

2025 LiveLaw (SC) 1101

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
ARAVIND KUMAR; J., N.V. ANJARIA; J.**

November 13, 2025

SPECIAL LEAVE PETITION (CRL.) NO(S). 7768, 11097 OF 2025

UNION OF INDIA *versus* VIGIN K. VARGHESE

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) - Section 37(1)(b) – Grant of Bail in Offences Involving Commercial Quantity – Twin Conditions – The Supreme Court set aside the High Court's orders granting bail, holding that the High Court failed to properly apply the statutory bar under Section 37 - The twin conditions—recording a satisfaction that there are reasonable grounds to believe the accused is not guilty and that he is not likely to commit any offence while on bail—must be demonstrably complied with - Held that the High Court's conclusion that there was no material to show knowledge was arrived at without discussion of the respondent's statements under Section 67 of the NDPS Act and circumstances relied upon by the prosecution, such as the respondent placing orders, controlling logistics, coordinating with the overseas supplier, and being present when the consignment was opened - Noted that High Court did not examine whether the circumstances, taken at face value, could prima facie indicate conscious control or involvement sufficient to attract the presumption of culpable mental state under Section 35 of the NDPS Act - Matter remitted to the High Court for fresh consideration of the prayer for bail, requiring a complete and fair appraisal of the rival contentions based on the material, and adhering to the parameters of Section 37. [Paras 15-22]

[Arising out of impugned final judgment and order dated 22-01-2025 in CRBA No. 1416/2024 passed by the High Court of Judicature at Bombay]

For Petitioner(s): Mr. Gurmeet Singh Makker, AOR

For Respondent(s): Mr. Malak Manish Bhatt, AOR Mr. Arshdeep Singh Khurana, Adv. Ms. Neena Nagpal, Adv. Mr. Vishvendra Tomar, Adv. Mr. Rohan Tewari, Adv. Mr. Aaditya Aniruddha Pande, AOR Mr. Siddharth Dharmadhikari, Adv. Mr. Shrirang B. Varma, Adv. Mr. Bharat Bagla, Adv. Mr. Sourav Singh, Adv. Mr. Aditya Krishna, Adv. Mr. Adarsh Dubey, Adv.

J U D G M E N T

ARAVIND KUMAR, J.

1. Leave granted.
2. These appeals, being *Special Leave Petition (Crl.) Nos. 7768 of 2025 and 11097 of 2025*, are directed against the orders dated 22.01.2025 and 12.03.2025 passed by the High Court of Judicature at Bombay granting bail to the respondent accused *Vigin K. Varghese* on prosecutions instituted by the Directorate of Revenue Intelligence under the *Narcotic Drugs and Psychotropic Substances Act, 1985* (hereinafter referred to as “NDPS Act”. The first order, rendered in *Criminal Bail Application No. 1416 of 2024*, relates to the seizure of approximately 50.232 kilograms of Cocaine imported from South Africa in the name of *M/s Yummito International Foods India Pvt. Ltd.*, of which the respondent is a Director. The second order, rendered in *Criminal Bail Application No. 1540 of 2024*, granted bail on the ground of parity in a connected prosecution arising from a seizure effected within a few days of the first. As both appeals concern the same accused, the

same investigating agency, and substantially overlapping facts and legal issues, they are heard together and disposed of by this common order.

3. On 05.10.2022, Officers of the Directorate of Revenue Intelligence, Mumbai Zonal Unit, acting on specific information, identified a refrigerated shipping container bearing No. MSDU-9809038, declared to contain pallets of pears, imported from South Africa in the name of *M/s Yummito International Foods India Pvt. Ltd.* The respondent is stated to be a Director and the operative mind of said concern. The container was escorted from the terminal at Jawaharlal Nehru Port to EFC Logistics CFS for examination in the presence of two independent panch witnesses and the respondent.

4. On 06.10.2022 and 07.10.2022, upon opening the said container and segregating the cartons, officers allegedly recovered fifty brick-shaped white packets concealed within cartons of green apples (pears) that were intermixed with the declared consignment of pears. On weighment, these packets were found to weigh approximately 50.232 kilograms. Field testing indicated the presence of cocaine. The contraband was seized under a panchnama dated 06.10.2022 and 07.10.2022.

5. Statements of the respondent came to be recorded under Section 67 of the NDPS Act wherein it is alleged that he admitted to ordering the consignment from a South African supplier, to having imported the goods using the Import Export Code of his firm, and for supervising the clearance and delivery operations through his logistics handlers. The Directorate further alleges that he identified one Mansoor Thachaparamban as his overseas collaborator who arranged the shipments and that the respondent described the commercial arrangement and coordination undertaken for the consignments.

