



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous 2nd Bail Application No. 13203/2025

Anandraj S/o Menpal Singh, Aged About 22 Years, R/o Village Khundroth Tehsil Neemrana, Police Station Madhan, District Kotputli-Behror (Rajasthan) (At Present Confined At Central Jail Jaipur).

-----Petitioner

Versus

State Of Rajasthan, Through PP

-----Respondent

For Petitioner(s) : Mr. R.B. Sharma Ganthola
For Respondent(s) : Mr. N.S. Dhakar, PP with
Mr. Tapesht Agarwal, PP &
Mr. Gaurav Gupta, Asstt. G.A.
Mr. Vinod Meena, Police Inspector
(I.O.), Special Police Station, Jaipur

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

ORDER

Order reserved on : 15.10.2025
Order Pronounced on : 28.10.2025

(REPORTABLE)

1. This second bail application under Section 483 BNSS has been filed on behalf of the petitioner, who has been arrested in connection with FIR No.02/2024 registered at Special Police Station, District C.I.D Surakchha (Raj.) for offences punishable under Sections 3 & 9 of the Official Secrets Act, 1923.
2. First bail application filed on behalf of the petitioner was dismissed as withdrawn vide order dated 24.01.2025 while giving liberty to renew the prayer for bail before the learned trial court under the provisions of Section 480(6) of BNSS (Corresponding to Section 437(6) of Cr.PC).



3. Learned counsel for the petitioner submits that since rejection of the first bail application, more than six months have elapsed, yet the trial has not progressed beyond the stage of pre-charge evidence. It is contended that the prosecution is not producing its witnesses promptly, resulting in unwarranted delay in the proceedings. Counsel further submits that as the charges have not yet been framed, the applicant is precluded from availing remedy of bail before the Trial Magistrate under Section 480(6) of the BNSS. In these circumstances petitioner has no option but to make prayer before this court for grant of bail. It is urged that the applicant has already suffered incarceration for about 19 months, having been in custody since 14.03.2024. In these circumstances, it is apparent that, his fundamental right to speedy trial, guaranteed under Article 21 of the Constitution of India, stands seriously infringed. Counsel further submits that the applicant is facing trial before the Magistrate Court, where, in any event, the maximum sentence that can be imposed in case of conviction cannot exceed seven years, notwithstanding that the offence alleged carries a maximum punishment of fourteen years. Counsel further argued that, from a perusal of the complaint submitted by the prosecution, it is clear that no incriminating material has been recovered from the petitioner's mobile phone. Moreover, the petitioner has not even been provided with the material that is alleged to have been sent by him through WhatsApp to a person in a neighbouring country. Counsel further submits that even if the allegations made in the complaint are considered on its face value, Section 3 of the Official Secrets Act,



1923 (for short "the Act of 1923") will not apply, but at the most, Section 5 of the Act of 1923 will apply to the case of the applicant. He has further argued that, in absence of allegation that the applicant has done it with purpose prejudicial to the safety and interest of the State, which is the per-requisite for application of Section 3, the offence under Section 3 of the Act of 1923, will not apply. It has also been submitted that, to date, the prosecution has not been able to produce FSL (Forensic Science Laboratory) report related to the petitioner's mobile phone. Due to this, the prosecution has been continuously seeking adjournments from the trial court. As proof, he submitted copies of the order sheets of the trial court. Counsel further submits that the delay in the trial is solely attributable to the prosecution, and under such circumstances, further custody of the petitioner would not serve any fruitful purpose. The petitioner is willing to comply with all conditions imposed by the Court. Finally he submits that in view of the prolonged incarceration of the petitioner, coupled with the fact that there is no immediate prospect of being concluded the trial in the near future, learned counsel prays that the petitioner may kindly be enlarged on bail. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in Union of India vs. K.A. Najeeb reported in (2021) 3 SCC 713.

