IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR SUCCESSIVE REGULAR BAIL - AFTER CHARGESHEET) NO. 9084 of 2025

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NIRMIT KRISHNAKUMAR JADEJA

Versus

STATE OF GUJARAT

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Appearance:

MR SI NANAVATI, SR. ADVOCATE with MR DARSHIT H RAVAL(11887) for the Applicant(s) No. 1

MS SHRUTI PATHAK, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Date : 09/07/2025

ORAL ORDER

Learned APP waives service of notice of Rule for and on behalf of the respondent – State of Gujarat.

[1.0] The present **third successive bail** application is filed under Section 483 of the Bharatiya Nyaya Suraksha Sanhita, 2023 (for short "BNSS") for regular bail in connection with **FIR being C.R. No.11210070240784 of 2024** registered with **Bhestan Police Station, District Surat** for the offence under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "NDPS Act").

[2.0] Heard learned advocate for the applicant and learned APP for respondent – State of Gujarat.

[3.0] Case of the prosecution is that officers of DCB Police Station on the basis of secret information, caught the accused No.1 Nirmit Krishnakumar Jadeja (present applicant), who was carrying illegally Mephedrone Drugs, weighing 80.26 Grams, valued at Rs.8,02,600/- and upon further enquiry, it was learnt that the said quantity of MD drugs

was supplied by one Jay Makwana (accused No.3) at the instance of accused Babu (accused No.2). In this regard, FIR came to be filed. Thereafter, the statements of the police officials and other witnesses have been taken. The samples of drug was sent to FSL Gandhinagar for analysis and it was opined that, it was Mephedrone, which is included in the NDPS Act.

[4.0] Learned Senior Counsel Mr. S.I. Nanavati assisted by learned advocate Mr. Darshit Raval appearing for the applicant has submitted that present applicant is falsely enroped in the offence. Earlier two applications seeking regular bail were filed but same were disposed of as withdrawn as the Court was not inclined and liberty was reserved to file fresh application if the trial does not progress substantially. Hence, the applicant has approached this Court by way of present third successive application. Further, he has submitted that out of 40 witnesses, only 4 witnesses have been examined. Present applicant was found in the possession of said contraband but said contraband was for his personal consumption. He has not indulged in any illegal activity or drug trafficking. Present applicant has purchased the said contraband for his personal use. As per the case of prosecution, from one Wasim, who is yet to be arrested, one Shri Krishna Ghanshyam Swane had purchased the contraband through Aditya and from Jay he had purchased the said contraband. Other two co-accused are released by the coordinate Bench and hence, on the ground of parity, the applicant is required to be released on regular bail as allegation against the applicant is only of consumption. Co-accused Ronak from whom present applicant had purchased the contraband is already released on bail and hence, has requested to extend the benefit of parity. Even otherwise, the commencement of trial will take its own time and except confessional statement at the time of raid, no any

material is collected. Hence, in absence of any material and there being no past antecedent, he has requested to allow the present application on the ground of delay. Further, present applicant is not a supplier and no further evidence is required to be collected from the present applicant. Hence, question of applicability of rigors of section 37 of the NDPS also does not arise as contraband was for personal use and consumption. Even, considering the delay in trial, he has requested to allow the present application.

[5.0] Learned APP has opposed the present applicant on the ground that present applicant is not entitled for the benefit of parity. Present applicant was found in conscious possession of the contraband and rigors of section 37 of the NDPS Act is applicable. Learned advocate for the applicant has argued that the said contraband was for consumption but as per section 8(c) of the NDPS Act, consumption itself is an offence. 80.26 gram of contraband is found from the conscious possession of the applicant however, even if it is believed that contraband was for consumption of applicant then also, the quantity of contraband recovered from the applicant is commercial quantity and hence, rigors of section 37 of the NDPS Act would be applicable.

