepted that the matter was posted for evidence on 03.02.2024 for the first time and thereafter it appears that the matter was pending for muddemal property till 09.07.2024. It further appears that accused no.3, i.e. the present applicant, has sought time to appoint new Advocate. The Courts have also accepted that accused nos.1 and 3 are in jail. It is also accepted by the trial Court that evidence of informant is yet to be recorded due to the reason that the jail authorities have failed to produce the accused, absence of Advocate of accused and bail applications moved by

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accused nos.1 and 3. Therefore, the trial Court has come to the conclusion that the trial has not been concluded within 60 days from the first date of fixing of evidence. Though the trial Court has tried to give reasons for rejection of the bail application, however, it is very difficult to digest that the petitioner is at fault when he is in jail since last more than three years i.e. from 11.02.2023.

8. From the factors laid down by the Supreme Court, which are relevant for deciding the present petition, it is apparent on the face of record that the trial Court has failed to conclude the trial within 60 days from the first date fixed for taking evidence, however, the delay caused cannot be attributed to the petitioner, since he was in jail. In case the petitioner had made applications one after another for bail or otherwise, one can understand as the same may be connected with the delay, in such circumstances the trial Court would have been justified in rejecting the application moved by the petitioner. However, in absence of the said fact, the delay cannot be attributed to the petitioner, therefore, I am of the considered view that the Courts

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below have miserably failed to give proper effect to Section 437[6] of the Code of Criminal Procedure. The Courts below ought to have taken a liberal approach considering the long incarceration of the petitioner and the case of the petitioner being based on documentary evidence, coupled with the fact that there are no chances of petitioner tampering with the evidence, since the investigation is complete and charge sheet is filed long back. It is further to be noted that charges are framed on 03.02.2024, and till date not a single witness has been examined. There is also one important factor which would be necessary to be considered is that whether there is any chance of abscondence of the petitioner if he is granted bail. In my considered opinion, there is very less chance, considering the fact that the petitioner is a permanent resident of Motala, District Buldhana. It is to be further noted that there are no criminal antecedents against the petitioner.

9. The paramount consideration is the personal liberty guaranteed under Article 21 of the Constitution of India. Further, if there is delay in trial, then the accused would be entitled for bail.

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Therefore, it would be useful to refer to the judgment delivered by the Supreme Court in the case of **Javed Gulam Nabi Shaikh .vrs. State of Maharashtra and Another, (2024) 9 SCC 813**; wherein in paragraph No.17 it has been held 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.”

10. Further in case of **Sheikh Javed Iqbal .vrs. State of Uttar Pradesh, (2024) 8 SCC 293**; it has been held in paragraph No.42, by the Supreme Court as under :

“42. This Court has, time and again, emphasized that right to life and personal liberty enshrined Under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an Accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the Accused-undertrial Under Article 21 of the Constitution of India has

been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the Rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But It would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.”

11. Even in the judgment in case of **Anoop Singh .vrs. U.T. of J & K (SLP (Cri) No.1398/2026)** vide order dated 03.02.2026, the Supreme Court has in paragraph No.8 held as under :

“8. The report is extremely disturbing. The report highlights the sorry state of affairs at the end of the prosecuting agency. We are at pains to note that in last 7 years, the prosecution has been able to examine only 7 witnesses. Prosecution still intends to examine 17 more witnesses. We wonder who are these 17 witnesses who are yet to be examined and if not examined, what would be the adverse effect on the case of the prosecution. However, the

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most unfortunate part of the report of the Trial Court is that past 82 hearings, not a single witness has been examined.”

12. The Hon’ble Supreme Court has in a recent judgment in case of **Arvind Dham .vrs. Directorate of Enforcement – (2026 SCC Online SC 30)**, has in paragraph no.18 held as under :

“18. The right to speedy trial, enshrined under Article 21 of the Constitution, is not eclipsed by the nature of the offence. Prolonged incarceration of an undertrial, without commencement or reasonable progress of trial, cannot be countenanced, as it has the effect of converting pretrial detention into form of punishment. Economic offences, by their very nature, may differ in degree and fact, and therefore cannot be treated as homogeneous class warranting a blanket denial of bail.”

13. Considering the above exposition of law and the fact that the petitioner is behind bars since 11.02.2023, I am of the considered view that the orders passed by both the Courts below do not sustain in law, as they have failed to give true meaning to Section 437[6] of the

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Code of Criminal Procedure. In such circumstances, I am inclined to allow the Writ Petition by quashing and setting aside the orders impugned. Hence, the following order.

ORDER

- (i) Criminal Writ Petition is allowed and disposed of.
- (ii) The order passed below Exh.170 in Regular Criminal Case No.62/2023 dated 06.01.2026 by the Judicial Magistrate First Class, Court No.1, Motala, District Buldhana, and the order dated 17.02.2026 passed by the Additional Sessions Judge, Malkapur in Criminal Bail Application No.17/2026, are hereby quashed and set aside.
- (iii) The Petitioner /accused Satish Ghanshyam Rathi be released on regular bail in connection with Crime No.63/2023 registered with Borakhedi Police Station, District Buldhana for the offences punishable under Sections 420, 409, 465, 468, 471, 201 read with Section 34 of the Indian Penal Code on his furnishing

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P.R. Bond of Rs.50,000/- with two sureties in the like amount.

- (iv) The petitioner/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.
- (v) The petitioner/accused shall provide his residential address and cell number to Police Station concerned and shall not change his place of residence without prior intimation to the Investigating Agency.
- (vi) The petitioner accused shall attend each and every date of trial regularly. If he fails to attend the trial for one single date, or fails to comply with the aforesaid conditions, his default would entail the State to ask for cancellation of bail.
- (vii) Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE

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