

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION NO. 14337 of 2023
(FOR REGULAR BAIL - AFTER CHARGESHEET)**

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MUKIMBANU @ MUKIMAPA MOHAMMAD YUSUF SAIYED
Versus
STATE OF GUJARAT

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Appearance:

ARTI MADANGOPAL RAJPUT(8254) for the Applicant(s) No. 1
MR SANJAY PRAJAPATI(3227) for the Applicant(s) No. 1
MR SOAHAM JOSHI APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 02/11/2023

ORAL ORDER

1. 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.11823021220706/2022 registered with the Sagbara Police Station for the offence punishable under Sections 8(C), 20 and 29 of the NDPS Act.
2. Learned advocate for the applicant submitted that the present application is preferred after submission of the chargesheet and now the investigation is completed. It is submitted that the applicant is arrested on 14.04.2023 and since then, he is in judicial custody. It is submitted that the present applicant is arraigned as accused on the basis of the statement made by the co-accused. It is also submitted that other co-accused, whose names are revealed during the course of investigation, have already been

enlarged on bail by the Coordinate Bench of this Court. It is submitted that it is alleged against the applicant that he is proposed purchaser of the contraband articles, except that, no other incriminating material is found out from the chargesheet papers. It is, therefore, urged that the present application may be allowed by imposing suitable conditions.

3. Learned APP for the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence. It is submitted that the role of the present applicant is clearly spelt-out from the papers of the chargesheet and intermediate quantity of the contraband articles were recovered by the members of the raiding party from the custody of the accused, who have been caught from the place. It is, therefore, urged that considering the role attributed to the applicant, the present application may not be entertained.
4. Learned advocates appearing on behalf of the respective parties do not press for further reasoned order.
5. 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. It is found out from the record that the investigation is completed and after submission of the chargesheet, the present

application is preferred. The applicant is arraigned as accused on the basis of the statement made by the co-accused before the IO as proposed purchaser. The co-accused, who were caught at the time of raid, have been enlarged on bail by the Coordinate Bench of this Court. Therefore considering the above facts and on the ground of parity, the present application deserves to be allowed.

6. 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 as well as in case of **Satender Kumar Antil v. Central Bureau of Investigation & Anr.** reported in (2022) 10 SCC 51.
7. 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.
8. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with the FIR being C.R. No.11823021220706/2022 registered with the Sagbara Police Station 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 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;

9. 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 concerned 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. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.

10. 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.
11. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(DIVYESH A. JOSHI, J.)

Gautam