

(2021) 02 GUJ CK 0006

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 17496 Of 2020

Harshal Prafulbhai Desai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 01-02-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164, 439
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8(C), 9(A), 20, 22,
23, 25, 25A, 29, 36(A), 37, 50, 53, 67
Evidence Act, 1872 — Section 24, 25, 26, 27
Customs Act, 1962 — Section 108

Citation : (2021) 02 GUJ CK 0006

Hon'ble Judges : B.N. Karia, J

Bench : Single Bench

Advocate : PM Lakhani, R P Lakhani, Devang Vyas, M.H. Bhatt

Final Decision : Allowed

Judgement

B.N. Karia, J

1. The present application is filed under Section 439 of the Code of Criminal Procedure by the applicant for regular bail in connection with complaint

being DRI F No. DRI/AZU/SRU/A/NDPS-01/2020 registered on 09.07.2020 with the department of Revenue Intelligence, Surat for the offence

punishable under Sections 22, 23, 25, 25A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "NDPS Act").

Heard learned advocate for the applicant; learned APP for the respondent State and learned Additional Solicitor General of India for the respondent

no.2

It was submitted by learned advocate for the applicant that applicant is quite innocent and has not committed any of the offence as alleged against him

in the FIR and no prima facie case is made against the present applicant. That, the applicant has been wrongly arraigned as an accused and applicant had not committed any offence as alleged. That applicant is one of the proprietor of M/s. Orlando Healthcare since the year 2012 and the said firm was engaged in trading of pharmaceutical materials. The applicant joined M/s. Ardor Drugs Pvt. Ltd. as a director only in the year 2019. It is highly uncertain and unreliable that the applicant has conspired and ensured to manufacture and export commercial quantity of contraband as he had just joined Ardor Pvt. Ltd. in 2019. That, the applicant being the proprietor of M/s. Orlando Healthcare since 2012, there is no single instance of violation of any law much less the provisions of the NDPS Act, in the past. That applicant has not engaged in commission of any offences as alleged in the complaint. That a bare reading of the complaint also at no point reveals that the applicant had any other role other than that of being the Director of Ms. Ardor Ltd. Since the year 2019. Further more, the applicant also doubts if the papers where the applicant's signatures were sought were blank papers in the first place. That the purported statement and the signature therein have been taken by coercion, duress, involuntarily and without the free will of the applicant herein. That applicant has been made to testify against himself. The same is prohibited in law. That the prosecution agency has placed a highly improbable story as the company has already exported 44.79 Lakhs tablets and that has gone unnoticed by the said agency and carved out a probable story that production has been carried out by the company of 60 Lakhs tablets, out of which, 44.79 lakhs tablets were already exported. That the prosecution agency has first carried out a search at Hazira Port and thereafter to shift the burden, M/s. Ardor Drugs Pvt. Ltd and is used as a scapegoat. That retraction letters for all statements under Section 67 of the NDPS Act have been sent since all the statements were recorded under duress and without free will. The statements were already drafted and the accused were forcefully made to sign the story in order to corroborate the story of the Investigating Authorities. Moreover, the applicant has not made any confession/admission of the alleged offence before the DRI officers. That applicant has denied giving the statements placed forward by the Respondent Agency/DRI vide a retraction correspondence. That the evidence adduced by the prosecution is neither consistent nor convincing nor cogent nor clear. That the recovered substance was not covered under the NDPS

(Regulation of Controlled Substances) order 2013. That even on merits looking to the materials placed on record by the prosecution absolutely there is

no reliable or trust worthy incriminating material adduced by the prosecution and no person can be kept behind the bar upon such unreliable

incriminating material. That the company being Ador Drugs Pvt. Ltd received license to manufacture and export Tramadol based drugs outside India.

It is submitted that, allegedly the company Ador Drugs Pvt Ltd. Manufactured more than 100 drugs and had received approval for the same, thus the

company was not doing anything outside the bounds of law and hence the present applicant could not be held responsible for the alleged offence.

