

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 1762
of 2026**

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IMRAN RAISH AHMAD MUSHA PATEL
Versus
STATE OF GUJARAT

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Appearance:
ADILHUSHAIN M SAIYED(9723) for the Applicant(s) No. 1
MS SHRUTI PATHAK, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER**Date : 21/04/2026****ORAL ORDER**

1. By way of the present application under Section 482 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (for short, 'BNSS'), the applicant has prayed for anticipatory bail in the event of arrest in connection with the FIR being C.R.II No.33 of 2018 registered with the Bharuch (Rural) Police Station, District : Bharuch for the offences punishable under Sections 8(C), 18(C), 20(C), 21(C), 23(C), 25, 29, 60(1), 60(2) and 60(3) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act').

2. **Rule.** Learned Additional Public Prosecutor waives service of notice of rule for and on behalf of the respondent – State.

3. Learned advocate Mr. Nirad D. Buch for learned advocate Mr. Adilhushain M. Saiyed for the applicant has mainly argued that the applicant has been wrongly introduced in the case solely on the basis of the statements of accused Nos.3 and 4; and that the statement of co-accused recorded before the police are inadmissible in evidence in view of Sections 25 and 26 of the Indian Evidence Act; and that the present case consists of Ayurvedic tablets known as 'Kamini Vidravan Ras', which are manufactured by Multani Pharmaceutical Ltd., a licensed manufacturer duly authorised by the Department of AYUSH and therefore, no offence under the N.D.P.S. Act is made out against the applicant; and that moreover, on perusal of the FSL report and the investigation papers, it is evident that no prohibited narcotic substance under the NDPS Act has been detected; and that as per Schedule-E(1) of the Drugs and Cosmetic Rules and the Ayurvedic Formulary of India (Part-III, First Edition), 'Kamini Vidravan Ras' is a legally manufactured Ayurvedic medicine containing permitted ingredients; and that even as per the charge-sheet, the sender of the alleged parcel is shown as one 'M.S. Patel'; and that the applicant's name, address or identity does not appear anywhere in the parcel receipt or custom's documents; and that the applicant neither resides at the said address nor has any connection with the said persons; and that the applicant has been falsely implicated

merely on the basis of a vague and unsubstantiated statement of a co-accused and therefore, the present applicant has not committed any offence as alleged in the impugned FIR; and that the allegations stated in the FIR do not disclose a clear, definite or credible factual foundation to infer against the present applicant. It is submitted that this application may be allowed.

4. Learned Additional Public Prosecutor for the State has vehemently opposed this application. It is submitted that the applicant is directly involved in the offence in question; and that Section 8(C) of the NDPS Act prohibits export inter States or export from India of any Narcotic Drug or Psychotropic Substance; and that from the FLS report, it could be seen that there was morphine found in the pills of medicines and material containing a Narcotic or Psychotropic Substance was attempted to be sent out of the country at the address of the applicant and therefore, prima facie, the offence appears to be have been committed; and that the cousin brother of the applicant has clearly given a statement that the said substance was to be sent to the present applicant who is residing at Canada and the address of the present applicant was stated in the parcel that was sent through the Post Office, Lal Bazar, Bharuch and therefore, it can be clearly established that the applicant has a direct role

in the offence in question, in view of the fact that the statement of the co-accused is sufficient material to lead in the investigation and from the investigation carried out against the other accused clearly indicates that there is an involvement of the present applicant; and that the statement of the co-accused is, who happens to be the brother of the applicant is required to be considered, in view of the fact that the investigation of the offence in question is still going on. It is submitted that the present application is required to be rejected.

5.1 Having heard learned advocates for the respective parties and having gone through the material produced on record, including the police papers as well as statement of the co-accused, this Court finds that the co-accused has stated that the said material was to be supplied to the present applicant; and that the investigation against the applicant is still going on; and that considering the statement of the co-accused, being relevant, which provides a lead to further investigation the offence, this Court is aware that the evidentiary value of the statement of the co-accused is none, however, during the investigation, the statement given by the co-accused is helpful to the investigating agency for the purpose of ascertaining that the investigation is proceeding in right direction or not; and that it also states that the other

accused had booked the parcel at the Post Office for exporting the same at the address of the applicant at Canada under the label of 'Hajmola Candy'. Therefore, prima facie, the prosecution has material against the applicant that he is involved in the trafficking of the product by labelling it as 'Hajmola Candy'; and that the report tendered by the Investigating Officer indicates that the presence of Anhydrous Morphine is found from the 'Kamini Vidravan Ras' during the FSL examination.

