

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR SUCCESSIVE REGULAR BAIL -
AFTER CHARGESHEET) NO. 9105 of 2025**

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SHRIKRISHNA GHANSHYAM SWEN

Versus

STATE OF GUJARAT & ANR.

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Appearance:MR AADITYA BHATT with MS SARIKA S. SALVE(14441) for the Applicant(s) No. 1
MS SHRUTI PATHAK, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**Date : 18/07/2025****ORAL ORDER**

[1.0] The present successive bail application is filed under Section 483 of the Bharatiya Nyaya Suraksha Sanhita, 2023 (for short "BNSS") for regular bail in connection with **FIR being C.R. No.11210070240784 of 2024** registered with **Bhestan Police Station, Dist. Surat**, for the offence under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "NDPS Act").

[2.0] Heard learned advocate for the applicant and learned APP for respondent – State of Gujarat.

[3.0] Case of the prosecution is that officers of DCB Police Station on the basis of secret information, caught the accused No.1 Nirmal Krishnakumar Jadeja, who was carrying illegally Mephedrone Drugs, weighing 80.26 Grams, valued at Rs.8,02,600/- and upon further enquiry, it was learnt that the said quantity of MD drugs was supplied by one Jay Makwana (wanted accused No.3) at the instance of accused Babu (wanted accused No.2). In this regard, FIR came to be filed. Thereafter, the statements of the police officials and other witnesses have been

taken. The samples of drug was sent to FSL Gandhinagar for analysis and it was opined that, it was Mephedrone, which is included in the NDPS Act.

[4.0] Learned counsel for the applicant has submitted that, nothing is found from conscious possession of the applicant. Whatever contraband drug recovered is from accused No.1. However, merely based on the statement of the co-accused, the applicant has been arraigned as an accused. The applicant is not named in the FIR, but during investigation, his name has been surfaced and mentioned in the chargesheet as an accused No.4. The applicant belongs to Mumbai. Allegation levelled against the applicant is that, the applicant was a supplier of said drug. It is submitted that, in a chain supply of contraband, under Section 67 of the Act, statement of co-accused is not binding and relevance and has no evidentiary value. No evidence which suggests the direct involvement of the applicant. Trial would obviously take long time. No money trail was found. Even if we assume for the sake of argument that CDR between the co-accused and applicant is available, but the said CDR is not placed on record. CDR is not an ample evidence to draw presumption about the guilt of the accused. Further, the said CDR do not belong to the said police station but to different police station i.e. Kapodara Police Station and even after rejection of the bail application of the present applicant, co-accused Ronak, who is similarly situated to the present applicant, has been considered by the coordinate Bench on 24.02.2025 and hence, he has requested to extend the benefit of parity to the present applicant. Further, he has submitted that role of Nimit and present applicant is different as nothing is recovered from the conscious possession of the present applicant.

[4.1] He has further submitted that, merely the applicant having similar nature of antecedents is not a ground to refuse the bail considering the fact that the investigation is over and trial would take time. Reliance is

placed on the decision of the Hon'ble Supreme Court in case of **Maulana Mohd. Amir Rashadi vs. State of UP & Ors, reported in 2012 (2) SCC 382**, wherein the accused who involved in more than three dozen offences, granted bail and against it, the State had preferred an appeal before the Hon'ble Supreme Court, which was also dismissed. Further, there is no recording of conversation between the co-accused and applicant, however, merely looking to the conduct of the applicant or based on the statement of the co-accused, from whose possession contraband drug was found, is not a corroborative piece of evidence. Further, there is gross violation of mandatory provisions of Section 52 of the Act. In absence of any material, he requested to allow present application.

[4.2] Learned counsel for the applicant has also relied on the decisions i.e. (i) Bharat Chaudhary Vs. Union of India, (ii) Yash Jayeshbhai Champaklal Vs. State of Gujarat, (iii) Kalyan Chandra Sarkar & Ors. Vs. Rajesh Ranjan & Ors. , (iv) Sahara India Real Estate Corporation Ltd. & Ors. vs. Securities Exchange Board of India & Ors. (v) State Vs. Pallulabid Ahmad Arimutta & Ors. (vi) Balwinder Singh (Binda) vs. The Narcotics Control Bureau (vii) Satnam Singh Vs. NCB.

