



**IN THE COURT OF 8TH ADDITIONAL SESSIONS JUDGE,
SURAT**

Cr.M.A.S. No. 1468 of 2026

Exh:- _____

Applicants/accused:-

Mohammed Saqib Munaf Jariwala

Age : 40 years, Occupation :- ,

Residing at : 502, Kohinoor Apartment

Rani Talav, Opp. Kaskivad, Surat.

Versus

Opponent :-

The State of Gujarat

Appearances :-

Ld. Advocate Mr. E. B. Huseni for the Applicants.

Ld. APP Mr. M. K. Brahmhatt for the Opponent-State.

~:: J U D G M E N T ::~

1. This is an application filed by the accused-applicant under Section-482 of BNSS, 2023 for seeking pre-arrest bail in connection with the offences registered at Athwalines Police Station vide Part A Crime Register No. 11210005260133 of 2026 under Sections 308(2) and 54 of B.N.S..
2. The notice was issued to the respondent State of Gujarat.

The Ld. Public Prosecutor has appeared before the court. The investigating officer has submitted his reply against the present bail application vide Exh. 4. The de facto complainant has submitted his affidavit vide Exh. 8 opposing the bail application.

Submission on behalf of Applicant-accused.

3. Heard the Ld. Adv. for the accused-applicant. He contended that there is no prima facie evidence against accused persons with respect to commission of any cyber offence. He further contended that the presence of accused would be easily available. He further contended that the accused-applicant is ready to comply any conditions that may be imposed by your Honour court. He further submitted that there is huge delay in lodging FIR since according to FIR the period for commission of offence is started from 01.09.2022 to uptil. He further submitted that the co-accused namely Rubinabanu who is the wife of the applicant herein has been enlarged on pre arrest bail by this Court vide order dated 18.02.2026 passed in CrMA no. 978 of 2026. Hence, prayed for allowing the application.

Submission on behalf of State.

4. Heard the Ld. APP. He submitted that there is prima facie case made out against the accused and the offence is serious therefore the application should be rejected.

Position of law governing Anticipatory Bail.

The Hon'ble Supreme Court in "Dhanraj Aswani vs. Amar S. Mulchandani" reported in (2024) 10 SCC 336 has held as under;

39. What has been conveyed in the aforesaid decision is that the court, on its own, should not try to read any other restriction as regards the exercise of its power to consider the plea for grant of anticipatory bail. Wherever Parliament intends or desires to exclude or restrict the power of courts, it does so in categorical terms. This is very much evident from the plain reading of subsection (4) of Section 438 CrPC itself. The dictum as laid is that the court should not read any blanket restriction nor should it insist for some inflexible guidelines as that would amount to judicial legislation.

5. The Hon'ble Supreme Court in "P. Chidambaram v. Directorate of Enforcement" reported in (2019) 9 SCC 24 has held as under:

Grant of anticipatory bail in exceptional cases

69. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 CrPC is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.

72. We are conscious of the fact that the legislative intent behind the introduction of Section 438 CrPC is to safeguard the

individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights—safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.

83. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.

6. The Hon'ble Supreme Court in the case of Tusharbhairajnikantbhairaj Shah v. Kamal Dayani reported in (2025) 1 SCC 753 has held as under;

68. This Court has time and again held that the discretion to grant pre-arrest bail should be exercised with great degree of circumspection. Reference in this regard may be made to *P. Chidambaram v. Enforcement Directorate* [*P. Chidambaram v. Enforcement Directorate*, (2019) 9 SCC 24 : (2019) 3 SCC (Cri) 509].

