



**IN THE COURT OF ADDITIONAL SESSIONS JUDGE
& SPECIAL JUDGE (POCSO COURT), BOTAD,**

Criminal Misc. Application No. 175 of 2026
[Pocso Case No.03/2026]

Exh.:05

Applicant/Accused:

Rathod Nileshbhai Ramabhai (Accused No.2)

Aged: 25 years, Occupation:Labour,

Residing At. Kaniyad,

Ta./Dist.:Botad.

At present in District Jail, Bhavnagar.

VERSUS

Opponent :

The State of Gujarat – Through P.P., Botad.

Appearance:-

Learned Advocate for the applicant/accused : Mr. R.M.Parmar

Learned P.P. for the opponent – State : Mr. K.M.Makwana

Subject:- Application U/s.483 of The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for Regular Bail.

J U D G M E N T

1. The present bail application has been preferred by the applicant/accused under Section-483 of The Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “the B.N.S.S”) for releasing him on regular bail after filing of the charge-sheet in connection with the offence registered with Paliyad Police Station vide FIR No.11190005250420/2025 for the offences punishable under Sections-65(1), 64(2)(i), 64(2)(m), 351(2), 351(3) of the B.N.S read with Sections-3a, 4(2), 5(j)ii, 5(L), 6, 7, 8 of the Protection of Children from Sexual Offences Act (for short “the Pocso Act”). The applicant/accused was arrested in connection with the

aforementioned offences on 17/12/2025 and sent to judicial custody thus, the applicant/accused is in judicial custody.

2. The factual matrix of the FIR are such that the complainant/mother of the victim girl lodged the complaint on the ground that her minor daughter aged 14 years, 09 months & 11 days has been called by the accused on the pretext of cleaning the house after which the accused Arjanbhai Khodabhai Patel committed rape upon the victim against her will. The accused has also threatened the victim to kill if she disclose the incident to anybody and has frequently made physical relations and committed rape upon the victim as a result of the rape, the victim girl became pregnant and gave birth to a child. During the course of investigation, it came on record that the present accused took the victim girl at his house, where she was subjected to rape against her ill and consent. Thereby, the accused persons have committed the aforesaid offences.
3. On presentation of this application notice was issued to the State and the complainant. The Learned P.P. Mr. K.M.Makwana appeared for the state and the Investigating Officer has filed an affidavit-in-reply raising objections at Exh.4. The complainant has raised objection orally. Heard Learned Advocates appearing for the parties. Perused the record.
4. Learned Advocate Mr.R.M.Parmar appeared on behalf of the applicant/accused has advanced his oral arguments and submitted that the present applicant is innocent and has been falsely implicated in the present case. He has further submitted that the present applicant is not named in the FIR and no specific role, either direct or indirect, is attributed to him. He has further submitted that the name of the applicant has been subsequently roped in only on the basis of the statements of the victim and her

relatives, without any independent corroboration. Further, upon perusal of the statements of the material witnesses, no specific allegations of sexual assault, use of force, or criminal intimidation are levelled against the present applicant. Further, there are material contradictions and inconsistencies in the statements of the victim recorded at different points of time, which creates serious doubt regarding the credibility and reliability of the prosecution case. Further the victim, in her statements, has referred the names of different persons with whom she allegedly had relations, thereby creating doubt at the very outset regarding the involvement of the present applicant as well as the paternity aspect. Further, looking to the complaint, no allegation has been made against the applicant and the victim has first informed her mother about the incident. He has submitted that the present bail application has been preferred on the ground of filing of charge-sheet as the investigation has already been completed and the same has been assigned as PocsO Case No.3/2026. Further, the right to personal liberty is a fundamental right guaranteed under Article 21 of the Constitution of India, and the same cannot be curtailed except in accordance with procedure established by law. Further, the Bail is rule and jail is an exception and the applicant will abide by all the terms and conditions which will likely to be imposed upon him. On such grounds, he has prayed for enlarging the applicant on regular bail by citing the various judgments of Hon'ble Apex court. He has further submitted that the trial takes time and if the applicant is kept in judicial custody it will be a pre-trial conviction. That there are no any offense registered against the applicant and there is no any criminal antecedents against the applicant. It is further the case of the applicant that the he is of young age and his family's responsibility lies on his shoulders and

is maintaining his family. He has also argued that the applicant is a permanent resident of the address mentioned in the cause title and is not likely to flee. He will abide by all the conditions likely to be imposed upon him by granting Regular Bail. So, in the interest of justice Regular Bail may be granted to present applicant.