In absence of any sufficient material establishing the livelink with the main accused, from whose possession contraband drug was recovered, present application deserves consideration.

[5.0] Ld. APP appearing for the State has opposed the present application on the ground that the applicant is involved in very serious offence, which is against the society. Though he is not named in FIR, but during investigation, his participation is surfaced and he is found in drug trafficking activities. Recovered MD drug is of commercial quantity and hence, rigors of Section 37 of NDPS Act would be applicable in the instant case. He has also submitted that, on the very day of arrest of

accused No.1 from whose contraband drug was found and prior to one day of his arrest, the applicant was in constant touch with the co-accused, which supports by CDR also. It also establishes that accused No.1 has received MD drug from one Jayesh Makwana and said Makwana brought the said drug from Aditya who belongs to Mumbai. The applicant is resident of Mumbai and he has received said drug from one Vasim, who is till date out of reach and his proper address is not provided. Money trail was there and amount is transferred in the account of Aditya. He has also received cash to supply the said contraband drug. As accused No.1 is used to consume the drug as well as involved in selling of said contraband, there was constant touch between the applicant, Jay Makwana, Aditya and Vasim. Therefore, if the applicant is released on bail, then there are all chances of indulging again in such type of serious offences. Whatever the authorities relied on by learned counsel for the applicant are not helpful to the applicant considering the fact that said judgments so far past antecedent is concerned are based on Indian Penal Code, 1860 offence.

[5.1] She has further submitted that there is no change in circumstance and only after two months from the date of rejection of earlier bail application which was dismissed on merits considering the past antecedents, the applicant has once again filed the present successive bail application and even the bail application of co-accused Nirmal is also dismissed and even the prosecution is ready and willing to expedite the trial and order of co-accused Ronak would not avail any assistance to the applicant as role of co-accused Ronak and present applicant is different.

[6.0] At the outset, it is worth to mention that present is a successive application without there being any change in circumstance. Considering the facts and circumstances of the case, gravity of offence, severity of punishment as well as the law laid down in cases of **Ram Govind**

Upadhyay vs. Sudarshan reported in **2002 (3) SCC 598**, discretion cannot be exercised in favour of the applicant – accused. In the case of **Ram Govind Upadhyay (Supra)**, the Hon’ble Apex Court has held that *“the accused has right to make successive application for grant of bail, but while entertaining a subsequent bail application, it is the duty of Court to consider the reasons and grounds, which persuade to take a view different from the one taken in the earlier application”*. From the record, it appears that there is no reason or ground which can persuade this Court to take a view different from the earlier application. The offence against the applicant is very serious in nature and earlier applications after filing of the charge-sheet have not been entertained. Hence, question of delay in trial does not arise. Even, learned APP has assured that prosecution is ready to expedite the trial and ready to examine the witnesses on day to day basis.

[7.0] Perusing the investigation papers and charge-sheet papers, it appears that on 02.07.2024, while the complainant Mr. Gamit, PSI was on patrolling to maintain law and order on the festival of Rathyatra, at that time, accused No.1 was found from conscious possession of Mefedrone Drug weighing 80.26 gms., valued at Rs.8,02,600/- and arranged for two panchas and in their presence, mandatory procedure under the NDPS Act was followed. In this regard, FIR came to be lodged. During investigation, it was surfaced that the accused No.1 has received said contraband from one Babu and said Babu had received from one Jay Makwana.

