IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER CHARGESHEET) NO. 17451 of 2026

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BHARATBHAI @ BHANO DAMJIBHAI LATHIYA

Versus

STATE OF GUJARAT

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Appearance:
MR AJAY N PABARI(11379) for the Applicant(s) No. 1
MR ADITYA JADEJA, APP for the Respondent(s) No. 1

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

Date : 30/07/2026

ORDER

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

[1.0] The present bail application is filed under Section 483 of the Bharatiya Nyaya Suraksha Sanhita, 2023 (for short "BNSS") for regular bail in connection with complaint being **CR No.11210004260002 of 2026** registered with **Amroli Police Station, Surat City** 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] The case of the prosecution is that on 31.12.2025, the SOG (Special Operations Group) received a specific tip-off regarding narcotics activity and acting on the said information, a raid was conducted near Ganeshnagar Row House, Chhapra Bhatha Road, Amroli during which, the co-accused Jil Bhupatbhai Thummar was

apprehended from the spot. Upon conducting a search, the police recovered a prohibited psychotropic substance, namely Mephedrone (MD Drugs), weighing 236.780 grams (valued at approximately 23,67,800/-) from the physical possession of the said co-accused. During the on-the-spot interrogation and subsequent panchnama, the co-accused Jil Thummar alleged that the seized contraband was supplied to him on a commission basis by his friend, the present applicant and his partner Khushal Ranpariya. It is the case of the prosecution that the drug was delivered to the co-accused by the present applicant for further distribution to an unknown person. Consequently, the present applicant has been arrayed as an accused on the grounds of criminal conspiracy under Section 29 of the NDPS Act despite the fact that no narcotics were directly recovered from the applicant's conscious possession during the raid. After investigation, charge-sheet is filed which culminated into Special NDPS Case No.130/2026.

[4.0] Learned advocate for the applicant has submitted that the applicant is arrested on 09.01.2026 and is languishing in jail since then. He has further submitted that the applicant is not found in conscious possession of the contraband and is arraigned only on the basis of the statement of co-accused who was arrested at the time of raid. He has also argued that there is no any banking transaction however, only an amount of Rs.46,686/- was transferred by the co-accused to the account of the present applicant over a prolonged period ranging from 30.10.2024 to 17.08.2025 however, there is no direct or indirect role, nexus or recovery of any contraband from the present applicant. He has also submitted that even from the statement of eye-witness and charge-sheet, no *prima facie* role of the applicant is revealed. It is further submitted that the applicant is not having any past antecedent

of similar nature and if the applicant is not released on bail then it will be a pre-trial detention of the applicant which is against the fundamental right enshrined under Article 21 of the Constitution of India. He has also submitted that there is no financial link or CDR evidence in the present case so as to prolong the incarceration of the present applicant and nothing is required to be recovered or discovered from the present applicant. He has therefore submitted that conclusion of trial will obviously take considerable time and therefore, he has requested to grant bail to the applicant as he is falsely implicated in the offence and for the same act, two FIRs have been registered.

[5.0] Learned APP has vehemently opposed the present application on the ground that applicant is not only a supplier but has indulged in large scale drug trafficking activity. The contraband Mephedrone which is seized at the time of raid is 236.780 grams which is obviously much higher than the commercial quantity and therefore, rigors of section 37 of the NDPS Act would be applicable in the present case. The allegation against the applicant is that applicant has indulged in manufacturing of drug and CDR and financial transactions in the account of applicant are found. The applicant has also purchased raw material for preparation of drugs and he was in constant touch of the co-accused who is running the entire racket from London. Even, details of whatsapp calls and chat *inter se* between the co-accused are found and one co-accused is yet to be arrested and therefore, if the applicant is released on bail, tampering of evidence and flight risk of the applicant cannot be ruled out. He has further submitted that based on specific intelligence, raid was conducted and co-accused Jil Thummar was found with conscious possession of 236.780 Grams of Mephedrone, which is more than commercial quantity and therefore,

rigors of section 37 of the NDPS Act would be applicable. He has also argued that statements of witnesses have been recorded which corroborate the case of prosecution and involvement of present applicant in trafficking of the narcotic drugs. Therefore, considering rigors of section 37 of the NDPS Act, applicant is not entitled to any relief from this Court. He has therefore submitted to dismiss the present application.