[5.1] So far as benefit of parity as claimed by the applicant on the ground of release of co-accused Ronak is concerned, while enlarging the said co-accused Ronak on bail, coordinate Bench has not considered the rigors of section 37 of the NDPS Act. Not only that, nothing was found from the conscious possession of co-accused Ronak and no other material except statement of co-accused is available which is substantially mentioned in paragraph 5 of the said order. On the contrary, while disposing the application of co-accused

Shri Krishna Ghanshyam on merit, this Court has discussed the role of present applicant (accused No.1) has received the contraband from one Babu and thereafter, he has received from one Jay the commercial quantity was recovered from the present applicant – accused No.1 and there was a live link for which CDR is collected during the investigation and financial transaction and money transaction with co-accused Aditya and other co-accused is also found and there is a live link and acceptable evidence is collected during the investigation. Hence, no case is made out to consider the present application in absence of any change in circumstances more particularly considering the rigors of section 37 of the NDPS Act.

[5.2] Further, she has refuted the argument canvassed by the learned Senior Advocate for the applicant that present applicant is having no past antecedent and submitted that same is not a ground to come out from the rigors of section 37 of the NDPS Act and possibility of tampering with evidence if released on bail cannot be ruled out. Further, if the applicant used to purchase commercial quantity for consumption then the possibility of his being involved in drug trafficking and to involve in similar type of activity cannot be ruled out. So far as other procedural aspect is concerned, it is matter of trial and so far as delay in trail is concerned, the prosecution after the direction of this Court had given the list of material witnesses and examination of witnesses is going on and 5 witnesses have been examined while PW-5 was being examined, at that time, the present applicant has raised objection qua recording of the evidence and he has filed the revision application and sought an adjournment and due to this reason, entire trial is protracted. Hence, present applicant cannot take undue advantage of the his own wrong as the accused persons in collusion and connivance of each other are trying to take

advantage of their own wrong. Further, the applicant is arrested on 12.07.2024 but he has engaged an Advocate only on 14.11.2024 and thereafter, the trial was in progress and hence, question of delay in trial does not arise and in absence of any change in circumstances, she has requested to dismiss the present application.

[6.0] Heard learned Senior Advocate for the applicant and learned APP for the respondent – State of Gujarat.

[7.0] Perusing the investigation papers and charge-sheet papers, it appears that on 02.07.2024, while the complainant Mr. Gamit, PSI was on patrolling to maintain law and order on the festival of Rathyatra, at that time, applicant – accused No.1 was found from conscious possession of Mefedrone Drug weighing 80.26 gms., valued at Rs.8,02,600/-, i.e. commercial quantity and arranged for two panchas and in their presence, mandatory procedure under the NDPS Act was followed. In this regard, FIR came to be lodged. During investigation, it was surfaced that the accused No.1 has received said contraband from one Babu and said Babu had received from one Jay Makwana. During the course of investigation and interrogation, it was found that accused Jay Makwana has received contraband from accused Aditya and he has received from one Wasim, who is yet to be arrested. Thus, prosecution has established the supply chain of contraband drug with another accused. Sufficient material including the CDR and bank details are collected which connects the whole chain of supply by the accused persons and live link of accused is shown and material is collected during the investigation. The certificate also issued in compliance of Section Section 65(4)(c) of the Indian Evidence Act/ Section 63 of BNSS is issued. Hence, the arguments canvassed by learned counsel for the applicant that the applicant has been falsely

enroped in the offence merely because he has received contraband only for the consumption purpose as per the case of prosecution without there being any supporting material, is not acceptable.

[7.1] One more aspect is required to be considered is that the recovered contraband MD drug from the conscious possession of applicant – accused is of commercial quantity. Hence, rigors of Section 37 of the Act would be applicable and therefore, applicant is facing serious charge under Sections 8(1), 22(c) and 29 of the NDPS Act.

[8.0] 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.

[8.1] 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".

[8.2] 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 organized 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.

[8.3] 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."