Learned advocate for the applicant has referred the certificate of renewal of license to manufacture for sale of Drugs and other than those specified

in schedule X issued in favour of M/s. Ardor Drugs Pvt. Ltd., which is produced at Page No.36-A to 36-B i.e. list of drugs for export to Cameroon

permitting to export One Lakh Tramadol Hydrochloride Tablet as well as letter for retraction of statement made by the applicant and other co-

accused. In support of his arguments, learned advocate for the applicant has placed reliance on the judgment reported in 1984 SCC (1) 284 and

judgment delivered in Criminal Appeal No. 2178 of 2011 by the Hon'ble Supreme Court. Ultimately it was requested by learned advocate for the

applicant to allow present application by releasing the applicant on regular bail.

From the other side, learned Additional Solicitor General of India for the respondent No.2 has strongly objected the submissions made by learned

advocate for the applicant and submitted that on receiving specific information by the respondent No.2 that applicant was engaged in manufacturing of

pharma products and selling Tramadol, a psychotropic substance illicitly through a trader M/s. Orlando Healthcare, Surat is in process of exporting

Tramadol tablets by concealing it in containers stuffed with pharmaceutical products from the Hazira Port, a search was carried out at the factory

premises of M/s. Ardor Drugs Private Ltd. Songadh on 06.07.2020 as well as container lying at CFS-Seabird Marines Services Pvt. Ltd., Hazira,

Surat. It is further submitted that during the process of the panchnama at factory premises of M/s. Ardor Drugs Private Ltd on 07.07.2020 in

presence of the present applicant and Shri Mehul Manubhai Desai and independent panch, it was observed that there was shortage of 1376.443 kgs of

Tramadol Hydrochloride, 174.978 kgs of Ephedrine Hydrochloride and 137.175 kgs of Pseudoephedrine Hydrochloride. It is further submitted that present applicant and co-accused Mehul Desai informed that they have manufactured 60 lakhs Tablets of Tramadol Hydrochloride 225 mg from the said 1376.443 kgs. of Tramadol Hydrochloride raw material and out of these 60 Lakhs tablets, 15 Lakhs tablets of Tramadol Hydrochloride 225 mg were lying at CFS-Seabird Marines Services Pvt. Ltd., Hazira, Surat for exporting the same and remaining 44.79 Lakhs tablets have already been exported clandestinely. It is further submitted that container was admitted to be exported and under the panchnama dated 06.07.2020 and 07.07.2020, total 15,20,400/- Tramadol Hydrochloride Tables Tablet of 225 mg from the container were recovered and placed under the seizure under the provisions of NDPS Act. It is further submitted that statement of the applicant, Sukhdevbhai Kantibhai Patel, Tameshwar Yograj Patle both are chemist of M/s. Ardor Drugs Pvt. Ltd., Songadh were recorded on 07-08/07/2020 as well as Mehul Manubhai Desai under Section 67 of the NDPS Act. That the applicant himself has stated in his statement that he is a Director of M/s. Ardor Drugs Pvt. Ltd., Songadh since 2019 and was engaged in illicit manufacture and export of Tramadol Hydrochloride tablets 225 mg and with clandestine removal of Ephedrine Hydrochloride and Pseudoephedrine Hydrochloride. It is further submitted that applicant himself has accepted in his statement that all such illegal activities were done at his instructions. That applicant was fully aware that he had illegally manufacture, sold and exported psychotropic substances ie. Ephedrine and Pseudoephedrine with an intention to gain money out it. That the Department of Revenue. Ministry of Finance has issued a notification and declared Tramadol a psychotropic substance and Ephedrine and Pseudoephedrine substances are covered under the NDPS (Regulation of Controlled Substances) order 2013 under Section 9(a) of the NDPS Act. It is further submitted that applicant has controverted the provisions of Section 8(C) and 9(a) punishable under Section 20, 23, 25, 25A and 29 of the NDPS Act. It is further submitted that investigation is over and charge-sheet has been filed on 29.12.2020. That detail complaint was filed wherein entire modus operandi of the applicant and events are described that applicant is engaged in the day to day business of his company.

