

**(2007) 06 GUJ CK 0017**  
**In the Gujarat High Court**  
**Case No : Spl. Cri. Appeal No. 1132 of 2007**

Santokben Sharmanbhai Jadeja

APPELLANT

Vs

State of Gujarat

RESPONDENT

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**Date of Decision :** 29-06-2007

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Criminal Procedure Code, 1973 (CrPC) — Section 437, 482  
Penal Code, 1860 (IPC) — Section 114, 212, 302, 376, 394

**Citation :** (2007) CriLJ 4566 : (2007) 27 GLH 600

**Hon'ble Judges :** Mukesh R. Shah, J

**Bench :** Single Bench

**Advocate :** N.D. Nanavati and Mitesh R. Amin, for the Appellant; R.C. Kodekar, Assistant Public Prosecutor, for the Respondent

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## Judgement

M.R. Shah, J.—Rule. Shri R.C. Kodekar, learned APP waives service of Rule on behalf of the respondent. By way of this petition under Articles 226/ 227 of the Constitution of India read with Section 482 of the Criminal Procedure Code, 1973 the petitioner original -accused No. 1 has prayed for an appropriate order quashing and setting aside the order dated 13th June. 2007 passed by the learned JMFC. II Court. Junagadh below application, Mark- 1 7 preferred by the petitioner for releasing her on bail by which the learned JMFC has passed an order of deferring the hearing of bail application till Narco Test is performed on the petitioner as per its order dated 13-6-2007.

2. A criminal complaint being C.R. No. I-168/2007 is filed against the petitioner and 3 unknown persons on 8-6-2007 at Junagadh "B" Division Police Station for the offences punishable under Sections 212, 506(2) and 114 of the Indian Penal Code. It is required to be noted that, so far, as State of Gujarat is concerned the offence punishable u/s 506(2) is non-bailable and triable by Magistrate. In the complaint it is alleged that one FIR being C.R. No. I-69 of 2007 is given by Jyotiben Dilipbhai Pipariya at Junagadh Taluka police station on 13-5-2007 against Mohan Amir Gohil and Mahesh alias Bhaddo Mulji Chauhan for the

offences punishable under Sections 302, 394, 376 etc., of I.P.C. In the FIR, being C.R. No. 1-168 of 2007 filed is against the petitioner and other 3 unknown persons allegedly on the basis of the statement given by sister of the accused Mohan Amir namely Savitaben, that it has come to the knowledge of the complainant Shri S.G. Raval, Police Inspector, Crime Branch, Junagadh that the petitioner has committed offences of harbouring and concealing accused named in C.R. No. 69 of 2007 as well as of criminal intimidation and abetment. The petitioner came to be arrested in connection with the complaint being C.R. No. 168 of 2007 and after the arrest by an application remand was sought by the Investigating Officer. The learned Magistrate by order dated 10th June, 2007 accepted the application of taking the petitioner on police remand and the petitioner was taken on police remand up to 11.00 a.m. of 13th June, 2007. It appears that after completion of the period of remand the Investigating Officer submitted an application for seeking further remand which came to be rejected by the learned Magistrate. That after the petitioner was taken on police remand on 11-6-2007 the prosecuting agency gave an application to the Court of learned Magistrate vide Mark-8 praying therein for taking the petitioner for performing Brain Mapping Test as well as Narco test on petitioner. That the same was objected to by the petitioner. However the learned Magistrate after hearing the learned advocates appearing on behalf of respective parties granted the application of the Prosecution by order dated 13th June, 2007 for taking the petitioner for Narco Test as well as Brain Mapping Test. It appears that being aggrieved by the said order the petitioner gave an application for staying the operation of the order granting application of the Prosecution for taking the petitioner for Narco Test as well as Brain Mapping Test and the learned Judge has stayed the operation of the order up to 26-6-2007. It appears that the petitioner has preferred Revision Application before the learned Sessions Judge against the order passed by the learned Magistrate granting the application of the Prosecution for taking the petitioner for Narco Test as well as for Brain Mapping Test and it is reported that the said Revision Application is already heard and is kept for order on 30th June, 2007.

