

GJSR010105332026



**IN THE SPECIAL COURT, NDPS & 11TH ADDITIONAL
SESSIONS JUDGE, SURAT**

Cr.M.A.S. No. 5669 of 2026

Exh:- _____

Applicant/accused:-

Rajesh Panchu Raut

Age : 27 years, Occupation :-Labour work,

Residing at : Malkeshwar, Kodala

Ganjam, Odisha.

At present Lajpore Central Jail, Surat.

Versus

Opponent :-

The State of Gujarat

Appearances :-

Ld. Advocate Mr. D. R. Behera for the Applicant.

Ld. P.P Mr. N. L. Sukhadwala for the Opponent-State..

~::~ JUDGMENT ::~

1. The is an application filed by the applicant/accused under Section 483 of BNSS, 2023 for being released on regular bail in connection with the offences registered at **Amroli**

Police Station vide C.R. No. Part-B-11210004261257 of 2026 for having committed offences under Sections 8(c), 20(b)(ii)(B) read with section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The notice was issued to the respondent State of Gujarat. The Ld. Public Prosecutor has appeared before the court. The investigating Officer has submitted his affidavit vide Exh. 4 opposing bail application.

Submission on behalf of Applicant-accused.

3. Heard the Ld. Adv. for the accused-applicant. He contended that there is no prima facie evidence against accused to book him in this case. He further contended that the accused has been falsely implicated in this case and he is totally innocent. He further contended that the presence of accused would be easily available at the time of trial. He further contended that the accused-applicant is ready to comply any conditions that may be imposed by your Honour court. He further submitted that the charge sheet has been submitted by the investigating agency and alleged case is not case of commercial quantity which attracts Section 37 of NDPS Act. Hence, Prayed for allowing application.

Submission on behalf of State.

4. Heard the Ld. Public Prosecutor. He submitted that the offence is serious one therefore the application should be rejected since the alleged offence is serious.

Position of law governing bail.

5. It has been observed by the Hon'ble Supreme Court in

"Ram Govind Upadhyay v. Sudarshan Singh" reported in AIR 2002 SUPREME COURT 1475 in para-3 and 4 as under;

“While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic consideration for grant of bail - More heinous is a crime, the greater is the chance of rejection of the bail, though, however dependent on the factual matrix of the matter. Some of the other relevant considerations are :-

(a) While granting bail the Court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the Court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail”.

6. The Hon'ble Apex Court in the case of Syed Iftikhar Andrabi vs. National Investigation Agency reported in

2026 SCC Online SC 881 has held as under;

34. Therefore, *Jalaluddin Khan v. Union of India*, is a timely warning to the courts. It says that when a case is made out for grant of bail, the courts should not have any hesitation in granting bail. The allegation of the prosecution may be very serious; but the duty of the courts is to consider a case for grant of bail in accordance with law. ‘*Bail is the rule and jail is the exception*’ is a settled law. The Bench cautioned that if the courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution.

35. The often invoked phrase ‘*bail is the rule and jail is the exception*’ is not merely an empty statutory slogan flowing from the CrPC as *Gurwinder* has stated. It is a constitutional principle flowing from Articles 21 and 22 of the Constitution and the presumption of innocence which is the cornerstone of any civilised society governed by the rule of law. Statutes may undoubtedly calibrate the manner in which that principle is applied, particularly in cases involving national security or terrorist offences for which the UAP Act is meant, but those cannot altogether invert the constitutional relationship between liberty and detention. The statutory embargo of Section 43-D(5) must remain a circumscribed restriction that operates subject to the guarantee of Article 21 and 22 of the Constitution. Therefore, we have no manner of doubt in stating that even under the UAP Act, ‘*bail is the rule and jail is the exception*’; of course, in an appropriate case, bail can be denied having regard to the facts of that particular case.

38. Thus it is clear beyond doubt that the preference for bail, or the often invoked principle ‘*bail is the rule and jail is the exception*’ flows from the constitutional primacy of personal liberty under Article 21 and, therefore, cannot be displaced by legislation.

40. We do not want to join issue any further with the two-Judge Bench either in *Gurwinder Singh* or in *Gulfisha Fatima*. As noted supra, *Gurwinder Singh* has already been explained in *Sheikh Javed Iqbal* and in *Javed Gulam Nabi Shaikh*, reiterated in *Arvind Dham*, this Court has categorically held that Article 21 applies irrespective of the nature of the offence. Ideally, more serious the accusations are, the speedier the trial should be.

7. The Hon'ble Apex Court in the case of "Sanjay Chandra Vs. C.B.I" reported in (2012) 1 S.C.C page no-40 has held in para-14 as under;

21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most

extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

24. In the instant case, we have already noticed that the “pointing finger of accusation” against the appellants is “the seriousness of the charge”. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather “recalibrating the scales of justice”.

25. The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law

and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual.

27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution.