4. On the other hand, the learned State counsel vehemently opposed the submissions made by the counsel for the petitioner. He submits that the offence is very serious and the maximum punishment for the offence alleged against the petitioner is fourteen years under Section 3 of the Act of 1923. He therefore,





submits that this Court may not grant bail to the applicant. It is submitted that whether Section 3 of the Act of 1923 would attract in this case, is a matter of trial and at this stage, it cannot be considered. He further submits that sufficient incriminating material is available on record against the petitioner to show his involvement in the alleged offence and as the offence relates to safety of the State, he prays for dismissal of the application. In support of his submission, he has placed reliance upon the judgment of the Hon'ble Supreme Court of India, in the case of the State Vs. Captain Jagjit Singh reported in AIR 1962 (SC) 253.

5. I have considered the contentions.

6. In light of the rival submissions of both the parties, I have perused the material available on record including order sheets of the trial court placed by the counsel for the petitioner during the course of arguments. Perusal of the record would reveal that petitioner is in custody since 14.03.2024 and presently trial is at the stage of recording of pre charge evidence and still FSL report with regard to mobile phone of the petitioner is awaited. Perusal of the order sheets of the trial court would further reveal that in this case, complaint was filed on 09.05.2024, but since the prosecution sanction was not submitted along with it, no proceedings took place for the next six months except waiting for the sanction. On 25.11.2024, cognizance was taken and the prosecution witnesses were summoned for pre-charge evidence, but in the next eleven hearings, no witness appeared. On 11.04.2025, the first witness appeared, but his statement could not be completed due to absence of FSL report and was therefore



deferred. Thereafter, until 06.10.2025, the statements of only three other witnesses were recorded, out of which the statement of one witness also remained incomplete due to the non-availability of the FSL report. The FSL report has still not been submitted by the prosecution agency. During this period, the accused submitted an application requesting closure of evidence or passing of any other appropriate order, but no order could be passed on it, as the prosecution kept seeking time to file its reply. It is also evident that, to secure the attendance of the witnesses, the trial court issuedailable and non-bailable warrants, yet out of 18 witnesses, statements of only 4 witnesses could be recorded in pre-charge evidence so far. Thus, from the perusal of the trial court order sheets, it is clear that the prosecution has been adopting a very lax and negligent attitude in producing its witnesses.

7. Now this court would like to discuss delay in trial of accused in custody and its effects. The personal liberty is a priceless treasure for a human being. It is basically a natural right. No one would like to lose his liberty. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. The expression 'Personal Liberty' in Article 21 of the Constitution is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of a person and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19 of the Constitution. 'Personal Liberty' under Article 21 of the Constitution primarily means



freedom from physical restraint of person by incarceration or otherwise. The concept of "right to life and personal liberty" guaranteed under Article 21 of the Constitution includes the "right to live with dignity" and it does not mean mere animal like existence of life. After the Hon'ble Supreme Court's decision rendered in the case of Maneka Gandhi Vs. Union of India, AIR 1978 SC 597, Article 21 of the Constitution now protects the right of life and personal liberty of citizen not only from the executive action but from the legislative action also. A person can be deprived of his life and personal liberty if two conditions are complied with, first, there must be a law and secondly, there must be a procedure prescribed by that law provided that the procedure is just, fair and reasonable. Hon'ble Supreme Court has held in catena of the judgments that prolonged incarceration without trial is violative of rights of an accused and the court should step in to protect him and no provision can take away the power of constitutional courts to grant bail on grounds of violation of fundamental rights. Prolonged incarceration is a valid ground for granting bail in the Indian judiciary system, particularly when coupled with the anticipated length of the trial. The right to liberty under Article 21 is a critical consideration, and courts should incline to grant bail to prevent undue hardship particularly when prosecution is not showing promptness in producing witnesses. However, the nature of the offence, potential risks associated with releasing the accused, and the overall context of the case must be carefully evaluated.



