

Reserved On : 28/01/2025
Pronounced On : 04/02/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER
CHARGESHEET) NO. 348 of 2025**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Sd/-

=====

Approved for Reporting	Yes	No
		No

=====

PRAGNESH PRAVINBHAI THUMMAR

Versus

STATE OF GUJARAT

=====

Appearance:

MR. KISHAN H DAIYA(6929) for the Applicant(s) No. 1

MR. SOHAM JOSHI, APP for the Respondent(s) No. 1

=====

CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

CAV JUDGMENT

1. Rule returnable forthwith. Learned APP waives service of notice of rule for and on behalf of the respondent-State.
2. The present successive application is filed under Section 483 of the Bhartiya Nagrik Suraksha Sanhita, 2023, for regular bail in connection with the FIR being C.R. No.11210015200082 of 2020 registered with the D.C.B. Police Station, Surat of the offence punishable under Sections 8(C), 22(C) and 29 of the NDPS Act.
3. The brief facts leading to the filing of the present

application are that police official of the D.C.B. Police Station received a tip-off that the accused, namely, Salman @ Aman Mohammed Hanif Zaveri, a resident of Surat is transporting the Narcotic Substance in his car and would be passing from Kuvada Tea point to Surat City for selling the said Narcotic substance and upon that information, the necessary procedure had been carried out, and raid was conducted and one accused, namely, Salman was caught by the police along with the contraband substance Mephedrone worth 1011.82 grams, and after following due procedure in accordance with law, the FIR came to be filed.

4. Mr. Kishan Daiya, learned counsel for the applicant has submitted that the applicant-accused was arrested on 18.10.2020 and since then he is in jail. Learned advocate Mr. Daiya for the applicant has also submitted that the investigation has already been completed and charge-sheet has also been filed. He has further submitted that the applicant-accused has not been named in the FIR, and he has been falsely implicated in the present offence on the basis of the statement made by the co-accused during the course of investigation. Learned advocate Mr. Daiya has also submitted that, in fact, the charge-sheet has been filed against in all total 19 persons, out of which, eight persons, having similar or graver role than that of the applicant-accused, have already been enlarged on bail. He has submitted that the contraband substance was not found from the conscious possession of the applicant-accused and he was not caught red-handed on the spot along with the contraband substance. Learned advocate Mr. Daiya has further submitted that there are in all total six

supplementary charge-sheets have been filed in the present case, and total 196 persons have been cited as witnesses, and all those cases have been ordered to be consolidated and heard together, which is indicative of the fact that the trial would take considerable long period of time to conclude, and keeping the applicant-accused behind the bar for such an indefinite period of time, would be nothing but a pre-trial conviction. The applicant accused came to be arrested on 18.10.2020 and since then he is in jail, i.e., for more than four years, and considering the period of incarceration already undergone by the applicant-accused, he is entitled to be released on bail. Moreover, there is no recovery or discovery at the instance of the applicant-accused. He has submitted that the applicant-accused is an educated man, having completed the study in Pharmacy with gold medal, having a bright future in pharmacy industry. In such circumstances, referred to above, learned advocate Mr. Daiya prays that there being merit in this application, the same may be allowed and the applicant-accused may be released on bail on any suitable terms and conditions.

5. The learned APP Mr. Joshi appearing on behalf of the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence. Learned APP has submitted that the role of the present applicant-accused is clearly found out from the charge-sheet papers. Learned APP Mr. Joshi has further submitted that the applicant-accused has studied in Pharmaceutical and is the main manufacturer of the contraband substance, and he is actively involved in such kind of illegal activity. Learned APP has also submitted that during

the course of investigation, the investigating officer has collected ample and clinching evidences against the applicant-accused which indicates his active involvement in the commission of the crime. He has also submitted that for doing the said illegal activity of manufacturing the contraband substance, he has also taken one house on rent, and the statement of the landlord has also been recorded by the investigating officer during the course of the investigation, wherein he has stated that the applicant-accused had taken his house on rent by saying that he is manufacturing the drug medicines to be used in severe diseases. The statement of the persons from whom the applicant-accused purchased the chemicals and other relevant materials have also been recorded. The applicant-accused is the main manufacturer of the contraband substance. There are also all possible chances that the applicant-accused may run away from the trial proceedings and, therefore, to secure his presence, he may not be enlarged on bail. It is further submitted that a huge quantity of 1011.82 kg Mephedrone has been recovered in the present offence, and therefore, rigors of Section 37 of the NDPS Act would come into play, and as such, this is a fit case wherein discretionary power of this Court is not required to be exercised in favour of the applicant-accused.

6. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether discretion should be exercised in favour of the applicant herein.

7. In light of the aforesaid, it is pertinent to refer and analyze the provisions and objective of the NDPS Act. Section 37 of the Act reads as under:

“37. Offences to be cognizable and non-bailable. -

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 1[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless--

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

8. In view of the gravity of the consequences of drug trafficking, the offences under the NDPS Act have been made cognizable and non- bailable. The Section does not allow granting bail for offences punishable under Section 19 or Section 24 or Section 27A and for offences involving commercial quantity unless the two-fold conditions prescribed under the Section have been met. The conditions include:

- a) hearing the Public Prosecutor; and
- b) Satisfaction of the court based on reasonable grounds that the accused is not guilty of the offence and that he is likely to not commit an offence of a similar nature.

9. The fetters on the power to grant bail does not end here, they are over and above the consideration of relevant factors that must be done while considering the question of granting bail. The court also needs to be satisfied before grant of bail about the scheme of Section 483 of the Code. Thus, it is evident that the present section limits the discretion of the court in matters of bail by placing certain additional factors over and above, what has been prescribed under the Code.

10. The contours of Section 37 of the Act have been analysed by the Hon'ble Supreme Court in the case of Union of India v. Ram Samujh (1999) 9 SCC 429. In this case, the Apex Court adjudged the validity of the order on bail granted by the High Court in a case registered under the Act. The Hon'ble Court extracted the Statement of Objects and Reasons for the introduction of amended Section 37 of the Act through Bill No. 125 of 1988. It is relevant to extract those for the present analysis, which reads as:

"6. The aforesaid section is incorporated to achieve the object as mentioned in the Statement of Objects and Reasons for introducing Bill No. 125 of 1988 thus:

"Even though the major offences are non-bailable by virtue of the level of punishments, on technical grounds, drug offenders were being released on bail. In the light of certain difficulties faced in the

enforcement of the Narcotic Drugs and Psychotropic Substances Act, 1985, the need to amend the law to further strengthen it, has been felt."(emphasis supplied)

7. *It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind 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 a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in Durand Didier v. Chief Secy., Union Territory of Goa [(1990) 1 SCC 95 : 1990 SCC (Cri) 65] as under: (SCC p. 104, para 24)*

"24. With deep concern, we may point out 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, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine."

11. Thus, what is evident from the above is that the offences prescribed under the Act are not only a menace to a particular individual but to the entire society especially, the youth of the country. Such offences have a cascading effect and are in vogue these days, thus destroying the capabilities and lives of a substantial chunk of the population and trend has been growing over the years. Thus, to prevent the devastating impact on the people of the nation, Parliament in its wisdom deemed it fit to introduce stringent conditions for grant of bail under the Act. The Court must stay mindful of the legislative intent and mandate of the Act while considering the question bail in such matters.

12. As far as condition under [Section 37\(b\)\(i\)](#) is concerned, there is no ambiguity in its interpretation. It gives effect to the doctrine of audi alteram partem. Since the crime is an act against the society, the legislature has contemplated that the Public Prosecutor must be given an opportunity to oppose a bail application under the Act. Additionally, under [Section 37\(b\)\(ii\)](#) of the NDPS Act, the court is not required to be merely satisfied about the dual conditions i.e., prima facie opinion of the innocence of the accused and that the accused will not commit a similar offence while on bail, but the court must have „reasonable grounds“ for such satisfaction.

