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**IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS
 JUDGE, AHMEDABAD (RURAL)**

CRIMINAL MISC. APPLICATION NO. 571 OF 2026

Exh.

APPLICANT/ACCUSED:

Prem alias Hudo Sundaji Thakor
 Age: 24 years, Occupation : Labour
 Residing at : Shamalbhai Lallubhai Ni Chali,
 Kaligam, Sabarmati, Ahmedabad.
 (at present in Central Jail, Sabarmati, Ahmedabad)

V/s.

OPPONENT :

The State of Gujarat

Sub: Application under Section 483 of The Bhartiya Nagrik Suraksha Sanhita, 2023 seeking regular bail **after chargesheet.**

Appearance:

Mr. H.S. Parmar Learned Advocate for Applicant/accused.

Mr.P.M.Trivedi, Learned Public Prosecutor for Opponent/The State.

-: J U D G M E N T :-

1. The applicant-accused has preferred this application u/s. 483 of The Bhartiya Nagrik Suraksha Sanhita, 2023 (hereinafter referred as 'BNSS') in connection with offence registered with **Ranip Police Station vide FIR/CR No. 11191002250424/2025** for the offence u/s 103(1), 54 of Bhartiya Nyay Sanhita (in short BNS) 2023 and Section 135(1) of The Gujarat Police Act **seeking regular bail after chargesheet.**

2. Ld. Advocate Mr. H.S. Parmar appearing on behalf of the applicant - accused submits that the applicant is innocent and has not committed any offence as alleged by the prosecution. At the outset, he submits that lastly he is seeking bail on the ground that mandatory provision with regard to communication of ground of arrest which not been communicated to the applicant and solely on this ground the applicant's custody is illegal. He is required to be released as per the decisions of Hon'ble Apex Court in case of "*Mihir Rajesh Shah Vs State of Maharashtra and Another*" 2026 1 SCC 500". He submits that this is a first bail application of the applicant, on completion of the investigation the applicant came to know that the applicant came to be arrested on 09/10/2025 around 23:15 hours except arrest memo, the Investigating officer has not complied with the provision of Section 47 and 48 of BNSS and thereby, he has been deprived of his constitutional rights of being informed by the ground of arrest and as held by the Hon'ble Apex Court in case of "*Mihir Rajesh Shah Vs State of Maharashtra and Another*" 2026 1 SCC 500" the applicant be released immediately. Ld. Advocate for the applicant has filed his written argument vide Exh.6.

2.1 On merits, it is submitted that the applicant is falsely implicated in the offence as there was prior rivalry between the complainant and accused persons, the FIR and case papers would reveal that there was a quarrel between the accused persons and deceased and the incident has taken place all of sudden and during that time it is alleged that the accused had taken out a knife and inflicted knife blow on the chest of the deceased, due to which he succumbed to the injuries. There was no intention on the part of the applicant/accused in committing murder of

deceased. He submits that the investigation is over and chargesheet is filed. The applicant is aged about 24 years and is behind the bars since 09/10/2025. The prosecution has pointed out one past antecedent, in which he has been acquitted by the concerned Court. The trial is not likely to conclude in near future, therefore, if the applicant is not enlarged on bail then he is likely to suffer pre-trial conviction. This Court has considered the case of co-accused persons considering the facts that they have not cause any injury to the deceased. So far as the applicant-accused is concerned injuries is caused by him in self-defence and this may be considered to be a case falling in exception and case of applicant-accused be considered on the ground of parity. The applicant will regularly remain present before the trial court, if enlarged on bail. The applicant is not likely to tamper the evidence and is also not likely to influence and/or coerce the witnesses of the case, if enlarged on bail. It is submitted that the applicant will abide by any stringent conditions that may be imposed upon while exercising discretion in his favour. It is accordingly urged to allow present application.

3. Ld. Public Prosecutor Mr.P.M.Trivedi appearing on behalf of Opponent – State has vehemently opposed grant of bail to the present applicant. He submits that applicant is charged for the offence u/s 103(1), 54 of BNS 2023 and Section 135(1) of The Gujarat Police Act. As per the prosecution's case the present applicant along with co-accused persons had quarrelled at the place of incident where deceased Naresh Raymalbhai Rajak Thakor was celebrating his birthday with friends. The accused persons keeping grudge over prior quarrel with applicant's brother Prakash Thakor started physically assaulting the deceased

and had given kick and fist blow to the deceased Naresh and when deceased Naresh tried to run away, he was caught hold by co-accused Ritik Thakor and present accused Prem @ Huda inflicted knife blow in his chest and caused his death. Applicant is involved in serious offence of murder. It is submitted that applicant/accused and complainant lives in the nearby vicinity and if granted bail the applicant is likely to indulge in similar offence and likely to hamper or tamper with the prosecution witnesses. Ld. Public Prosecutor has placed reliance on the affidavit filed by the Investigating Officer (Exh.5) and has urged to reject the application for bail.

