IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER CHARGESHEET) NO. 21091 of 2026

==========

DIVYESHKUMAR @ DIVYESH SONI ARVINDBHAI SONI

Versus

STATE OF GUJARAT

==========

Appearance:
MR A A ZABUAWALA(6823) for the Applicant(s) No. 1
MS SHRUTI PATHAK, APP for the Respondent(s) No. 1

==========

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

Date : 28/09/2026

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 17.06.2026. No money trail is found and whatever transaction took place is with Mohsin. 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 seven past antecedents out of them, six offences are of Prohibition Act and one offence is of NDPS Act. 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. Co-accused Irfan's bail application has been dismissed by this Court. Another co-accused has been enlarged on bail because there was no recover or proximate cause. Earlier point of time, the applicant was also indulged in drug trafficking activities. The applicant is involved and systematically run drug trafficking network. Statement of other two witnesses namely Kadir and Ishika have been recorded. Beside CDR and money trail, the applicant is found in contact of co-accused. 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 upon perusal of the investigation papers, it appears that, as per the prosecution case, while the police were on patrolling duty, three persons were found with two two-wheeler vehicles. As their movements appeared suspicious, they were intercepted and interrogated. During the course of such inquiry, the police allegedly found contraband, namely Mephedrone, concealed in the dicky of the two-wheeler vehicle belonging to accused No. 3. The contraband was found in two pouches, along with an injection syringe, cash, plastic zip-lock bags, and a pocket digital weighing scale. Thereafter, after following the procedure prescribed under law, the seized muddamal was sent for analysis and was found to be Mephedrone weighing 204.700 grams, having a value of Rs. 20,47,000/-. Accordingly, the accused persons came to be arrested. During the course of

investigation, it was revealed, as per the prosecution case, that the co-accused had arrived in an Innova car along with two witnesses and had allegedly supplied 204.700 grams of Mephedrone to co-accused Sarfaraz. It is further alleged that Sarfaraz had received the said contraband from the present applicant, who had allegedly arrived at the spot near the hotel in a Swift car without a registration number plate. Thus, according to the prosecution, the contraband was ultimately recovered from the conscious possession of co-accused Sarfaraz.

7) Further, during the course of investigation, it was revealed that the applicant had brought MD drugs from Ratlam, Madhya Pradesh to Mangrol for the purpose of sale and was in contact with co-accused Irfan @ Chino Iliyasbhai Makrani. That, on 20.10.2025, co-accused Irfan transferred an amount of Rs.40,000/- from the account of Sarfaraz's wife to the account of Mohsin Irrahim Ravat, who is a friend of the present applicant. The said amount was subsequently withdrawn by co-accused Mohsin Ravat and handed over to the present applicant. Thereafter, on 26.10.2025, the applicant contacted co-accused Irfan and informed him that he would come to meet him. The applicant thereafter arrived in a Maruti Swift car without number plate and delivered 205 grams of MD drugs, valued at Rs.2,85,000/-, to co-accused Irfan. Thus, sufficient material has been collected by the investigating agency against the applicant. The money trail through the account of Mohsin Ravat, who is stated to be a friend of the applicant, prima facie indicates the applicant's involvement with the alleged offence. Whether the money received by the applicant through any other mode is a matter of evidence and appreciation of such evidence is not permissible at this stage. The applicant was in constant contact with the co-accused, as reflected from the CDRs, and that a money trail has also been found. Considering the aforesaid facts and the material collected during the investigation, there is

prima facie material indicating the involvement of the applicant in the alleged offence relating to drug trafficking. Moreover, zip-lock plastic bags and a pocket digital weighing scale were recovered from the possession of the co-accused, which, according to the prosecution, further indicates the involvement of the accused persons in the sale and distribution of drugs. Therefore, considering the material collected during the investigation, the rigours of Section 37 of the NDPS Act would be attracted. 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 but he was supplier of the contraband, in view of the law laid down by the Hon'ble Supreme Court in the case of ***Nawaz Khan (Supra)*****,** 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 seven past antecedents under the NDPS Act 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 seven past antecedents under the NDPS Act which shows that applicant is indulging in similar illegal activities 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) Learned advocate for the applicant has requested for bail on the ground that charge-sheet is already filed however, it is needless to say that merely charge-sheet is filed is not a ground to release the applicant on bail. In this regard reference is required to be made to the decision of the Hon'ble Supreme Court in the case of **Virupakshappa Gouda vs. State of Karnataka** reported in **(2017) 5 SCC 406,** wherein it is held as under :

> *"13. ……. Needless to say, filing of the charge-sheet does not in any manner lessen the allegations made by the prosecution. On the contrary, filing of the charge-sheet establishes that after due investigation the investigating agency, having found materials, has placed the charge-sheet for trial of the accused persons."*

16) One more aspect is also required to be considered, so far concept of the bail is concerned, purpose of the bail is not a punitive but a preventive. While granting bail, the Court has to take care the availability of the accused at the time of trial and second important aspect is that possibility of the tampering with an evidence of the prosecution. Further, while granting bail, the Court has to satisfy itself about the interest of prosecution. One of the criteria which is required to be considered while considering bail is interest of prosecution witnesses. This Court is of the considered opinion that if the present accused is enlarged on bail, the possibility of accused misusing his liberty and tampering with evidence of prosecution and flight risk cannot be ruled out. At this stage, it would be apposite 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** wherein the Hon'ble Apex Court has 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. In the said decision, the Hon'ble Supreme Court relying on the decision of Hon'ble Supreme Court in the case of **Prasanta Kumar Sarkar vs. Ashis Chatterjee** reported in **(2010) 14 SCC 496** has observed in paragraph 30 as under:

> *"30. We may usefully state that when the citizens are scared to lead a peaceful life and this kind of offences usher in an impediment in establishment of orderly society, the duty of the court becomes more pronounced and the burden is heavy. There should have been proper analysis of the criminal antecedents. Needless to say, imposition of conditions is subsequent to the order admitting an accused to bail. The question should be posed whether the accused deserves to be enlarged on bail or not and only thereafter issue of imposing conditions would arise. We do not deny for a moment that period of custody is a relevant factor but simultaneously the totality of circumstances and the criminal antecedents are also to be weighed. They are to be weighed in the scale of collective cry and desire. The societal concern has to be kept in view in juxtaposition of individual liberty. Regard being had to the said parameter we are inclined to think that the social concern in the case at hand deserves to be given priority over lifting the restriction of liberty of the accused."*

In the present case, the applicant is having **total 7 past antecedents including 1 under the NDPS Act and 6 under the Prohibition Act**. This shows that the applicant is habitual in committing offences and if the applicant is released on bail in connection with the present offence, then it would send wrong signal and message to the society and undermines public confidence in judicial system.

17) Therefore, considering past antecedents of the applicant, further possibility of tampering with evidence cannot be ruled out if the applicant is released on bail. In view of decision of the Hon'ble Supreme Court in the case of **State of U.P. Through CBI vs. Amarmani Tripathi** reported in **(2005) 8 SCC 21,** and considering the gravity and seriousness of the offence, as well as the fact that the victim is yet to be examined, it is not expedient to enlarge the applicant on bail.

18) 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 **seven past antecedents** (one is of NDPS Act and six are of Prohibition 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.

19) 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.

20) 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)

SUCHIT

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: PATEL SUCHIT JAYESHBHAI(HC01083), Private Secretary, at High Court of Gujarat on 28/09/2026 15:48:17