That license for production of Tramadol is issued then applicant will have to maintain certain record of sale which he did not. That arguments advanced by learned advocate for the applicant is far away from the facts. That present applicant has played an active role in illegal activities in export of Tramadol tablets and also for illicit clearance of Ephedrine and Pseudoephedrine, and therefore, he is liable to be punished under different Sections of NDPS Act. That he is a director of different companies and all the illegal activities of manufacturing, selling and exporting of psychotropic substance i.e. Tramadol 225 mg were carried out under his active control and directions. That Tramadol HCL 225 mg tablets were manufactured and illegally exported to M/s. Orlando Healthcare, Surat wherein the applicant is a proprietor also a director of M/s. Ardor Drugs Pvt. Ltd without valid permission.

While referring Section 37 of NDPS Act, learned Additional Solicitor General of India has argued that it is necessary for the Court to examine the question of grant of bail where Section 37 of the NDPS Act applies. That Court should satisfy having regard to the material available on record before passing any order. It is further submitted that provisions of Code of Criminal Procedure would not be applicable where different procedures having been prescribed under the NDPS Act. Since the Act prescribes, separate provisions for bail, general provisions of bail under the Cr.P.C. will not be applicable in the facts and circumstances of the case.

Referring 67 of the Act, he has submitted that statement of the applicant is admissible in evidence as it was made voluntarily with his consent. There was no any fear, inducement or coercion. It is further submitted that there is nothing on record to come to the conclusion that the confessional statement of the applicant was outcome of any threat, duress, coercion or under influence caused to the accused by any Narcotics Control Bureau Officer. There is sufficient material available with the prosecution and charge-sheet is filed no leniency can be shown by this Court by accepting any prayer to enlarge him on bail, as serious offence has been committed by the applicant. Hence, it was requested by learned Additional Solicitor General of India to dismiss the present application. Learned Additional Solicitor General of India has placed short note of written submissions on behalf of the respondent No.2, which is taken on record and considered.

Learned APP for the respondent-State has supported the arguments advanced by the learned Additional Solicitor General of India and argued that

applicant is prima facie, involved in the serious offence under the NDPS Act. That sufficient material was collected by the officer of the respondent

NO.2, which clearly shows the prima facie involvement of the present applicant in the commission of offence. That in an offence of NDPS Act,

which is serious in nature, this Court may not accept the prayer of the applicant and ultimately, it was requested by learned APP for the respondent-

State to dismiss present application.

Having gone through the facts and circumstances of the case and arguments advanced by learned advocates for the respective parties, it appears that

the Director of Revenue Intelligence, Surat has received and developed specific intelligence that M/s Ardor Drugs Pvt. Ltd. Situated at Songadh-Ukai

Road, Songadh, Tapi is engaged in the business of manufacturing of drugs (medicines) and also engaged in manufacturing and selling Tramadol, a

psychotropic substance illicitly and aforesaid company through M/s. Orlando Health care Ltd, Surat is in process of exporting Tramadol tablets by

concealing it in containers stuffed with pharma products from Hazira Port. Thereafter on 06.07.2020, a search was carried out at factory of M/s.

Ardor Drugs Pvt. Ltd. And at CFD-Seabird Marine Services Pvt. Ltd, Hazira Port, Surat and during the search, shortage of 1376.443 kgs of

Tramadol Hydrochloride was found and shortage of 174.978 kgs of Ephedrine Hydrochloride IP and shortage of 137.175 kgs of Pseudoephedrine

Hydrochloride were found from the factory premises. Upon interrogation, Mehulbhai Manubhai Desai and the present applicant have given

information that they have manufactured 60 Lakhs tablets of Tramadol Hydrochloride of 225mg from the aforesaid short found material. Thereafter, it

was informed by the aforesaid two Directors of the company that out of 60 Lakhs tablets, 15.21 lakhs tablets are lying at CFS Seabird Marine

Services Pvt. Ltd., Hazira Port for export vide Bills Nos.3594018 and 3614975 dated 03.07.2020 and 04.07.2020 respectively and remaining 44.79

Lakh tablets have already been exported illicitly. That, during the search on 06.07.2020 and 07.07.2020 aforesaid 15.21 Lakh tablets were seized from

two different containers and same were recovered. Thereafter in the statements of co-accused and one of the co-accused Mr. Sukhdev Patel has

informed the Investigating Agency that he prepares formulations including that of Ephedrine Hydrochloride IP and Pseudoephedrine Hydrochloride

and that he was instrumental in formulation of Tramadol Hydrochloride in formulation of Tramadol Hydrochloride 225 Mg tablets. That, Mr.