3.1 Ld. Public Prosecutor Mr.P.M.Trivedi, submits that so far as the grounds pertaining to non-communication of ground of arrest is concerned the I.O. had prepared arrest memo which is signed by the accused persons and accused society members namely Laxmiben was informed. The accused person and said Laxmiben has put their signature on the arrest memo. So far as written communication of ground of arrest as held by the Hon'ble Apex Court in case of "*Mihir Rajesh Shah Vs State of Maharashtra and Another*" 2026 1 SCC 500" is concerned, the said decision was declared after the accused persons came to be arrested and therefore, the principle which is subsequently laid down by the Hon'ble Apex Court cannot be applicable, when arrest was prior to the same judgment, so as to release the applicant immediately. He submits that the provision of BNSS is not specific that it should be written communication only, the provision of BNSS u/s. 47 & 48 do not specifically provides that the grounds of arrest should be communicated in writing, I.O. has filed further report before this Court stating that all the accused

persons were informed orally about the grounds of their arrest and even their society member namely Laxmiben was informed about the arrest and ground of arrest orally, when the accused persons produced before Judicial Magistrate, I.O. had filed application declaring ground for arrest before Magistrate Court. The accused persons during course of remand application had engaged the Advocate and remand application was heard on merits by the Ld. Magistrate Court and this would clearly supports the say of the I.O. about the oral communication of ground of arrest to the accused persons, the accused has never uttered anything about non-communication of ground of arrest at any point of time and it is for the first time after around four and half months, this ground is raised only with a view to say that he is indulged very serious offence mere on technical ground. It is accordingly, urged that oral communication of the I.O. informing about the grounds of arrest be considered as sufficient and complete compliance of the provision of section 47 & 48 of BNSS, hence he urged to reject the application for bail.

4. Heard the learned Advocates for the respective parties. The Court has gone through the bail application, documents annexed with it, affidavit and report of the I.O. (Exh.5, 7), case papers, case diary and written arguments and the case law cited by the applicant. It is clarified that the observations made by this Court are prima facie in nature and said have not relevance during the trial as the same are tentative of nature for the parties for deciding this application. Following factors are taken into consideration while deciding this bail application:-

i) The applicant is charged for the offence u/s 103(1), 54 of BNS 2023 and Section 135(1) of The G.P. Act.

ii) As per the prosecution case, accused persons had gone to the place of incident where deceased – Naresh Raymalbhai Thakor was celebrating his birthday with his friends. Accused persons keeping grudge of earlier quarrel with the brother of Accused No.1 had initiated scuffle and had started inflicting kick and fist blow to deceased – Naresh Raymalbhai Thakor. While deceased was trying to escape from the place of incident, co-accused – Ritik Ashokbhai Thakor caught hold of deceased and applicant – accused – Prem alias Hudo Sundaji Thakor took out knife and inflicted knife blow on the chest of the deceased due to which deceased succumbed to the injury and thereby, the accused persons are stated to have committed the offence.

iii) At the first instance, Ld. Advocate for the accused had raised an issue that accused was not communicated grounds of arrest when accused came to be arrested on 09/10/2025 around 23:15 hrs. The accused was produced before the jurisdictional Magistrate, who remanded the accused to Police custody and on completion of remand period, he was taken into judicial custody. During this entire procedure, the I.O. has not complied the mandatory provisions under Section 47(1) and (2), 48 of The BNSS. As per the decision in the case of “*Mihir Rajesh Shah Vs State of Maharashtra and Another*” 2026 1 SCC 500”, if the grounds are not communicated and there is violation of Section 47 and 48 of BNSS then the arrest is illegal and accused is required to be released immediately and therefore, the Court is required to decide as to whether the applicant – accused was informed grounds for his arrest or not.

iv) To decide the above issue it would be relevant and useful

to refer the decision of the Hon'ble Apex Court in case of ***“Vihaan Kumar Vs. State of Haryana 2025 INSC 162”*** wherein, similar issue with regard to non-communication of grounds of arrest was raised. The Hon'ble Apex Court in Para 21 of the said judgment has concluded as under;

