

GJBK010019172026



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D M Y

**IN THE COURT OF 3rd ADDITIONAL SESSIONS JUDGE,
BANASKANTHA DISTRICT AT PALANPUR**

CRI. MISC. APPLN. NO.592/2026

Exh. _____

Applicant: **Bismillakhan Namadkhan Pathan**
Age : 55 years, Occupation : Agriculture,
R/o Thalvada, Tal. Vadgam,
District: Banaskantha.

Versus

Opponent: **The State of Gujarat**
(Notice be served to the District Public
Prosecutor Office, Palanpur)

**SUBJECT :- APPLICATION
UNDER SECTION 482 OF
BHARATIYA NAGRIK
SURAKSHA SANHITA, 2023
FOR ANTICIPATORY BAIL.**

Appearance:

Mr. S. M. Chaudhary,	Learned Proxy Advocate for L.A. Mr. B. B. Solanki for the Applicant
Mr. D. H. Chappiya,	Learned A.P.P. for the Opponent-State
Mr. M. M. Sindhi,	Learned Advocate for the original complainant with prosecution

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

- 1) Present application is preferred by applicant under Section 482 of BNSS, 2023 for anticipatory bail in connection with FIR registered against him with Chhapi Police Station bearing No.11195009260378 of 2026 under Sections 103(1) & 54 of Bharatiya Nyay Sanhita, 2023 and u/s. 135 of Gujarat Police Act.
- 2) Learned Proxy Advocate Mr. S. M. Chaudhary for the L.A. Mr. B. B. Solanki appearing for the applicant has submitted that applicant is innocent and has not committed any offence as alleged in the FIR and has been falsely implicated in this offence. It is further submitted that considering the papers on record no offence is made and he is unnecessarily dragged in the offence and applicant apprehends his arrest in respect of above offence and if the applicant is arrested there are all chances that the police would exercise torture and would involve him in false offence and he is innocent person and has not played any role directly or indirectly as alleged by the complainant,

and he is falsely implicated. It is also submitted that accused Nos. 2 & 3 are son of the present applicant and both accused Nos. 2 & 3 have been arrested by the police and sent to judicial custody and substantial investigation is over. It is also submitted that applicant is sick since last 3 years and earlier he had taken indoor treatment on 23.03.2024 and he had to undergo bypass surgery on 17.04.2026. It is further submitted that applicant has no knowledge regarding the said offence and no case is made out against him and he has been falsely implicated in the said offence. It is further submitted that the applicant is ready and willing to cooperate with the investigating agency, is residing with family at the above stated address, and therefore, he should be released on anticipatory bail otherwise his family will suffer a lot. That there is no prima facie case against him. The applicant undertakes to abide by conditions as may be imposed by the Court, therefore he has requested to grant anticipatory bail with suitable terms and conditions and allow this application.

- 3) Upon issuance of notice, Learned A.P.P. Mr. D. H. Chappiya has appeared and by filing an affidavit of I.O. at Exh.6 has strongly opposed the bail application of applicant/accused person. It is further submitted that accused Armankhan Bismillakhan Pathan inflicted blow of iron pipe upon deceased victim Sormabhai Devabhai Sipai on his head and accused Bismillakhan Namadkhan Pathan

and Sadulkhan Bismillakhan Pathan beaten with DHOKA (wooden bat) and thereby causing death of deceased victim. The accused had breached the proclamation of District Magistrate for prohibiting the weapons. All the accused helped each other in committing crime. It is alleged that applicant alongwith another accused are prima facie involved in the present offence so if in such type of offence, anticipatory bail is granted, then there are all chances that he will tamper with the prosecution evidence. It has further been stated that applicant is preventing his arrest and therefore if the applicant is protected under anticipatory bail, he will not cooperate with investigation and, therefore it is requested to reject the application.

- 4) The original complainant Salembhai Sormabhai Sipai appeared before this Court and filed his affidavit at Exh.8 and opposed the bail application. It is also submitted that applicant and another accused committed murder of his father and all the accused are headstrong persons hence, if present applicant is released on anticipatory bail then there are all chances of tampering and hampering with the evidence hence, it is requested to reject the bail application.
- 5) Heard, learned Advocates for the parties. Perused the bail application, police papers and affidavit of I.O. produced on record.

