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IN THE COURT OF SESSIONS JUDGE AT BOTAD

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Criminal Misc. Application No.456/2026
(Regular Bail after chargesheet)

Applicant/ :- Shivrajbhai @ Shivkubhai Jethsurbhai Karpada,
Accused Aged :- 44years, Occupation :- Agriculturist,
 Residing at Refda, Taluka :- Barwala, District :- Botad.
 (Presently in Sub Jail of Botad.)

VERSUS

Opponent:- The State of Gujarat.

Appearance :-

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

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

Subject :- Application for Regular bail filed under Section 483 of B.N.S.S.

J U D G M E N T

1. The present bail application is preferred by the applicant/accused for grant of Regular bail u/s. 483 of B.N.S.S. Applicant/Accused came to be arrested for the alleged offence punishable under Sections 111(2)(B), 111(3) & 111(4) of the Bharatiya Nyaya Sanhita, 2023 and Sections 65(A)(E), 81, 83, 98(2) & 116(B) of the Prohibition Act registered with Paliyad Police Station, District - Botad vide C.R.No.111 9000 526 0165/2026. Earlier, the applicant/accused had filed Criminal Misc. Application(For Regular Bail – Before Chargesheet) No. 375 of 2026 before this Court which was rejected on 05/06/2026. Thereafter, the chargesheet came to be filed before concerned Trial Court which is numbered as CC No.6187 of 2026 and now this successive bail application has been preferred by the applicant/accused

seeking enlargement on bail under Section 483 of BNSS.

2. The brief facts of the present case are that the accused persons, including the present applicant/accused, in furtherance of their common intention and with a view to deriving unlawful pecuniary gain, entered into a criminal conspiracy for the procurement and transportation of illegal contraband liquor. Pursuant thereto, the main accused I.e, present applicant/accused Shivkubhai, arranged for the procurement of the said illicit liquor, while the other accused persons assembled together and loaded a truck with contraband liquor consisting of foreign liquor, beer tins, and other prohibited alcoholic substances valued at approximately Rs.13,74,720/-. Thereafter, under the instructions and directions of the present applicant/accused Shivkubhai, the accused persons were transporting the aforesaid contraband liquor in the said truck without possessing any valid pass, permit or authorization as required under law, during which they were apprehended by the authorities. Hence, the present offence came to be registered against the accused persons.

3. I have heard learned advocate for the applicant/accused who has vehemently submitted in his arguments that the applicant has not committed alleged offence and is innocent. The present applicant/accused has been falsely and maliciously implicated in the alleged offense by the police authorities, without any prima facie case or evidence to substantiate his involvement. Further, the applicant/accused was not apprehended from the place of offense but later on, present applicant/accused has arrested by the police on a grounds showing that the applicant/accused was present at scene of offense. The vehicle in question is neither registered in the name of the applicant, nor were they driving it at the material time rather. It is respectfully submitted that no incriminating material or contraband (*muddamal*) was recovered from the conscious possession of the applicant. The applicant had neither knowledge of, nor any physical or constructive

control over, the contents of the intercepted vehicle or the seized contraband. In absence of *mens rea* (guilty mind) and actual or constructive possession, no liability can be fastened upon the applicant, who is entirely disconnected from the alleged seizure. Furthermore, as the core of the investigation is completed and the statements of the witnesses have already been recorded and also the charge-sheet is filed and there exists no apprehension of the applicant tampering with the prosecution evidence or hampering the judicial process if released. The applicant is a responsible family man with dependents relying solely on him for his sustenance and their arrest appears to be a colorable exercise of power by the police to artificially boost their case metrics. Further, he has argued that the other-accused persons of this case have released on bail by this Hon'ble Court in Criminal Misc. Application Nos.333 of 2026, 339 of 2026 and 360 of 2026 and role played by the present applicant/accused is not much graver than the accused who were released on bail. Therefore, on the ground of parity, this matter also deserves to be allowed. Furthermore, the charges leveled against the applicant are not of the nature so as to inflict punishment of life imprisonment or death. 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 applicants are 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. In support of his arguments, learned counsel for the applicant/accused has placed in reliance upon various decisions;

- i. Sanjay Chandra Vs. C.B.I, reported in AIR 2012 S.C
- ii. 830,
- iii. Rameshbhai B. Dhabhi vs. State of Gujarat, reported in 2011(3) G.L.R.
Prabhakar Tewari versus State of Uttar Pradesh, 2020 (0) AIJEL- SC 65674.

