

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR SUCCESSIVE REGULAR BAIL -
AFTER CHARGESHEET) NO. 21669 of 2024**

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MOHAMMAD SADIK @ SAJJU MOHAMMAD RAFIK GULAMNABI PATHAN
Versus
STATE OF GUJARAT

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Appearance:

MR BILAL M RADHANPURWALA(10978) for the Applicant(s) No. 1
MR NISHIT H SHAH(10712) for the Applicant(s) No. 1
MR UTKARSH SHARMA APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 28/02/2025

ORAL ORDER

1. This present successive bail application has been filed under section 439 of the Code of Criminal Procedure, 1973 in connection with the FIR No.11191011210096 of 2021 registered with D.C.B. Police Station, Ahmedabad City for offences punishable under sections Section 8(C), 22(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS') .

2. Learned advocate Mr. Satyam Chhaya for Mr. Nishit H.Shah appearing for the applicant has submitted that the present applicant was arrested on 11.08.2021 and since last three and half years he is in jail. The proceeding has not taken the speed and till then only two witnesses have been examined and, thus, has referred to

the judgments of the Supreme Court, which are as under;

(i) In the case of Rabi Prakash v/s. The State of Odisha reported in 2023 Live Law (SC) 533.

(ii) In the case of Ankur Chaudhary V/s. State of Madhya Pradesh, rendered in Special Leave to Appeal (Crl.) No.4648/2024 dated 28.05.2024.

(iii) In the case of Mohd Muslim @ Hussain V/s. State (NCT of Delhi) reported in 2023 Live Law (SC) 260.

(iv) In the case of Kulwinder Singh V/s. State of Punjab on 23.04.2024.

3. Learned advocate Mr. Chhaya submitted that long incarceration in the jail has weighed to the Supreme Court and has considered it as violation of the fundamental rights guaranteed under Article 21 of the Constitution of India, and as such, conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered.

4. Learned advocate Mr. Chhaya submitted that in NDPS trials, Special Court would not have much time to give importance to a particular matter.

5. Countering the arguments, learned APP Mr. Utkarsh

Sharma has submitted that once a trial begins, then no concession of bail should be granted, as laid down in case of X Vs. State of Rajasthan & Anr., rendered in Special Leave Petition (Criminal) No.13378/2024, dated 27.11.2024. Mr. Sharma further stated that equal importance is to be given to all the parties before the Special Court, hence, no privilege should be granted to any of the accused, and thus, urged to reject the present application.

6. Heard learned advocates on both the sides and perused the material on record. The report of the City Civil Judge, Special Court was called for and the report dated 09.12.2024 shows that there are about 29 witnesses in the matter and two witnesses were examined. The learned Judge has not shown any time bound schedule of examination of the witnesses. Thus, taking into consideration the long incarceration of the applicant of three and half years, this Court finds this to be a fit case where discretion could be exercised in favour of the applicant.

7. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR No.11191011210096 of 2021 registered with D.C.B. Police Station, Ahmedabad City on executing a personal bond of Rs.15,000/- (Rupees Fifteen Thousand only) with one surety of the like amount to the

satisfaction of the trial Court and subject to the conditions that he shall;

[a] not take undue advantage of liberty or misuse liberty;

[b] not act in a manner injurious to the interest of the prosecution;

[c] surrender passport, if any, to the lower court within a week;

[d] not to leave State of Gujarat without prior permission of the concerned trial Court;

[e] furnish the present address of residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of the concerned trial court;

8. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the lower Court having jurisdiction to try the case.

9. Rule is made absolute to the aforesaid extent. Direct service is permitted. Registry to communicate this order to the concerned Court/authority by Fax or Email forthwith.

(GITA GOPI,J)

Vikramsinh Amarsinh