

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1857 OF 2026

Aguilum Jude Ebuka	.. Applicant
Versus	
State of Maharashtra	.. Respondent

WITH
BAIL APPLICATION NO. 1924 OF 2026

Eneje Grace Chinonyen	.. Applicant
Versus	
State of Maharashtra	.. Respondent

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- Mr. Shekhar S. Bhandary a/w K.S. Bhandary, Advocates for Applicants
 - Mr. Amit K. Munde, APP for State
 - Mr. Kishor Khadke, API, Talaja Police Station, Navi Mumbai

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 28, 2026

P. C.:

1. Heard Mr. Bhandary, learned Advocate for Applicants and Mr. Munde, learned APP for State.
2. Common order is being passed in both the Bail Applications.
3. Applicants are foreign nationals. They are indicted in the crime in connection with C.R. No. 451 of 2024 registered with Talaja Police Station for the offences punishable under Sections 8(c), 21(c) and 22(c) of the Narcotic Drug and Psychotropic Substances Act, 1985 (for

short "NDPS Act"). Both have been in incarceration for the past 1 year 10 months pending trial. Investigation is completed. Trial has not begun.

4. *Prima facie*, the notice under Section 50 of the NDPS Act and the intimation required to be given regarding appraisal of the right of the arrestee under Section 52 of the NDPS Act, copies of which are appended at page 39 to 41 onwards, leaves much to be desired. There is *prima facie* non-compliance of the said provisions. The signatures of the Applicants are not appearing, though it is the case of the prosecution in the FIR that they refused to sign. If that be the case, such a remark ought to have been appended on the Section 50 notice itself. The fact that the said notice does not have the said remark leaves an element of doubt and suspicion.

5. Insofar as compliance of Section 52 notice is concerned, the case is much worse. The witnesses have not appended their signatures at all despite the FIR stating so to the contrary. Though learned APP would vehemently argue that commercial quantity of contraband has been recovered from the accused on the basis of secret information received and the rigor of Section 37 will have to be applied, the NDPS Act itself mandates that trial should be concluded within a period of one year and here is a case where for the past almost two years, the trial has

not begun. Merely because the Applicants before the Court are foreign nationals, that cannot be a reason for incarceration.

6. Insofar as the commercial quantity of the contraband having been recovered is concerned, Applicants can be put to stringent conditions so as not to re-offend and if that be the case, the bail can be directed to be cancelled.

7. The procedure under Section 50 and 52 being very crucial and important steps at the threshold are required to be satisfied without any suspicion. If that is not the case, it leaves an element of doubt in the mind as to whether the procedure that is prescribed has been adopted and followed, or otherwise especially so when the FIR *prima facie* shows that the said procedure has been followed to the hilt. If the appended documentation is not in consonance with the procedure and the FIR filed, then the case of the Applicants will have to be considered for grant of bail.

8. One more reason which impels me to consider the Applicants' case for grant of bail is in view of the investigation being completed and chargesheet been filed.

9. 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:-

10. In the case of *Nitish Adhikary alias Bapan Vs. State of West Bengal*¹ the Supreme Court considering long incarceration of an undertrial-accused granted him bail to an undertrial-accused who was incarcerated for 1 year and 7 months despite being alleged to be in possession of commercial quantity of contraband.

11. In the case of *Babor Ali Mondal Vs. State of West Bengal*² the Supreme Court considering the long incarceration granted bail to an undertrial-accused who was incarcerated for 1 year and 4 months.

12. In the case of *Sukhvinder Singh Bittu Vs. State of Punjab*³ the Supreme Court considering long incarceration of an undertrial-accused granted him bail who was incarcerated for 1 year despite being alleged to be in possession of commercial quantity of poppy straw.

13. In the case of *Mohd. Mobin Jahurul Hasan Manihar Vs. State of Maharashtra*⁴ - this Court on 20.01.2025 considering long incarceration of the under-trial accused granted bail to him who was

1 2022 SCC OnLine SC 2068

2 Criminal Appeal No. 3349 of 2024

3 Cri. Appeal No.1204 of 2024

4 BA No.713 of 2024 decided on 20.01.2025

incarcerated for 1 year 11 months. The contraband in question was 220 gms of MD, the commercial quantity of which is 50 gms.

