

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 9758
of 2026**

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HAFIZUR ABDUL MAULYA @SOHEL
Versus
STATE OF GUJARAT

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Appearance:

MR NASIR SAIYED(6145) for the Applicant(s) No. 1

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

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CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER**Date : 06/08/2026****ORAL ORDER**

1. This application emanates from serious allegations relating to contraband substance MD (mephedrone) which is a prohibited synthetic stimulant drug. Offences of this character are not mere infractions; they transcend ordinary criminality and strike at the very foundation of public health. Given the inherent gravity of the alleged offence and the stringent mandate of the NDPS Act, any plea seeking the extraordinary indulgence of anticipatory bail must necessarily be subjected to the highest degree of judicial scrutiny.

2. By way of the present application under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 ('the BNSS' for short), the applicant-accused have prayed to release him on anticipatory bail in the event of his arrest in

connection with the FIR being C.R.No.11210003240961 of 2024 registered with Adajan Police Station, Surat City for the offences punishable under Sections 8(c), 21(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act ('the NDPS Act' for short).

3. RULE. Learned APP waives service of notice for the respondent-State.

4.1 Learned advocate for the applicant has submitted that the applicant is an innocent person and falsely implicated in this offence; the present applicant has been implicated in the present offence on the basis of the co-accused statement; that on the basis of the only allegation against the present applicant that there were some monetary business transactions with the co-accused and/or some call records between them, the applicant is implicated as purchaser of the said contraband; that he will abide by all the conditions and will not flee away from the investigation. It is, therefore, prayed to allow this application.

5. *Per contra*, learned APP has submitted that the applicant has committed a very serious offence and is involved in a serious offence of supplying commercial quantity of MD drugs; that the muddammal is worth Rs.35 lacs and

odd; there are interse communication between the accused and the applicant; that the applicant has not appeared and cooperated with the investigation after he was granted transit bail; there are transactions by UPI showing the money paid and received by the applicant with the accused no.1. He also submitted that as the applicant is not traceable; the warrant under Section 72 of the Bharatiya Nyay Suraksha Sanhita is issued against him. Therefore, as the present applicant is directly involved in the said offence, and the investigation is going on, the custodial interrogation is necessary to unearth the truth. He, therefore, prayed to dismiss this application.

6.1 Having heard the learned advocates for the respective parties and having considered the role of the present applicant, it transpires from the affidavit of the Investigating Officer that in the present case, the applicant herein had continuously purchased the contraband article-M.D.drugs from the accused Mohd.Asif Abdulrasid Shaikh, for which, the bank transactions are done often in State Bank of India and Kotak Mahindra Bank; that the applicant herein did not appear and cooperate with the investigation after he was granted transit bail and therefore warrant under Section 72 of the BNSS was issued against him; that the accused Yogesh Indle who is a resident of Mumbai, from whom the accused no.1-Asif was purchasing drugs is still wanted and

not arrested; the accused no.1-Asif who is the seller of the said drug, has categorically stated in his statement that he used to supply the said contraband article to customers and he has specifically stated the name of the applicant as one of those customers to whom he was continuously selling the said contraband article, for which they were in constant touch with each other and there were also bank transactions.

6.2 The investigation material reveals that the applicant's name has not come up in isolation. Rather, it has emerged during the course of inquiry into an organized network allegedly involved in the illicit trafficking of contraband substances. The allegations against the applicant are neither casual nor standalone. Prima facie, the material collected, including the statement of a co-accused, points to the applicant's role in a broader conspiracy concerning procurement, supply chain, distribution, and related financial transactions. In offences of such seriousness, where public interest and societal welfare take precedence over individual liberty, the extraordinary and discretionary relief of anticipatory bail cannot be allowed to be used as a barrier to a fair, thorough, and effective investigation.

6.3 The argument that the applicant's implication rests solely on the statement of a co-accused is a matter

that cannot be determined at this preliminary stage. The statement of the co-accused forms part of the evidentiary material gathered during investigation. At this juncture, it would not be proper to assess or weigh the probative value of such statement. Further, the investigating agency is well within its domain to examine the role attributed to the applicant. Custodial interrogation is deemed necessary to ascertain and clarify the extent of the applicant's involvement in the alleged offence. Since the investigation is still underway, it would be premature to accept the applicant's submissions and to interfere with the ongoing process of investigation.

6.4 It is a settled position of law that at the time of investigation, statement of co-accused provides clues to the investigating agency as to how to investigate the case and thereafter the Investigating Officer has to collect evidence against the person who has been named as accused. In view of the said fact, there is no bar on considering the statement of the co-accused for investigation purpose, irrespective of the fact that the statement of the co-accused to police is not admissible in evidence before the Court, but police can certainly consider that statement as a clue while interrogating him further or other person arrested or interrogated during the course of investigation, as the said

confession of co-accused gives a clue to the Investigating Authorities as to how to investigate the matter and against whom to investigate the matter. Therefore, in view of the aforesaid fact, the statement of the co-accused provides a clue for investigation and to unearth the truth, the statement of co-accused is required.

7. In the case of *Kalyan Chandra Sarkar v. Rajesh Ranjan Alias Pappu Yadav*, reported in (2004) 7 SCC 528, the Hon'ble Supreme Court has observed as under:

"The next argument of the learned counsel for the respondent is that prima facie the prosecution has failed to produce any material to implicate the respondent in the crime of conspiracy. In this regard he submitted that most of the witnesses have already turned hostile. The only other evidence available to the prosecution to connect the respondent with the crime is an alleged confession of the co-accused which according to the learned counsel was inadmissible in evidence. Therefore, he contends that the High Court was justified in granting bail since the prosecution has failed to establish even a prima facie case

against the respondent. From the High Court order we do not find this as a ground for granting bail. Be that as it may, we think that this argument is too premature for us to accept. The admissibility or otherwise of confessional statement and the effect of the evidence already adduced by the prosecution and the merit of the evidence that may be adduced hereinafter including that of the witnesses sought to be recalled are all matters to be considered at the stage of the trial.”

