

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

CRIMINAL APPLICATION NO.20 OF 2026

HaRSHAD Bhagwan Gangitre

..vs..

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

Shri S.V. Sirpurkar, Advocate for the applicant.
Shri A.A. Madiwale, APP for the State.

CORAM: M.M. NERLIKAR, J.

DATE : 06.03.2026.

Heard.

2. By way of this application, the applicant is seeking bail in connection with Crime No.347 of 2023 registered with Dhad Police Station, District Buldana for the offence punishable under Sections 8(c), 20(b)(ii)(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 198.

3. It is alleged that the local crime branch, Buldana on receipt of information conducted the raid on Dhad to Sambhajinagar road and accused no.1 Rahul Sable was apprehended on the spot. It is stated that he was transporting illegal drugs and therefore, search was conducted. There was seizure of contraband, two phones and sim cards. Present applicant was arraigned as an accused on the basis of statement of accused no.1 that the seized contraband belonged to both of them and therefore, FIR came to be registered and present applicant came to be arrested on 09.11.2023.

4. Learned Counsel for the applicant is seeking bail on two grounds i.e. on merits as well as on the grounds

of delay in trial. It is submitted that there is no evidence in the charge-sheet against the applicant except the confessional statement of accused no.1 Rahul. The other material placed on record along with the charge-sheet are CDR reports. However, it cannot be relied upon because the mobile was seized from the father of the applicant and the mobile did not have sim card. In the absence of sim card, it is very difficult to rely on the CDR report. Accused no. 3 Satyanarayan Sharma and accused no. 4 Dineshbhai Parmar, who were also involved in the crime, have also been released on bail by the Trial Court, however bail to Rahul Sable has been rejected as the role of Rahul is different since he was caught red handed along with the contraband.

5. Learned Counsel for the applicant submits that so far as the delay in trial is concerned, the applicant is in jail since 09.11.2023 i.e. more than two years have lapsed and there is no progress in the trial. Hence, the applicant is entitled to be released on bail on the ground of delay in trial also.

6. On the other hand, learned APP appearing for the State vehemently opposes the application on the ground that there was active participation of the present applicant in the alleged crime. The applicant was in constant touch with accused no.1 Rahul. Also, the applicant was seen in the company of Rahul in the CCTV footage at one Dhaba near Deulgaon Raja. The applicant was in the truck along with Rahul and traveled from one place to another. Hence as there is active participation in the alleged crime by the applicant, the application is

prayed to be rejected.

7. I have heard the rival submission and perused the record. Admittedly, vehicle namely Eicher was apprehended near village Dhad by the Investigating Agency and Rahul who was carrying contraband in the truck was caught red handed and during investigation, Rahul has taken name of the present applicant. Also, the mobile was seized from the father of the applicant and seizure panchanama shows that there was no sim card in the mobile phone. Further it is to be noted that the applicant was seen along with Rahul at one Dhaba, therefore, even if it is presumed that the applicant was travelling with Rahul, that itself is not sufficient to connect the applicant with the alleged crime. It is for the prosecution to show from where the contraband articles were loaded and where it was to be unloaded. So far as the CDR report is concerned, no number was found in the seizure panchanama and the mobile of the applicant was seized from his father.

8. Considering the nature of allegations and the fact that the applicant is behind bars since 09.11.2023, this Court has called the status report from the concerned Trial Court, from which it appears that examination-in-chief of PW1 is going on. In the charge-sheet near-about 45 witnesses are shown. No doubt, prosecution may not examine all the witnesses however fact remains that the examination-in-chief of PW1 is going on.

9. The Hon'ble Supreme Court has considered the issue of delay in trial in catena of judgments stating that

the accused cannot be put behind bars for indefinite period, if the trial has not progressed. The Hon'ble Supreme Court in the case of **Javed Gulam Nabi Shaikh VS State of Maharashtra and Another, (2024) 9 SCC 813**; has in para no.17 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 VS State of Uttar Pradesh, (2024) 8 SCC 293**; it has been held in para 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 recent judgment in case of **Anoop Singh vs. U.T. of J and K (SLP (Cri) No.1398/2026)** vide order dated 03.02.2026 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 most unfortunate part of the report of the Trial Court is that past 82 hearings, not a single witness has been examined.”

12. In view of the above exposition of law and considering the fact that the investigation is complete and charge-sheet has been filed, the accused is in jail since 09.11.2023 and there is delay in trial and the applicants, fundamental right of speedy trial guaranteed under Article 21 of the Constitution of India is infringed , I am inclined to enlarge the applicant on bail. Hence the following order :

- (a) The application is allowed.
- (b) The applicant Harshad Bhagwan Gangitre in connection with Crime No.347 of 2023 registered with the Dhad Police Station, District Buldana be released on bail on

furnishing P.R. bond of Rs.50,000/- with one or two sureties in the like amount.

- (c) The applicant 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.
- (d) The 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.
- (e) The applicant shall not commit any similar type of offence.
- (f) The 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 entail the State to ask for cancellation of bail.

13. The observations are *prima facie* in nature and the Trial Court shall not be influenced by the same .

14. All Misc. application(s), pending if any, shall stands disposed of accordingly.

(M.M. NERLIKAR, J.)