14. From the above, it is apparent that inspite of the stringent test to be met by the Accused person under Section 37 of the NDPS Act for being released on bail, it has been held that the same does not fetter grant of Bail to the Accused person on the ground of undue delay in the completion of trial. It has been held that incarceration for substantial period of time generally militates against the right to life and liberty guaranteed under Article 21 of the Constitution of India and hence the conditional liberty must override the statutory embargo under Section 37 of the NDPS Act.

15. Attention of this Court is drawn to the observations made in paragraph Nos. 19 to 24 by the Supreme court in the case of ***Mohd. Muslim alias Hussain v. State (NCT of Delhi)***⁵ which reads thus:-

"19. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is "not guilty of such offence" and that he is not likely to commit any offence while on bail. What is meant by "not guilty" when all the evidence is not before the court? It can only be a prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439 CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under the Special Acts (the NDPS Act, etc.), which apply over and above the ordinary

5 2023 SCC OnLine SC 352

bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused cooperating with the investigation, not fleeing from justice : even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such Special Acts, has to address itself principally on two facts : likely guilt of the accused and the likelihood of them not committing any offence upon release. This Court has generally upheld such conditions on the ground that liberty of such citizens has to—in cases when accused of offences enacted under special laws—be balanced against the public interest.

20. *A plain and literal interpretation of the conditions under Section 37 (i.e. that court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.*

21. *The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this Court have, therefore, emphasised that the satisfaction which courts are expected to record i.e. that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Mallik (2009) 2 SCC 624. 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 (Satender Kumar Antil v. CBI, (2022) 10 SCC 51 : (2023) 1 SCC (Cri) 1]). Having regard to these factors the Court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.*

22. *Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not,*

appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31-12-2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 prisoners in the country. Of these 1,22,852 were convicts; the rest 4,27,165 were undertrials.

23. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in *A Convict Prisoner v. State - 1993 SCC OnLine Ker 127 : 1993 Cri LJ 3242*] as “a radical transformation” whereby the prisoner :

“13. ... loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity and autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”

24. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal” [*Working Papers - Group on Prisons & Borstals - 1966 U.K.*] (also see Donald Clemmer's “*The Prison Community*” published in 1940 [*Donald Clemmer, The Prison Community*(1968) Holt, Rinehart & Winston, which is referred to in Tomasz Sobecki, “*Donald Clemmer's Concept of Prisonisation*”, available at: <https://www.tkp.edu.pl/wpcontent/uploads/2020/12/Sobecki_sklad.pdf> (accessed on 23-3-2023).]). Incarceration has further deleterious effects—where the accused belongs to the weakest economic strata : immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials—especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”

16. In the above *prima facie* facts and circumstances of the case the Applicants before me have made out a case for bail. Hence considering the period of long incarceration for almost two years and the probability of the trial not commencing and for that matter not concluding in the near foreseeable future persuades me to allow the Applications. Hence, both the Applicants are released on bail on the following terms and conditions:-

- (i) Applicants are directed to be immediately released on bail from prison in connection with C.R. No. 451 of 2024;
- (ii) Applicants are directed to be released on bail on furnishing PR. Bond of Rs. 50,000/- each (Rs. Fifty Thousand Each) with one or two sureties in 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 v. Chidiebere Kingsley Nawchara & Ors.*⁶
- (iii) Applicants shall report to the concerned Police Station once every month on the first Sunday of the month between 10:00 a.m. to 12:00 p.m.;
- (iv) Applicants 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 they do so it will entitle the

⁶ SLIP (Cri) No.(s). 14185 of 2025

prosecution to apply for revocation of this order;

- (v) Applicants shall not leave the country without prior permission of the Trial Court. Applicants are directed to deposit their passports, if, any with the Trial Court within a period of one week of their release from prison.
- (vi) Applicants shall not influence any of the witnesses or tamper with the evidence in any manner;
- (vii) Applicants shall keep the Investigating Officer informed of their current addresses and mobile contact numbers and / or change of residence or mobile details, if any, from time to time, as applicable; and
- (viii) Any infraction of the conditions shall entail cancellation of bail granted to the Applicants;
- (ix) 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.*⁷

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

17. Needless to state that the above observations will not come in the way of trial as they are *prima facie* in nature based on the submissions made and the material placed before this Court.

18. Both the Bail Applications are allowed and disposed of in the above terms.

[MILIND N. JADHAV, J.]

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