8. In a case, before Hon'ble Supreme Court, Masroor v. State of U.P. reported in 2009 (14) SCC 286, Hon'ble Supreme Court beautified that there should be a balancing approach between personal liberty of the accused and interest of public and a case of prosecution. Again, Hon'ble Supreme Court, in a case Neeru Yadav vs. State of Uttar Pradesh, reported in 2014(16) SCC 508 ardently discussed the aspect of balancing two interests by observing that "The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilized. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. The society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its



sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law."

9. In the case of Jahir Hak vs State of Rajasthan : AIR 2022 (SC) 3047, indulgence of bail was extended to the accused therein by the Hon'ble Apex Court by considering the following observations made in the case of Union of India vs K.A. Najeeb (2021) (3) SCC 713:-

"12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act") which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi) [Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252 : 1999 SCC (Cri) 1156], Babba v. State of Maharashtra [Babba v. State of Maharashtra, (2005) 11 SCC 569 : (2006) 2 SCC (Cri) 118] and Umarmia v. State of Gujarat [Umarmia v. State of Gujarat, (2017) 2 SCC 731 : (2017) 2 SCC (Cri) 114] enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

19. Yet another reason which persuades us to



enlarge the respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS Act where the competent court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under UAPA. Instead, Section 43-D(5) of the UAPA merely provides another possible ground for the competent court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by abscission, etc."

10. In the case of Mehmood Mohammed Sayeed vs State of Maharashtra reported in 2001 (7) SRJ 336, the Hon'ble Apex Court while considering the fact that the trial may take long time, disposed of the appeal of the appellant and released him on bail with certain conditions. The same is reproduced hereinbelow for the sake of ready-reference:-

"1. Leave granted. Though learned Counsel for the State of Maharashtra opposed appellant to be released on bail we have taken note of the fact that appellant is remaining in custody from 18-1- 2000 onwards. The offences alleged against him include Sections 463, 467, 461, 419 read with Section 120 of the Indian Penal Code. Investigation is completed and the charge-sheet has been laid. What remains is only the trial. We do not know how long the trial will take, particularly, seeing the condition of the trial Courts



in Maharashtra.

2. When learned Counsel for the State noticed that we are disposed to release the appellant on bail he alternatively pleaded that stringent conditions may be imposed on him because of the allegations that he has some links with the international terrorists gang. We, therefore, impose the following conditions on him:

1. He shall report to the Worli Police Station, Mumbai on every Monday between 4.00 p.m. and 6.00 p.m. until further orders: and
2. If, he is to leave the limits of Mumbai City Corporation he shall take permission from the trial Court.
3. If he is prepared to abide the above conditions he shall be released on bail on his executing a bond of Rs. 2 lacs with two solvent sureties to the satisfaction of the trial Court.

This appeal is disposed of accordingly."

11. While it is true that Article 21 of the Constitution of India is of great importance because it enshrines the fundamental right to individual liberty but at the same time a balance has to be struck between the right to individual liberty and the interest of the Society. No right can be absolute and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time. The Court is also required to take into account other relevant factors, including the broader interest of society. In the present case, the record reveals that the trial is still at the stage of recording pre-charge evidence. Out of a total of 18 witnesses, only 4 have been examined so far. Despite



the issuance of bailable and arrest warrants to secure attendance of witnesses, the prosecution has managed to examine only 4 of them, reflecting a lethargic and non-diligent approach in producing its witnesses. The petitioner has been in custody since 14.03.2024, and given the current pace of proceedings, there appears to be no likelihood of the trial concluding in the near future. A person accused of a criminal offence cannot be kept in confinement for an indefinite period as an under trial prisoner, especially when the prosecution is not diligent in producing its witnesses. The right to a speedy trial is a fundamental facet of personal liberty guaranteed under Article 21 of the Constitution. Especially when the prosecution fails to proceed with due promptness, the continued detention of the accused amounts to punishment before conviction, which is unreasonable and without justification. In such circumstances, the prosecution cannot take shelter under the plea that the charges are serious in nature, as the gravity of the offence alone cannot justify prolonged incarceration without progress in trial.