Mehulbhai Manubhai Desai has also informed by his statement that he is a Director of the company and is looking after the work related to

manufacturing, accounting and billing of the company and is aware about the illicit manufacturing and export of Tramadol Hydrochloride 225 mg.

Tablets and has also accepted his offence. That, the Investigating agency has also recorded statement of the present applicant who is also one of the

Directors of the company and proprietor of M/s. Orlando Healthcare, Surat. During the aforesaid statement, he informed that the said illicit or illegal

activities are done at his instruction and he is aware about illegal manufacture, selling and export of Tramadol Tablets and illegally sold the controlled

substance with an intention to gain money out of it. Therefore, intelligence officer has lodged a complaint against Harshal Prafulbhai Desai (present

applicant), Mehulbhai Manubhai Desai and others for contravention of Sections 8(C) and 9(A) punishable under Sections 22, 23, 25, 25(A) and 29 of

the NDPS Act. Thereafter applicant has preferred an application under Section 439 of the Code of Criminal Procedure, 1973 for regular bail being

Criminal Misc. Application No.3670 of 2020 before the learned Sessions Court at Surat and the learned 3rd Additional Sessions Judge, Surat has

rejected the above mentioned application vide order dated 30.07.2020.

Now if we peruse the certificate of renewal of license to manufacture for sale of Drugs and other than those specified in schedule X produced at

Annexure -C collectively and Licence in Form No.25, License No.G/25/1623 produced at Page No.36-C, it appears that M/s. Ardor Drgus Pvt. Ltd

was granted a license to manufacture the psychotropic drugs and export the same by the Commissioner, Food and Drugs Control Administration,

Gujarat State. It appears that time and again license of the competent authority was renewed and valid till 4.12.2020. Admittedly search was carried

out by the prosecution at the premises of M/s. Ardor Drugs Pvt. Ltd., Sonagadh and Hazira Port on 06.07.2020 where the validity of the licnese was

in existence. In License No.G/25/1623, product for exporting of Tramadol Hydrochloride BP 225 mg declares contents of Tramadol Hydrochloride BP

225 mg excipients was also approved with a quality of 1 Lakh tablets on 12.11.2019. Now this Court would like to refer affidavit in reply filed by the

Deputy Director, Directorate of Revenue Intelligence, Surat namely Prashant Kumar in his affidavit-in-reply in Para 2.12, he has stated that:

Letter FDCA/Ardor/2020/77682-84 dated 17.08.2020 issued by Commissioner, Food & Drugs Control Administration wherein they had informed that M/s. Ardor Drugs Pvt. Ltd. Had permission to manufacture only 101000 tablets of Tramadol Hydrochloride 225 mg with name Tramadol

Hydrochloride Tablets BP- SUPER 225mg. However, without the requisite permission, they had manufactured Tramadol tablets/capsules in excess of

the permissible limits i.e. 101000 tablets of Tramadol Hydrochloride 225 mg and the excess of manufactured 101000 tablets of Tramadol

Hydrochloride 225 mg were exported illegally.

From the statement on oath made by the officer of the respondent No.2, it appears that, Commissioner of Food and Drugs Control Administration was

inquired by the prosecution and letter thereof was issued on 17.08.2020 informing that M/s. Ardor Drugs Pvt. Ltd had a permission to manufacture

only 1 Lakh tablet of Tramadol Hydrochloride 225 mg with name of Tramadol Hydrochloride BP Super 225mg. It appears from the letter that

Tramadol Hydrochloride were manufactured in excess of permissible limit and exported illegally. The same thing was stated by the office of the

respondent no.2 in his affidavit in para 5 and 7:

V. The applicant joined M/s. Ardor Drugs Pvt. Ltd. In the month of November, 2019, however the permission bearing No. G/25/1623 for

manufacturing and export of Tramadol 225 mg. tablets to Cameroon (through M/s. Sanctuary Pharmaceuticals) was for only 101000 Tramadol 225

mg tablets. However the applicant in the guise of above mentioned license, manufactured Tramadol 225 mg. tablets more than the permissible of limit

of 101000 Tramadol 225 mg tablets and got it clandestinely removed from M/s. Ardor Drugs Pvt. Ltd. Further, out of the said tablets 15.21 lakhs

tablets were attempted to be exported from M/s. Orlando Healthcare, Surat however the same were seized by DRI authorities. It is pertinent to

mention here that export has been made from M/s. Orlando Healthcare (Proprietor Shri Harshal Desai) which did not had any permission to

manufacture or export the above said Tramadol 225 mg tablets. Hence Shri

Harsahl Desai has violated the provisions of the NDPS Act.

