

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION NO. 19926 of 2021**

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NARUGHAR SONGHAR GOSWAMI

Versus

STATE OF GUJARAT

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Appearance:

MR RONITH JOY FOR MR UTKARSH J DAVE(10620) for the Applicant(s)

No. 1

MS CM SHAH, APP for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE S.H.VORA****Date : 01/07/2022****ORAL ORDER**

1. By way of present application under section 439 of Code of Criminal Procedure, the applicant - Narughar Goswami prays to release him on bail in connection with FIR being C.R.No.11198035201321 of 2020 registered with Mahua Police Station, Bhavnagar for the offence punishable under sections 15, 15(C), 25, 29 of the NDPS Act.

2. As per FIR registered on 18.06.2020, the police received secret information that inside an abandoned petrol pump of Essar Company, several persons were transferring liquor from one truck to other under the grab of transferring onion. Therefore, the police called for independent witnesses to raid the tipped place. On reaching the spot, the police found two trucks, an Eicher Truck and Car and several persons were transferring some goods from the trucks. Police nabbed accused no.1 and he disclosed that he was driver of Eicher Truck and he was not transporting liquor but poppy straw.

3. As a result of above, necessary orders were passed for the purpose of search and seizure under the provisions of NDPS Act. The police found 62 bags from Eicher Truck and lying on the land where the truck was parked and 7 other bags from the room of abandoned petrol pump. Thus, in all 69 plastic bags of poppy straw were found by the police. The police called Officer from the FSL and necessary procedure for weighing the total quantity was carried out. Accordingly, police seized 1371.72 kg from 69 bags, estimated value at Rs.16,62,624/-. Pursuant to aforesaid offence, the applicant came to be arrested on 09.04.2021.

4. Learned advocate for the applicant would submit that the applicant has not been named in the FIR, the applicant was not seen at the scene of offence or nearby vicinity, the applicant was not in conscious possession of contraband substance, the applicant has not instigated or engaged himself with one or more other accused persons in conspiracy or intentionally aided or by illegal omission to commit offence under NDPS Act, co-accused - Bababa @ Bablu Gangaram Nayi and Gajanan Narughar Goswami came to be enlarged on bail as per order annexed at Annexure - J and Annexure K respectively and lastly, it is submitted that considering the fact that the applicant is aged 66 years, he may be enlarged on bail, in view of settled proposition of law down in the case of Sanjay Chandra v/s. CBI reported in (2012) 1 SCC 40.

5. Per contra, learned APP while opposing bail application would submit that the applicant happens to be one of the owner of the land bearing survey no.349 paiki 1/1 situated at Village Mahuva and partner of dealership agreement of Essar

Petrol Pump and holding dealership agreement of abandoned petrol pump. It is further submitted that the applicant and other accused are his relatives and they were in constant touch with each other and thus, allowed the premises to be used for commission of offence and therefore, the applicant is equally responsible for the offence where Poppy straw weighing 1371.72 kg is seized by the police. In view of the provisions contained in section 25 and section 37 of the NDPS Act and considering aforesaid fact, it is urged that the bail applicant may be refused.

6. Before matter is considered on merits, it is relevant to quote section 25 of the NDPS Act, which reads as under :-

***“SECTION 25 : Punishment for allowing premises, etc., to be used for commission of an offence :-***

*Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.”*

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7. It is an admitted fact that contraband substance seized is of commercial quantity and role of the co-accused who are enlarged on bail viz. Bababhai @ Bablu and Gajanan Goswami are not identical inasmuch as they are not owner of the land nor partner of dealership agreement but they are implicated on the basis of statement of co-accused and call details. Whereas, it appears that the present applicant is owner of the

land and also partner and holding dealership agreement of petrol pump from where contraband poppy straw has been seized. It is relevant to note here that petrol pump dealership agreement was already expired and huge cultivation of poppy straw was going on the land owned by the applicant and it was used for commission of offence under NDPS Act. Having regard to contraband substance seized as aforesaid and provisions contained in section 25 of the NDPS Act, it is not a fit case to enlarge the applicant on bail either on account of his age or grant of bail in favour of aforesaid two co-accused. Therefore, the applicant has no option but to obtain verdict of his either innocence or involvement in the offence by following due procedure as laid down in the Code of Criminal Procedure, since no exceptional circumstances has been pointed by the learned advocate for the applicant. Thus, considering the provisions of section 25 and section 37 of NDPS Act, the Court is not inclined to grant bail to the applicant, pending trial. Therefore, the present application is rejected.

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THE HIGH COURT  
OF GUJARAT

**(S.H.VORA, J)**

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