6. The Directorate also asserts that the present seizure was not isolated. On 02.10.2022, in a separate operation, approximately 198.1 kilograms of Methamphetamine and 9.035 kilograms of Cocaine had been seized, allegedly traceable to the same network involving the respondent and the aforesaid Mansoor Thachaparamban. A separate complaint bearing No. 428 of 2023 in respect of that seizure stands filed before the Special Court for NDPS cases, Panvel. The Union relies on this to show antecedent involvement.

7. The respondent came to be arrested in October 2022 and has remained in custody since then. Upon completion of investigation, a complaint came to be filed before the Special Court on or about 01.04.2023, registered as DRI/MZU/C/INT-96/2022. The application for bail preferred by the respondent was rejected on 24.01.2024, inter alia holding that the material prima facie disclosed his active role and that the fetters of Section 37 were attracted.

8. The respondent thereafter approached the High Court of Judicature at Bombay by way of *Criminal Bail Application No. 1416 of 2024*. By order dated 22.01.2025, the High Court enlarged the respondent on bail. The High Court reasoned that although a large quantity of contraband was seized, there was prima facie no material to show that the applicant had knowledge of the cocaine concealed in the cartons of apples; that there were no antecedents; and that the trial was unlikely to conclude in the near future. On that basis, it concluded that there existed reasonable grounds to believe that the applicant was not guilty of the alleged offence and that he was entitled to bail.

9. A subsequent order dated 12.03.2025 passed on a later bail application arising from the same chain of events proceeded on similar reasoning and extended the benefit of bail by invoking parity and reiterating absence of knowledge and prolonged custody. The

Union of India has assailed both these orders in the present appeals which have been directed to be heard together.

10. Shri Raghavendra P. Shankar, Learned Additional Solicitor General appearing for the appellant submits that High Court has erred in granting bail despite the recovery of a commercial quantity of narcotic substances under Sections 21(c), 23(c), 29 and 30 read with Section 8(c) of the NDPS Act. It is urged that the statutory bar under Section 37 was not properly applied and the reasoning adopted by the High Court is contrary to settled law. It is contended that the High Court had granted bail without recording any satisfaction that the respondent was not guilty or that he would not commit any offence while on bail. The order, it is submitted, is devoid of reasons demonstrating compliance with the twin conditions prescribed under Section 37(1)(b).

11. The appellant further submits that incriminating materials such as call data records, seizure memos, and statements recorded under Section 67 of the NDPS Act clearly implicate the respondent and reveal his active participation in facilitating import and concealment of narcotic consignments. The High Court, according to the appellant, misapplied considerations such as delay of trial and health, which cannot override the statutory embargo. It is contended that offences of this magnitude undermine public interest and that a liberal approach in granting bail defeats the object of the NDPS Act. The Union accordingly prays that the impugned orders be set aside and the respondent be directed to surrender.

12. Per contra, learned senior counsel appearing for the respondent submits there is no direct material linking respondent to the possession or conscious control of the contraband seized. It is urged that the recovery was from a shipping container arriving from abroad and not from the personal custody or premises of the respondent. The statements relied upon by the prosecution, are recorded by the enforcement officers and lack independent corroboration. The respondent emphasizes that he has been in custody since October 2022 and that the trial having not commenced in real earnest, it is unlikely to happen in the near future.

13. It is contended that the High Court exercised sound discretion by harmonizing the rigour of Section 37 with the right to personal liberty under Article 21 of the Constitution. Reliance is placed on the principle that prolonged incarceration without trial cannot be justified, particularly when delay is not attributable to the accused. The respondent submits that he has cooperated throughout the investigation; has no prior criminal antecedents; and, poses no risk of absconding or tampering with the evidence. It is argued that the impugned orders reflect a reasoned exercise of judicial discretion after examining the case diary and no interference under Article 136 of Constitution of India is warranted. It is also pointed out that appellants suffer from unexplained delay in filing.

14. We have perused the impugned orders dated 22.01.2025 and 12.03.2025. Both orders proceed essentially on four planks, absence of knowledge of the cocaine to the respondent in the imported consignment, absence of antecedents, length of custody and perceived delay in conclusion of the trial, and a consequent conclusion that there exist reasonable grounds to believe that the accused is not guilty of the offence.