5.2 With regard to the submissions of the learned advocate for the applicant that the applicant is residing at Canada; and that 'Kamini Vidravan Ras' is a medicinal product, which is purchased or sold or imported or exported freely and over the counter; and that there is no justification as to why the accused were exporting the same under the label of 'Hajmola Candy' is concerned, from the evidence and material placed on record clearly indicate that commercial quantity of 'Kamini Vidravan Ras', labelling under the 'Hajmola Candy', was attempted to be sent to Canada at the address of the applicant through Post Department and there is no explanation qua the same is given by the present applicant.

5.3 In the aforesaid backdrop, custodial interrogation is

necessary. When serious offences are disclosed and involvement of an accused prima facie established then, the Court would be loath to lean in favour of grant of pre-arrest bail in absence of any other overriding considerations. This Court is conscious with the safeguards provided under Section 482 of the BNSS and the concept of personal liberty. But herein, I am of the considered of view that, arrest is part of the process of investigation and intended to secure several purposes. In which the accused may provide information, during the the discovery of material facts and to relevant information.

5.4 In such circumstances, when investigation is going on, if anticipatory bail is granted at this stage, it may hamper the investigation and to collect the material in the more information, and find out the involvements of another person custodial interrogation is also necessary, therefore, keeping in mind the law laid down by the Hon'ble Supreme Court in the case of (i) *State Rep. by the CBI V/s Anil Sharma* reported in 1997 (7) SCC 187, (ii) *Adri Dharan Das V/s State of W.B.* reported in 2005 (4) SCC 303 and (iii) *P. Chidambaram V/s Directorate of Enforcement* reported in AIR 2019 SC 4198, wherein the Hon'ble Supreme Court has held held as follows :

"The legislative intent behind the introduction of Section 438 CrPC is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights – safeguarding the personal liberty of an individual and the societal interest. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. It may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if

the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In this view, it cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant/applicant under Article 21 of the Constitution of India.

Consequently, power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. The privilege of the prearrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to

the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Section 438 CrPC is to be invoked only in exceptional cases where the case alleged is frivolous or groundless. Anticipatory bail is to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy".

Having regard to nature of allegations and stage of investigations, held investigating agency must be given sufficient freedom in process of investigation. Appellant not entitled to anticipatory bail as the same would hamper the investigation"

5.5 Further, in the case of *Pratibha Manchanda vs The State of Haryana*, reported in *AIR 2023 SC 3307*,

wherein the Hon'ble Apex Court has held in Para 19 as under :

“19. The relief of Anticipatory Bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice.

The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome.”

5.6 Further, keeping in mind Law laid down by the Hon'ble Supreme Court in the case of *Siddharam Satlingappa*

Mhetre V/s State of Maharashtra and Others reported in (2011) 1 SCC 694. Herein, I have gone through the material available against the accused very carefully and it appears that herein, no complaint has been made with view to humiliating or tarnish the image of the present applicant. Even in *Jai Prakash Singh V/s State of Bihar and another*, reported in (2012) 4 SCC 379, Honourable Supreme Court pleased to hold :

"Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefore. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty."

6. In the above facts and circumstances and considering the observations on the legal aspect of the matter, this Court has absolutely no doubt that if the applicant is equipped with such an order before he is interrogated by the investigating agency, it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy.

7. Having considered nature and seriousness of the charge, prima facie involvement of accused and possibility of tempering with the evidences, it does not appear to be just and proper to exercise the discretion in favour of the applicant. This application, therefore, needs to be dismissed and is **dismissed** accordingly. Rule is discharged.

8. It is made clear that the observations made in the present order are tentative in nature and should not affect the trial and/or other proceedings.

M.H. DAVE

(SANJEEV J.THAKER,J)