IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER CHARGESHEET) NO. 14523 of 2026

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IRFAN @ CHINO ILYASBHAI MAKRANI

Versus

STATE OF GUJARAT

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Appearance:
MR ZUBIN F BHARDA(159) 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 : 23/09/2026

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.11210061250502 of 2025** registered with **Lalgate Police Station, Surat City** for the offence under Sections 8(C), 22(c) and 29 of the NDPS Act.

3) Learned advocate appearing on behalf of the applicant submits that the applicant was initially not named in the FIR and is implicated solely on the basis of the statement of co-accused. Further, the applicant is innocent and has been falsely implicated in the offence. Investigation is over and charge-sheet has been filed. He is in custody since 29.10.2025. 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 vehemently opposed the present application and submitted that the applicant is facing serious charges involving trafficking of narcotic drugs. It is contended that the material collected during the course of investigation clearly establishes the applicant's involvement in the alleged offence. It is further submitted that, if released on bail, there is a likelihood that the applicant may again indulge in similar criminal activities. Learned APP further submitted that, applicant is having two past antecedents of NDPS Act and two for the offences under the provisions of Indian Penal Code. Further, the applicant is the kingpin and supplier of the alleged contraband i.e. 205 gram of Mephedrone, which is admittedly commercial quantity and therefore, rigors of section 37 of the NDPS Act are applicable. She has also argued that applicant is not arrested merely on the basis of statement of co-accused but he is the main supplier and co-accused Divyesh Soni is on run and is yet to be arrested. Further, applicant’s presence is found alongwith the co-accused to whom he had supplied the contraband. Not only that, applicant is systematically involved in the drug trafficking activity coupled with CDR and money transactions and location with all co-accused and therefore, since there is involvement of the present applicant, there is serious possibility of tampering with evidence and again indulging in similar activities if the applicant is released on bail. Therefore, according to the prosecution, a *prima facie* case is made out against the applicant. Further, learned APP has submitted that there is no possibility of delay in trial as only limited witnesses i.e. 35 witnesses are cited by the prosecution and even out of the said number of witnesses, most of them are panch and police witnesses and prosecution proposes to examine only material witnesses within a period of six months. 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) While granting bail, the Court has to consider the involvement of the accused in the alleged offence, the jurisdiction to grant bail has to be exercised on the basis of the well settled principles having regard to the facts and circumstances of each case and the following factors are to be taken into consideration while considering an application for bail: (i) the nature of accusation and the severity of the punishment and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses and threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations are required to be considered.

6) Having heard the learned advocates appearing for the respective parties and perusing the investigation papers, it appears that as per the case of prosecution, when the police was in patrolling, at that time, three persons were found with their two 2-wheeler vehicles and having suspicion about their movement, they were interrogated and from the dikki of the 2-wheeler vehicle belonging to accused No.3, alleged contraband i.e. Mephedrone was found in two pouches alongwith injection syringe, cash and plastic zip bags and pocket digital weighing scale. Thereafter, after following the due procedure as prescribed under the law, muddamal was found to be Mephedrone weighing 204.700 gram worth Rs.20,47,000/- and hence, the accused persons were arrested. During the investigation, role of the applicant was found and it is alleged that the present applicant came alongwith

two witnesses in Innova Car and had supplied 204.700 gram of Mephedrone to co-accused Sarfaraz, who had received from Divyesh Arvind Soni who also came at the spot near Hotel in swift car without registration number plate and thus, from conscious possession of the co-accused Sarfaraz, muddamal contraband was found.

7) Further, during the investigation, it was found that the applicant was found in constant touch with the co-accused and even his presence is found in CCTV footage and even CDR and money trail is found in the account of the present applicant. Further, money is transferred through UPI transaction in the account of wife of the present applicant and co-accused and applicant is also found in contact with accused No.5 namely Divyesh Soni, who is on run and is yet to be arrested. Still investigation is going on *qua* the present applicant. Considering the aforesaid fact, sufficient material is collected by the investigation agency to show that the applicant is involved in serious offence of drug trafficking and even zip plastic bags, pocket digital weighing scale are found from the possession of co-accused, which clearly reveals that the applicant is actively involved in drug trafficking activity and therefore, rigors of section 37 of the NDPS Act are clearly applicable as money trail and CDR are found. Further, present is not a case where merely based on the statement of the co-accused, applicant is arrested but CDR and other evidence also collected during investigation. It also appears that the applicant and other co-accused were in constant touch. Accused persons had talked with each other. Hence, *prima facie* involvement of applicant in aid of Section 29 of the NDPS Act is revealed. 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 having the knowledge about contraband Ganja contained in parcels lying at courier company and he was in constant touch and not only personal knowledge but the existence of contraband and the intention was safely inferred based on the said knowledge also.

8) Even, from the bare perusal of the investigation papers, it appears that though the present applicant was not 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),*** the

applicant having knowledge about the contraband Mephedrone, his involvement is there and 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.

9) 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 facilitating the drug trafficking activity, 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 in the procurement of the contraband, coordinated with the supplier, and facilitated drug trafficking, 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.

10) Even, the learned APP has submitted that there is no possibility of delay in trial as only limited witnesses i.e. 35 witnesses are cited by the prosecution and even out of the said number of witnesses, most of them are panch and police witnesses and prosecution proposes to examine only material witnesses within a period of six months. Therefore also, there is no possibility of delay in trial. 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. At this stage, it is also appropriate to refer to the recent decision of the Hon’ble Supreme Court in the case of **State of Punjab v.**

Sukhwinder Singh @ Gora [2026 INSC 401], wherein the Hon'ble Supreme Court ruled that the right to a speedy trial under Article 21 cannot bypass the strict statutory requirements of Section 37 for commercial drug quantities.

11) So far as the argument canvassed by the learned advocate for the applicant that the co-accused Imran having similar role to that of the present applicant is released on bail is concerned, it is pertinent to note that the said co-accused was not having any past antecedent whereas the present applicant is having two past antecedents under the NDPS Act and two under the IPC and therefore, case of present applicant cannot be equated with the co-accused Imran and is distinguishable. In this regard, it would be apposite to refer to the decision of the Hon'ble Apex Court in case of **Tarun Kumar vs. Assistant Director Directorate of Enforcement** reported in **2023 SCC OnLine SC 1486** and recent decision of the Hon'ble Supreme Court in the case of **Sagar vs. State of U.P.** reported in **2025 INSC 1370**. Hence, applicant is not entitled to get benefit of parity considering that his role and involvement in the offence is graver or on higher footing coupled with the fact that present applicant is having two past antecedents under the NDPS Act which shows that applicant is indulging in similar illegal activities again and again.

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 contraband Ganja and therefore, considering the rigors of Section 37 of the NDPS Act and applicant having **two past antecedents of 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**, if the applicant is released on bail then he may indulge in similar type of drug trafficking activity.

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 expeditiously.

17) If the applicant fails to engage an Advocate then the applicant shall be provided legal aid under Section 341 of the BNSS for expeditious disposal of the trial in view of the decision of the Hon'ble Supreme Court in the case of **Ummed Devi vs. The State of Rajasthan and Anr. [2026 INSC 931]**. The applicant is directed to cooperate with the learned trial Court to cooperate in expeditious trial. Rule is hereby discharged.

(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 23/09/2026 18:36:53