

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR SUCCESSIVE REGULAR BAIL -
AFTER CHARGESHEET) NO. 1308 of 2025**

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TOFAN SUDARSHAN SHAHU

Versus

STATE OF GUJARAT

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Appearance:

MR ARJUNSINGH B CHAUHAN(11510) 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 application has been filed under section 439 of the Code of Criminal Procedure, 1973 for regular bail in connection with the CR. No.11210030220011 of 2022 registered with Mahdharpura Police Station, Surat, for offences punishable under sections Section 8(C), 20(B)II(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS') .

2. Learned advocate Mr. Arjunsingh B.Chauhan appearing for the applicant has submitted that the present successive bail prayer is moved primarily on the ground that the applicant is in jail since long and the matter could not progress. He further stated that taking into consideration the docket of the concerned Court, it is unlikely that the matter could be taken up for recording

of the evidence of the witnesses.

3. Learned advocate for the applicant, on the last adjournment, had referred to the computer status and had submitted that the matter had been adjourned for about 78 times, though the status shows that it is posted for the evidence of the prosecution side. Learned advocate Mr. Chauhan submitted that yet not a single witness has been examined. He has also 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.

4. Learned advocate Mr. Chauhan 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.

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, and thus, urged to reject the present application.

6. Heard learned advocates on both the sides and perused the material on record. This Court on the earlier occasion called for the report from the learned concerned Judge conducting the matter. The report dated 27.02.2025 of the 12th Additional and District Judge Special Judge, NDPS, Surat records of many other cases pending in his Court, which requires urgent disposal, as they under direction of the Court.

7. The Rojnama of the trial shows that though the matter had been opened for the prosecution on 30.04.2022 and from 16.03.2023, the evidence of the prosecution, nothing substantial has occurred in the trial proceedings. Almost 78 times, the matter has been adjourned. Thus, taking into consideration the law with

regard to the precious fundamental right guaranteed under Article 21 of the Constitution of India and the prolonged incarceration and the blink hope of any speedy trial in the matter, this Court finds this to be a fit case where discretion could be exercised in favour of the applicant.

8. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with CR. No.11210030220011 of 2022 registered with Mahdharpura Police Station, Surat 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;

9. 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.

10. 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.

Vikramsinh Amarsinh /1

(GITA GOPI,J)