[8.4] Considering the provisions of Section 37, limitation of grant of bail under Section 37(b) of the Act where there are reasonable ground for pleading that the applicant is not guilty of such offence and that he is not likely to commit any offence while on bail. Considering the aforesaid provisions, as the applicant is having past antecedents of similar nature of offence under the NDPS Act and considering the rigors of Section 37 (b)(ii) of the Act, possibility cannot be ruled out to indulge again in such type of serious offence if he is released on bail.

[8.5] Further, in the present case, the applicant is found in conscious possession of the contraband 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, Mayur Jamanbhai Ajani Vs. State of Gujarat, [SLP (Cri.) No.302/2025]**, 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 to any relief from this Court. Further, in view of the decision of the Hon'ble Supreme Court in case of **State of Kerala Vs. Rajesh, Criminal Appeal No.154-157 of 2020,** as the recovered contraband Mefedrone Drug is of commercial quantity, rigors of Section 37 of the Act would be applicable.

[9.0] Further, to consider the argument canvassed by the learned Senior Advocate for the applicant that applicant is entitled to bail on the ground of delay in trial aspect, the report of learned Sessions

Judge was called for and perusing the same it appears that 5 witnesses are examined and prosecution has also submitted the list of material witnesses but while recording the evidence, present applicant has raised objection and by way of revision application challenged the said order due to which the trial is prolonged. Hence, on the ground of delay in trial, present applicant is not entitled for any relief in absence of any change in circumstances. Earlier, after withdrawal of earlier two applications, learned Senior Counsel has failed to point out any material change in circumstances and no one can take advantage of his own wrong. Considering the facts and circumstances of the case, gravity of offence, severity of punishment as well as the law laid down in cases of **Ram Govind Upadhyay vs. Sudarshan** reported in **2002 (3) SCC 598,** discretion cannot be exercised in favour of the applicant – accused. In the case of ***Ram Govind Upadhyay (Supra)***, the Hon'ble Apex Court has held that *"the accused has right to make successive application for grant of bail, but while entertaining a subsequent bail application, it is the duty of Court to consider the reasons and grounds, which persuade to take a view different from the one taken in the earlier application"*. From the record, it appears that there is no reason or ground which can persuade this Court to take a view different from the earlier application. The offence against the applicant is very serious in nature and earlier applications after filing of the charge-sheet have not been entertained. Hence, question of delay in trial does not arise. Even, learned APP has assured that prosecution is ready to expedite the trial and ready to examine the witnesses on day to day basis.

[10.0] Now, coming back to the next argument *qua* extending benefit of parity, considering the role of the present applicant and law laid down by the Hon'ble Apex Court in the case of **Ramesh Bhawan**

Rathod vs. Vishanbhai Hirabhai Makwana reported in **AIR 2021 SC 2011** as well as in the case of **Tarun Kumar vs. Assistant Director, Directorate of Enforcement** reported in **2023 INSC 1006,** argument as regards parity is not acceptable. Herein, the role of co-accused Ronak, who has been released on bail, was different. Except the statement of co-accused, no material was available and nothing was found from the conscious possession of the said co-accused. Herein, from the conscious possession of the present applicant, the contraband was found and that too 80.26 gram which is obviously commercial quantity. The evidence of monetary transaction with co-accused is also found and cross-entry in the statement of account is also found and learned trial Court has also noted the aforesaid fact that there was a live link between the applicant herein and other co-accused, who were considered in absence of any live link. Even otherwise, it is needless to say that while considering the application of co-accused Ronak, Court has not considered the rigors of section 37 of the NDPS Act though, it is mandatory requirement to adhere to the statutory requirement while granting bail in the case of commercial quantity under the NDPS Act. Herein, in the case on hand, from the conscious possession of the applicant, muddamal was recovered and hence, rigors of section 37 of the NDPS Act would be applicable in view of the decision of the Hon'ble Supreme Court in the case of **State of Meghalaya vs. Lalrintluanga Sailo and Another** reported in **2024 SCC OnLine (SC) 1751.** Further, on two different dates, Rs.50,000/- each and in total Rs.1,00,000/- was transferred from the account of the present applicant to the co-accused who are supplier of said contraband. Hence, it reveals from the investigation papers that there is live link of the present applicant with the drug peddler and the persons who are indulged in drug trafficking. Hence, the argument

