

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER
CHARGESHEET) NO. 7825 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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SARJERAO KESHAVRAO GARAD
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

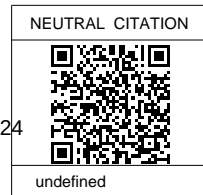
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CORAM: HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

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



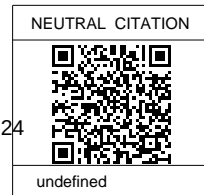
learned advocate Mr. Kartik Pandya waives service of notice of rule for and on behalf of the respondent No.2.

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. The factual matrix in the instant case, as submitted by the prosecution, is as under:

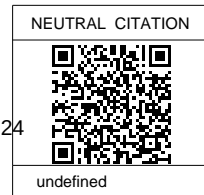
3.1 On 14.11.2021, when the complainant along with the other police personnel were on duty at the A.T.S Office, at that time at around 12:30 hours, Superintendent of Police Mr. K.K. Patel received a tip-off that one Mukhtahussain @ Jabbar Jodiya Noormamad in company with his uncle Isha Rav and his punter Gulmahussain Umar Bhagad have brought the cache of contraband substance heroin from Pakistan through seaway and kept the same hidden at the newly constructed house situated near the house of one Samsuddin Hussainmiya Saiyed (Pirzada) at village Zinjuda and are going to shift the same at some hidden location. The said information was then reduced into writing and forwarded to the superior officer, who then instructed them to carry out the raid.

3.2 Thereafter, for the purpose of carrying out raid, Panchas were also called for and after following the due procedure of



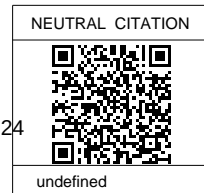
raid, all the members of the raiding party reached at the house under information and found one person present over there and upon asking his name he identified himself as Samsuddin Hussainmiya Saiyed. Thereafter, when the police asked him about Jabbar Jodiya, Isha Rav and Gulam Bhagad, he told that Jabbar Jodiya and Gulam Bhagad are present inside the house. Thereafter, when the police called both of them by their names, two persons came out and, thereafter, the police introduced themselves to those two persons and asked them about their names, whereupon, they identified themselves as Mukhtarhussain @ Jabbar Jodiya Noormamad and Gulamhussain Umar Bhagad. The police then got acquainted all the aforesaid three persons with the secret information received by them that they have illegally kept the cache of contraband substance heroin in the newly constructed house owned and occupied by them and, therefore, they have to carry out the search of the said premises.

3.3 Thereafter, personal search of all of them was carried out, however, nothing objectionable was found upon his personal search. After that, the police entered into the premises from where they found some suspicious substances lying in various plastic bags hidden under the mattresses, and upon asking about the same to the aforesaid three persons, Mukhtarhussain @ Jabbar Jodiya and Gulamhussain Umar Bhagad admitted it to be the contraband psychotropic substance heroin, whereas Samsuddin Hussainmiya Saiyed told that the said bags belong to Mukhtarhussain @ Jabbar Jodiya, his brother Isha Rav and Gulamhussain Umar Bhagad



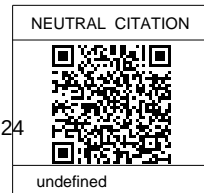
and he does not know what is lying in the same. The quantity of the contraband substance found from the said premises was of 118.650 kg. Thereafter, samples were taken and upon testing with the drug detection kit, the samples tested positive for heroin. Hence, the present FIR.

4. Learned advocate Mr. Kishan Prajapati appearing for the applicant submits that the applicant-accused is an innocent person, aged about 57 years languishing in the judicial custody since 27.11.2021. It is further submitted that the investigation has already been completed and charge-sheet has also been filed. Learned advocate Mr. Prajapati further submits that the applicant-accused has not been named in the FIR and his name come on fore during the course of investigation on the basis of the statement made by one of the co-accused, namely, Michael Ugochuko Christian who came to be arrested subsequently. The allegations against the applicant-accused are that the applicant-accused went to Bhavnagar and at some other places for getting the delivery of the narcotic substance upon the say of Michael Ugochuko and for the said work, the applicant-accused got some money from the said accused, however, to establish the said charges, there is no evidence produced by the investigating agency, except the statement of the co-accused. Learned advocate Mr. Prajapati also submits that the applicant-accused was not found in possession of the contraband substance and even he was not present at he place of occurrence when the raid was carried out. He was not caught red-handed by the raiding party. It is further submitted that there is no recovery or discovery of any



Muddamal article at the instance of the applicant-accused. Learned advocate Mr. Prajapati also submits that it is a settled legal position that any confessional statement made by the accused cannot be made the basis to implicate the other person as the same does not have any evidentiary value in the eye of law. It is further submitted that the other co-accused persons have already been enlarged on bail by this very Court. Learned advocate Mr. Prajapati has submitted that the applicant-accused was not found in conscious possession of the narcotic substance and has been implicated in the present offence on the basis of the statement made by the other co-accused. Further, the applicant-accused is in jail since 27.11.2021, i.e, for more than two years and, therefore, considering the period of incarceration already undergone by the applicant-accused as well as the facts narrated herein above, he may be released on bail on any suitable terms and conditions.