2.1 That in the meantime the petitioner has submitted an application at Mark-17 before the learned JMFC, II Court, Junagadh, for releasing her on bail and the said application was filed u/s 437 of Criminal Procedure Code. That the said application was submitted on 13th June, 2007. As the application of the prosecution for taking the petitioner for Narco Test as well as Brain Mapping Test was allowed by the learned JMFC vide order dated 13th June, 2007, the learned JMFC vide the said order dated 13th June, 2007 postponed hearing of the application for bail till Narco Test as well as Brain Mapping Test on the petitioner are performed. The learned JMFC has also directed the Prosecution to complete the tests as early as possible so that the application for bail can be heard. Being aggrieved and dissatisfied with the order passed by the learned JMFC, Junagadh, dated 13th June, 2007 in postponing hearing of the bail application submitted by the petitioner, the petitioner has approached this Court by way of present

application praying for the aforesaid relief.

3. Shri N. D. Nanavati, learned Senior Advocate appearing on behalf of the applicant has submitted that the learned Trial Court has committed an error in postponing hearing of the bail application till the Narco Analysis Test and Brain Mapping Test are performed. He has submitted that conducting/performing of Narco Analysis Test is part of the investigation and even if the applicant is released on bail she can be again taken into custody for the purpose of Narco Analysis Test and Brain Mapping Test. He has submitted that the trial Court may on merits decide either to grant bail or refuse to grant bail however the trial Court is not justified in even considering the application for bail on merits. It is submitted by him that when the application is submitted for bail the same cannot be deferred as done by the learned trial Court. He has further submitted that as such Bail Applications are required to be decided as early as possible. Therefore it is requested by Shri Nanavati, learned Senior Advocate for the applicant to direct the learned trial Court to hear and decide the application submitted by the applicant on merits.

4. While opposing the application, Shri R.C. Kodekar, learned APP has submitted that the Narco Analysis Test is part of investigation and till the investigation is concluded the learned trial Court is justified in deferring hearing of the application for bail. It is submitted that the petitioner is in judicial custody and when the learned trial Court has exercised discretion in deferring hearing of the bail application till investigation is over, i.e., in the present case till the Narco Test and Brain Mapping Tests are conducted/performed no illegality has been committed by the learned Trial Court. Therefore, it is requested to dismiss the present application.

5. Heard the learned advocates appearing on behalf of the respective parties. It is required to be noted that, the applicant is charged for the offences punishable u/s 212 read with 506(2) of the Indian Penal Code and one of the offence, i.e., punishable u/s 506(2) of the I.P.C. is non-bailable, so far as State of Gujarat is concerned. It is true that, the learned Trial Court has allowed the application of the prosecution for performing the Brain Mapping Test as well as the Narco Test on the petitioner by order dated 13-6-2007, and the petitioner has challenged the said order before the learned Sessions Judge by way of Revision Application and therefore the Narco Test and Brain Mapping Tests are not performed on the petitioner. It is to be noted that, performing of Brain Mapping Test as well as Narco Test are part of the process of investigation and if the learned Judge is of the opinion that investigation is not over, in that case he may refuse the bail and/or may not release the accused on bail at this stage. However, certainly he cannot defer hearing of the bail application and the learned Judge has to take an appropriate decision on the bail application one way or the other on merits, and he might in appropriate case if satisfied that as the investigation is pending it is not desirable at that stage to grant bail, even consider not to grant bail and/or even he may consider granting of bail on certain conditions as he may deem fit.

However, he is not justified in deferring hearing of the bail application. Bail Applications are required to be heard and decided as early as possible. Under the circumstances, the learned Trial Court was not justified in deferring hearing of the bail application till Narco Analysis Test and Brain Mapping Tests are performed on the petitioner. As stated above, there are three courses open to the learned Judge at the time of considering the bail application on merits, i.e. (1) rejection of the bail application on merits; (2) rejection of the bail application at this stage as the investigation by way of Narco Analysis Test and/or Brain Mapping Test and/or other investigation is pending; or (3) to grant the bail on certain conditions which he deems fit. However, as stated above the learned Judge cannot defer hearing of the application for bail at all. Under these circumstances, the impugned order dated 13th June, 2007 passed by the learned JMFC, II Court, Junagadh, deferring hearing of the bail application requires to be quashed and set aside.

6. For the reasons stated above, the impugned order dated 13th June, 2007 passed by the learned JMFC, II Court, Junagadh, in deferring the hearing of the bail application at Mark-17 is hereby quashed and set aside and the learned JMFC, II Court, Junagadh is directed to hear and decide the application at Mark-17 submitted by the applicant for releasing her on bail on its own merits and in accordance with law and pass an appropriate order to his satisfaction. Rule is made absolute to the aforesaid extent. Direct service is permitted.