“21. Therefore, we conclude:

a) The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);

b) The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;

c) When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the Investigating Officer/Agency to prove compliance with the requirements of Article 22(1);

d) Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the same time, filing of chargesheet will not validate a breach of constitutional mandate under Article 22(1);

e) When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made; and

f) When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The

statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established.”

v) In the very same judgment Hon'ble Justice Nongmeikapam Kotiswar Singh concurring with the conclusion has further added that communicating grounds of arrest to the detinue, and in addition to his relatives is not merely a formality but to enable the detained person to know the reasons for his arrest and to provide him opportunity through his relatives, friends or nominated persons to secure his release at the earliest and hence, requirements of communicating grounds of arrest in writing is not only to the arrested persons but also to the friends, relatives or such other persons as may be disclosed or nominated by the arrested person so as to make a mandate of Article 22(1) of the Constitution of India meaningful and effective, failing which such arrest may be rendered illegal.

vi) The Hon'ble Apex Court in case of ***“Pankaj Bansal Vs. Union of India 2024 & Ors. (7) SCC 576”*** and in case of ***“Prabir Purkayastha Vs. State (NCT of Delhi) 2024 (8) SCC 254”*** has held that failure to comply with the mandate of Article 22(1) of the Constitution and Section 50 of Cr.P.C., the arrest of accused is illegal.

vii) The Hon'ble Apex Court in case of ***“Kasireddy Upender Reddy Vs. The State of Andhra Pradesh 2025 INSC 768”*** in Para 15 considering the decision in case of ***Vihaan Kumar (supra)*** has noted as under;

“15. The pathbreaking judgment of this Court in the case of Vihaan Kumar v. State of Haryana and another reported in 2025 SCC OnLine SC 269 serves as a pivotal reference point in Indian jurisprudence regarding the rights of individuals

upon arrest. The judgment in Vihaan Kumar (supra) has profound implications for the enforcement of Article 22 of the Constitution across the country. It underscores the judiciary's commitment to upholding constitutional protections against arbitrary arrest and detention. This decision sets a clear precedent that the investigating agency/ police officer/ authorities effecting arrest of any person in connection with any cognizable offence without a warrant must provide specific, actionable reasons for an individual's arrest, beyond citing broad provisions of law. A clear dictum has been laid in Vihaan Kumar (supra) that the law enforcement agencies must exercise greater diligence in communicating the precise grounds of arrest in order to avoid unlawful detention claims."

In the very same judgment the Hon'ble Apex Court considering the earlier decisions has recorded conclusion in Para 18 and has clarified the principles of law laid down and explained in ***Vihaan Kumar (supra)*** as under:

"18. Thus, the following principles of law could be said to have been laid down, rather very well explained, in Vihaan Kumar (supra):

- a) The requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional condition.*
- b) Once a person is arrested, his right to liberty under Article 21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the person concerned must understand on what grounds he has been arrested.*
- c) The mode of conveying the information of the grounds of arrest must be meaningful so as to serve the true object underlying Article 22(1).*
- d) If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1).*
- e) On the failure to comply with the requirement of informing the grounds of arrest as soon as may be after the arrest, the arrest would stand vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.*
- f) If the police want to prove communication of the grounds of arrest only based on a diary entry, it is necessary to incorporate those grounds of arrest in the diary entry or any other document.*

The grounds of arrest must exist before the same are informed.

g) When an arrestee pleads before a court that the grounds of arrest were not communicated, the burden to prove the compliance of Article 22(1) is on the police authorities.

h) The grounds of arrest should not only be provided to the arrestee but also to his family members and relatives so that necessary arrangements are made to secure the release of the person arrested at the earliest possible opportunity so as to make the mandate of Article 22(1) meaningful and effective, failing which, such arrest may be rendered illegal.”

viii) In view of settled position of law as laid down by the Hon’ble Supreme Court of India in cases mentioned hereinabove, now this Court is required to ascertain as to whether the accused was communicated grounds of arrest as per the mandate laid down therein, for which the factual aspects are required to be recorded:

- The arrest memo of the accused would reveal that the present accused along with three other co-accused persons came to be arrested on 09/10/2025 at 23:15 hrs. It is a common arrest memo for all the persons. The relevant names in the arrest memo is mentioned as Laxmiben Babuji Thakor. All the accused persons, their relative Laxmiben Babuji Thakor and P.I. Mr. K.Y. Vyas had signed the said arrest memo. It is required to note that as per the say of the applicant – accused, Laxmiben Babuji Thakor is not relative but leading person among the society. It is an admitted fact that except arrest memo no grounds of arrest were communicated to the accused persons or his relatives.
- The arrest memo except mentioning the name of accused persons and their stated relative, it do not mentions or reveal any particulars of accused persons being

communicated about their grounds of arrest.

