

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER CHARGESHEET) NO. 3100 of 2026**

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ABDULVAJID ABDULVAHID SHAIKH

Versus

STATE OF GUJARAT

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Appearance:

MR SALIM M SAIYED(5172) for the Applicant(s) No. 1

MS VRUNDA C. SHAH, APP for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR****Date : 10/06/2026****ORDER**

- 1) **RULE.** Learned APP waives service of rule for the respondent-State.
- 2) The present application is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (which shall hereinafter be referred to "**BNSS**" for short) for regular bail in connection with **FIR being C.R. No. 11208058240160 of 2024** registered with **Airport Police Station, Rajkot City**, for the offence under Sections 8(c) and 21(c) 29 of Narcotic Drugs and Psychotropic Substances Act (which shall hereinafter be referred to "**NDPS Act**" for short).
- 3) Learned advocate appearing on behalf of the applicant submits that applicant is innocent and has been falsely implicated in the offence based on the statement of the co-accused. Investigation

is over and charge-sheet has been filed. He is in custody since 22.05.2025. Nothing was found from conscious possession of the applicant. It is submitted that no specific role is attributed to the applicant. No *prima facie* case is made out. Whatever condition is imposed by the Court the applicant is ready to comply with the same. Even ignoring stringent provision of Section 37 of the NDPS Act. The statement of the prosecution witnesses are inconsistent with the evidence and contrary to each other and hence no purpose would serve to extend the custody of the applicant. Considering limited role attributed to the applicant and the facts and circumstances of the case, it is respectfully prayed that the applicant be enlarged on regular bail on such terms and conditions as this Hon'ble Court may deem fit and proper.

- 4) Learned APP appearing on behalf of the respondent-State has opposed the present application and submitted that the applicant is facing serious charges involving trafficking of narcotic drugs. One similar nature of offence registered against the applicant and other eight offences under Indian Penal Code and other Acts have been registered having past criminal antecedents. The applicant is arraigned as an accused not only on the basis of statement of the co-accused but also on the basis of call detail record and corroborative piece of evidence

has been collected during the investigation. Hence, rigors of Section 37 of the NDPS Act would be applicable more particularly here is the case of commercial quantity. It is further submitted that, if released on bail, there is a likelihood that the applicant may again indulge in similar criminal activities. Therefore, according to the prosecution, a *prima facie* case is made out against the applicant. Considering the gravity and seriousness of the offence, learned APP submitted that the present application does not deserve to be entertained and deserves to be rejected.

- 5) Having heard the learned Advocates for the respective parties and going through the papers it appears that the co-accused Swetaben was arrested in conscious possession of 58.95 grams Mephedrone worth Rs.5,89,500/- and the applicant was the supplier of the said contraband. The Mephedrone weighing 58.95 grams is above commercial quantity and the applicant is the supplier who is already facing charge under Section 29 of the Act. He is one of the supplier who has supplied the drug for consumption to the co-accused lady who is aged only 27 years old. During the course of investigation it was found that the applicant was found in contact with Hanuma @ Seja from whom contraband was received and complete chain is established. Moreover, including the call detail records and considering the aforesaid facts it reveals that the applicant has actively

participated in the illegal trafficking of contraband and having committed similar nature of offence under NDPS Act and eight other offences are also registered means the applicant is having past antecedents and rigors of Section 37 of the NDPS Act would apply. Even otherwise after registration of the offence the applicant was on run and subsequently arrested and supplementary charge-sheet came to be filed. As the applicant is involved in illegal trafficking of drugs with the co-accused and the rigors of Section 37 of the Act coupled with past antecedents, this is not a fit case to exercise discretion in favour of the applicant.

- 6) At this stage, it is apposite to refer to the decision of the Hon'ble Supreme Court in the case of **State of Kerala etc. vs. Rajesh etc.** reported in **AIR 2020 SC 721**, wherein considering the provisions of Section 37(1)(b)(ii) of the NDPS Act, it has been held that since the offence involves recovery of the narcotic drug in excess of its commercial quantity, the Court is required to record its satisfaction that there are reasonable grounds for believing that the applicant is not guilty of such offence and that the applicant is not likely to commit any offence while on bail and the Court is required to record a finding mandated under Section 37 of the NDPS Act which is a *sine qua non* for grant of bail to the accused under the NDPS Act.

- 7) Since the case involves commercial quantity of contraband, rigours of Section 37(1)(b) of the NDPS Act are attracted. Before granting bail, the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. Both these conditions are mandatory. In the present case, having regard to the material collected during the investigation, the applicant is the supplier of contraband to the co-accused, hence this Court is not satisfied that the twin conditions prescribed under Section 37 are fulfilled. Therefore, this is not a fit case for exercising discretion in favour of the applicant. It is also not a case where the applicant has been implicated solely on the basis of statements of co-accused recorded under Section 67 of the NDPS Act. The material on record prima facie indicates that the applicant played an active role as he is the supplier thereby demonstrating conscious involvement in the alleged offence. In this regard, reference may be made to the decisions of the Hon'ble Supreme Court in the cases of ***Union of India v. Vigin K. Vergese, reported in 2025 INSC 1316 and Union of India v. Namdev, reported in 2025 LiveLaw (SC) 109***, wherein it has been observed that in cases involving commercial quantity of narcotic substances, grant of bail is an exception and refusal of bail is the rule. The

Court must interpret the provisions of the NDPS Act in a manner that advances its object and purpose and not in a manner that frustrates them. Prima facie, the material on record indicates that the applicant was involved in an organized network engaged in drug trafficking. Consequently, no ground is made out for relaxing the mandatory requirements of Section 37 of the NDPS Act. Further, in view of Sections 29 and 37 of the NDPS Act, and having regard to the principles laid down by the Hon'ble Supreme Court in **State of Punjab v. Balraj Singh @ Billa**, reported in **2026 INSC 618**, mere delay in trial cannot by itself be a ground for granting bail when the offence involves commercial quantity and the prima facie involvement of the accused is evident from the record.

- 8) 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. 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".

- 9) 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 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.

- 10) 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.
- 11) 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."

Further, in the present case, the applicant is found in illegal trafficking of contraband Mephedrone 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** 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 for bail.

- 12) In view of the above, there being no merits in the present application, same is hereby ***dismissed***. It is made clear that the observations made in the present order are tentative in nature and the learned trial Court shall expedite the trial, on its own merits without being influenced by the observations made in the present order, **within 12 weeks** from the date of receipt of this order.
- 13) The Office of the Chief Legal Aid Defense Counsel shall provide an Advocate to the applicant, in case the applicant has not engaged any Advocate. The applicant is directed to cooperate with the learned trial Court in the trial for the expeditious disposal of the case. Rule is hereby discharged.

ANKIT JANSARI

(HASMUKH D. SUTHAR,J)