VII. M/s. Ardor Drugs Pvt. Ltd. got the permission for manufacture and export of Tramadol 225 mg tablets to Cameroon (through M/s. Sanctuary

Pharmaceuticals) for only 101000 Tramadol 225 mg tablets. However, the applicant in the guise of above mentioned license, manufactured more than

permissible quantity of Tramadol 225 mg tablets and got it clandestinely removed from M/s. Ardor Drugs Pvt. Ltd. Further, 15.21 lakhs tablets were

attempted to be exported from M/s. Orlando Healthcare, Surat, however the same were seized by DRI authorities. It is pertinent to mention here that

export has been made from M/s. Orlando Healthcare (Proprietor Shri Harshal Desai) which did not had any permission to manufacture or export the

above said Tramadol 225 mg tablets. Department of Revenue, Ministry of Finance vide Notification S.O 1761(E) dated 26.4.2018 has declared

Tramadol a psychotropic substance at Sr. No. 110Y of the Schedule wherein list of psychotropic substances are mentioned. Further, Department of

Revenue, Ministry of Financier vide Notification S.O 1762(E) dated 26.4.2018 has declared 250gm as the commercial quantity for Tramadol.â??

What is necessary for the Court to examine the question of grant of bail where section 37 applies is that the court should be satisfied having regard to

the material available on record as there are sufficient grounds with the applicant that he may not be convicted. If probabilities are that the applicant

can not be convicted then the court can grant bail subject to further conditions being satisfied that the applicant is not likely to commit any offence

while on bail. The language of Section 37 is clear that the Section is not a complete bar to the grant of bail to an accused of offence under the NDPS

Act. This section stipulates mandatory conditions to be satisfied that the person-accused under the NDPS Act is entitled to be released on bail. The

first condition is that the prosecution must be given an opportunity to oppose the application and the second, is that the court must be satisfied that

there are reasonable grounds for believing that he is not guilty of such offence and finally that the accused is not likely to be committed any offence

while on bail.

Here it is the case of the applicant that the statement of the applicant was recorded without free will and he was forced to sign on already prepared

statement. The statement was recorded under duress and without consent. That,

it is reflected from the letter for retraction of statement is also

produced by him at Annexure-D to this petition and such a confessional statement can be disregarded if it is shown that the same was caused by the

inducement, threat or promise etc by the person in authority as enumerated under Section 24 of the Evidence Act. This action would be a question of

fact, which can be decided only after conclusion of the trial.

This Court would like to refer the judgment of the Hon'ble Apex Court passed in Criminal Appeal No. 949 of 2018 wherein statement of the accused

recorded under Section 67 of the Act was discussed. Hon'ble Supreme Court, in para 5, 6, 7 and 8 in such judgment, has observed as under:

5. As regards the appellant, it was observed by the High Court that he was specifically named by co-accused Raj Kumar @ Raju and Surinder Pal

Singh in their statements. Apart from such statements nothing was produced on record to indicate the involvement of the appellant. The High Court

however found that the case against the appellant was made out. It was observed:

“Offence of abetment under Section 29 of NDPS Act stood established against accused Surinder Kumar Khanna, showing that he was involved in

drug trafficking. He was specifically named by accused Raj Kumar @ Raju and Surinder Pal Singh in their statements. Such statements of accused

Raj Kumar @ Raju and Surinder Pal Singh recorded under Section 67 of the NDPS Act are admissible in evidence and are not hit by Section 25 of

the Evidence Act because the officers of DRI, who had apprehended Raj Kumar @ Raju and Surinder Pal Singh, traveling in an Indica car and

effecting recovery from them do not come within the definition of police officers.”

