

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 4301 of 2022**

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MALEK AHMEDKHAN HANIFKHAN
Versus
STATE OF GUJARAT

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Appearance:

MR RAJESH M AGRAWAL(1253) for the Applicant(s) No. 1
MR MANAN MEHTA, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 29/07/2022

ORAL ORDER

1. This application under Section 439 of the Code of Criminal Procedure is for grant of regular bail to the applicant in connection with the **FIR being Part B C.R.No.11217004200825 of 2020 registered at Balisana Police Station, Dist. Patan**, for the offence punishable under Sections 8(c), 20(b)(ii)(c), 22, 2(c) and 29 of the Narcotic Drugs and Psychotropics Substances Act, 1985 ('NDPS' for short).
2. Heard learned counsel Mr. R.M. Agarwal for and on behalf of the applicant and learned APP Mr. Manan Mehta, for the State.
3. Brief facts leading to filing of present application are that, on 04.12.2020, PSI, Balisana Police Station, received a message to the effect that, one Salmanbhai and his father are selling narcotics substance ganja, nearby

mosque of village Manand, Taluka Balisana, Dist. Patan. The raiding officer, raided the house of the applicant and during court of search, one plastic gunny bag was lying at the southern wall of the room and upon search of the bag, commercial quantity of ganja weighing 26.130 kg worth of Rs.2,61,200/- was found and the same has been seized.

In such circumstances, FIR came to be lodged under the provisions of the NDPS Act as referred above and the applicant apprehended on 06.12.2020 in connection with the alleged offence. Chargesheet came to be filed by the investigating agency. Applicant moved an application for regular bail before the Sessions Court, Patan, which came to be rejected and therefore, he has preferred present bail application before this Court.

4. Mr. R.M.Agarwal, learned counsel for and on behalf of the applicant submitted that, the applicant is aged about 62 years old, has falsely been implicated in the alleged offence. It is also urged that, the applicant has no any connection at all with the seized ganja and the house is also not belonged to the applicant and he never resided there in the house and the house is registered in the name of Basirkhan Gulabkhan. In such circumstances, learned counsel prays that, the applicant is in custody since 06.12.2020 and there is no progress in the case proceedings, therefore, discretion may kindly be exercised enlarging the applicant on bail.

5. On the other hand, opposing the bail application, learned APP Mr. Manan Mehta, submits that, the quantity is commercial quantity and therefore, rigorous of Section 37 of the NDPS Act is applicable to the present case. He further urged that, the applicant having knowledge about the narcotic substance and he is residing in the same house and as per the investigation, though the house is registered for tax purpose in the name of Basirkhan, but in fact, no one residing in the village named Basirkhan. In the aforesaid contentions, learned APP prays that, the offence affecting the society at large and considering the gravity of the offence, no case is made out for exercising discretion in favour of the applicant.
6. Having considered the rival contentions raised by the counsel for the respective parties and upon perusal of the chargesheet case papers, it appears that, the applicant is residing in the same house where raid was conducted. The quantity of the seized ganja is of commercial quantity. Section 37 of the NDPS Act limits the grant of bail when person has been apprehended with the commercial quantity of prohibited narcotic drugs. The applicant failed to convict this Court that he is not residing in the house where the raid was conducted. In the village panchayat, since long, hours is registered in the name of Basirkhan, however, the investigating officer could not find a person named Basirkhan. In such circumstances, there are reasonable ground for believing that the applicant has committed the offence and he has not been able to satisfy the Court that, he is not guilty of

such offence.

7. For the foregoing reasons, no grounds is therefore found to grant bail to the applicant. Accordingly, application stands dismissed. Nothing in this order shall tantamount to the findings on the merits of the case. Rule is discharged.

(ILESH J. VORA,J)

SUCHIT