6) So far as anticipatory bail is concerned, this Court is very well aware with the principle laid down by the Hon'ble High Court as well as Hon'ble Apex Court in catena of judgments with regard of the precaution required to be taken by the Court while deciding the anticipatory bail application. What is material to decide the anticipatory bail application and while deciding the bail application, the following factors are required to be taken into consideration :

- a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest;*
- b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*
- c) The possibility of applicant to flee from justice;*
- d) The possibility of accused's likely hood to repeat similar or other offence;*
- e) Where accusation have been made only with the object of injuring or the humiliating the applicant by arresting him or her;*
- f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*
- g) The court must evaluate the entire available materials against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The case in which accused is implicated with the help of section 34 and 149 of the IPC, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*

- h) While considering prayer for grant of anticipatory bail, a balance has to be struck between two factor namely, no prejudice should be caused to free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused.*
 - i) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
 - j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of bail and in event of there being some doubts as to the genuineness of the prosecution, in normal course of events, the accused is entitled to an order of bail.*
- 7) It is settled principle that liberty of a person should not ordinarily be interfered with unless there exists cogent grounds therefore, it is necessary for the Courts dealing with application for bail to consider the aforesaid circumstances amongst other circumstances.
- 8) I have gone through the evidence collected by the I.O during the course of investigation. The offence registered against the applicant and another accused is very serious in nature as per the affidavit of I.O., accused Armankhan Bismillakhan Pathan inflicted blow of iron pipe upon deceased victim Sormabhai Devabhai Sipai on his head and accused (present applicant) Bismillakhan Namadkhan Pathan and Sadulkhan Bismillakhan Pathan beaten him with DHOKA (wooden bat) and thereby causing death of deceased victim. The accused had breached the

proclamation of District Magistrate for prohibiting the weapons. All the accused helped each other in committing crime. It reveals that the present applicant and another accused are prima facie involved and has played active role towards commission of the offence. It also reveals from the affidavit of I.O. that there are serious allegations against the present applicant and another accused of using a lethal dangerous weapon, violating the circular of District Magistrate and thereby committed murder of deceased victim, and therefore looking to the role played by the applicant and another accused and the nature of offence this court does not deems it fit to exercise discretion in favour of the present applicant-accused.

- 9) It further reveals from the affidavit of I.O. that another offence had been registered against the applicant and as such it appears that applicant is a habitual offender. It also reveals that present applicant is trying to evade arrest after registration of the complaint as after service of notice he has not appeared before the police and is not cooperating with the police investigation which itself shows that the present applicant-accused is not cooperating with the Investigating Authority and when such type of conduct is there, there is no question of allowing this application and in these circumstances, there is no question of granting the anticipatory bail. The factors which are required to be considered while granting the anticipatory bail have

already been stated above but none of the factors are satisfied by the present applicant and considering the seriousness of offence and the role of the present applicant-accused, there is no question of allowing this application. If in such type of offences the application is allowed then it would have very bad impact on the society at large.

- 10) Thus by considering the recent case law of Hon'ble Apex Court and of Hon'ble High Court, I am not in agreement with the argument canvased by the learned advocate for the applicant/accused person. Such kind of offence are threat to the society at large. Further, arrest is a part of the process of investigation intended to secure several purposes. The accused person may have to be questioned in detail regarding various facts of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the

locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. Thus arguments canvassed by the learned advocate doesn't inspire the confidence of this court to use discretion of granting bail in favor of the applicant.

- 11) Having said that it is needless to mention here that at the time of arrest of accused police agency is bound to obey the direction issued by Hon'ble Supreme Court in the case of **Arnesh Kumar Vs. State of Bihar**.
- 12) At this juncture, there appears to be prima facie involvement of the present applicant/accused person in the commission of the offence and applicant/accused person with the aid and abetment of each other have not only brutally attacked the victim but have also committed his murder and therefore arrest of the applicant is necessary as he is very injurious for the well being of the society, and the custody of the applicant is required for further interrogation and the investigation is still going on and is at a crucial stage and chargesheet is not yet filed and in that circumstances no discretionary relief regarding granting of anticipatory bail can be exercised in favour of the present applicant/accused person as looking to the nature of the offence applicant/accused person is threat to the society and if he avails the advantage of anticipatory

bail then there are chances that he may disrupt the peace and well being of society and hence, release of the applicant/accused person on anticipatory bail at this juncture can affect the case of the prosecution as there are chances that applicant/accused person may create hindrance and can also influence the witness and tamper the evidences and as per the discussion made above in the interest of justice, I pass the following order:-

:ORDER:

The present anticipatory bail application bearing Cr.M.A. No. 592/2026 is hereby **rejected**.

Signed & pronounced on today on this **1st day of June, 2026**.

PALANPUR.
Date: 01/06/2026

(Amitkumar J. Kanani)
3rd Additional Sessions Judge
B.K. District, Palanpur.
(Code : GJ00662)

VISHAL