



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR SUCCESSIVE REGULAR BAIL -
AFTER CHARGESHEET) NO. 23992 of 2024
[On note for speaking to minutes of order dated 28/02/2025 in
R/CR.MA/23992/2024]

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DENISH SURENDRA JOTA
Versus
STATE OF GUJARAT

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Appearance:

MR SALIM M SAIYED(5172) for the Applicant(s) No. 1
MR. KISHAN H DAIYA(6929) for the Applicant(s) No. 1
MS CM SHAH, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA
Date : 07/03/2025
ORAL ORDER

Upon hearing learned advocate for the applicant, the discrepancies pointed out in the Note for Speaking to Minutes deserve to be corrected. It is, therefore, directed that in the order dated 28.02.2025 passed in Criminal Misc. Application No.23992 of 2024, the FIR number i.e. **“I.CR. No.11210015200082 of 2021”** be read and corrected as **“FIR No.11210015200082 of 2020”** and also the NDPS Case number i.e. **“Special NDPS Case No.3 of 2022”** be read and corrected as **“Special NDPS Case No.28 of 2022”**.

Fresh writ be issued. The Note for Speaking to Minutes is disposed of accordingly. Direct Service today is permitted.

(ILESH J. VORA,J)

Rakesh

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA**Date : 28/02/2025****ORAL ORDER**

1. By way of this successive bail application under Section 483 of B.N.S.S., 2023, the accused Denish Surendra Jota is seeking regular bail in connection with the FIR being I.CR. No. 11210015200082 of 2021 registered with DCB Police Station, Surat, for the offences punishable under Sections 8(c), 22 (c) read with Section 29 of the Narcotic Drugs and Psychotropic Substance Act,1985, (herein after referred to as 'the NDPS Act' for short).

2. The applicant herein, arrested on 27.11.2021. Chargesheet against the applicant is filed on 20.05.2022, which culminated into Special NDPS Case No. 3 of 2022.

3. The facts and circumstances giving rise to file



present application are that, the police officials of the DCB Police Station, Surat received secrete information that the accused no. 1 Salman @ Aman Mohd. Hanif Zaveri, residents of Surat, is going in his car from Kuwada Tea Point to Surat City, for selling and transpiration of psychotropic substance. The information received on 22.09.2020 and same was noted down by the Officer and after following the procedure, the raid was conducted. The accused Salman was intercepted at the place mentioned in the information and during the proceedings, the narcotic substance mephedrone 1011.82 Gm., which is commercial in quantity found and recovered from the conscious possession of the accused no. 1 Salman. The contraband seized in the presence of panchas and at relevant time, the accused no. 1 was carrying 5 mobile phones which were also seized by the officials. During the investigation, it reveals that the accused no. 1 being a paddler, selling the narcotic substance through co-accused and huge network uncovered and accordingly, police officials recovered and seized 6 different diaries wherein, the names of the purchasers and seller with the quantity of the narcotic drugs and the financial transactions found, having been maintained by the accused no. 1. The specimen signature and hand writing of the accused no. 1 was taken for the purpose of examination of the handwriting of the diaries. The five cell phones found from the accused no. 1, were also sent for



forensic science laboratory, the details of CDR have also been obtained from the different service providers and upon analysis of the CDR details and considering the evidence of the diaries, the investigating agency recorded statements of various persons who are either drug edicts or purchaser of the contraband drugs for their financial vested interest. During the course of investigation, it reveals that, the seized contraband drugs, was to be given to co-accused for further sale in the market. In all, 19 accused on the different dates have been arrested, against whom, chargesheets came to be filed before the Special Court.

So far, role of present applicant is concerned, it is alleged that, the applicant is drugs edict and was purchasing the contraband substance from the accused no. 1 for himself and to sell purpose. After his arrest, it reveals that, either he made payment for purchase in cash or used Google pay or Pay-tm through witnesses. During the investigation, the witnesses namely Rajkumar Roopchand, Rajat Nirmal Kumar, Prit Prakashbhai, Salia Musa, Nidhika Badriprasad, Shivendra Rajendrasinh and others have categorically, stated that the applicant - accused is drug edict and was selling the contraband to them as well as different persons after procuring the same from accused no. 1. It is case of the prosecution that, the applicant accused was in constant touch on different



mobile phones with the accused no. 1 and conversation of the phones reveals the fact of doing business of contraband. The name of the applicant accused is also found in the diary marked 'D1', 'D2', 'N2' and 'N3', wherein, his reference was made for accounting purpose.