5. On the other hand, this application has been vehemently opposed by the learned advocate Mr. Kartik Pandya appearing for the respondent No.2-Union of India. Looking to the nature and gravity of the offence. He has submitted that on the basis of the specific inputs received by the members of the raiding party, they had carried out a search at the premises of the co-accused from where a commercial quantity of contraband substance was recovered. It is more so submitted that the applicant-accused at many times, had effectuated the transportation of heroin from Gujarat to Delhi under the instruction of co-accused Michael Ugochuko. In the present case also, the applicant had collected the contraband from

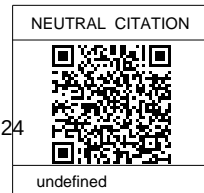


Gujarat and delivered it to the co-accused Michael Ugochuko at Delhi, for which, Michael Ugochuko also sent traveling tickets to the applicant-accused on his whatsapp. Not only that, the said co-accused Michael Ugochuko also sent significant amount in the bank account of the daughter of the applicant-accused, namely, Harshida and his son Harshad and, therefore, it can be said that the applicant-accused has been actively involved in the drug trafficking. 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.

6. 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.

7. 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.

8. 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--

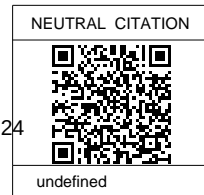
(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(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.”

9. 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.

10. 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 439 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.

11. 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:

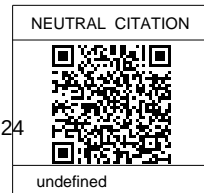
"Even though the major offences are non-bailable by virtue of the level of punishments, on technical grounds, drug offenders were being released on bail. In the light of certain difficulties faced in the enforcement of the Narcotic Drugs and Psychotropic Substances Act, 1985, the need to amend the law 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."

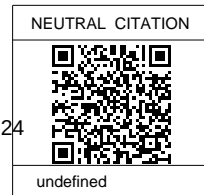
12. Thus, what is evident from the above is that the offences prescribed under the Act are not only a menace to a particular individual but to the entire society especially, the youth of the country. Such offences have a cascading effect and are in



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.

13. 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.

14. 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

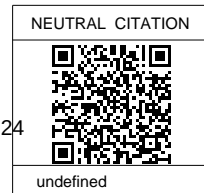


not from the exclusive possession of the accused, but other family members were also involved. The Supreme Court set aside the order granting bail. In this context, it interpreted „reasonable grounds“ under [Section 37](#) of the Act, as under:

"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".

15. 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.

16. 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

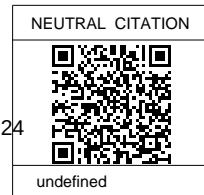


previous decisions of the Hon“ble Supreme Court, the court prescribed the following test for granting bail under [Section 37](#) of the NDPS Act:

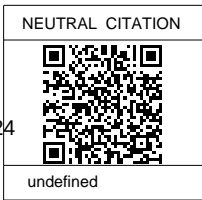
"20. Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness 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."

17. 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.

18. 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. In the present case, there is recovery of 118.650 kgs of heroin from the house owned by the other co-accused. It is true that the applicant-accused has not been named in the FIR, however, during the course of investigation, his name has come on fore on the basis of the statement of the co-accused Michael Ugochuko from whose conscious possession also, 642 grams of heroin had been recovered and he appears to be indulged in doing such illegal activity of drug trafficking since long. It has also come on record that before the said incident, the applicant-accused had gone to Bhavnagar and other places for getting the delivery of the Narcotic substance under the instructions of said Michael Ugochuko. Not only that, many times, the applicant-accused has illegally transported the narcotic substance from Gujarat to Delhi and handed it over to Michael Ugochuko and, therefore, it can safely be said that the applicant-accused is a habitual drug peddler. Moreover, the record further reveals that for doing such illegal activities, significant amount has been deposited in the bank account of the applicant's daughter Harshida and son Harshad by the co-accused Michael Ugochuko. Thus, from the above, it appears that the role played by the applicant-accused appears to be of drug peddler and, therefore, it can be said that the role of the other co-accused who have already been enlarged on bail is distinct and different than the role attributed to the present applicant-accused and, therefore, parity cannot be claimed in the present case. It is pertinent to note that the total quantity



of contraband recovered in this case is 118.650 kg which falls under the commercial quantity and thus the embargo of Section 37 of the NDPS Act is applicable.

19. Therefore, looking into the entire circumstances of the present case and the fact that the contraband substance recovered in the present case is commercial in nature, there are no reasonable grounds for believing that the applicant is not guilty of the offence. That being the case, the limitations prescribed for the grant of bail under Section 37 NDPS Act are not satisfied and thus, no benefit can be given to him at this stage.

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

(DIVYESH A. JOSHI,J)

VAHID