

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR SUCCESSIVE REGULAR BAIL -
AFTER CHARGESHEET) NO. 8297 of 2025**

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IRSHADKHAN AIYUBKHAN PATHAN

Versus

STATE OF GUJARAT

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Appearance:

MR NABIL KHAN, MR BILAL M RADHANPURWALA(10978) for the

Applicant(s) No. 1

MR RONAK RAVAL, PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE NIRZAR S. DESAI**

Date : 20/06/2025

ORAL ORDER

Rule. Learned APP waives service of rule for the Respondent-State.

1. By way of this third successive application, filed under Section 483 of the Bhartiya Nagrik Suraksha Sanhita ('BNSS', in short), 2023, the applicant has prayed to release him on regular bail in connection with the FIR, bearing No. 11209016211751 of 2021, registered with Himmatnagar 'A' Division Police Station under Sections 8(C), 21(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in brief, 'NDPS').

2. As per the FIR filed by the one Mr. K.K. Rathod, Police Sub-Inspector, Special Operations Group, Himmatnagar, District: Sabarkantha, on the date of the alleged offence, i.e. 09.10.2021, while on patrolling, he and his team received a secret information and carried out a raid, whereupon, the present petitioner was found in conscious possession of Mephedrone (MD) drugs, weighing about 348.6 grams, which is a commercial quantity and is having market value of about Rs.34,86,000/-.

2.1 Pursuant to the registration of the FIR, the petitioner filed an

application being Criminal Misc. Application (For Regular Bail) No. 6637 of 2022, which came to be disposed of as withdrawn on 09.12.2022.

2.2 After the rejection of the earlier application, the petitioner preferred another application in February, 2025, being Criminal Misc. Application (For Successive Regular Bail – After Charge-sheet) No. 3976 of 2025, which was also not entertained by this Court and was permitted to be withdrawn vide order dated 21.03.2025.

2.3 In the above background, the petitioner has preferred this third successive application for regular bail, within a period of about three months, from the date of withdrawal of his second successive application for regular bail in the month of March, 2025.

3. When this Court put a specific query to learned Advocate, Mr. Nabil Khan, appearing for learned Advocate, Mr. Radhanpurwala, for the petitioner, as to what is the change in circumstances, i.e. after the withdrawal of his second successive application for regular bail, as the petitioner has preferred the third successive application for regular bail within the period of just three months, learned Advocate, Mr. Nabil Khan, candidly submitted that as such there is no change in circumstances, except, one co-accused is granted regular bail by the Hon'ble Apex Court vide order dated 24.09.2024, passed in Special Leave to Appeal (Criminal) No. 10937 of 2024 and another co-accused is granted regular bail by the Coordinate Bench of this Court vide order dated 30.11.2023, passed in Criminal Misc. Application No. 16684 of 2023.

3.1 However, the aforesaid submission made by learned

Advocate, Mr. Nabil Khan, cannot be accepted for the simple reason that when the petitioner withdrew his second successive application for regular bail, i.e. Criminal Misc. Application (For Successive Regular Bail – After Charge-sheet) No. 3976 of 2025, on 21.03.2025, both the aforesaid orders as well as the ground of parity was very much available to the present petitioner, which was not considered by this Court at that time and therefore, the same cannot be said to be a change in circumstances.

3.2 Secondly, learned Advocate, Mr. Nabil Khan, submitted that the petitioner has been in jail since 10.10.2021 and the trial is proceeding at a slow pace and therefore, the petitioner may be released on bail.

3.2.1 In response to the specific query of this Court, as to how many witnesses have been examined so far before the trial Court, learned Advocate, Mr. Nabil Khan, submitted that out of total about 40 witnesses, only 16 witnesses have been examined till date and therefore, the trial is likely to take a long time in completion. It was, therefore, prayed that this petition be allowed.

4. On the other hand, learned APP, Mr. Raval, strongly opposed this petition and submitted that this being the third successive application for regular bail, the petitioner is required to point out only the change in circumstances. It was submitted that the second successive application for regular bail, being Criminal Misc. Application (For Successive Regular Bail – After Charge-sheet) No. 3976 of 2025, was withdrawn by the petitioner in the recent past, i.e. on 21.03.2025 and therefore, there being no change in circumstances, this petition is required to be dismissed.

4.1 It was also pointed out that the present petitioner was found in conscious possession of Mephedrone (MD) drugs, weighing about 348.6 grams, which is a commercial quantity and which has approximate market value of Rs.34,86,000/-, whereas, nothing was found from the possession of the other two co-accused, whose case was considered by the Hon'ble Apex Court as well as the Coordinate Bench of this Court, and therefore, the petitioner cannot claim parity with them

4.2 In Support of his submissions, learned APP, Mr. Raval, placed reliance on the decision of the Hon'ble Apex Court, rendered in the case of '**X Vs. State of Rajasthan**' in Special Leave Petition (Criminal) No. 13378 of 2024, Dated: 27.11.2024, wherein, the Hon'ble Apex Court has observed that ordinarily, in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Courts, be it the Trial Court or the High Court, should be loath in entertaining the bail application of the accused.

4.3 It was also pointed out that the offences charged against the present petitioner, on successful conviction, shall entail the punishment of imprisonment up to 20 years and therefore, this Court may not entertain this petition and the same may be dismissed.

5. I have heard the learned Advocates for the parties and perused the material on record and as noted herein above, since, the second successive application for regular bail was withdrawn by the present petitioner before about three months only, this

Court has put a specific query to learned Advocate, Mr. Nabil Khan, as to what is the change in circumstances and in reply to that it was submitted that as such there is no change in circumstances. Moreover, in view of the fact that the present petitioner was found in conscious possession of Mephedrone (MD) drugs, weighing about 348.6 grams, which is a commercial quantity and which has approximate market value of Rs.34,86,000/-, whereas, nothing was recovered from the other two co-accused, whose cases were considered by the Hon'ble Apex Court as well as by the Coordinate Bench and therefore, the petitioner cannot claim parity with them.

5.1 Even otherwise, in view of the fact that the trial has proceeded substantially, as according to learned Advocate, Mr. Nabil Khan, out of about total 40 witness, 16 witnesses have already been examined, this petition does not deserve to be entertained.

6. Reluctantly, this petition fails and the same is ***dismissed*** in *limine*. Rule is discharged.

(NIRZAR S. DESAI,J)

UMESH/-

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: CHAVDA UMESH(HC00203), Principal pvt Secretary, at High Court of Gujarat on 24/06/2025 11:59:49