The High Court thus affirmed the order of conviction as recorded against the appellant but reduced the sentence to rigorous imprisonment for a period

of 10 years and to pay fine of Rs.1 lakh, in default whereof to undergo further rigorous imprisonment for 1½ years. Similar orders of sentence were

passed in respect of other co-accused namely Raj Kumar @ Raju and Surinder Pal Singh.

6. In this appeal challenging the correctness of the conviction and sentence rendered as against the appellant, it was submitted by Mr. Jayant Bhushan,

learned Senior Advocate that apart from the so called statements of co-accused

Raj Kumar @ Raju and Surinder Pal Singh there was nothing against the appellant and that he was neither arrested at the site nor was the contraband material in any way associated with him. Mr. Maninder Singh, learned Additional Solicitor General appearing for the respondent however supported the judgment of conviction and sentence rendered against the appellant. He placed on record call data reports showing that around the time when the co-accused was arrested, the appellant was in touch with a person named Chaudhary from Dubai. The learned Additional Solicitor General however fairly accepted that apart from the statements of the co-accused there was nothing to link the appellant with said convicted accused. The call data reports also did not indicate that around the time when co-accused were apprehended, the appellant was in touch with either of them.

7. For the present purposes, we will proceed on the footing that the statements of co-accused were recorded under and in terms of Section 67 of the NDPS Act. As regards such statements, a bench of two Judges of this Court after referring to and relying upon the earlier Judgments, observed in *Kanhaiyalal v. Union of India*¹, as under:

“45. Considering the provisions of Section 67 of the NDPS Act and the views expressed by this Court in *Raj Kumar Karwal* case² with which we agree, that an officer vested with the powers of an officer in charge of a police station under Section 53 of the above Act is not a “police officer” within the meaning of Section 25 of the Evidence Act, it is clear that a statement made under Section 67 of the NDPS Act is not the same as a statement made under Section 161 of the (2008) 4 SCC 668 (1990) 2 SCC 409 Code, unless made under threat or coercion. It is this vital difference, which allows a statement made under Section 67 of the NDPS Act to be used as a confession against the person making it and excludes it from the operation of Sections 24 to 27 of the Evidence Act.”

8. Later, another bench of two Judges of this Court in *Tofan Singh v. State of Tamil Nadu*³ was of the view that the matter required reconsideration and therefore, directed that the matter be placed before a larger bench. It was observed in *Tofan Singh* (supra) as under:

“40. In our view the aforesaid discussion necessitates a re-look into the ratio of *Kanhaiyalal* case. It is more so when this Court has already doubted the dicta in *Kanhaiyalal* in *Nirmal Singh Pehlwan*⁴ wherein after noticing

both Kanhaiyalal as well as Noor Aga⁵, this Court observed thus:

(Nirmal Singh Pehlwan case, SCC p. 302, para 15) “15. We also see that the Division Bench in Kanhaiyalal case had not examined the principles

and the concepts underlying Section 25 of the Evidence Act, 1872 vis-à-vis Section 108 of the Customs Act and the powers of a Customs Officer

who could investigate and bring for trial an accused in a narcotic matter. The said case relied exclusively on the judgment in Raj Kumar case. The

latest judgment in point of time is Noor Aga case which has dealt very elaborately with this matter. We thus feel it would be proper for us to follow

the ratio of the judgment in Noor Aga case particularly as the provisions of Section 50 of the Act which are mandatory have also not been complied

with.” (2013) 16 SCC 31 (2011) 12 SCC 298 (2008) 16 SCC 417

41. For the aforesaid reasons, we are of the view that the matter needs to be referred to a larger Bench for reconsideration of the issue as to whether

the officer investigating the matter under the NDPS Act would qualify as police officer or not.

42. In this context, the other related issue viz. whether the statement recorded by the investigating officer under Section

67 of the Act can be treated as confessional statement or not, even if the officer is not treated as police officer also needs to be referred to the larger

Bench, inasmuch as it is intermixed with a facet of the 1st issue as to whether such a statement is to be treated as statement under Section 161 of the

Code or it partakes the character of statement under Section 164 of the Code.”