12. As far as the judgment cited by the learned State counsel in State v. Captain Jagjit Singh (supra) is concerned, the said decision is clearly distinguishable on facts. In that case, the Hon'ble Supreme Court observed that the High Court had failed to consider the relevant factors such as the nature and seriousness of the offence, the character of the evidence, circumstances peculiar to the accused, the reasonable possibility of the accused not being available for trial, and the fact that the accused therein was facing trial before the Sessions Court for an offence



punishable with a maximum sentence of fourteen years. In contrast, in the present case, the petitioner is facing trial before the Magistrate Court, has already undergone incarceration for more than nineteen months, and even in the event of conviction, cannot be sentenced to more than seven years of imprisonment.

Although the provisions of Section 480(6) BNSS are not applicable to the present proceedings since the charges have not yet been framed, the purpose and spirit of the said provision cannot be ignored, particularly when the accused has already undergone 19 months of imprisonment in a case triable by a Magistrate.

13. Recently in the case of Subhelal @ Sushil Sahu VS State of Chhattisgarh, Reported in (2025) 5 SCC 140, Hon'ble Supreme Court observed as under:-

"12. We may, however, hasten to add that, that cannot be an absolute proposition and some of the reasons which may be relevant for rejection for regular bail under Section 437(1)&(2) of the Code, may also be relevant for rejection of application under sub-section (6) of the said Section, in a given situation. We do not subscribe to the theory that factors which are relevant for rejection of regular bail, at the initial stage are not at all relevant for rejection of application under sub-section (6) of the said Section. Fact situations are so large in numbers, that it may not be possible to contemplate, enumerate, illustrate or incorporate here the factors which would be relevant and which would not be relevant for the purpose of rejection of application under sub-section (6) of Section 437 of the Code. But, it can certainly be said that grounds relevant for considering application under sub-section (6) of Section 437 of the Code and the grounds relevant for considering application for regular bail would be different to some extent.



13. 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?
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?

If the answer to any one of the above referred fact situations or similar fact situations is in affirmative then that would work as a fetter on the right that accrues to the accused under first part of sub-section (6) of Section 437 of the Code.

14. xxx

15. xxx

16. xxx

17. 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."



14. In backdrop of the aforesaid factual and legal aspect, this second bail application is accordingly allowed and it is directed that accused-petitioner **Anandraj S/o Menpal Singh** shall be released on bail provided he furnishes a personal bond in the sum of Rs.3,00,000/- together with two sureties in the sum of Rs.1,50,000/- each to the satisfaction of the learned Trial Court with the stipulation that he shall appear before that Court and any court to which the matter is transferred, on all subsequent dates of hearing and as and when called upon to do so.

15. It is made clear that the accused-petitioner shall not involve in any other offence(s) during currency of the bail and he shall mark his presence in first and third week of every month in the concerned police station, till conclusion of the trial. He shall also surrender his passport (if any) to the trial court. It is further directed that petitioner shall share his mobile number (in use) to the trial court and investigating agency and shall keep his mobile phone in active mode and may not switch off for a longer period intentionally.

16. Concerned SHO shall enter attendance of the petitioner in the Roznamcha. In case the petitioner fails to mark his presence in the concerned police station, the concerned SHO is directed to immediately report the matter to the concerned Court in this regard.

17. If any breach of these conditions is reported or come to the notice of the Court, the same shall alone be a reason for the trial court to cancel the bail granted to him by this Court.



18. Office is directed to send a copy of this order to the concerned SHO for necessary compliance.

19. The observations made hereinabove are only for decision of the bail application and would not have any impact on the trial of the case in any manner.



(ANIL KUMAR UPMAN),J

GAUTAM JAIN /