In such circumstances, it is alleged by the prosecution that, there is sufficient evidence found against the applicant that, the contraband recovered from accused no. 1, was in the knowledge of the present applicant herein as he himself purchaser of the 50 grms for his personal use as well as for his customer and since long, he was associated with the principal accused for carrying out the illegal drug business and therefore, applicant accused is abettor and is a party to the criminal conspiracy to commit alleged offence.

4. This Court has heard learned counsel Mr. Salim Saiyed with Mr. Kishan Daiya for the applicant and Ms. C.M.Shah, learned APP for the respondent-State.

5. Mr. Salim Saiyed, learned counsel for the applicant has submitted that, after rejection of the earlier bail application, the accused went to the Supreme Court by filing Special Leave Petition and the same was withdrawn. After the withdrawal, considering the release of the co-accused by the Coordinate Bench of this Court and when there is no immediate possibility of trial being concluded in



reasonable time, the cause of this successive bail application is being arisen as the inordinate delay would directly affect the fundamental right under Article 21 as enshrined under the Constitution of India.

Mr. Saiyed, learned counsel in the aforesaid facts and circumstances would further urge that, nothing found from the conscious possession of the applicant and as per the prosecution case, the applicant-accused is addicted person and those persons who implicated on the same footing or having serious charges, have been enlarged on bail.

Mr. Saiyed, learned counsel would further urge that, the police filed different chargesheets against the accused involved in the offence and same are pending with the Special Court, NDPS at Surat. The total witnesses cited in the said chargesheets are 312 and so far as chargesheet filed against the applicant is concerned, the number of witnesses cited is 61 and till date, only 34 witnesses have been examined. In such circumstances, it is submitted that, the trial has not proceeded as expeditiously and there are no chances of trial being concluded in near future in a reasonable time. Therefore, considering the long incarceration of 3 years and more, the applicant is entitled to discretionary relief with the appropriate conditions.

6. On the other hand, opposing the prayer of bail, Ms.



C.M. Shah, learned State counsel vehemently opposed the contention and contended that, there is sufficient evidence against the applicant herein and considering role attributed to the present applicant and evidence in support of charge, no case is made out. It is further submitted that, in view of restrictions imposed under Section 37 of NDPS Act, at this stage, it cannot be said that, no case is made out against the accused. Lastly, she would urge that, the order of expeditious trial may be passed with time bound schedule.

7. Having regard to the facts and circumstances of present case, the issue is whether this successive bail application can be entertained or not. The earlier bail application was rejected on merits and against the order, the matter was carried upto Supreme Court. It is settled position of law that, in case of successive bail application if there is fresh circumstances or any subsequent events, the fresh bail application can be filed by the accused. In the facts of the present case, after withdrawal of the earlier bail application from the Supreme Court, the accused who were in judicial custody, had been released on bail by this Court. Thus, in my opinion, considering this subsequent events of releasing the co-accused who having similar role, this successive bail application is maintainable.

8. Now the second issue is whether applicant is entitled



for discretionary relief of bail or not. Admittedly, since 27.11.2021, the applicant is in judicial custody. Charge is framed on 29.04.2022. The similarly situated persons as referred in the application, have been released on bail by Coordinate Bench of this Court. Before the trial court, group of special cases arise out of same FIR are pending for recording the evidence of the prosecution witnesses and there are 300 and more witnesses and so far as case of the applicant is concerned, 61 witnesses cited by the I.O. In such circumstances, I am of the view that, there is no possibility of trial being completed in a reasonable time. Recently, in case of *Ravi Prakash vs. State of Odhisha (2023 SCC Online SC 1109)*, while interpreting between twin conditions contained in Section 37 of The NDPS Act, the Apex Court has held that, the prolonged incarceration, generally militates the most precious fundamental right guaranteed under Article 21 of the Constitution of India and in such situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of The NDPS Act.

9. For the reasons aforementioned, the case is made out for exercising judicial discretion and accordingly, with the imposition of stringent condition, I am inclined to release the applicant on bail.

10. Hence, present application is allowed and the applicant is ordered to be released on regular bail in



connection with the FIR being I.CR. No. 11210015200082 of 2021 registered with DCB Police Station, Surat, on executing a personal bond of Rs.25,000/- (Rupees Twenty five thousands only), with one surety of the like amount to the satisfaction of the learned Trial Court and subject to the conditions that he shall;

No.	Conditions
(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 India without prior permission of the Sessions Judge concerned;
(e)	furnish latest 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 trial Court;
(f)	not leave Surat City till conclusion of trial without prior permission of the court concerned;

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. Bail bond to be executed before the learned 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. At the trial, learned 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.

TAUSIF SAIYED

(ILESH J. VORA,J)