7.1 In the case of *Mohammed Fasrin v. State Rep. By the Intelligence Officer, rendered in Criminal Appeal No.296 of 2014*, the Hon’ble Supreme Court observed as under:

“.....The confessions of a co-accused gives a clue to the investigating authorities as to how to investigate the matter and against whom to investigate the matter. Thereafter, it is for the investigating officers to collect evidence against the said person who has been named by the co-accused.....”

7.2 It is evident from the aforesaid decisions that a

statement of a co-accused can be considered and treated as a clue or a piece of information for the purposes of initiating and conducting an inquiry or investigation, or for directing the investigation or inquiry in a particular direction, with the objective of ascertaining whether there exists any independent, satisfactory, and reliable material which may support, justify, or provide a reason for continuing the inquiry or investigation, or for initiating further investigation.

8. The investigation is at a nascent stage and custodial interrogation of the applicant is necessary to unearth the source, the extent of the network, and the role of other conspirators.

9. Further, it has also been brought to the notice of this Court that the applicant has not appeared and has not cooperated with the investigation after he was granted transit bail and therefore warrant under Section 72 of the BNSS was issued against him on 02.05.2025 which is prior to filing of this application i.e. on 22.04.2026.

10. In the case of *Lavesh V/s State (NCT of Delhi)* reported in (2012)8 SCC 730, wherein the Hon'ble Apex Court has held in paragraph 12 as under:

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and declared as “absconder”. Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.”

11. In the decision of *State of Madhya Pradesh V/s Pradeep Sharma reported in (2014)2 SCC 171*, the Apex Court has held that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 Cr.P.C., he is not entitled to relief of anticipatory bail. After extracting Section 438, Cr.P.C., it was further held therein thus:-

“The above provision makes it clear that the power exercisable under Section 438 of the Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there was reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty.”

12. In the case of *Srikant Upadhyay & Ors. V/s State of Bihar & Anr., reported in 2024 INSC 202*, it is held in paragraph 17 as under:

“17. Section 70(2), Cr.P.C. mandates that every warrant issued under Section 70(1), Cr.P.C. shall remain in force until it is cancelled by the Court which issued it, or until it is executed. In this case, as noticed hereinbefore, the bailable warrants and thereafter the non-bailable warrants, were issued against the appellants. They were neither cancelled by the Trial Court nor they were executed. It is not their case that they have successfully challenged them. Xxxxx”

Further, it is held in paragraph 24 as under:

“24. xxxxx, At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, it will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s), continuously, defying orders and keep absconding is not entitled to such grant.”

13. Further, there is nothing on the record put forward by the applicant to show that there were any commercial business transactions between the applicant and the accused no.1, as has been canvassed by the learned

advocate for the applicant, for which, he was transferring and receiving money in the bank accounts and therefore, the inference that the said amount was paid and received for the purchase of the said contraband article-M.D.drugs, as per the statement of the accused no.1, cannot be ruled out at this preliminary stage of investigation. Therefore, the custodial interrogation of the applicant is necessary to unearth the truth.

14. Having regard to the gravity of the offence, the huge muddammal involved, and the statutory embargo contained in Section 37 of the NDPS Act, this Court is of the considered view that it is not a fit case to exercise the extraordinary discretionary jurisdiction under Section 482 of the BNSS. In offences of such seriousness, where societal interest and public health outweigh individual liberty, anticipatory bail cannot be allowed to operate as an impediment to a fair and effective investigation. The investigation is at a crucial stage.

15. In offences under the NDPS Act, the following factors are typically relevant:

- Investigation often involves an organized supply chain;
- The statement of a accused commonly leads to

identification of suppliers, transporters, financiers, and receivers;

- Custodial interrogation is often necessary to verify disclosures and unearth further incriminating material;
- At the anticipatory bail stage, the Court evaluates *prima facie* involvement and investigative needs, not the ultimate probative value of a co-accused's statement at trial.

In the totality of the circumstances, including the gravity of the offence and the need for an effective investigation, the application for anticipatory bail deserves to be rejected.

16. In the case of *Siddharam Satlingappa Mhetre vs State Of Maharashtra, reported in (2011) 1 SCC 694*, the Hon'ble Court held that life and personal liberty are the most prized possessions of an individual but not at the cost of larger interest of society and public. This is not a case, wherein accused is falsely enraged in the offence with a view to tarnish his image. Considering the fact that the custodial interrogation is required. The Hon'ble Apex Court in the case of *Jai Prakash Singh Vs State of Bihar & Anr. reported in 2012 4 SCC 379*, has been pleased to hold as under :

“Parameters for grant of anticipatory bail in a

serious offences 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 enroped in the crime and would not misuse his liberty.”

17. In view of the gravity of allegations, material on record, and need for effective investigation, this Court finds no ground to exercise discretion under Section 482 of the BNSS as custodial interrogation of the applicant is imperative to unearth the truth. Hence, this is a not a fit case to exercise the jurisdiction in favour of the applicant.

18. For the foregoing reasons and considering the law laid down in the above cited decisions of this Court as well as of the Hon'ble Apex Court, this Court is of view that it is not a fit case to exercise the discretion under Section 482 of BNSS in favour of the applicant. Accordingly, present application does not deserve any consideration and is hereby ***rejected***. Rule is discharged.

19. 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.

SRILATHA

(SANJEEV J.THAKER,J)