

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1502 OF 2026**

Neelam Baburao Balla

...Applicant

V/s.

Union of India & Anr.

...Respondents

Adv. Ayaz Khan a/w Adv. Zehra Charania & Adv. Mallika Sharma,
for the Applicant.

Ms. Ruju R. Thakker, SPP a/w Mr. Priyanshu Doshi, for the
Respondent No.1- UOI.

Mr. V. A. Kulkarni, APP for the Respondent No.2-State.

**CORAM: SHYAM C. CHANDAK, J.
DATED : 19th AUGUST, 2026**

P.C. :-

1. Heard learned Counsel for the parties. Perused the record.

2. Ms. Thakker, learned Counsel for Respondent No.1 tendered Affidavit-in-Reply on behalf of Respondent No.1-UOI. It is taken on record.

3. The Applicant seeks her release on bail under Section 483 of the BNSS 2023, in Special Case No.320 of 2026, pending on the file of Special Judge (N.D.P.S.), Sessions Court Gr. Bombay. Said case arising out of File No.SD/INT/AIU/527/2025-AP 'B', registered with Air Intelligence Unit (AIU), CSMI Airport, Terminal-II, Mumbai, for the offence punishable under Sections 20(b)(ii)(B), 21(b), 23(b), 28, 29, 30, 35 and 54 r/w 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act").

4. As alleged, on 17th December 2025, when she arrived at CSMI Airport, Mumbai from Bangkok, she was found in

possession containing 13.324 kg of hydroponic ganja which she had carried from abroad in her baggage. Accordingly, the aforesaid crime was registered and Applicant came to be arrested. Therefore, the trial Court refused to release the Applicant on bail.

5. Mr. Khan, learned Counsel for the Applicant submitted that the quantity of the alleged ganja recovered is much less than the commercial quantity, i.e. 20 kg, as specified under the relevant Schedule. The NDPS Act does not prescribe any distinction based on the ad-valorem or market value of the alleged hydroponic ganja and ordinary ganja. The charge-sheet was filed on 13.02.2026. However, till date, the CA report of the alleged contraband ganja is not produced before the trial Court. Therefore, there is no *prima facie* case against the Applicant of the alleged offence. He submitted that since the Report of C.A. is not filed, the Applicant is entitled for default bail even before this Court as held in ***Rakesh Kumar Paul v. State Of Assam***, reported in 2018 (1) SCC (Cri) 401.

It is submits that since the alleged quantity of the contraband substance is intermediate quantity, therefore, rigours of Section 37 of NDPS Act are not applicable in this case. It is further submitted that there are no criminal antecedents registered against the Applicant and that the charge-sheet has already been filed in the matter and no further interrogation of the applicant is required as the narcotic substance has already been recovered. Moreover, it is submitted that the Applicant is a woman. She is ready to abide by the conditions, if any, imposed by the Court while granting her bail. To support the submissions, Mr. Khan has cited following citations:

Bablu Singh v. State of MP	Special Leave to Appeal (Crl.) No. 631/2024
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Raju Miah v. State of WB	Special Leave to Appeal (Crl.) No. 5870/2025
Ashish Prakash Walke v. State of Maharashtra	Criminal Application [BA] No. 376 of 2026 Bombay HC (Nagpur Bench)
Jabir Kha v. State of MP	Criminal Appeal No.2088 of 2025 (Arising out of S.L.P. (Criminal) No.2933 of 2025)
Jay Anil Sawant v. State of Maharashtra	Criminal Bail Application No. 3760 of 2024 (Bom. HC)
Birbal Prasad @ Birbal Prasad Sah @ Birbal Prasad Sao @Birbal Sah v. The state of Bihar	Supreme Court 2018(2) SCC (Cri) 672
Rajesh v. The state of Haryana	SLP/14037/2024 (Supreme Court)
Rajaram v. The state of Rajasthan	SLP/14693/2024(Supreme Court)
Raju Majumdar v. State of West Bengal	SLP/13733/2025(Supreme Court)
Mahesh Prasad Kusmaya & Anr. v. The state of Madhya Pradesh	SLP/6748/2025(Supreme Court)
Urvex Nevel Vesuna v. State of Maharashtra	BA/4700/2024(Bom HC)

