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Exhibit : 5

IN THE COURT OF SESSIONS JUDGE AT BOTAD

Criminal Miscellaneous Application No.184/2026
(Before charge-sheet)

Applicant :- Dharmdeepbhai Kathubhai Khachar,
Age :- 21, Occupation :- Agriculturer,
Residing at Nagadka, Taluka :- Saayla, District :- Surendranagar.
(Presently in Sub jail of Botad)

Versus

Opponent :- The State of Gujarat.

Appearances :-

Mr. A. S. Metaliya, learned Advocate for the applicant/accused.

Mr. A. D. Zala, learned Spl.P.P. for the Opponent-State.

Subject:- Application for seeking Regular bail U/s. 483 of B.N.S.S.

J U D G E M E N T

1. The present bail application is preferred by the applicant/accused for regular bail under Section 483 of B.N.S.S. Applicant/accused came to be arrested for the alleged offence punishable under Sections 65(E), 116(B), 81 & 98(2) of the Gujarat Prohibition Act, 1949, registered with Paliyad Police Station, District - Botad vide C.R. No.111 9000 525 0400/2025. Therefore, seeks relief under Section 483 of the BNSS for enlargement on regular bail.
2. The brief facts of this case in nutshell are such that the applicant/accused done this overt act for obtaining the financial gain.
3. I have heard learned advocate for the applicants who has vehemently submitted in his arguments that the applicant has not committed alleged offence and is innocent. Further, he is having a family and also have a responsibility to maintain his families. Further, no prima facie case has been made out against the present applicant because the muddamal has

not been recovered from the conscious possession of the applicant and he have been falsely implicated in the present offence. It is further stated that when the incident occurred applicant is not at the place of offense and there is no proof that the place of incident is belong to or registered in the name of the present applicant. He has also argued that the other-accused of this case have released on bail by this Hon'ble Court in Criminal Misc. Application No.12 of 2026 and role played by present applicant/accused is not graver than the said accused who was released on bail. Therefore, on the ground of parity, this matter also deserves to be allowed. That the charges upon the applicant is not of the nature so as to inflict punishment of life imprisonment or death. No prima facie, offence is made out against the applicant. The applicant is permanent resident of address cited in the cause title and if released on bail, will not likely to abscond or to tamper evidence of the prosecution by inducement or threat to witnesses and shall fully co-operate the police investigation. The applicant is ready and willing to furnish bail bond of the amount as deem fit to the Hon'ble Court and admit to comply the conditions that may be imposed. Hence, urged that applicant be released on bail.

4. Opposing the present application, learned Spl.P.P. for the State submits that looking to gravity of offence, the applicant/accused are not deserving to be enlarged on bail. It is further submitted that the role played by present applicant/accused is much graver than the accused who was released on bail. The investigation is pending and the charge-sheet is yet to be filed. Finally, there is a possibility of tampering or hampering the evidence and therefore, under the circumstances, the application be rejected.
5. Investigating Officer has filed his affidavit at Exhibit-4, wherein it is submitted that there is direct and sufficient evidence against applicant/accused. That the muddamal i.e. liquor have been recovered in

the present offence which shows their prima facie involvement in the alleged crime. Further, there is all possibility of tampering with the evidences if the applicant/accused enlarge on bail. Further, the investigation is at crucial stage and charge-sheet is yet to be filed. Therefore, the applicant/accused doesn't deserve to be enlarged on bail and hence, it is prayed to reject this application.

6. Bail to be granted or not to be granted requires to be decided on celebrated principles enunciated by the Hon'ble Apex Court and the Hon'ble Gujarat High Court. This Court, at this stage should not go on scrutinizing the evidences before it. The Hon'ble Apex Court has held that the Court must bear in mind the While deciding the bail application, the merits and demerits of the case should not be discussed in detail, but some important factors are required to be taken into consideration i.e. prima-facie case against the accused, nature and gravity of offence, punishment prescribed for the offence, danger of the accused absconding or fleeing away, if released on bail, character, behavior, means, position and standing of the accused, likelihood of the offence being repeated, reasonable apprehension of the witnesses being tampered with, larger interest of the society and State, etc.
7. In this regard I would like to refer judgment of Hon'ble Supreme Court In case of **Sanjay Chandra V/s C.B.I, reported in AIR 2012 S.C 830**, wherein at para 14, 16 it is held that :-

Para 14. "In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the

trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."

Para 16. "This Court, time and again, has stated that bail is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution."