39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds: the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of

imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

41. This Court in *Gurcharan Singh v. State (Delhi Admn.)* [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179] observed that two paramount considerations, while considering a petition for grant of bail in a non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both of them relate to ensure the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing.

42. When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is: whether the same is possible in the present case.

43. There are seventeen accused persons. Statements of witnesses run to several hundred pages and the documents on which reliance is placed by the prosecution, are voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that the accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do

not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet.

45. In *Bihar Fodder Scam (Laloo Prasad case [Laloo Prasad v. State of Jharkhand, (2002) 9 SCC 372]*) this Court, taking into consideration the seriousness of the charges alleged and the maximum sentence of imprisonment that could be imposed including the fact that the appellants were in jail for a period of more than six months as on the date of passing of the order, was of the view that the further detention of the appellants as pretrial prisoners would not serve any purpose.

46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.

8. The Hon'ble Supreme Court in the case of "Dataram Singh vs. State of U.P" 2018 (3) SCC 22 has held as under;

2. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. To put it shortly, a humane attitude is required to be adopted

by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in *Inhuman Conditions in 1382 Prisons, In re [Inhuman Conditions in 1382 Prisons, In re, (2017) 10 SCC 658 : (2018) 1 SCC (Cri) 90]* .

6. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

Analysis.

9. Looking to the FIR, it appears that it is alleged therein that the co-accused Ishwarbhai, Aditya @ Adi and Rajesh Panchu accused applicant herein were found in possession of Ganja (Marijuana) without valid permit or license on 01.06.2026 so that FIR came to be registered against them. It is recited in the FIR that the contraband Ganja was demanded by Ashaben Mukeshbhai and she has been specifically named in the FIR. It is stated in the affidavit of Investigating Officer that there is no criminal bad antecedents against the application accused and the charge-sheet has been submitted against the applicant accused.

10. The provision Section-8 of the Narcotic Drugs and Psychotropic Substances Act, 1985 deals with Prohibition of certain activities relating to property derived from offence under the Act and breach of which is made punishable under section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985. The said section deals with quantity lesser than commercial quantity but greater than small quantity, which provides rigorous imprisonment for a term which may extend to **ten years**, and with fine which may extend to one lakh rupees. In view of the well settled bail jurisprudence prevailing in India settled by a catena of decisions of the Hon'ble Supreme Court and various Hon'ble High Courts that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The accused has been in judicial custody since arrest and the investigation is completed and the charge-sheet against applicant herein came to be filed. The trial of the case would take its own time. The case is admittedly of intermediate quantity which does not attracts rigours of Section 37 of NDPS Act.

11. The Hon'ble High Court of Judicature at Delhi in the case of Mohd. Nasar v. Narcotics Control Bureau reported in (2024) 1 HCC (Del) 217 has held as under:

22. The question then would arise is that whether the rigors of Section 37 of the NDPS Act will apply to the petitioner for the recovery of contraband made from the co-accused Hikamatullah Hakimi. Needless to say, that the rigors to Section 37 of the NDPS Act would become applicable only

when the quantity of the recovered contraband is commercial and there is an incriminating material to show that the petitioner was involved in conspiracy with co-accused Hikamatullah Hakimi, from whom contraband was recovered in commercial quantity.

23. The quantity of contraband also assumes relevance as quantum of sentence to be awarded for an offence of possessing or transporting a contraband committed under the Act is also dependent on the fact whether the quantity of such contraband is “small quantity”, “commercial quantity” or an “intermediate quantity”.

24. Therefore, it was necessary for the respondent NCB to determine the quantity of contraband which has been recovered before an obligation is cast upon the petitioner to fulfil the twin conditions under Section 37 of the NDPS Act viz. (i) to satisfy the court that there are reasonable grounds for believing that he is not guilty of such an offence; and (ii) that he is not likely to commit any such offence while on bail.

12. Under such circumstances and aforesaid reasons, the discretionary power under Section 483 of BNSS, 2023 may be exercised in favour of the accused. In view of the aforesaid discussion, this court is inclined to grant this application for bail on imposing conditions to secure his presence at the time of trial so I hereby pass following order in the interest of justice.

∴ Order ∴

The present application filed by the present applicant-accused is hereby allowed.

The applicant-accused is hereby ordered to be released on

1. The accused shall not commit similar offence while on bail.
2. The accused shall submit an Affidavit regarding his present and permanent residential address along with running mobile number within 7 days from being released from jail before the Ld. Trial Court.
3. The accused shall deposit his passport into the Court, if he possess and if, he does not possess passport, then he shall submit an affidavit regarding same before the Ld. Trial Court.
4. He shall not leave the territory of India without prior permission of the this Court.
5. The accused shall appear before the court without fault whenever he is summoned by the court failure of which shall be deemed to have forfeited their personal bond and surety bond.
6. The bail of the accused shall stand cancelled if any of the above condition(s) is violated by the accused.

Date : 08.08.2026 [Amitkumar Narendrabhai Dave]
Place: Surat Special Court NDPS &
11th Additional Sessions Judge
Surat
UIC No.GJ00807.