



GJBH010005092026

IN THE COURT OF 2nd, ADDITIONAL DISTRICT AND
SESSIONS JUDGE , AT BHARUCH



Criminal Misc Application No.157 of 2026.

(For Anticipatory Bail)

Mubarak Haider Mansuri.

Age: 31 Yrs., Occupation: business
R/o. Village- Shankwad, Masjid Faliyu
Taluka & District: Bharuch.

(Applicant/accused)

Versus

STATE OF GUJARAT

(Respondent)

Application under Section. 482 of BNSS.

ORAL ORDER

1. Present application under Section 482 of BNSS has been filed for anticipatory bail, as the accused-applicant is apprehending his arrest in

connection with offence registered at Bharuch City "A"-Division Police station, Bharuch vide Part- 'C' Crime Register No. 11199010260192 of 2026 under Section 316(2) of Bhartiya Nyay Sanhita.

2. Learned Advocate for the applicant, apart from the contentions raised in the application has submitted that the applicant has been falsely implicated in the present case. During arguments, learned Advocate for the applicant has submitted that the offence is triable by Ld. Magistrate court and maximum imprisonment is upto 5 years. It is submitted that the transaction is monetary transaction and it is of civil nature and it is submitted that the applicant is ready to co-operate with investigation, no notice was issued till the filing of the application as per law, the applicant is of young age and if the application is not allowed, the police may misuse their powers and the applicant is apprehending that, the guidelines of the Honourable Supreme court may not be followed by the Investigation officer, hence this application is filed, which may be allowed. The submissions are based on the application.

3. On the other hand, learned APP states that, today the investigation officer is present before this court and it is submitted that he is acting as per law, has sent the notice but the accused not appearing before the investigation and not co-operating the investigation.

3a. It is submitted that the offence allegedly committed by the applicant has sentence up to Five years, the investigation officer has complied the guideline of Honourable Supreme Court, notice u/s 35(3) of BNSS was issued to the accused on 03/03/2026 and was served and the applicant was asked to remain present before the investigation officer within 2 days.

It is further submitted that, applicant/accused has not complied the notice and had not appeared before the investigation officer till today and is

not co-operating in investigation, it is submitted that, as the applicant is not appearing and not co-operating in investigation, now he is to be arrested as per law. It is submitted that, there is no question of not complying the guidelines of Honourable Supreme court by the concerned investigation officer, hence the application filed by the accused is not maintainable.

4. This court has heard both the side and considered Section 35 of Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 41 and 41A from Old CrPC), which is stated below.

35. When police may arrest without warrant.

35.(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a) who commits, in the presence of a police officer, a cognizable offence; or

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest; or

(c) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence; or

(d) who has been proclaimed as an offender either under this Sanhita or by order of the State Government; or

(e) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(f) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(g) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(h) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(i) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 394; or

(j) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of section 39, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

(3) The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(4) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(5) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(6) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

(7) No arrest shall be made without prior permission of an officer not below the rank of Deputy Superintendent of Police in case of an offence which is punishable for imprisonment of less than three years and such person is infirm or is above sixty years of age.

5. A perusal of Section 35 shows that there is no absolute bar against arresting a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend up to seven years with or without fine. It provides that an investigating officer shall not arrest a person accused of such offences in a routine manner and the arrest be made, only after following the restrictions imposed under Section 35.

6. As per section 35(4), *it is was the duty of the applicant/accused to comply with the terms of the notice issued by the investigation officer , but he failed to comply the same. Hence prima facie it appears that the accused has failed, in his duty imposed by law,* in such a case, failure to comply with the notice of appearance and hiding himself and not co-operating the investigation may be grounds for the police to arrest a person to whom a notice under this Section has been issued and *as the accused had failed to co-operate in investigation, it entitles the investigation officer to arrest the accused as per Section 35(6),* under such circumstances merely a submission on behalf of the Ld. Advocate that the accused is apprehending arrest, on accusation of having committed a non-bailable offence, is not tenable.

7. Considering the facts and circumstances of the case on hand, the conduct of the accused and Section 35 of the Bharatiya Nagarik Suraksha Sanhita, 2023, this court pass following order.

ORDER.

The present application is dismissed.

Signed and pronounced in the open Court on this 2nd day of April 2026.

Date : 02/04/2026.

Place: BHARUCH
(EMS)

(EJAZ MOHSINALI SHAIKH)
2nd Additional District & Sessions Judge,
BHARUCH.
(Judge Code No.GJ00627)