

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER
CHARGESHEET) NO. 6678 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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IQBAL ALIMIYA KADRI @ IQBAL BHANGARIYA
 Versus
 STATE OF GUJARAT & ANR.

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Appearance:

MR HITESH P PRAJAPATI(12819) for the Applicant(s) No. 1

MR.KISHAN PRAJAPATI(7074) for the Applicant(s) No. 1

MR KARTIK V PANDYA(2435) for the Respondent(s) No. 2

MR. L.B. DABHI, LD. ADDL. PUBLIC PROSECUTOR for the Respondent(s)
 No. 1

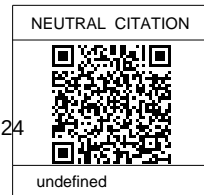
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CORAM: HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 09/05/2024

CAV JUDGMENT

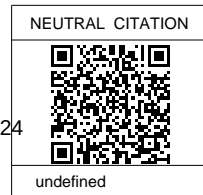
1. Rule returnable forthwith. Learned APP waives service of notice of rule for and on behalf of the respondent No.1 and



learned advocate Mr. Kartik Pandya waives service of notice of rule for and on behalf of the respondent No.2.

2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with the FIR being C.R. No.05 of 2021 (CR No.NCB/AZU/CR NO.-06 of 2022) registered with the ATS Police Station, Ahmedabad of the offence punishable under Sections 8 (C), 21(c), 23 (c), 25, 27 (a), 28, 29, 35 and 54(a) of the NDPS Act.

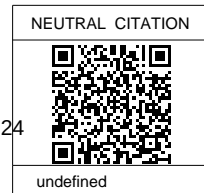
3. Learned advocate Mr. Kishan Prajapati appearing for the applicant submits that the applicant-accused was arrested on 18.11.2021 and since then he is in jail. Learned advocate for the applicant has also submitted that the investigation has already been completed and charge-sheet has also been filed. It is further submitted that the applicant-accused has not been named in the FIR and during the course of investigation, the name of the applicant-accused has come on surface on the basis of the statement made by the co-accused. It is also submitted that there is no recovery or discovery of any narcotic substance from the applicant-accused. Learned advocate Mr. Prajapati has further submitted that only on the basis of CDR collected by the Investigating Officer, the applicant-accused has been arraigned as an accused that he was in touch with the other co-accused persons. Except that, no incriminating material is found against the applicant-accused. Learned advocate Mr. Prajapati has also submitted that if the Hon'ble Court would go through the contents of the charge-sheet papers, in that event, it would be found out that



the role attributed to the applicant-accused is of carrier who has supplied the contraband substance to one accused at the instance of another accused. Learned advocate Mr. Prajapati has further submitted that the other similarly situated co-accused persons have already been enlarged on bail by this very court. Learned advocate Mr. Prajapati has submitted that the applicant-accused is in jail since 18.11.2021, i.e., for more than two years and, therefore, considering the period of incarceration already undergone by the applicant-accused, the present bail application may be entertained the applicant-accused may be enlarged on bail. To substantiate his arguments, learned advocate Mr. Prajapati relies upon the following decisions;

- i) The decision of the Supreme Court in the case of Bharat Chaudhary vs. Union of India, reported in 2021 (15) Scale 178;
- ii) Another decision of the Supreme Court in the case of Anirudhsinh Umedsinh Jadeja vs. The State of Gujarat, SLP No.1237 of 2024;
- iii) One another decision of the Supreme Court in the case of Vandit Bharatbhai Patel vs. State of Gujarat, SLP No.1526 of 2024;

4. On the other hand, this application has been vehemently opposed by learned advocate Mr. Kartik Pandya appearing for the respondent No.2. He has submitted that the direct involvement of the applicant-accused is clearly found out from the body of the charge-sheet papers. Learned advocate Mr.

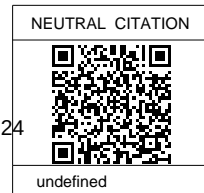


Pandya has also submitted that at the time of commission of crime, the applicant-accused was in constant touch with the main accused persons from whose conscious possession, the contraband article heroin was recovered by the members of the raiding party, which is evident from the CDR collected by the investigating officer. The role attributed to the applicant-accused is of carrier who was supplying the contraband substance to the other co-accused. Learned advocate Mr. Pandya further submits that the narcotic substance heroin recovered in the present case is 118.650 kg which is commercial in nature and, therefore, rigors of Section 37 of the NDPS Act would also come into play. Thus, considering the role attributed to the applicant-accused, this is a fit case wherein discretionary power of this Court is not required to be exercised in favour of the applicant-accused.

5. The learned APP appearing on behalf of the respondent-State has also opposed grant of regular bail and submitted that considering the role attributed to the applicant-accused, this is a fit case wherein discretionary power of this Court is not required to be exercised in favour of the applicant-accused.

6. The learned advocates appearing on behalf of the respective parties do not press for further reasoned order.

7. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers of the investigation and considered the allegations levelled against the applicant and the role played by the applicant. This Court has also considered the following aspects;

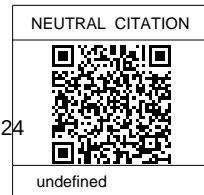


- a) That the investigation has already been completed and charge-sheet has also been filed;
- b) That the other identically situated co-accused persons have already been enlarged on bail by this very Court;
- c) That the applicant-accused has not been named in the FIR and has been implicated in the present offence on the basis of the statement made by the co-accused;
- d) That the applicant-accused is in jail since 18.11.2021, i.e, for more than two years and, therefore, considering the period of incarceration already undergone by the applicant-accused, the present bail application deserves consideration;

8. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of **Sanjay Chandra v. Central Bureau of Investigation**, reported in [2012]1 SCC 40.

9. In the facts and circumstances of the case and considering the nature of the allegations made against the applicant in the FIR, without discussing the evidence in detail, *prima facie*, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail.

10. Hence, the present application is allowed and the applicant is ordered to be released on regular bail in connection with the FIR being C.R.No.05 of 2021 (CR No.NCB/AZU/CR NO.-06 of 2022) registered with the ATS Police

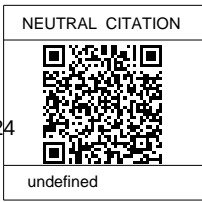


Station, Ahmedabad, on executing a personal bond of Rs.15,000/- (Rupees Fifteen Thousand only) with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that he shall;

- [a] not take undue advantage of liberty or misuse liberty;
- [b] not act in a manner injuries to the interest of the prosecution;
- [c] surrender passport, if any, to the lower court within a week;
- [d] not leave the State of Gujarat without prior permission of the Sessions Judge concerned;
- [e] mark presence before the concerned Police Station on alternate Monday of every English calendar month for a period of six months between 11:00 a.m. and 2:00 p.m.;
- [f] 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 this Court;

11. The authorities will release the applicant only if he is not required in connection with any other offence for the time being. 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.

12. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above



conditions, in accordance with law.

13. At the trial, the trial Court shall not be influenced by the observations of preliminary nature qua the evidence at this stage made by this Court while enlarging the applicant on bail. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

(DIVYESH A. JOSHI,J)

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