



GJSR010066582025 		Presented on	03-06-2025
		Registered on	03-06-2025
		Decided on	12-06-2025
		Duration	0 yy, 0 mm, 9 dd

**IN THE COURT OF ADDL. SESSIONS JUDGE,
SURAT
(Presided Over by R.R.BHATT)**

CRIMINAL MISC. APPLICATION NO. 4269 of 2025

Exh:- _____

Applicant/accused:-

MAFMAD RIZVANBHAI AIYUBBHAI LIMBADA

Age : 37, Occupation- Business & Farming,

Residing at : 429, Whorwad Faliyu,

Village Kondh, Tal. Valiya, Dist. Surat.

Versus

Opponent :-

The Union of India,

Appearances :-

Ld. Advocate Shri. Z. K. Belawala for the Applicant.

Ld. DGP Shri. N. L. Sukhadwala for the Opponent-State.

Additional Sessions Judge, Surat

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

1. The present application has been filed by the applicant/accused under Section 482 of the BNSS in connection with the Complaint being File No.DRI/AZU/SRU/B/INV-11/2023 for the offence punishable under Sections 135(1)(A) & (B) and 135(1)(i) (A) & (B) of The Customs Act, 1962.
2. Ld. Advocate for the Applicant/accused submitted that the Applicant/ accused is innocent and has been falsely implicated in the aforesaid case. It is further submitted that no other or further recoveries or discovery is required to be made by the investigation agency from the present applicant and therefore, custodial interrogation of applicant would not arise. It is further submitted that applicant-accused is arrayed as an accused based on the statement of other co-accused. It is further submitted that there is no cogent evidence to attribute such role to the present applicant-accused. It is further submitted that there is no evidence against the applicant-accused regarding bringing smuggled gold. It is further submitted that there is no need of custodial interrogation for

the present applicant-accused. It is also submitted that the applicant has been falsely implicated in the present case. The offence is triable by Ld. Magistrate and considering the maximum punishment of the alleged section against the applicant the same is punishable maximum term of seven years and considering the term of sentence and the fact of trial which likely to take some time to avoid pre-trial conviction the applicant is required to be released on anticipatory bail on appropriate terms and condition. It is further submitted that the applicant is local resident of Surat, and, therefore, if he is released on bail he shall not flee from justice and shall remain present during investigation. It is further submitted that the entire evidence is in form of documents which are already confiscated by the Investigating Agency and, therefore, the question of hampering and tempering with the witness and the evidence would not arise. Furthermore, The other co-accused of the said matter have been released on bail by the Hon'ble High Court of Gujarat as well as by this Hon'ble Court, hence, the applicant-accused is entitled for principle of Parity. Hence, the accused having roots in the community would deter him

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from fleeing from justice as well as bail should be granted in economic offences, considering the gravity of offence and attendant circumstances with the period of sentence. By making aforesaid submissions, he has prayed for allowing the present Bail Applicant and releasing him on anticipatory Bail.

3. Per contra, Learned D.G.P. Mr. N. L. Sukhadwala appearing for the Respondents State has vehemently objected to the present Bail Application and submitted that the Department had received specific intelligence that attempt is made to smuggle Gold into India. It is further submitted that accused has played an active role in smuggling of gold paste and therefore, summons was issued to him for recording statement but he neither appeared before the I.O. nor responded to summons and is absconding since long. It is further submitted that custodial interrogation is required. It is submitted that Custom Officer is not a Police Officer and therefore, a statement made before him are admissible where name of present applicant is disclosed by co-accused. By making aforesaid submissions he has prayed for dismissing the present Bail Application.

Position of law governing bail.

4. 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 Cr.P.C. 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 Cr.P.C. 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.

5. 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.

6. The Hon'ble High Court of Gujarat in "**Harisinh Abhesinh Parmar Versus State Of Gujarat**" reported in **2023 (0) AIJEL-HC 244993** has held as under;

9. Therefore, considering the law which has been laid down by the apex court and considering the averments made in the complaint filed by the original complainant and after considering the observations made by the learned sessions judge concerned, this court is of the considered view that custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail and this is not the case where the discretion should be exercised in favour of the applicant for anticipatory bail.