69. Thus, the power to grant anticipatory bail is not to be

exercised in a routine manner and the courts are expected to use this provision with a great degree of circumspection. Once, a court bearing in mind the strict parameters applicable to grant of anticipatory bail exercises such power, then in such a situation, giving a handle to the investigating officer to seek police custody remand of the accused, would virtually negate and frustrate the very purpose behind the order of anticipatory bail. Hence, we have no hesitation in holding that the practice prevalent in the State of Gujarat that the courts while dealing with the anticipatory bail application routinely impose the restrictive condition whereby, the investigating officers are granted blanket permission to seek police custody remand of the accused, in whose favour the order of anticipatory bail is passed, is in direct contravention to the ratio of the Constitution Bench judgment of this Court in *Sushila Aggarwal* [*Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1 : (2020) 2 SCC (Cri) 721] . The Division Bench judgment of the Gujarat High Court in *Sunilbhai Sudhirbhai Kothari* [*Sunilbhai Sudhirbhai Kothari v. State of Gujarat*, 2014 SCC OnLine Guj 16054] does not hold good in law as the same runs contrary to the ratio of *Sushila Aggarwal* [*Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1 : (2020) 2 SCC (Cri) 721] and thus, the same stands impliedly overruled.

7. The Hon'ble Supreme Court in "XXX vs Arun Kumar C. K" reported in AIR 2022 SC 5705 has held in Para-15 as under:

In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail.

Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.

8. The Hon'ble Supreme Court in the case of "P. Krishna Mohan Reddy Versus State Of Andhra Pradesh" reported in 2025 INSC 725 has held as under;

21. It was sought to be argued that the petitioners have already joined the investigation and are fully cooperating with the investigating agency and therefore, there is no need for custodial interrogation.

22. The petitioners might have been cooperating with the investigation and they might have been interrogated also by the investigating agency so far but, at the same time, we should not overlook the fact that by grant of anticipatory bail, we may come in the way of the investigating agency if at all it wants custodial interrogation.

23. As held by this Court in Sumitha Pradeep v. Arun Kumar C.K. & Anr. reported in (2022) 17 SCC 391 that it would be preposterous as a proposition of law to say that if custodial interrogation is not required that by itself is sufficient to grant anticipatory bail. Even in cases where custodial interrogation

may not be required the court is obliged to consider the entire case put up by the State, more particularly, the nature of the offence, the punishment provided in law for such offence etc.

24. It is needless to say that for the purpose of custodial interrogation, the investigating agency has to make out a prima facie case at the time when remand is prayed for. Whether any case for police remand is made out or not, it is for the Court concerned to look into.

25. In such circumstances, referred to above, we are of the view that we should not come in the way of the investigating agency at this point of time and the investigation should be permitted to proceed further.

27. To some extent, the petitioners could be said to have made out a prima facie case of political bias or mala fides but that by itself is not sufficient to grant anticipatory bail overlooking the other prima facie materials on record. Political vendetta or bias if any is one of the relevant considerations while considering the plea of anticipatory bail. The courts should keep one thing in mind, more particularly, while considering the plea of anticipatory bail that when two groups of rival political parties are at war which may ultimately lead to litigations, more particularly, criminal prosecutions there is bound to be some element of political bias or vendetta involved in the same. However, political vendetta by itself is not sufficient for the grant of anticipatory bail. The courts should not just look into the aspect of political vendetta and ignore the other materials on record constituting a prima facie case as alleged by the State. It is only when the court is convinced more than prima facie that the allegations are frivolous and baseless, that the court may bring into the element of political vendetta into consideration for the purpose of considering the plea of anticipatory bail. The frivolity in the entire case that the court may look into should be

attributed to political bias or vendetta.

54. Besides the above, we would also like to make ourselves very clear that the investigating agency shall not adopt any third-degree methods or shall not coerce or exert any undue pressure or bring any undue influence on any of the witnesses or any of the co-accused to make statements that may suit the State. Tomorrow, if any complaint is made before the court in this context with some cogent material, be it the trial Court or the High Court or the Supreme Court, the same shall be viewed very seriously. It is expected of the investigating agency to carry out a fair, impartial and transparent investigation, more particularly, in accordance with law.

55. Before we close this matter, we make it further clear that if the petitioners are ultimately arrested, remanded and thereafter sent to judicial custody and if any regular bail application is filed, the same shall be considered on its own merits in accordance with law. **It is needless to say that the principles of grant of anticipatory bail substantially differ from the principles of grant of regular bail.** It is for the Court concerned to apply the correct principles of law so far as the grant of regular bail is concerned and decide the same accordingly.