[7.1] During the course of investigation and interrogation, it was found that accused Jay Makwana has received contraband from accused Aditya and he has received from the applicant. The applicant has received from one Wasim, who is yet to be arrested. Thus, prosecution has established the supply chain of contraband drug. Sufficient material including the CDR and bank details are collected which connects the whole chain of

supply by the accused persons. The certificate also issued in compliance of Section 65(4)(c) of the Indian Evidence Act/ Section 63 of BNSS is issued. Hence, the arguments canvassed by learned counsel for the applicant that the applicant has been falsely enroped in the offence merely based on the statement of the co-accused and no supporting material is available, is not acceptable. One more aspect is required to be considered that the recovered contraband MD drug is of commercial quantity. Hence, rigors of Section 37 of the Act would be applicable and therefore, applicant is facing serious charge under Section 29 of the NDPS Act.

[7.2] First blush argument of learned counsel for the applicant is that, there was no link between the applicant and co-accused is not acceptable considering the material collected during investigation. Even the said fact is also a matter of trial. So far as Section 29 of NDPS Act is concerned, which relates to abetment in criminal conspiracy.

[7.3] Now, coming back to the next argument *qua* extending benefit of parity, considering the role of the present applicant and law laid down by the Hon'ble Apex Court in the case of **Ramesh Bhawan Rathod vs. Vishanbhai Hirabhai Makwana** reported in **AIR 2021 SC 2011** as well as in the case of **Tarun Kumar vs. Assistant Director, Directorate of Enforcement** reported in **2023 INSC 1006**, argument as regards parity is not acceptable. Herein, the role of co-accused Ronak, who has been released on bail, was different. Except the statement of co-accused, no material was available and nothing was found from the conscious possession of the said co-accused. Herein, from the conscious possession of the present applicant, the contraband was found and that too 80.26 gram which is obviously commercial quantity. The evidence of monetary transaction with co-accused is also found and cross-entry in the statement of account is also found and learned trial Court has also noted

the aforesaid fact that there was a live link between the applicant herein and other co-accused, who were considered in absence of any live link. Even otherwise, it is needless to say that while considering the application of co-accused Ronak, Court has not considered the rigors of section 37 of the NDPS Act though, it is mandatory requirement to adhere to the statutory requirement while granting bail in the case of commercial quantity under the NDPS Act. Herein, in the case on hand, from the conscious possession of the applicant, muddamal was recovered and hence, rigors of section 37 of the NDPS Act would be applicable in view of the decision of the Hon'ble Supreme Court in the case of **State of Meghalaya vs. Lalrintluanga Sailo and Another** reported in **2024 SCC OnLine (SC) 1751**. Further, on two different dates, Rs.50,000/- each and in total Rs.1,00,000/- was transferred from the account of the present applicant to the co-accused who are supplier of said contraband. Hence, it reveals from the investigation papers that there is live link of the present applicant with the drug peddler and the persons who are indulged in drug trafficking. Hence, the argument canvassed by the learned Senior Advocate appearing for the applicant that rigors of section 37 of the NDPS Act will not be applicable, is not acceptable and there is substance in argument canvassed by the learned APP.

[7.4] The main argument of the learned advocate for the applicant is that the quantity which is of commercial quantity was recovered from accused No.1 and not from him and therefore, the applicant has no live link with the alleged offence. Perusing the CDR details collected during investigation, it appears that present applicant and accused No.1 both were in constant touch with each other through their respective mobile phones. Hence, argument of learned advocate for the applicant that there was no any link between the present applicant and accused No.1 is not acceptable considering the material collected during investigation

and it is a matter of trial. If the accused are involved in illegal activity of carrying contraband and abets an offence, then in aid of section 29(2) of the NDPS Act, clubbing of the said contraband is permissible though obviously it is a subject of trial but this Court is of prima facie considered view that present is a case of commercial quantity and hence, rigors of section 37 of the NDPS Act would be applicable, as the applicant facing charge under Section 29 of the NDPS Act, which reads as under.

"29. Punishment for abetment and criminal conspiracy.

(1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which--

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India."