8. Further ground of parity is required to be taken into consideration because, if present accused is entitled to bail on the ground of parity, other relevance consideration are not required to be dealt with. Judgment of Hon'ble High Court in case of **Ramesh (Supra)** is required to be taken into consideration wherein Hon'ble High Court has held that,

"Though, two orders granting bail to co-accused passed by the High Court were brought to the notice of the learned Sessions Judge, it is held that ground of parity can be claimed by co-accused only before the High Court. The above approach of the learned Judge is not only illegal, but contrary to settled practice of considering the order of superior Court in proper perspective. That, in the set of facts and circumstances almost similar or identical, when superior Courts exercise the powers either under Secs. 438 or 439 of the Code, the subordinate Courts are duty-bound to consider the same and apply **if the same sets of facts are in existence and unless there being any extraordinary circumstances or striking dissimilarities exist to deviate from the law of parity, the Courts below should consider the same in accordance with law.**" (Para 9)

9. Considering the above factors and after perusing the police papers, it transpires that the police has seized contraband liquor i.e., total worth of Rs.74,68,400/- of muddamal were seized. From perusal of the police papers, it transpires that the applicant/accused were not found at the place

of offence and the place of offense were also not registered in the name of applicant/accused and nothing has been found from the conscious possession of the applicant/accused. The muddamal liquor is already seized and no further recovery or discovery is to be made out at the instance of the applicant/accused. Further, while considering the ground of parity, the role played by the present applicant/accused is not graver than the accused who was released on bail by this Hon'ble Court in Criminal Misc. Application No.12 of 2026. On facts it is found that, the case of applicant/accused can be equated with the other-accused who have been released on bail and there are no different circumstances and striking dissimilarities to deviate from the rule of parity. Hence, on the ground of parity only present applicant is entitled to bail. It is settled proposition of law that if on the ground of parity, the applicant is entitled for bail then other relevant considerations are not required to be dealt with except striking dissimilarities, if available on record. In the present case, no such striking dissimilarities which dis-entitle the applicant the benefit of parity appears to have been on record. There is no likelihood of the trial being commenced and concluded in the near future looking to the pendency of U.T.P. Cases pending before this special court. Denial of bail to the applicant, would amount to pre-trial conviction. It is not that the applicant would flee from the trial. Therefore, in view of above facts and proposition of law, in the opinion of this Court, this is a fit case to exercise the discretionary powers of the Court in favour of the applicant/accused in view of the ratio also laid down by the Hon'ble Apex Court in the case of **Sanjay Chandra (supra)**. Hence, allowing the arguments of the Ld. advocate for the applicant/accused, for the interest of justice, following order is passed :-

::: O R D E R :::

- (1) The present Regular Bail Application is hereby allowed.
- (2) Applicant/accused namely Dharmdeepbhai Kathubhai Khachar is

hereby released on bail for the offenses registered with Paliyad Police Station being C.R. No. 111 9000 525 0400/2025, upon furnishing personal bond of Rs.20,000/- (Rupees Twenty Thousand Only) with one surety of like amount with following conditions :-

- (a) applicant/accused shall not abscond/jump out the bail and shall not to take undue advantage of liberty.
- (b) applicant/accused shall not act prejudicial to the interest of the prosecution and shall remain present before the Court at the time of trial on every adjournment.
- (c) applicant/accused shall not induce or threaten witness acquainted with facts of present case.
- (d) applicant shall not leave Gujarat State without prior permission of this Court;
- (e) applicant/accused shall furnish his residential address proof with Mobile contact number with the authentic documents before the Court within 7 days of their release and shall not change his residence without prior permission of the Court;
- (f) applicant/accused shall himself available before the Investigating agency for interrogation/investigation whenever and wherever called for.
- (g) However, it is clarified that, in case of involvement of the applicant/accused in any similar kind of offence in future, or applicant/accused violate any condition, the present bail order stands automatically cancelled without further order.
- (h) Bail Bond shall be furnished according to the satisfaction of the concerned Court having jurisdiction to try the case;

(3) Bail is to be given before the concerned Trial Court.

(4) The Soft Copy of this order to be sent to the Jailor, Sub-Jail, Botad by E- mail in accordance with the directions of the Hon'ble Supreme Court of India in SMWP (Criminal) No.4/2021, in RE POLICY STRATEGY FOR GRANT OF BAIL dated 31.01.2023.

(5) Copy of this order also to be furnished to the concerned Trial Court as well as concerned Police Station.

Pronounced in the Court today i.e., on this **16th** Day of **March, 2026**.

DATE : 16/03/2026
BOTAD.

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