



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

Criminal Misc. Application No. 180 of 2026
[Pocso Case No.03/2026]

Exh.:05

Applicant/Accused:

Arjanbhai Khodabhai Vadchhak
Aged: 76 years, Occupation: Agriculture/Retired,
Residing At. Chaturanagar, Patel Para,
Targhara, Kaniyad Road,
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.B.Khachar
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 02/12/2025 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 present accused on the pretext of cleaning the house after which the accused 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. Thereby, the accused has 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 also remained present and raised oral objection. Heard Learned Advocates appearing for the parties. Perused the record.
 4. Learned Advocate Mr.R.B.Khachar 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 according to the complaint, the fact that the said incident took place before 7 to 8 months and as per the allegation, the applicant had taken the victim to his farm under the pretext of getting the house cleaned and during that time, established physical relations with her. Further, the allegations levelled against the applicant are false and that he has been falsely

implicated in the present offence. He has further submitted that as per the statement of the victim, the applicant had taken her to the house for cleaning work and, at that time, the wife of the applicant was suffering from knee pain and had gone out of the house, and therefore was not present at the relevant time and hence, the allegations of sexual intercourse are completely false and concocted. He has further submitted that as per the statement of the victim dated 03/12/2025, the applicant had allegedly established physical relations with her on three occasions. However, after a period of thirteen days from the complaint, the victim stated that she was having a love affair with the co-accused and that the co-accused had called her to his house about nine months prior and had established physical relations with her against her will. He has further submitted that the victim has also stated that another co-accused had forcibly established physical relations with her after catching hold of her in a farm while she was passing through the farm of Tegabhai Rathod. He has further submitted that the victim has stated new facts in her statement after a period of thirteen days from the date of the incident and that is having a love affair with two other co-accused and establishing physical relations with them is on record. Therefore, it is prima facie established that the applicant has been wrongly implicated in the present offence. He has further submitted that the applicant is an old-aged person and is not physically capable of establishing sexual relations and had undergone a prostate operation about 7 to 8 months prior to the alleged incident, which further supports the contention that the allegations against the applicant are false and untenable. 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. 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. He has further submitted that, upon perusal of the medical evidence, no signs of force or injury are found on the person of the victim. 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 old 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. 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 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 advertent 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, on the pretext of getting the house cleaned, the accused repeatedly established physical relationship with the victim and as a result of which, the victim became pregnant and subsequently 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 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, 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 has just commenced, and all

material witnesses are yet to be examined. Therefore, merely on the ground that the charge-sheet has been filed, this Court cannot grant the present application at this crucial juncture, as no new circumstances arising after the filing of the charge-sheet have been placed before this Court. Hence, in the interest of justice following order is passed:-

:: ORDER ::

The present **Criminal Misc. (Regular Bail) Application No.180 of 2026**, is hereby rejected.

Signed & Pronounced in the open Court today i.e. on 23rd March, 2026.

Date : 23/03/2026
Place: Botad.

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