[7.5] In the case of **Union of India v. Nawaz Khan reported in (2021) 10 SCC 100 (3 Judges' Bench)**, the Hon'ble Supreme Court has elaborately discussed the test, which the High Court should adopt while granting bail, "reasonable grounds to believe", "conscious possession" of contraband and principles for ascertaining the same have been summarized. Merely the contraband was not in conscious possession of present applicant does not absolve him of the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act. The term "possession" could mean "physical possession" with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the

contraband and the intention based on such knowledge. Herein, it is very much established that the applicant is involved in supply chain of drug and he was in constant touch of accused No.1.

[7.6] So far as argument canvassed by the learned advocate for the applicant that the earlier offence committed by the present applicant was concerning intermediate quantity is concerned, it is needless to say that while deciding bail application of accused involved in NDPS offence, irrespective of intermediate quantity or commercial quantity, Court has to consider repetition or involvement of accused in similar type of drug trafficking activity and not on the basis of the quantity and therefore, the said argument would not avail any assistance to the applicant.

[8.0] A Liberal approach in the matter of bail under the NDPS Act is uncalled for. Section 37 of the NDPS Act starts with a non- obstante clause and therefore, the provisions of Section 437/439 of the Code of Criminal Procedure would not be applicable with regard to a person accused of an offence punishable under Section 19 or Section 24 or Section 27A and also for offences involving commercial quantity of contraband. The words "reasonable grounds" also appear in clause (i) of Section 437 of Cr.P.C. but the authority given to a High Court or a Court of Session under clause (a) of Section 439 permitting release on bail of any person accused of an offence would be curtailed in view of the stringent provision of Section 37(1)(b)(ii) of the NDPS Act.

[8.1] The limitations prescribed under the NDPS Act on granting of bail are in addition to the limitations under Cr.P.C. or any other law for the time being in force. It is further contended that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court is not called upon to record a finding of not guilty. With reference to the phrase "reasonable grounds for believing".

[8.2] Moreover, other aspect to be borne in mind is that the liberty of a citizen has got to be balanced with the interest of the society. In cases where narcotic drugs and psychotropic substances are involved, the accused would indulge in activities which are lethal to the society. Therefore, it would certainly be in the interest of the society to keep such persons behind bars during the pendency of the proceedings before the court that the organized activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years.

[8.3] The seriousness of cases under the NDPS Act have to be viewed like this that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable: it causes deleterious effects and deadly impact on the society, that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, the Parliament in its wisdom, has made effective provisions by introducing this Special provisions under the Act.

[8.4] The Court while considering the application for bail with reference

to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty. in the case of **Babua v. State of Orissa**, Hon'ble Apex Court has been pleased to held that:

"3. In view of Section 37(1)(b) of the Act unless 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 alone will entitle him to a bail. In the present case, the petitioner attempted to secure bail on various grounds but failed. But those reasons would be insignificant if we bear in mind the scope of Section 37(1)(b) of the Act. At this stage of the case all that could be seen is whether the statements made on behalf of the prosecution witnesses, if believable, would result in conviction of the petitioner or not. At this juncture, we cannot say that the accused is not guilty of the offence if the allegations made in the charge are established. Nor can we say that the evidence having not been completely adduced before the Court that there are no grounds to hold that he is not guilty of such offence. The other aspect to be borne in mind is that the liberty of a citizen has got to be balanced with the interest of the society. In cases where narcotic drugs and psychotropic substances are involved, the accused would indulge in activities which are lethal to the society. Therefore, it would certainly be in the interest of the society to keep such persons behind bars during the pendency of the proceedings before the court, and the validity of Section 37(1)(b) having been upheld, we cannot take any other view."

[8.5] Considering the provisions of Section 37, limitation of grant of bail under Section 37(b) of the Act where there are reasonable ground for pleading that the applicant is not guilty of such offence and that he is not likely to commit any offence while on bail.

[8.6] Considering the aforesaid provisions, as the applicant is having past antecedents of similar nature of offence under the NDPS Act and considering the rigors of Section 37 (b)(ii) of the Act, possibility cannot be ruled out to indulge again in such type of serious offence if he is released on bail.