5. *Per Contra* the Learned P.P. Mr. K.M.Makwana appeared on behalf of the State and filed affidavit of Investigating Officer vide Exh.4. He has strongly objected the present bail application and further submitted that, at the time of alleged commission of offence, the victim was aged about 14 years, 09 months & 11 days and she was subjected to rape and penetrative sexual assault by the present accused as a result of which, the victim girl became pregnant and gave birth to a child. He has further submitted that the age of the victim girl was within the knowledge of the accused, but despite this fact, the accused has committed alleged offence. He further submitted that this is the first bail application on behalf of the applicant and there is no new ground for filing the present application. He further submitted that the serious allegations have been leveled against the present applicant and trial is just commenced. All the witnesses in the case are yet to be examined and if the applicant/accused is released on bail, he is likely to jump bail which may adversely affect the trial of the case. Thus, in view of the aforesaid grounds, Learned PP has submitted that no discretionary power can be exercised in favour of applicant at this stage. Accordingly, prays that the present bail application deserves to be rejected.
6. Before adverting to the emergence of the factual matrix from the record of the case, it is worthwhile to comprehend the factors governing the grant or rejection of the bail. While granting bail,

the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State, possibilities of repetition of similar or serious offences, possibility of fleeing away from process of law and other similar considerations.

7. Now, at this this juncture, while deciding present regular bail application, Court cannot appreciate evidence on record, but at the same time Court can weigh according to the material available on record and has to see whether the prima-facie allegations made against the applicant/accused can be believed and the Court has to comprehend exact role attributed to the accused. On perusal of the Affidavit filed by the Investigating Officer and FIR and other relevant materials available on record, it transpires that, the present applicant/accused has prima facie involved in the alleged offence.
8. As per the catena of decisions of the Hon'ble Supreme Court and our own the Hon'ble High Court, the Court must evaluate the entire available material against the accused very carefully. The Court must also clearly comprehend the exact role of the accused in the case. It is settled legal proposition in our country that, at the time of deciding the application under Section.483, the nature and gravity of the accusation and the exact role of the accused must be properly comprehended. Another material aspect is possibility of the applicant to flee from justice. The possibility of the accused likelihood to repeat similar or the other offences is also one of the parameters to take into consideration.

9. As per the above settled principles, it is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The entire discretion of grant or refusal of bail is left on the Courts and such discretion must be exercised on the basis of the available material and the facts of the particular case. It is pertinent to be noted that, at the time of deciding any application under the provision of Section.483, the appreciation and evaluation of the evidences is not permissible. But the materials produced by the contesting parties are required to be considered for fair adjudication of the application. Having perused the complaint filed against the present applicant, it reveals that specific accusation is made against the present applicant. It is one of the contention of the applicant and the Ld. Advocate appeared on behalf of the applicant that the present complaint is false and lodged frivolous. But in the present application, there are specific allegations against the present applicant/accused. On perusing the statement of victim, it clearly transpires that the age of the victim girl was within the knowledge of the accused, but despite this fact, the accused had repeatedly made physical relationship with the victim as a result of the rape, the victim girl became pregnant and gave birth to a child.
10. From the materials available on record, it prima facie appears that there is a specific accusation and attribution of role played by the accused person. The perusal of the record shows that serious allegations of rape, kidnapping and threatening have been leveled against the present accused. The victim girl was made pregnant and gave birth to a child at the tender age of 14 years and 09 months. The accused person has played with the life of the victim girl. There is a prima facie case against the present applicant. Looking to the gravity and nature of the accusation made against

the present applicant/accused and considering the role comprehended to the present applicant/accused and while balancing personal liberty and society's interest, it reveals that the personal liberty of the present applicant/accused cannot be protected against the interest of the society. Moreover, the applicant has criminal antecedent and hence, there is possibility of the present applicant/accused to flee from justice and to tamper or hamper with the evidences cannot be ruled out. Therefore, considering the facts and circumstances of the matter on hand and entire materials available on record and in view of the gravity, nature and complexity of the crime, the role played by the accused person and the age of the victim at the time of offence, therefore considering the larger interest of the society, it is not a fit case for granting regular bail to the accused person. Moreover, the trial of the case is just commenced and all important witnesses are yet to be examined and therefore, only on the ground of filing of charge-sheet, the Court cannot grant this application at this crucial juncture as no any circumstances after rejecting the previous bail application of the present applicant have been put before this Court. Hence, in the interest of justice following order is passed:-

::: O R D E R :::

The present **Criminal Misc. (Regular Bail) Application No.175 of 2026**, is hereby rejected.

Signed & Pronounced in the open Court today i.e. on 18th March, 2026.

Date : 18/03/2026
Place: Botad.

(Jayeshkumar Kanubhai Prajapati)
Additional Sessions Judge
& Special Judge(Pocso Court),
Botad.
[Code No.GJ00598]