6. Opposing the said submissions vehemently, Ms. Thakker, the learned SPP submitted that, if the seized contraband substance was not Ganja, the Applicant would not have carried it to India from abroad. It is submitted that the recovered narcotic substance is Hydroponic Weed and the same was smuggled by the Applicant in a concealed manner. The said contraband substance is amounting approximately of Rs.13,32,40,000/- in the indigenous and international market. Relying the Order of High Court of Rajasthan in ***Kuldeep Singh v. D.R.I., S.B.*** Criminal Miscellaneous Bail Application No. 13353/2025, Ms. Thakker submitted that the intensity of the recovered narcotic substance, Hydroponic Weed, is much greater than ganja because the content of Tetrahydrocannabinol (THC) in the recovered narcotic substance is approximately 25% as compared to 2% THC in the ordinary ganja. This sole fact indicate that the Applicant

transported the ganja to earn money. Such an act is damaging the economy of the nation. Additionally Ms. Thakker submitted that the issue is still pending before the Larger Bench of the Supreme Court, for consideration as to whether a charge-sheet without the FSL/Examiner's Report in a NDPS case can be termed as an 'Incomplete Report' under Section 173 of C.r.P.C. Therefore, merely because the C.A. Report is not filed, the default bail or regular bail is not possible.

7. I have considered these submissions. There is no dispute that, till the date, the Report of C.A. is not filed in this case before the trial Court. In similar circumstances, bail is granted in the case of ***Bablu Singh v. The State of Madhya Pradesh***, (Supra) by the Hon'ble Supreme Court. Therein, the accused was charged for possession of 28 kg of Opium. He was in custody for more than 3 years and five months. There was one criminal antecedent of similar nature against the Applicant.

8. My attention is also drawn to the Order of this Court Bench at Nagpur in ***Ashish Prakash Walke v. State of Maharashtra***, (Supra). Therein, the accused was found in possession of 160 grams. of the contraband substance M.D. Therefore, rigours of Section 37 of NDPS Act were attracted. The charge-sheet was filed on 21.01.2026, without there being Chemical Analysis report. It appeared from the record that the Chemical Analysis report was prepared on 08.12.2025, and it was forwarded to the Police Station, which was received by the Police Station on 16.12.2025. However, if the date of filing of charge-sheet is considered i.e. 21.01.2026, it could be gathered that much after receipt of the Chemical Analysis report, the charge-sheet came to be filed, however, for the reasons best known to the

Investigating Officer, the Chemical Analysis report was not made part and parcel of the charge-sheet. An explanation was tried to be put forth by the learned A.P.P. that the investigation in the matter was carried by the Local Crime Branch, and the Chemical Analysis report was received by the police station, cannot be accepted. It is further to be noted that the said Chemical Analysis report was tendered before the trial Court by moving a letter/communication dated 13.03.2026 by the Police Inspector, Police Station, Ramnagar. The Chemical Analysis report was enclosed along with this letter. Thus, almost after two months from the filing of the charge-sheet the Chemical Analysis report was sought to be placed on record.

Therefore, on behalf of the accused it was contended that the charge-sheet was filed without Forensic Science Laboratory Report; that, in order to defeat the right provided under Section 187(3) of the BNSS/Section 167 [2] of the C.r.P.C., charge-sheet was hurriedly filed, without the Report of C.A. Therefore, without going into the merits of the matter, the applicant be released on regular bail.

Therefore, the issue before the High Court was, whether application under Section 483 of the BNSS/Section 439 of the C.r.P.C. would be maintainable seeking bail under Section 187(3) of the BNSS/Section 167[2] of the C.r.P.C., in the present circumstances?

8.1 While dealing with and answering that issue, the learned Single Judge noted that, the issue is pending before the Larger Bench of the Supreme Court in case of **Mohd. Arbaz and others v. State of NCT of Delhi**, (Special Leave to Appeal (Cri.) No(s). 8164-8166/2021 dated 18/07/2024), and after noticing that

there are conflicting views of different High Courts, the Supreme Court has observed as under :-

“1. In this batch of cases, the primary issue that arises for consideration is as to whether a chargesheet without the FSL/Examiner's Report in a NDPS case can be termed as an incomplete Report' under Section 173 Cr.P.C.?”

In the same order, the Supreme Court in Paragraph No.8 has observed that, “The orders granting interim bail to the petitioners shall continue to operate until further orders.”

8.2 This Court also considered the judgment of Delhi High Court in case of **Subhash Bahadur @ Upender vs. The State (NCT of Delhi)**, BA/No.3141/2020 dated 06.11.2020. Specifically paragraph nos.19, 20, 25 and 42 therein, which reads :

“19. According to Ms Chauhan, learned APP, it is not sufficient that the petitioner had made an application for bail. According to her, it would be necessary for an accused to apply for bail specifically mentioning the provisions of Section 167(2) of the Cr.PC and any application moved under Section 439 of the Cr.PC could not be construed as the accused availing of his indefeasible right to default bail.