4. Heard Spl.P.P. for the State. He vehemently argued that accused has committed offence of serious nature. He has further submitted that the present application is filed as after completion of investigation and filing of chargesheet but as the earlier application of has rejected and upon considering the same material which is available before the Court, no new material brought before the Court by the accused. Therefore, present application is also required to be rejected. After rejection of Regular Bail Application No.375/2026, the accused has brought present bail application which does not required any consideration. Moreover, learned Spl.P.P. has referred the affidavit filed by I.O. at Exhibit-4, wherein it is clearly surfaced that the present applicant/accused has played active role in the so-called offense and he is principal perpetrator in the present case, therefore, the benefit of parity cannot be extended/given to him. Therefore, present application is also required to be rejected.

5. Now, the first of all, I would like to decide whether the present application is maintainable and rejection of earlier application would be a bar to grant of the present application. I, myself has decided the earlier bail application of the present applicant/accused and at the relevant time available contentions are raised by the accused and order has been passed wherein the grounds raised by the accused are discussed to find out whether exceptional case has been made out or not? This Court had previously considered and rejected the bail application of the present applicant/accused, observing that the possibility of the present applicant/accused to flee from justice and to tamper or hamper with the evidences cannot be ruled out and the investigation is yet not completed. The said application was rejected primarily on the ground of pending investigation. In the present application, the applicant/accused has stated that the investigation has completed and chargesheet has duly been filed. Therefore, the question that arises for consideration before this Court is whether such grounds constitute sufficient

change in circumstances warranting the release of the applicant/accused on bail. Hence, certainly present application is required to be considered as accused would have pointed out new material in this case. Therefore, I hold that consideration and parameters to decide both the applications demands that present application can not be termed as successive application and can be entertained on merits.

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, criminal antecedent, 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. First of all 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 **Rameshbhai Batubhai Dhabhi V. State of Gujarat** 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. Having carefully considered the facts and circumstances of the case, this Court observes that the offenses alleged against the applicant/accused is neither grave nor heinous in nature and carry punishments that do not extend to life imprisonment or the death penalty. Moreover, the benefit of parity cannot be given/extended to the present applicant/accused because there are several dissimilarities in the role played by the present applicant/accused and accused who were released on bail. Furthermore, the muddamal is recovered/discovered in the present offense no more recovery has been made and additionally, the investigation has concluded and the charge-sheet has been duly filed, there is no reasonable apprehension of the applicant/accused tampering with the prosecution evidence or hampering the trial. No material exists on record to suggest that the applicant/accused who is permanent resident of the given address is likely to abscond, evade the due process of law, or flee from justice. It further appears from the affidavit filed by the Investigating Officer that the applicant/accused has past criminal antecedents. In this regard, this Court deems it appropriate to rely upon the judgment of the Hon'ble Supreme Court in *Prabhakar Tewari V. State of Uttar Pradesh, 2020 (11) SCC 648 (or 2020 (0) AIJEL-SC 65674)*, wherein it has been held that the mere pendency of several criminal cases against an accused cannot be a sole ground to disentitle them from being released on bail. Further, 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 Hon'ble court. Denial of bail to the applicant, would amount to pre-trial conviction. Conse-

quently, this Court is of the opinion that no fruitful purpose would be served by keeping the applicant/accused in continuous judicial custody, thereby making it a fit case for the exercise of judicial discretion to enlarge the applicant/accused on bail. Accordingly, considering the nature of the offence and the overall facts of the case, this Court is of the considered opinion that it is a fit case for the exercise of its discretionary jurisdiction in favour of the applicant/accused. Therefore, without further elaboration, the following order is passed :-

:-O R D E R:-

(1) The present application is hereby allowed.

(2) Applicant/accused namely Shivrajbhai @ Shivkubhai Jethsurbhai Karpada arrested by Paliyad Police Station in connection with F.I.R. being C.R.No.111 9000 526 0165/2026 is hereby ordered to be released on bail on furnishing a personal bond for the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each with one surety of the like amount, on the following conditions :-

- (a) furnish the address of his residence to the Investigating Officer and also to the Court after released from jail and shall not change his residence without prior permission of the Court;
- (b) Applicant shall make himself available before the Investigating agency for interrogation/investigation whenever and wherever called for;
- (c) Applicant/accused shall not leave the India without prior permission of this Court;
- (d) Applicant shall not enter into Botad District except attending the Court proceedings and except special circumstances before the Court and concerned police station for a period of six months from the date of this order.
- (e) The Applicant shall surrender his passport if any before Court concerned. If he does not have any passport then file affidavit thereof;
- (f) Bail Bond shall be furnished according to the satisfaction of the Trial Court having jurisdiction to try or to commit the case;
- (g) If breach of any of the above conditions is committed, the concerned Trial Judge will be free to issue warrant or take appropriate action in the matter;

(h) 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.

(3) Bail Bond shall be furnished according to the satisfaction of the Concerned Court having jurisdiction to try or to commit the case.

(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 3rd day of July, 2026.

DATE : 03/07/2026
BOTAD

(M. J. PARASHAR)
SESSIONS JUDGE,
BOTAD.
CODE No.GJ00463