As the issue of considering the statement under Section 67 of the NDPS Act can be constrained as a confessional statement and same was referred

to larger bench, thereafter, on the premise that such statement under Section 67 of the NDPS Act was recorded, Hon'ble Apex Court has proceeded

further observing that it may amount to confession, but certain additional features must be established before such a confessional statement could be

relied upon against a co-accused.

Referring another judgment of the Hon'ble Apex court, it was held that it cannot by itself be taken as a substantive piece of evidence against another

co-accused and can at best be used or utilized in order to lend assurance to the Court, therefore, appellant was entitled to be acquitted of the charges

levelled against him.

In another case of *Sujit Tiwari versus State of Gujarat and Another* reported in 2020(1) Crimes 141(SC), while deciding bail application under the NDPS Act, Hon'ble Supreme Court has observed the provisions of Sections 36(A), 37 of the NDPS Act. In this case, huge quantity of Narcotic substances from the Ship was found and seized. The prosecution mainly relied in view the bar of Section 37 of the NDPS Act and statement made by the accused under Section 67 of the NDPS Act. Hon'ble Supreme Court has observed that without going into the question whether the statement is admissible or not, matter has been referred to a larger bench, for the purpose of this case. Taking the statement into consideration even though the accused has resiled from the same, Hon'ble Apex Court was pleased to accept the prayer by granting bail with stringent conditions.

Considering the peculiar facts of the present case, as the issue of admissibility of the statement recorded under Section 67 of the Act is referred to the larger bench. In the present case also, statement of the applicant is recorded. It is stated that his statement was under duress and without his consent.

Annexure-D shows that he has reiterated his statement saying that it was not given voluntarily by him and he is forced to give the same before the Officer of the Department of Revenue Intelligence under duress and without free will. Further as admitted by Mr. Prashant Kumar in his affidavit in reply Page 43 of the petition that M/s. Ardor Drugs Private Limited got one time permission for manufacture and export of Tramadol Hydrochloride 225 Mg tablets to Cameroon (through M/s. Sanctuary Pharmaceuticals) for only 101000 Tramadol 225 mg tablets. However, applicant in the guise of above mentioned licence, manufactured more than permissible quantity of Tramadol 225 mg tablets and got it clandestinely removed from M/s. Ardor Drugs Private Limited. Therefore, under the facts and circumstances of this case, this Court feels that this is a fit case whether the applicant is entitled to bail because there is a possibility that he may not be convicted under the provisions as charged by the respondent no.2 after recording evidence of eye witnesses. This Court is satisfied having regard to the material available on record and there are sufficient grounds that if the applicant may not be convicted.

Further, the applicant has no antecedent and trail would take long time. He is not likely to run away from the justice if he is released on bail, as he is a

Director of different companies situated at Songadh District Tapi.

If the probabilities are there, the applicant may not be convicted, court can grant bail subject to further conditions being satisfied that the applicant is not likely to commit any offence while on bail.

After filing of the the chargesheet during the pendency of this application, no further evidence is placed on record involving the present applicant in the offence, and therefore, this court feels that some stringent conditions will have to be imposed upon the applicant by accepting the prayer.

Hence, the present application is allowed and the applicant namely Harshal Prafulbhai Desai is ordered to be released on regular bail in connection

with complaint being DRI F No. DRI/AZU/SRU/A/NDPS-01/2020 registered on 09.07.2020 with the department of Revenue Intelligence, Surat upon

furnishing bail bond of sum of Rs. 5,00,000/- (Rupees Five lacs only) with two sureties of the like amount to the satisfaction of the Special Judge,

NDPS Court at Surat and subject to the conditions that the applicant 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 Special Court of NDPS at Surat within a week;

[d] not leave the State of Gujarat without prior permission of the Sessions Judge concerned and not go to any other place;

[e] furnish latest and permanent 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 learned Sessions Court concerned;

[f] provide his cell phone number to the respondent no.2. Authority and shall not change his cell phone without permission of the trial Court.

[g] not in any manner try to delay the trial once it commences.

If the applicant fails in comply with these conditions, respondent no.2 shall be entitled to straightway apply to the Special Judge for cancellation of his bail.

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 learned 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, learned 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.

Rule is made absolute to the aforesaid extent.

This order be communicated to the applicant through Jail Authorities by the registry as well as learned Sessions Court concerned.