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Exhibit :

## IN THE COURT OF SESSIONS JUDGE AT BOTAD

Criminal Miscellaneous Application No.128/2026

**Applicant/ :- K. P. Zala, 31 years,**  
**The State** Police Sub Inspector, Botad Town Police Station, Botad.

**VERSUS**

**Opponent/ :- Sirajbhai @ Sirajdon Hussainbhai Khalyani,**  
**Accused** Aged :- 45 years,  
Residing at Khojawadi, Navnala, Near Telephone Exchange,  
Taluka & District :- Botad.

**Appearances :-**

**Mr. K. M. Makwana,** Learned P.P. for the applicant-State.

**Mr. R. D. Gida,** Learned Advocate for the opponent/accused.

**Subject:-** Application for cancellation of U/s. 439(2) of CrPC.

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

1. The applicant herein is the State through PSI K.P. Zala who is posted before the Botad Town Police Station. The FIR registered with Botad Town Police Station vide C.R.No.111 9000 222 1330 of 2022 punishable under Sections 302, 307, 324, 323, 504, 506(2) & 34 of Indian Penal Code, 1860 and Section 25(1)(B)(A) & 27 of the Arms Act. The applicant has preferred this application for cancellation of bail, which was granted to the opponent/accused by the Hon'ble High Court of Gujarat vide order passed in R/Criminal Misc. Application No.7177 of 2025 on 28/04/2026.
2. The applicant, by way of this application has submitted that the opponent/accused was granted bail by the the Hon'ble High Court

of Gujarat, subject to conditions, wherein, condition no.(b) was that, maintain law and order and not to indulge in any criminal activities and condition no.(i) not enter the area of Botad Town Police Station except for making presence before the concerned Police Station and for attending the Trial Court concerned. However, the accused has frequently committed breach of the said condition and he constantly roams around within the Botad. Thus, the bail granted to him should be cancelled.

3. Heard learned P.P. Mr. K. M. Makwana for the applicant who has reiterated averments of the application. Mr. Makwana has drawn the attention of this Court that the opponent/accused reflecting his presence at various places in Botad. A FIR registered with Botad Town Police Station vide C.R.No.111 9000 225 1731 of 2025 punishable under Sections 308(5),351(3),352 & 54 of B.N.S., 2023. The opponent has threatened the complainant to kill and take extortion money from the complainant. As per the complaint, he has visited the Botad District time and again. Hence, the present applicant/accused has flouted the condition and committed an offence. Mr. Makwana has also stated that, in spite of the bail condition being unequivocally clear about the applicant being prevented from entering the entire Botad District except for marking his presence, he has committed breach of the said condition day in and day out.
4. He has submitted that vide para 8 of the Order of the Hon'ble Gujarat High Court passed in Criminal Miscellaneous Application No.2934/2025 dated 28.08.2018, it is ordered that "If breach of any of the above conditions is committed, the Trial Court concerned will be free to issue warrant or take appropriate action according to law.". Therefore this court is empowered to cancel the bail.Hence, this

application should be allowed and the bail which had been granted to the opponent should be cancelled.

5. Heard learned advocate Mr. R. D. Gida for the opponent/accused stated that the complainant has on multiple occasions, contacted the opponent/accused with a view to amicably resolve and conclude the outstanding financial/account-related issues between the parties. It was specifically conveyed by the complainant that upon finalization of the accounts, the dispute would stand resolved. In furtherance of the said understanding, the Complainant requested the opponent/accused to remain present at Jasdan and accordingly, the opponent/accused visited Jasdan for the said purpose. It is respectfully submitted that as per the explicit directions contained in the order passed by the Hon'ble High Court of Gujarat, the opponent/accused was restrained only from entering the territorial limits of Botad District. Jasdan does not fall within Botad District and therefore, the visit of the opponent/accused to Jasdan is in strict compliance with the conditions imposed by the Hon'ble Court. In view of the above facts and circumstances, it is submitted that no breach or violation of the conditions of the Hon'ble High Court's order has occurred. Hence, it is most humbly prayed that the present application be dismissed.
6. The Hon'ble Apex Court in the judgement of Ms. P. v. The State of Madhya Pradesh and another reported in 2022 LiveLaw (SC) 448 has discussed the circumstances where bail granted to the accused under Section 149(1) of CRPC can be cancelled. The said paras are reproduced as under :-

"24. As can be discerned from the above decisions, for cancelling bail once granted, the Court must consider whether any supervening

circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial. To put it differently, in ordinary circumstances, this Court would be loath to interfere with an order passed by the Court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the Appellate Court. Some of the circumstances where bail granted to the accused under Section 439 (1) of the Cr.P.C. can be cancelled are enumerated below :-

- a) If he misuses his liberty by indulging in similar/other criminal activity;
- b) If he interferes with the course of investigation;
- c) If he attempts to tamper with the evidence;
- d) If he attempts to influence/threaten the witnesses;
- e) If he evades or attempts to evade court proceedings;
- f) If he indulges in activities which would hamper smooth investigation;
- g) If he is likely to flee from the country;
- h) If he attempts to make himself scarce by going underground and/or becoming unavailable to the investigating agency;
- i) If he attempts to place himself beyond the reach of his surety.
- j) If any facts may emerge after the grant of bail which are considered unconducive to a fair trial.

I may clarify that the aforesaid list is only illustrative in nature and not exhaustive.

