

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 2482 of 2023****GOGANBHAI RAMBHAI SHEKH**

Versus

STATE OF GUJARAT

Appearance:

MR D C SEJPAL(1322) for the Applicant(s) No. 1

MR. K.M.ANTANI, APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE UMESH A. TRIVEDI**Date : 27/03/2023****ORAL ORDER**

[1] This application is filed praying for an order of regular bail post submission of charge-sheet in connection with an offence being registered at **C.R.No.11193009220548 of 2022 with Bagsara Police Station, Amreli** for the offence punishable under Sections 8(b), 8(c), 20(b), 20(a)(i) and 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the NDPS Act”).

[2] Mr. D.C.Sejpal, learned advocate for the applicant submitted that the case of the prosecution while registering the First Information Report is about cultivation of Ganja, that too, against the present applicant and they found six plants weighing 5 kilo 50 grams from the field said to have

been possessed by the applicant. He has further submitted that even if it is presumed that case is for the possession of Ganja of the quantity, as mentioned in the FIR and the papers of charge-sheet, it is an intermediary quantity, which is above the small quantity and less than the commercial quantity and therefore, rigors of Section 37 of “the NDPS Act” would not be applicable. Therefore, he has submitted that the maximum punishment provided for the offence alleged against the present applicant would be 10 years with a fine, as mentioned in Section 20 of “the NDPS Act”. Therefore, he has submitted that the applicant be released on bail, post submission of charge-sheet.

[3] As against that, Mr. K.M.Antani, learned Additional Public Prosecutor submitted that since the accused is prosecuted for an offence under “the NDPS Act” and he was found in possession of plant of cannabis sativa, as opined by the FSL, the offence under “the NDPS Act” being serious in nature, though maximum punishment is up to 10 years, he may not be released on bail.

[4] Having heard the learned advocate for the applicant as also learned APP for the respondent – State as also going through the FIR as also the impugned order and papers of investigation, it reveals that on prior information about cultivation of plant of Ganja, the Police swung into

action and recovered six plants, as claimed in the FIR, of Ganja weighing 5.05 kilograms. Since the applicant who is said to be in possession of that cultivation part of the filed, he is booked under “the NDPS Act” and prosecuted. However, considering the papers of investigation, it reveals that the quantity even if presumed to be all parts of the plants to be Ganja is less than the commercial quantity and higher than the small quantity, therefore, considering the provisions of “the NDPS Act”, rigors of Section 37 would not be applicable in the present case. At the same time, as coming out from the record, the applicant is also not having any other criminal antecedents, apart from the antecedents of the very same nature, I deem it fit to release the present applicant on bail.

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

[6] Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR being **C.R.No.11193009220548 of 2022 with Bagsara Police Station, Amreli** 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 India 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;

[7] 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 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, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

[8] Rule is made absolute to the aforesaid extent. Direct service is permitted.

(UMESH A. TRIVEDI, J)

Lalji Desai