The Court had sought clarification from the concerned I.O. with regard to communication of grounds of arrest as per the provisions of BNSS (Old Cr.P.C.) and as per the settled position of law laid down in the cases referred hereinabove. The I.O. had filed his report with Exh.5 – affidavit stating that he had orally informed the accused that this is a case of murder and there are sufficient evidence for arrest and you have right to hire an advocate for filing bail application and accordingly, the accused persons and their family relatives were orally informed and thereby, there is compliance of Section 47 and the accused persons and relative Laxmiben had signed the arrest memo and thereby, there is compliance of Section 48 of BNSS.

The Court once again provided fair opportunity to the I.O. to specify as to how there was compliance of the mandatory provisions, to which Exh.7 – affidavit was filed by the I.O. stating that accused persons were orally informed about the grounds of arrest and even their relatives were informed who happens to be the prominent lady namely Laxmiben Babuji Thakor of their community. The accused persons were produced before the jurisdictional Magistrate Court within time limit and at that time along with the production report, the grounds for arrest with remand case papers was furnished to the Ld. Magistrate Court. On behalf of accused persons, Ld. Advocate had filed his Vakalatnama and had argued to

reject the remand application and this would fortify his say that the accused persons were informed and made understand about the grounds of arrest and the same may be considered as compliance of the provisions under the BNSS and Constitution. It is also further stated that the decision in case of ***Mihir Rajesh Shah (supra)*** was passed on 06/11/2025 whereas, the accused persons were arrested on 09/10/2025 i.e. decision was passed after the arrest of accused persons and the Police Commissioner Officer had issued Office Order on 13/01/2026 with regard to mandatory written communication of grounds of arrest to accused persons.

- Arguments has been raised by the Ld. Public Prosecutor stating that the Article 22 of Constitution do not specify that communication of grounds of arrest should be in writing only and secondly, as the decision in case of ***Mihir Rajesh Shah (supra)*** was passed subsequently after the accused persons were arrested, the arrest cannot be treated as illegal is required to be rejected at the threshold. Firstly on the ground that prior to decision in case of ***Mihir Rajesh Shah (supra)*** there was decision of the Hon'ble Apex Court in case of ***Vihaan Kumar (supra)*** who had considered the earlier decision of the Hon'ble Apex Court in case of ***Pankaj Bansal (supra)*** and in case of ***Prabir Purkayastha (supra)*** wherein, it is held that communication of ground of arrest to accused is mandatory and non-communication of the same would render the arrest illegal. In the decision of ***Vihaan Kumar (supra)***, the Hon'ble Apex Court has not only concluded that requirement of informing the person

arrested of the grounds of arrest is mandatory requirement of Article 22(1), but has also further recorded that requirement of communicating grounds of arrest in writing is not only to the arrested persons but also to the friends, relatives or such other persons as may be disclosed or nominated by the arrested person. The decision of ***Vihaan Kumar (supra)*** is dated 07/02/2025 i.e. much prior to arrest of accused and therefore, the aforesaid contention of prosecution is devoid of merit and stands rejected.

- In view of the affidavits Exh.5 and Exh.7 the Court had further ascertained the case papers. Admittedly, there is nothing on record with regard to accused or his relatives having been communicated his grounds of arrest in writing as laid down in case of ***Vihaan Kumar (supra)*** nor it reveals that there was meaningful communication / information of the grounds of arrest conveyed to the applicant/accused so as to serve the true object underlying Article 22(1) as held in case of ***Kasireddy Upender Reddy (supra)***.
- The report filed by the I.O. seems to be an afterthought attempting to contend that there was oral communication of grounds of arrest. In this regard, the arrest memo do not mentions anything about even oral communication of grounds of arrest. Secondly, the say of the I.O. that grounds of arrest were furnished to the jurisdictional Magistrate be considered to be compliance is unacceptable as the mandate is to provide grounds of arrest to the arrested person. Furnishing grounds of arrest to the jurisdictional Magistrate cannot be equated with the

communication of the grounds to the accused persons. In the present case, even there is nothing on record to show that the grounds which were given to the Ld. Jurisdictional Magistrate were provided even at the time of production of the accused.