[6.0] Perusing the investigation papers and charge-sheet papers, it appears that based on intelligence, raid was conducted and co-accused Jil Thummar was found in conscious possession of 236.780 Grams of Mephedrone, which is obviously commercial quantity of prohibited narcotic drug and therefore, rigors of **section 37 of the NDPS Act** is applicable. *Prima facie* involvement of applicant is found on the basis of sufficient material collected during investigation. Sufficient material and evidence has been collected by the investigating agency to establish that the present applicant is involved in the present offence.

[6.1] Herein, *prima facie,* investigation would reveal that applicant is involved in drug trafficking activity and the applicant is not arraigned as an accused only on the basis of statement of co-accused but there is substantial following material collected during the investigation:

(i) Role attributed to the present applicant is not only limited to supplier / peddler but he is systematically engaged in the production of such psychotropic substance and was regularly supplying such contraband and has actively participated and indulged in the illegal activity of drug trafficking.

(ii) Further, the CDR details with regard to conversation of present applicant alongwith co-accused have also been found including

the banking transaction who are actively engaged in drug trafficking.

(iii) Not only that, during the investigation, it has been found that the co-accused Brijesh Bhalodiya and Janak Jagani had managed one laboratory namely Food and Pharma Analytical Lab under the license of one Eesha D/o. Dineshbhai Kanjibhai and used to manufacture psychotropic substance for which raw material is also purchased by the present applicant and co-accused Janak Jagani who is residing at London and who was in contact of the said witness and at the instance of said co-accused Janak Jagani, entire trafficking racket is running in the country.

(iv) Even, machines and raw material are purchased and set-up is also prepared for the production of such prohibited contraband / psychotropic substance.

(v) Further, CCTV footage of the said factory, CDR details and financial transactions between the applicant and co-accused clearly reveals involvement of the present applicant. The co-accused Jill Thummar and Khushal Ranpriya are found in contact of each other 737 times and 224 calls have been found between present applicant and both the said two co-accused and present applicant is also found in contact with the co-accused Janak Jagani, who is based at London and is running the entire racket and is yet to be arrested.

(vi) Further, locations of present applicant alongwith other co-accused are found at the factory place and mobile location of all the accused are found at the place i.e. Ankleshwar and Bharuch from where raw material is purchased for production /

manufacturing drugs.

(vii) During the investigation, it has been found that in the mobile phone of the applicant, through online and GooglePay amount is transferred and the account of wanted accused Janak Jagani is active and during investigation, financial transactions of Rs.34,500/- have been found for the present applicant which was transferred by co-accused Janak Jagani. Further, from the GooglePay account of co-accused Jill Thummar, it has been found that Rs.46,600/- has been deposited in the account of present applicant by the said co-accused Jill Thummar. Further, it has been found that financial transactions worth Rs.54,400/- have been made through two different GooglePay accounts of co-accused Khushal Ranpariya on the account of present applicant.

(viii) Even, the applicant has made the payment *qua* chemical from different places and also towards the raw material in the form of chemical for production of such drug.

(ix) Co-accused from London is managing entire racket of drug trafficking through the present applicant.

In view of above, the argument canvassed by learned advocate for the applicant that nothing is found from the conscious possession of the present applicant and therefore, applicant is required to be released on bail is not acceptable since the applicant is arraigned as an accused in aid of section 29 of the NDPS Act and thus, the applicant was having the knowledge about the said contraband which clearly reveals his knowledge and *animus* as discussed in the case of **Union of India v. Nawaz Khan** reported in (**2021**) **10 SCC 100 (3 Judges'**

Bench), wherein 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. Even otherwise, applicant cannot claim liberty as an absolutism as of right at the cost of larger public interest. This Court is of the considered view that if the applicant is released on bail then the co-accused who is yet to be arrested will not be arrested. Further, the investigating agency has also recorded statement of four witnesses wherein the witnesses have clearly stated that present applicant is the person from whom they used to purchase the drug and thus, the prosecution has collected enough material to show the involvement of the present applicant of large scale illegal drug trafficking activity.