canvassed by the learned Senior Advocate appearing for the applicant that rigors of section 37 of the NDPS Act will not be applicable, is not acceptable and there is substance in argument canvassed by the learned APP.

[11.0] Further, it is worth to mention that while enlarging co-accused on bail, rigors of section 37 of the NDPS Act are not considered and hence, applicant is not entitled to get benefit of parity on that count also. It is true that rigors of section 37 of the NDPS Act is always not a ground to refuse bail in case of delay in trial but herein, considering the peculiar facts of the case on hand, as the applicant is facing charge under Section 20(c) of the NDPS Act and as applicant is facing charge wherein contraband involved is of commercial quantity attracting rigors of section 37 of the NDPS Act and as punishment for the said offence is not less than 10 years but it may extend upto 20 years and shall also be liable to fine which is not less than one lakh rupees but may extend to two lakh rupees. Individual rights of accused are undoubtedly important but equally important was societal interest for bringing offender to book and for system to send right message to all in society be it law-abiding citizen or potential offender. Criminal justice delivery system could not be allowed to veer exclusively to benefit of offender making it uni-directional exercise. In this regard, reference is required to be made to the decision of the Hon'ble Supreme Court in the case of **Varinder Kumar v. State of Himachal Pradesh** reported in **(2020)3 SCC 621.** Further, herein case on hand, rigors of section 37 of the NDPS Act is applicable, trial is in progress, if applicant is released on bail it seems difficult to secure the presence of accused during the further proceedings and possibility to repeat or indulge in similar nature of offence in view of law laid down by the Hon'ble Apex Court in case of **Union of India vs. Abdul Momin**

reported in **(2005) 13 SCC 144** and **Union of India vs. Saurabh Chatterji** reported in **(2006)9 SCC 759.** Herein, the applicant is found in conscious possession of the contraband 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 (Supra)** as well as in the case of ***Lalrintluanga Sailo and Another (Supra)***, the applicant is not entitled to any discretionary relief from this Court.

[12.0] It would be profitable to refer to the decision of the Hon'ble Supreme Court in the case of **Ash Mohammad vs. Shiv Raj Singh alias Lalla Babu and Another** reported in **(2012) 9 SCC 446** is also required to be referred to wherein it has been held that the concept of liberty is not in the realm of absolutism but is a restricted one and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardized. Gujarat State is starving to eliminate the drug menace from the State and launched anti drug campaign. During the last year only, the State Law Enforcement agencies have seized approximately more than 87000 kg of narcotics and 251 drug related cases have been registered and drug worth of approximately Rs.410 Crore is seized and 353 persons are arrested. From such illegal drug trafficking the illegal activities are also going on and considering the adverse impact of the same on the society, this is not a case to exercise the jurisdiction in favor of the applicant – accused while his *prima facie* involvement is found in drug trafficking activity.

[13.0] In view of the above, there being no merits in the present application, same is hereby **dismissed**. However, learned trial Court is directed to expedite the trial. Rule is hereby discharged. It is made clear that the observations made in the present order are tentative in nature and the learned trial Court shall decide the case of the

applicant on its own merits, without being influenced by the observations made in the present order, as early as expeditiously preferably within a period of **TEN WEEKS** from today. The applicant – accused shall also cooperate the learned trial Court in early disposal of the case.

(HASMUKH D. SUTHAR, J.)

Ajay

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: AJAY CHANDRAN MENON(HC00939), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 09/07/2025 14:26:16