- The Court had also asked the prosecution to provide the case diary to even remotely ascertain as to whether there was even oral communication which can be said to be meaningful and sufficient compliance of communication of grounds of arrest. The case diary would reveal that the accused persons were handed over to the I.O. by LCB Zone – 2 Squad Police persons. On recording of statement of accused persons, they are stated to have confessed the offence and they came to be arrested on 09/10/2025 at 23:15 hrs. The case diary pertaining to date 09/10/2025 do not reveal communication of grounds of arrest in writing or even orally to the accused persons.

Further reading case diary dated 10/10/2025, it reveals the reconstruction panchnama, medical examination, collection of blood sample etc. were carried out and thereafter, as the accused persons were required to be produced before the jurisdictional Magistrate within time limit, accused persons production report, grounds of arrest, details of offence against the accused persons were prepared and thereafter, they were produced before the jurisdictional Magistrate who granted Police remand upto 14:00 hrs dated 12/10/2025. The case diary of 10/10/2025 also do not specify anything with regard to communication of grounds of arrest to the accused.

Having considered the arrest memo, production memo, remand application, case diary, this Court clearly finds that the applicant – accused or his relatives / friends have not been communicated his grounds of arrest in writing nor from the case papers it can be found out that there was sufficient compliance of constitutional obligation to inform arrested person about his grounds of arrest and being so, it amounts to violation of fundamental rights, rendering his arrest illegal and as held in the above referred decisions, the applicant – accused is required to be set free.

ix) While deciding this bail application, this Court has found that there is complete non-compliance on the part of I.O. of the mandatory provisions under Article 22 of the Constitution of India, Section 50 of the BNSS and principles laid down by the Hon'ble Apex Court in case of *Vihaan Kumar (supra)*, *Pankaj Bansal (supra)* and *Prabir Purkayastha (supra)*. At the same time, it is also noted that even the jurisdictional Magistrate before whom, the accused persons were produced and remand was asked by the I.O., the Ld. Magistrate did not ascertain about compliance with regard to Article 22(1) and other mandatory safeguards as concluded by the Hon'ble Apex Court in Para 21(e) of *Vihaan Kumar (supra)*.

5. In view of facts and circumstances noted hereinabove, having considered the fact the applicant – accused was not informed grounds of his arrest the case for bail is made out. Accordingly, following order is passed in the interest of justice.

:: ORDER ::

1. The regular bail application of applicant - accused is **allowed**.
2. Applicant/accused **Prem alias Hudo Sundaji Thakor** is hereby ordered to be enlarged on regular bail in connection with offence registered with **Ranip Police Station, Ahmedabad vide FIR/CR No.11191002250424/2025** for the offence u/s 103(1), 54 of Bharatiya Nyaya Sanhita, 2023 and Section 135(1) of The Gujarat Police Act on furnishing personal bond of **Rs.10,000/- (Rupees Ten Thousand only)** and surety of like amount and on following conditions:
 - (a) applicant/accused shall remain present before the concerned Court regularly as and when required.
 - (b) applicant/accused not take undue advantage of liberty or misuse liberty;
 - (c) applicant/accused shall not act in a manner injuries to the interest of the prosecution and shall not obstruct or hamper the police investigation and shall not to play mischief with the evidence collected or yet to be collected by the police;
 - (d) applicant/accused shall also surrender his passport, if any, else shall make necessary affidavit;
 - (e) applicant/accused shall not leave India without prior permission of the Court;
 - (f) applicant/accused shall furnish present address of his 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 Court.

3. Bail Bond to be executed before the concerned Court and yadi be send accordingly.
4. Copy of this order be sent to the concerned police station.
5. This Court deems it in the interest of justice and to ensure strict compliance of the mandate laid down by the Hon'ble Apex Court in case of *Mihir Rajesh Shah Vs State of Maharashtra and Another*" 2026 1 SCC 500 and in case of *Vihaan Kumar Vs. State of Haryana 2025 INSC 162*, accordingly a copy of this order be sent to the Superintendent of Police, Ahmedabad (Rural) for taking appropriate corrective action against the I.O., who has failed to comply the mandate laid down in the above decisions and further to ensure that Police persons under his jurisdiction strictly adheres with regard to compliance of mandate with regard to communication of grounds of arrest to avoid any plea of non-communication of grounds of arrest.
6. A copy of this order be also forwarded to the Jurisdictional Magistrate to ensure that directions as contained in Para 21 (e) of the decision in case of *"Vihaan Kumar Vs. State of Haryana 2025 INSC 162"* is strictly adhered.

Pronounced and signed in the open court today.

Date :16/03/2026
Place:Ahmedabad

(Kamal M. Sojitra)
Principal District & Sessions Judge
Ahmedabad (Rural)
U.I.Code No.GJ01494