[6.2] One more aspect is required to be considered that the recovered contraband Mephedrone is of commercial quantity. Hence, rigors of Section 37 of the Act would be applicable and therefore, applicant is facing serious charge under Section 29 of the NDPS Act. Further, considering the rigors of **section 37 of the NDPS Act**, 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, though the contraband is not found from the conscious possession of the applicant, muddamal was recovered

from the conscious possession of the co-accused who is found to be in constant touch of the present applicant 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.** Hence, it reveals from the investigation papers that there is live link of the present applicant with the co-accused 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.

[6.3] Insofar as the submission made on behalf of the applicant that the trial will take considerable time and therefore, applicant is entitled to bail considering concept of personal liberty under Article 21 of the Constitution of India is concerned, it is true that accused has right to speedy trial in case of ordinate delay in trial since it amounts to violation of fundamental right of an accused and this Court has also considered the said fact in many cases but herein argument canvassed by learned Advocate for the applicant is not accepted as the applicant is arrested on 09.01.2026 and has remained in judicial custody approximately for 6 months which includes the statutory period i.e. investigation, right to get copies of documents, statutory period for filing of a discharge application, which is followed by pre-cognizance hearing under Section 223(1) of the BNSS. 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.

[6.4] Even in offence under IPC also, to use the discretion in favor of an accused to release him on bail, triple test is required to be satisfied considering the flight risk, tampering with evidence and possibility to stand to trial. Hence, possibility that applicant may flee from justice cannot be ruled out. Herein, thought the applicant is not found in conscious possession of the contraband but he was actively involved in the offence in collusion with his real sister who is caught red-handed with conscious possession of prohibited contraband that too in commercial quantity and therefore, if the accused abets an offence, then in aid of section 29(2) of the NDPS Act, clubbing of the said contraband is permissible though obviously it is a subject of trial but this Court is of *prima facie* considered view that present is a case of commercial quantity and hence, rigors of section 37 of the NDPS Act would be applicable, as the applicant facing charge under Section 29 of the NDPS Act, which 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."

[7.0] 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.

[7.1] 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".

[7.2] 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.

[7.3] 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.

[7.4] 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."*

[7.5] Considering the provisions of Section 37, limitation of grant of bail under Section 37(b)(i) of the NDPS 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.

[7.6] Considering the aforesaid provisions, as the applicant is having past antecedent 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.

[8.0] Further, in the present case, 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 ***Lalrintluanga Sailo and Another (Supra)***, 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 *Ganja* is of commercial quantity, rigors of Section 37 of the Act would be applicable.

[8.1] It is apt to refer to the decision of the Hon'ble Supreme Court in the case of **Ash Mohammad Vs. Shiv Raj Singh @ Lalla Babu & anr, reported in 2012 (9) SCC 446** wherein, it has been held that the concept of liberty is not in the realm of absolutism but is restricted.

[8.2] Further, in the case of **CBI vs. V. Vijay Sai Reddy reported in (2013)7 SCC 452**, the Hon'ble Supreme Court observed in paragraph 34 as under:

> *"34. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."*

[9.0] 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. 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.

[10.0] Learned trial Court is directed to expedite the trial as early as

possible since the applicant is an under-trial prisoner. If the co-accused are absconding then the learned trial Court shall separate the trial of such co-accused and the applicant shall also cooperate the learned trial Court in early disposal of the trial. If the applicant fails to engage an Advocate, the trial Court shall appoint an advocate for the accused through District Legal Services Authority / office of Chief Legal Aid Defence Counsel.

[11.0] 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 independently on its own merits without being influenced by the observations made in the present order. Rule is 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 30/07/2026 17:56:53