15. At this stage, two features stand out. The High Court's conclusion that there is no material to show that the applicant had any knowledge of the cocaine in the consignment has been arrived at without discussion of the statements of the respondent and circumstances relied upon by the prosecution, including the assertion that the respondent had placed the orders for import, controlled the logistics chain, coordinated with the

overseas supplier, and was present when the consignment was opened. The High Court has not examined whether those circumstances, taken at face value for the limited purpose of bail, could prima facie indicate conscious control or involvement sufficient to attract the presumption of culpable mental state indicated under Section 35 of the NDPS Act.

16. Further, while granting bail, the High Court recorded that there were no antecedents against the applicant. The material before this Court includes the Union's assertion that the respondent had already been apprehended in connection with an earlier seizure of approximately 198.1 kilograms of Methamphetamine and 9.035 kilograms of Cocaine allegedly imported through the same channel only days before the present seizure. That assertion is neither noticed nor answered in the impugned orders.

17. The High Court then, on the strength of those premises, recorded a finding that there exist reasonable grounds to believe that the applicant is not guilty of the alleged offence, treating prolonged incarceration and likely delay as the justification for bail. Such a finding is not a casual observation. It is the statutory threshold under Section 37(1)(b)(ii) which would disentitle the discretionary relief and grant of bail must necessarily rest on careful appraisal of the material available. A conclusion of this nature, if returned without addressing the prosecution's assertions of operative control and antecedent involvement, risks trenching upon appreciation of evidence which would be in the domain of trial court at first instance.

18. This Court ordinarily shows deference to the discretion exercised by the High Court while considering the grant of bail. However, offences involving commercial quantity of narcotic drugs stand on a distinct statutory footing. Section 37 enacts a specific embargo on the grant of bail and obligates the Court to record satisfaction on the twin requirements noticed above, in addition to the ordinary tests under the Code of Criminal Procedure.

19. In the present case, the High Court has not undertaken the analysis of those twin requirements with reference to the material placed by the prosecution. The orders dated 22.01.2025 and 12.03.2025 do not advert to the allegation regarding the respondent's prior involvement in a seizure of narcotic drugs and psychotropic substances only days prior to the seizure forming the subject matter of the present complaint, nor do they engage with the prosecution's assertion as to the respondent's role in arranging, importing, clearing and supervising the consignments. The omission to consider these factors bears directly upon the statutory satisfaction required by Section 37(1)(b).

20. We are of the view that, in the facts of this case, it would not be appropriate for this Court at the threshold stage itself to render findings on whether there are or not reasonable grounds, for believing that the respondent is not guilty, or on whether he is likely to commit any offence while on bail. That factual assessment, which the statute requires to be made and recorded with reasons, is one that the High Court must undertake upon a complete and fair appraisal of the rival contentions based on materials placed before it.

21. In our considered view, the interests of justice would be met if the impugned orders are set aside and the matter is remitted to the High Court for fresh consideration of the respondent's prayer for bail, keeping in view the parameters of Section 37 of the NDPS Act, the nature and quantity of contraband alleged to have been seized including 50.232 kilograms of Cocaine on 06.10.2022 and 07.10.2022, the role attributed to the respondent in the said import, the allegation of his involvement in an earlier seizure of 198.1 kilograms of methamphetamine and 9.035 kilograms of cocaine in early October 2022, the period of custody undergone since October 2022, and the stage of trial before the Special Court.

22. In the result, the following order is passed:

(1) The impugned orders of the High Court of Judicature at Bombay dated 22.01.2025 and 12.03.2025 are set aside.

(2) The matters are remitted to the High Court of Judicature at Bombay for fresh consideration of the respondent's prayer for bail. The High Court shall, after affording an opportunity of hearing to both the sides and upon advertent to the statutory requirements of Section 37 and to the relevant material on record, pass a reasoned order keeping in mind the observations made hereinabove within four weeks from the date of receipt of this order.

(3) Until the High Court takes a decision, and purely as an interim arrangement, the respondent shall continue to have the benefit flowing from impugned orders including the terms and conditions of bail as presently operative. It is made clear that any infraction of the conditions of bail, including any attempt to contact witnesses or tamper with evidence, shall entitle the prosecuting agency to move for immediate cancellation before the High Court during the interregnum.

(4) We clarify that we have not expressed any opinion on the merits of the case and all contentions of both parties are left open to be urged before the High Court.

23. The Appeals are disposed of in the above terms.

© All Rights Reserved @LiveLaw Media Pvt. Ltd.

*Disclaimer: Always check with the original copy of judgment from the Court website. Access it [here](#)