9. The Hon'ble Supreme Court in the case of Priya Indoria vs. State of Karnataka reported in 2024 (4) SCC 749 has held as under:

47. Despite the inclusion of the provision for anticipatory bail in the CrPC after the acceptance of the aforesaid recommendation, the expression “anticipatory bail” remained undefined in the CrPC. This Court in *Balchand Jain* [*Balchand Jain v. State of M.P.*, (1976) 4 SCC 572 : 1976 SCC (Cri) 689] observed that “anticipatory bail” means “bail in anticipation of arrest”. This Court has explicated that an application for anticipatory bail could be made by the accused either at a stage before an FIR is

filed or at a stage when an FIR is registered but the charge-sheet has not been filed, and the investigation is underway. Alternatively, it can be moved after the completion of investigation. The stage of investigation has a bearing on the conditions to be imposed while granting the relief of anticipatory bail.

48. A crucial difference between the pre-arrest bail order under Section 438CrPC and the bail order under Sections 437 and 439CrPC is the stages at which the bail order is passed.

Analysis.

10. Looking to the FIR it appears that it is alleged therein that applicant herein Mr. Munabbhai Jariwala came to the spot of construction to be carried out by the complainant and stated that he is reporter in News City Today and threatened the complainant that he will have to give money to him since his construction is unlawful and requires approved plan. The applicant herein had also stated the said fact to the complainant and demanded sum of Rs.2,50,000/-. Sum of Rs.25,000/- was transferred to the account of accused Munaf Jariwala on 01.09.2022. Again sum of Rs.10,000/- was transferred on 16.11.2022 and taken cash of Rs.15,000/- by Munaf Jariwala from the complainant. Again the accused herein Munaf Jariwala demanded Rs.2,00,000/- so that the complainant had given another Rs.50,000/- in January 2023 and sum of Rs.50,000/- in March 2023 again Rs.50,000/- in April 2023 and Rs.50,000/- in May 2023. Thereafter, in July 2025, the accused herein Munaf Jariwala came to the site and demanded Rs.2,50,000/- so that sum of Rs.2,50,000/- was

given to him and demanded other sum of Rs.1,00,000/- on the occasion of engagement of his son. On 13.08.2025, the accused herein Munaf Jariwala sent the invitation to the complainant and demanded other amount and got stop further construction on sixth floor. Thereafter, the complainant started further construction and the accused herein Munaf Jariwala demanded amount so that the complainant lodged and FIR. The IO has reiterated the facts of extorting amount from the complainant. So, there is a prima facie case made out against the applicant herein. The co-accused Rubinabano was released on pre-arrest bail on the ground that the entire allegation is leveled against applicant herein and no role attributed to Rubinabano and no prima facie case made against Rubinabano. So, the mere fact that co-accused Rubinabano has been enlarged on regular bail does not make any difference against applicant herein since there is prima facie case made out against him.

11. The Hon'ble Supreme Court in the case of *Sushila Aggarwal v. State (NCT of Delhi)* reported in (2020) 5 SCC 1 has held as under;

85.1. As held in *Sibbia [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465]*, when a person apprehends arrest and approaches a court for anticipatory bail, his apprehension (of arrest), has to be based on concrete facts (and not vague or general allegations) relatable to a specific offence or particular offences. Applications for anticipatory bail should contain clear and essential facts relating to the offence, and why the applicant

reasonably apprehends his or her arrest, as well as his version of the facts. These are important for the court which is considering the application, the extent and reasonableness of the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not a necessary condition that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.

92.1. Consistent with the judgment in *Gurbaksh Singh Sibbia v. State of Punjab* [*Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465], when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.

- 12.** Under such circumstances and aforesaid reasons, the discretionary power under Section- 482 of BNSS, 2023 may not be exercised in favour of the applicant herein considering the peculiar facts and circumstances of this

case. Hence, I hereby pass following order in the interest of justice.

:- Order :-

The present application is hereby ordered to be rejected.

There shall be no order as to cost.

Date:07/03/2026

Place: Surat

(Amitkumar Narendrabhai Dave)

8th Additional Sessions Judge

Surat. GJ00807