

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER
CHARGESHEET) NO. 13893 of 2026**

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JAVEDKHAN AHMEDKHAN KURESHI

Versus

STATE OF GUJARAT

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Appearance:

MR SHAHRUKHKHAN A PATHAN(13404) for the Applicant(s) No. 1

MR.MINHAJ M SHAIKH(6847) for the Applicant(s) No. 1

MS DHWANI TRIPATHI, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR****Date : 22/06/2026****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 (for short "BNSS") for regular bail in connection with **FIR being C.R. No. 11995001250012 of 2025** registered with **State Monitoring Cell, District Gandhinagar**, for the offence under Sections 20(2)(c), 8(c) and 29 of NDPS Act.
- 3) The case of the prosecution is that, acting upon secret information, the police officials, while on routine patrolling duty within the limits of Mahesana City, intercepted an Activa scooter bearing Registration No. GJ-02-EL-1629. The scooter was being driven by the present applicant, while accused No.1 was travelling as a pillion rider. Upon conducting a search of the vehicle, the police recovered 98.33 grams of mephedrone from the dicky of the scooter, allegedly found in the joint possession of the present applicant and accused No.1. The seized contraband was valued at Rs.9,83,300/-. In connection with the said incident, the present FIR came to be registered. Upon completion of the investigation, a charge-sheet has been filed against

the present applicant and three other accused persons.

- 4) Learned advocate appearing on behalf of the applicant submits that applicant is innocent and has been falsely implicated in the offence. Investigation is over and chargesheet has been filed. He is in custody since 14.05.2025. Allegation against the applicant is that alleged narcotic substance was found from the dicky of Aactiva scooter which was driven by the applicant and the applicant is not the owner of the said Aactiva scooter. The applicant has nothing to do with the contraband substance put in the dicky. No CDR or other material is there to suggest the involvement of the applicant in the alleged offence. He has no any past antecedent. 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.
- 5) 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. The applicant and accused No.1 were travelling on Aactiva Scooter and jointly found with conscious possession of 98.33 gms. Mephedrone drugs, which is of commercial quantity and therefore, rigors of Section 37 of NPDS Act is attracted. The applicant and accused No.1 were going to deliver the said contraband to accused No.3 Aslam Ismailbhai Saiyed and apprehended by the police. Therefore, according to the prosecution, involvement of the applicant is clearly revealed. 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.
- 6) Having heard learned counsel for the respective parties and perusing the material placed on record, when police officials State Monitoring Cell, Gandhinagar were doing patrolling in Mehsana City area, they received secret intelligence and accordingly, they kept the watch at

the place, at that time as described the applicant and accused No.1 while delivering mephedrone drugs to accused No.3, who was standing at Ashish Pan Parlor apprehended by the police and upon search, total 98.33 gms. Mephedrone valued at Rs.9,83,300/- was recovered, which is admittedly a **commercial quantity**. During interrogation, they disclosed that said mephedone was supplied by absconding accused of Rajasthan having mobile No.9680068426. Further, the recovered mephedrone was of commercial quantity. Thus, the applicant is facing charges under the NDPS Act.

- 7) It further reveals that the applicant is involved in supplying contraband mephedrone. This circumstance, prima facie, establishes a direct nexus between the applicant and the narcotics trafficking racket. During the course of investigation, it has been revealed that the applicant/accused, from time to time ordered and used to supply drugs in market. Thereby, the youth of society are being pushed into drug addiction.
- 8) Thus, it is clear that the applicant was having animus and knowledge of the said contraband and hence, as the applicant was travelling alongwith the co-accused, in view of Sections 35, 54 and 20 of the NDPS Act, the applicant is considered to be in conscious possession of the contraband and therefore, rigors of section 37 of the NDPS Act are applicable as explained by the Hon'ble Supreme Court in the case of **Madanlal and Another vs. State of H.P.** reported in **(2003) 7 SCC 465**.
- 9) This is not a case merely based on the statement of the co-accused, applicant is arrested. But the applicant along with accused No.1 apprehended by the police with conscious possession of commercial quantity of mephedrone drugs. CDR and other evidence also collected during investigation from which it appears that accused No.1 and accused No.4 were in constant touch with absconding

accused Anil Meena of Rajasthan. Hence, prima facie involvement of applicant reveals. Section 29 of the Act reads as under:-

"29. Punishment for abetment and criminal conspiracy. (1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which--

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India."

In the case of **Union of India v. Nawaz Khan** reported in (2021) **10 SCC 100 (3 Judges' Bench)**, the Hon'ble Supreme Court has elaborately discussed the test which the High Court should adopt while granting bail, "reasonable grounds to believe", "conscious possession" of contraband and principles for ascertaining the same have been summarized. Merely the contraband was not in conscious possession of present applicant does not absolve him of the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act. The term "possession" could mean "physical possession" with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on such knowledge. Herein, applicant along with accused No.1 secretly supplying the contraband mefedrone drugs and accused No.1 was in constant touch with the absconding accused.

10) Even, from the bare perusal of the investigation papers, it appears that the present applicant was found in conscious possession of the contraband, in view of the law laid down by the Hon'ble Supreme Court in the case of **Nawaz Khan (Supra)**, as the applicant and accused No.1 were jointly and secretly supplying the contraband drugs and was connected with the co-accused from whose premises 98.33 gms. Mephedrone was seized. The said contraband substance was supplied to the applicant and accused No.1 by absconding accused Anil Bheruram Meena and they went to deliver it to accused No.3, which establishes the link between the accused. Considering the rigors of Section 37 of the NDPS Act, it is very difficult to presume that if the applicant is released on bail, then he would not involve in commission of similar type of offence. 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.

11) 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's

knowledge of the transaction, and his alleged role in supply of the contraband, 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 was within the knowledge of contraband drugs kept in the scooter and were going to deliver the same to accused No.3, 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.

- 12)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".

13) 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.

14) 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.

- 15) 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 mephedrone drug 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**, **State by the Inspector of Police Vs. B. Ramu, Union of India Vs. Namdeo Ashruba Nakade** and **Union of India Vs. Ajay Kumar Singh**, the applicant is not entitled for bail.

16) 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. The learned trial Court shall expedite the trial on its own merits, without being influenced by the observations made in this order, and shall conclude the proceedings within **10 weeks** from the date of receipt of this order. The Official Counsel/Chief Legal Aid shall provide an advocate from the Legal Services Authority to the applicant, in case the applicant has not engaged any advocate. The applicant is directed to cooperate with the learned trial Court to cooperate in expeditious trial. The Rule is hereby discharged.

(HASMUKH D. SUTHAR,J)

SUCHIT