Analysis.

7. Heard both the parties, looking to the facts of the present case, read F. I. R. application of the accused and police papers along with an affidavit of the IO. The offence has been registered under Sections 135(1)(A) & (B) and 135(1)(i)(A) & (B) of The Customs Act, 1962. It is case of the prosecution that upon receiving by specific intelligence, there was an attempt to smuggle Gold into India with help of Official working near arrival area of Immigration at Surat Airport. Upon such

information, four accused persons were apprehended and upon checking their Luggage, Gold paste worth approximately Rs.23 Crores was recovered and name of present applicant is disclosed during interrogation by the other co-accused. It further appears that necessary recovery/discovery is already done and no other or further recovery/discovery is required to be made by the investigation agency. It appears that there is no requirement for further custody of the applicant-accused. It is required to be noted here that the offence is triable by Ld. Magistrate and considering the maximum punishment of the alleged section against the applicant the same is punishable maximum term of seven years and considering the term of sentence and the fact of trial which likely to take some time to avoid pre-trial conviction the applicant is required to be released on anticipatory bail on appropriate terms and condition. It is further submitted that, if he is released on bail, he shall not flee from justice and shall remain present during the interrogation. It further appears that the entire evidence is in form of documents which are already confiscated by the Investigating Agency and, therefore, the question of hampering

and tempering with the witness and the evidence would not arise. Furthermore, the co-accused who are having more or less similar nature of the same offence have been released on bail by the Hon'ble High court of Gujarat as well as by this Hon'ble Court and therefore, on the ground of parity also the case of present applicant accused is required to be considered.

8. Considering the role and nature of allegations, gravity of offences, role attributed to the accused and without discussing the evidence in detail, at this stage and looking to the possibility of accused availability at the time of investigation and trial, this is an appropriate case to use discretionary power under Section 482 of the BNSS and release the applicant on bail subject to certain strict conditions.

-: O R D E R :-

1) Present Criminal Misc. Application No. 4269 / 2025 of applicant namely **MAFMAD RIZVANBHAI AIYUBBHAI LIMBADA**, in connection with his arrest, under Section 482 of BNSS is hereby allowed and the present applicant is ordered to be released (enlarged) on anticipatory bail in connection with the Complaint being File No.DRI/AZU/SRU/B/INV-11/2023 for

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the offence punishable under Sections 135(1)(A) & (B) and 135(1)(i)(A) & (B) of The Customs Act, 1962, on his executing surety of Rs.25,000/- (in words Rupees Twenty Five Thousand only) and personal bond of like amount subject to following conditions that,

CONDITIONS :

1. Shall co-operate with the investigation and make himself available for interrogation and investigation whenever required;
2. The applicant shall produce on Affidavit his present and permanent address along with address proof and mobile number and shall not change the same without prior permission of trial Court.
3. The applicant shall not take undue advantage of his liberty or abuse his liberty and must not involve in any offence of like nature;
4. The applicant shall not influence the prosecution witnesses;

5. The applicant shall remain present before the concerned I.O. for interrogation on 19th of June, 2025 between 10 A.M. to 6 P.M.
 6. The applicant shall regularly remain present during the trial before trial court.
 7. The applicant shall not leave India without prior permission of this court;
 8. The applicant shall deposit his original passport with the court and if he does not possess passport then affidavit to that effect shall be filed.
 9. The applicant shall not tamper with evidence;
- 2) Bail & Bond be produced before the concerned Ld. Trial Court.

Pronounced and signed in open court today i.e. On 12th June, 2025.

Date : 12.06.2025
Place: Surat.

(Rakesh Rajnikant Bhatt)
Additional Sessions Judge,
Surat
(Unique ID Code: GJ00608)

Additional Sessions Judge, Surat