25. Keeping the aforesaid parameters to be borne in mind when dealing with a petition where not only has the order granting bail been assailed on the ground of perversity and illegality, supervening circumstances have been pleaded by the appellant that justify interference by this Court, we may now proceed to deal with the instant case."

7. Looking to the above proposition, let us find-out the factual matrix of the case found fit to the legal proposition set-out herein above. The accused/opponent came to be arrayed as accused in the offense registered by Botad Town Police Station, under the provisions of IPC and Arms Act. The accused is a habitual offender who has repeatedly extorted money from various

individuals by means of coercion and intimidation, including threats to cause death in the event of non-payment. In matters of this nature, the accused possesses a substantial number of antecedents, demonstrating a consistent pattern of criminal conduct.

- 8.** On perusing the documents on record, it transpires that the opponent/accused flouted the order of the Court by committing breach of condition no.(b) that is, maintain law and order and not to indulge in any criminal activities and condition no.(i) that is, not enter the area of Botad Town Police Station except for making presence before the concerned Police Station and for attending the Trial Court concerned then also accused constantly roaming within the jurisdiction of Botad District.
- 9.** Further, the present application has been submitted on 19/02/2026 and the learned Advocate R. D. Gida on behalf of accused on 5/03/2026 and then prayed for sometime and then on 13/06/2026, he has submitted the deposition of submitted at mark 7/1 which is recorded in CC No.72 of 2026 on 5/03/2026 before the Ld. Trial Court in the alleged offense based upon which the present cancellation application has been filed. As usual, the complainant has been turned hostile and stated different fact but in his complaint specifically stated that there is some alteration with the accused. Further, learned advocate has stated the complaint is false and the complainant itself has not supported the case of the prosecution. But this fact does not change the factual proposition as even at the time of bail application, the complainant has remain present and stated that they have compromised the matter. The question before me is not the outcome of the case but the conduct of the accused and violation of bail condition by the accused is the

issue before me. Apparently, the accused has committed the breach of condition and subsequently, by his muscle power, somehow manage to compromise the case. Therefore, there is clear breach of condition by the accused on record.

10. Ld. Advocate Shri. R. D. Gida has further submitted that the applicant-PSI Shri K.P. Zala has no locus to file present application. But this does not appeal to me as the PSI on behalf of State on every right to file present application and even otherwise in GUJCTOC complaint, the present complainant is original complainant and similar condition has been imposed while releasing him on bail. Further, though the applicant is not the original complainant and can be termed as an "aggrieved party", having locus to prefer this application, it would be pertinent to take note of the judgement delivered by the **High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No.933 of 2014** in the case of **Mahesh Pahade V. State of Madhya Pradesh**, whereby, the said High Court was examining the locus of filing of an application for cancellation of bail. The Court while referring to the judgement of **R.Rathinam v. State by DSP reported in (2000) 2 SCC 391** has observed thus in para 15:

"15. In R. Rathinam's case (supra) the accused were granted bail pending trial. Some Advocates filed a petition for cancellation of bail granted to the accused. The said petition was not entertained by the Bench. It was held by the High Court that the correctness of an order passed by the learned Single Bench CRA-933-2014 cannot be doubted before the Division Bench. The remedy is under Article 136 of the Constitution of India. But, it was held that in terms of Sub-section (2) of Section 439 of the Code, the bail can be cancelled. The Court held as under:-

"8. It is not disputed before us that the power so vested in the High

Court can be invoked either by the State or by any aggrieved party. Nor is it disputed that the said power can be exercised suo motu by the High Court. If so, any member of the public, whether he belongs to any particular profession or otherwise, who has a concern in the matter can move the High Court to remind it of the need to invoke the said power suo motu. There is no barrier either in Section 439 of the Code or in any other law which inhibits a person from moving the High Court to have such powers exercised suo motu. If the High Court considers that there is no need to cancel the bail for the reasons stated in such petition, after making such considerations it is open to the High Court to dismiss the petition. If that is the position, it is also open to the High Court to cancel the bail if the High Court feels that the reasons stated in the petition are sufficient enough for doing so. It is, therefore, improper to refuse to look into the matter on the premise that such a petition is not maintainable in law."

- 11.** In the aforesaid facts, it appears to this Court that the opponent/accused does not believe in upholding the sanctity of the Court's order and accordingly, the bail which came to be granted to him by the Hon'ble High Court of Gujarat vide order passed in R/Criminal Misc. Application No.7177 of 2025 on 28/04/2026, in the offence alleged to have been committed under the IPC and Arms Act, deserves to be cancelled. Therefore, I pass the following the order :-

**::: O R D E R :::**

- (1)** The present Application is hereby allowed.
- (2)** The bail granted to opponent/accused for the offense registered with Botad Town Police Station vide C.R.No.111 9000 222 1330 of 2022 punishable under Sections 302, 307, 324, 323, 504, 506(2) & 34 of Indian Penal Code, 1860 and Section 25(1)(B)(A) & 27 of the Arms Act is hereby cancelled.
- (3)** The Investigating Officer is directed to arrest the

opponent/accused alleged to have been involved in the offense in FIR bearing C.R.No.111 9000 222 1330 of 2022 which came to be registered by Botad Town Police Station, Botad, in accordance with law.

**(4)** Copy of this order also to be furnished to the concerned jail authority as well as concerned Police Station.

Pronounced in the Court today i.e., on this **07<sup>th</sup> Day of April, 2026.**

DATE : 07/04/2026  
BOTAD.

**[ M. J. PARASHAR ]**  
SESSIONS JUDGE,  
BOTAD.  
CODE NO.GJ00463