[9.0] Further, in the present case, the applicant is found in conscious possession of the contraband and therefore, considering the rigors of section 37 of the NDPS Act and the law laid down by the Hon'ble Supreme Court in the case of **Bhawani Singh vs. State of Rajasthan reported in 2022 SCC OnLine SC 1991, Mayur Jamanbhai Ajani Vs. State of Gujarat, [SLP (Cri.) No.302/2025]**, as well as in the case of **State of Meghalaya vs. Lalrintluanga Sailo and Another reported in 2024 SCC OnLine SC 1751**, the applicant is not entitled to any relief from this Court. Further, in view of the decision of the Hon'ble Supreme Court in case of **State of Kerala Vs. Rajesh, Criminal Appeal No.154-157 of 2020**, as the recovery contraband is Mefedrone Drug is of commercial quantity, rigors of Section 37 of the Act would be applicable.

[9.1] Learned advocate for the applicant has raised a grievance about non-compliance of section 52A of the NDPS Act but at the time of deciding bail application Court is not required to appreciate the evidence as the trial is in progress and at this stage appreciation of evidence is not permissible. Further, correctness of drawing of sample itself is a question of evidence and it can be a good defence but while deciding bail application, compliance of section 52A of the NDPS Act cannot be gone into and it is not expedient to assign any reason qua non-compliance of section 52A of the NDPS Act is concerned and as whether the sample was drawn in conformity with section 52A itself is a matter of evidence. In this regard, the Court has relied upon the decision of the Apex Court in the case of **Bharat Amble Vs. State of Chhatisgarh, 2025 INSC 78**.

[9.2] It is apt to refer to the decision of the Hon'ble Supreme Court in the case of **Ash Mohammad Vs. Shiv Raj Singh @ Lalla Babu & anr, reported in 2012 (9) SCC 446**.

[9.3] Further, in the case of **CBI vs. V. Vijay Sai Reddy reported in (2013)7 SCC 452**, the Hon'ble Supreme Court observed in paragraph 34

as under:

"34. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

[9.4] Even, in the case of **Parasa Raja Manikyala Rao And Anr vs State Of A.P reported in AIR 2004 SC 132**, the Hon'ble Supreme Court has observed and held as under:

"...Each case, more particularly a criminal case depends on its own facts and a close similarity between one case and another is not enough to warrant like treatment because a significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

Hence, the authorities relied on by the learned advocate for the applicant would not be of any assistance to the case of the applicant.

[9.5] Relying on the decisions as cited above, learned counsel for the applicant has submitted that, merely having past antecedent is not only the criteria to dismiss the bail application. In the said offence, offence was under the Indian Penal Code, 1860 and as discussed in earlier part, here the offence is under the NDPS Act and that too rigors of Section 37 of the Act would be applicable as there is commercial quantity. Therefore, the decisions relied on by the applicant would not avail any assistance in the case on hand.

[9.6] At the time of deciding bail application, the Court should not blindly rely upon the precedent and as held by the Apex Court in case of

Zee Tele films Ltd. V/s.Union of India, 2005 (4) SCC page 649, each case should be decided on its own merits and the Court has to consider the facts of each case and in the instant case, *prima facie* offence is proved against the accused. Further, at the time of deciding bail application, appreciation of the evidence is not permissible and it is very premature stage to appreciate the evidence.

[10.0] In view of the above, there being no merits in the present application, same is hereby **dismissed**. However, learned trial Court is directed to expedite the trial. Rule is hereby discharged. It is made clear that the observations made in the present order are tentative in nature and the learned trial Court shall decide the case of the applicant on its own merits without being influenced by the observations made in the present order.

[11.0] Ld. trial Court is directed to expedite the trial and complete it in accordance with law as early as possible but preferably within a period of **TEN WEEKS from today**. The applicant shall also cooperate the learned trial Court in early disposal of the trial. If the applicant fails to engage a counsel, the trial Court shall appoint an *amicus curie* for the accused through District Legal Services Authority.

(HASMUKH D. SUTHAR, J.)

Ajay

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: AJAY CHANDRAN MENON(HC00939), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 18/07/2025 17:54:35