20. Thus, the question that falls for the consideration of this Court is whether an application for a bail under Section 439 Cr.PC would be sufficient for a court to construe that the accused had availed of his right to be released on bail under the provisions of Section 167(2) of the Cr.PC if the condition stipulated therein were met.

25. In Rakesh KumarPaul (supra),the right to apply for default bail in terms of proviso (a) to Section 167(2) of the Cr.PC had accrued to the accused (appellant therein) on 04.01.2017. The chargesheet in that case was filed on 24.01.2017 and on that date, his right to secure a default bail stood extinguished. The petitioner had applied for a

regular bail on 11.01.2017 before the Gauhati High Court, but he had not made any specific application for default bail. The Court noted that in that case, the accused had mentioned that the statutory period for filing the charge-sheet had expired and he had also argued the issue orally. However, the same was not accepted. In the aforesaid context, the Supreme Court held that the petitioner had made an application for default bail, if not in writing, then orally. The Court further observed as under:

“40. In our opinion, in matters of personal liberty, we cannot and should not be too technical and must lean in favour of personal liberty. Consequently, whether the accused makes a written application for “default bail” or an oral application for “default bail” is of no consequence. The court concerned must deal with such an application by considering the statutory requirements, namely, whether the statutory period for filing a charge-sheet or challan has expired, whether the charge-sheet or challan has been filed and whether the accused is prepared to and does furnish bail.”

42. As explained by the Supreme Court in a number of decisions, the Proviso to Section 167(2) of the Cr.PC is intrinsically linked to the right under Article 21 of the Constitution of India that “no person shall be deprived of his life or personal liberty except according to the procedure established by law”. It embodies a safeguard that circumscribes the power to detain an accused pending investigation. Keeping this principle in mind and the consistent view of the Supreme Court that in matters of personal liberties, it would not be apposite to curtail the same on technicalities, this Court is of this view that the petitioner would be entitled to default bail. This is also considering the fact that the petitioner had indicated in unequivocal terms that he desires to be released on bail and he is ready to furnish surety for the same.”

8.3 In the backdrop, in **Ashish Prakash Walke**, in paragraph 11, the learned Single Judge observed and held that, “11. Even the Delhi High Court has clarified that when the question of personal liberty of an accused/person is concerned, the Court cannot be too technical and must lean in favour of the personal liberty.” Therefore, this Court directed to release the accused on bail.

9. In the wake of above, I am inclined to allow the Application. However, having regard to observation in **Kuldeep Singh** (supra) highlighted by Ms. Thakker that, in the matters of economic offences Courts have to be of iron hands as such offences are committed with cool calculation and are deliberated design to effect and fabricate the whole economy of the country; that, prosecution in white collar crimes is crucial for maintaining public trust in the financial system and ensuring accountability amongst those who manipulate economic regulations for their personal gains, stringent conditions must be imposed. Hence, following Order:-

(i) Applicant – Neelam Baburao Balla shall be released on bail Special Judge (N.D.P.S.), Sessions Court Gr. Bombay, arising out of File No.SD/INT/AIU/527/2025-AP ‘B’, registered with Air Intelligence Unit (AIU), CSMI Airport, Terminal-II, Mumbai, on her furnishing P.R. Bond in the sum of Rs.1,00,000/- with one or two sureties in the like amount.

(ii) The Applicant shall regularly attend the proceedings before the jurisdictional Court unless exempted by the said Court, for the reasons to be recorded in writing.

(iii) The Applicant shall not tamper with the prosecution evidence and shall not directly or indirectly influence upon the prosecution witness to prevent them from deposing against him.

(iv) The Applicant shall surrender her passport with the Office of AIU, CSMI Airport, Terminal-II. The Applicant shall not enter within the jurisdiction of Mumbai till the conclusion of the trial, except to mark her attendance before the trial Court and to face the trial.

(v) The Applicant shall not indulge in identical activities for which she has been arraigned in this case.

(vi) On being released from jail, the Applicant shall furnish her contact number and residential address to the Investigation Officer and shall keep him updated, in case there is any change.

(vii) It is clarified that any observation made in the present Order are for the purpose of deciding the present Bail Application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

10. Application stands disposed of in the aforesaid terms.

(SHYAM C. CHANDAK, J.)