13. The term “reasonable grounds” under [Section 37\(b\)\(ii\)](#) has been interpreted by the Hon“ble Supreme Court in the case of [Union of India v. Shiv Shanker Kesari](#), (2007) 7 SCC 798. It was a case where an appeal was preferred against the order granting bail under the [NDPS Act](#) by the

High Court. The prosecution alleged that the raiding party seized nearly 400 kgs of poppy straw from the possession of the accused therein. The special court rejected the bail while the High Court granted the bail on the ground that the recovery was not from the exclusive possession of the accused, but other family members were also involved. The Supreme Court set aside the order granting bail. In this context, it interpreted „reasonable grounds“ under [Section 37](#) of the Act, as under:

"7. The expression used in [Section 37\(1\)\(b\)\(ii\)](#) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act
Signature Not Verified Digitally Signed
By:GAURAV SHARMA Signing Date:25.01.2022
17:34:17 reasonably, knows or ought to know. It is difficult to give an exact definition of the word "reasonable".

14. Thus, the term “reasonable grounds” is not capable of any rigid definition, but its meaning and scope will be determined based on the surrounding facts and circumstances of each case. Thus, what may be reasonable in one set of facts may not be reasonable in another set of facts. However, the standard of satisfaction in such cases is more than mere satisfaction on a prima facie opinion. Thus, the court before

exercising its discretion for granting the bail must record the reasonable grounds before granting bail to the accused.

15. The Supreme Court in the case of [Union of India v. Md. Nawaz Khan](#) (2021) 10 SCC 100 has reiterated the position of law with respect to [Section 37](#) of the Act. After analysing the previous decisions of the Hon“ble Supreme Court, the court prescribed the following test for granting bail under [Section 37](#) of the NDPS Act:

"20. Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the [NDPS Act](#) and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the [NDPS Act](#) have been prescribed."

16. Thus, the court must be conscious about the mischief that is sought to be curbed by the Act and the consequences that might ensue if the person accused of the offence under the Act is released on bail. The court ought to be satisfied on the basis of reasonable grounds discernible from the facts and circumstances that the Petitioner is not guilty of offences that the accused is charged with. Additionally, the court also needs to be satisfied that the person so released will not commit the offence while being on bail. Both the conditions are interlinked because the legislature intends that in cases where there is a possibility of commission of this grave offence under the Act, the person need not be released. It is so because if the person is released, he is most likely to repeat the offence, thus impacting the society at large. Thus, to not give any leeway to

the accused, the court has to be satisfied about the dual conditions on reasonable grounds.

17. In the instant case, the case of the applicant and his role in the entire sequence of events is not as simple as has been projected during the entire course of arguments by learned counsel for the applicant. He is not merely arrested for the small quantity of contraband but has been implicated for his role as being a part of a larger drug trafficking. Here, in the present case, the applicant is charged for commercial quantity weighing 1011.82 grams of Mephedrone and, therefore, his bail application needs to be decided as per [Section 37](#) of the Act. As per the materials available on record, the applicant-accused is the main manufacturer of the Mephedrone drugs, who was manufacturing the contraband drugs and then supplying it in the market through different persons. All requisite procedures had also been followed as per the law and, thereafter, the accused persons came to be arrested. At the time of granting bail, the court has to consider the role played by the applicant-accused in the commission of the offence as well as gravity of offence and in the present case, considering the role played by the applicant in the offence, as the act of the applicant would effect to the youth of the nation, I am of the opinion that the present application is required to be rejected.

18. Proceeding to the application of Section 37 in the instant matter, the Public Prosecutor has been heard who has vehemently opposed the bail petition with reasons. With respect to the second condition prescribed thereunder, this

Court is satisfied that there are no reasonable grounds, based on the analysis of the provision in the foregoing paragraphs and its application to the facts of the case, for this Court to believe that the applicant is not guilty of the offence that he has been charged with. Since this court is not satisfied on this ground, there is no question to consider that the accused will not commit the offence while on bail.

19. In view of the aforementioned facts, circumstances, analysis and reasoning, keeping in mind the legal provisions and the underlying intent as well as the mischief that is sought to be curbed by the NDPS Act, this Court is of the considered view that the conditions stipulated under Section 37 of the Act are not satisfied and there are no "reasonable grounds" to presume the accused as not being guilty of the offence. Thus, this Court is not inclined to allow the instant bail application as being devoid of any merit and hence, liable to be rejected.

20. Accordingly, the instant bail application stands rejected. Rule is discharged.

(DIVYESH A. JOSHI,J)

VAHID