

**IN THE COURT OF 2nd ADDITIONAL SESSIONS JUDGE,
SURAT**

CRIMINAL MISC. APPLICATION NO. 4269 of 2025

Exh. _____

Applicant/accused:-

MAHMED 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

Intelligence Officer DRI

Appearances :-

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

Ld. Adv. Shri M.A. Malik for the Opponent - DRI.

[1] Pursuant to the order of the Hon'ble High Court of Gujarat in R/Criminal Misc. Application (For cancellation of Bail) No.18593 of 2025, (Converted from Cr.MA/35858/2025 dated: 08/09/2025), the order passed by the Additional Sessions Judge, Surat in Criminal Misc. Application No. 4269/2025 dated: 12.06.2025 is hereby quashed and set aside. Further, Ld. Additional Sessions Judge is requested to hear the said bail application afresh by considering the objections filed by the applicant and also, after giving opportunity to either sides to

make fresh and/or additional submissions, if required and it deems fit, at the time of hearing of the bail application.

1.1 Earlier, the applicant had preferred bail application 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, which was allowed subject to terms and conditions.

2. In view of the order of the Hon'ble High Court of Gujarat, this Court issued notices both sides.

3. Ld. Advocate for the applicant has submitted that the applicant had appeared thrice before the opponent authority and recorded his statement before the IO. It is further submitted that the applicant has cooperated with the investigation. The other accused were released on bail by the Hon'ble High Court of Gujarat and the role of the applicant is very limited than the accused released on bail by the Hon'ble High Court. The chargesheet has been filed against the accused. There is no recovery or discovery from the house of the applicant/accused and the fact has not been revealed for reconsideration the matter. Ld. Adv. has submitted that the opponent has raised contention that the Court has not considered the proceedings under the COFEPOSA against the applicant, however, this Court has considered all the facts and granted anticipatory bail to the applicant. It is submitted that other accused had released on anticipatory and regular bail, as such the bail application of the

applicant needs to be allowed. It is further submitted that no new grounds have been narrated by the opponent.

3.1 It is further submitted that applicant-accused is arrayed as an accused based on the statement of other co-accused. There is no cogent evidence to attribute such role to the present applicant-accused. There is no evidence against the applicant-accused regarding bringing smuggled gold. There is no need of custodial interrogation for the present applicant-accused. 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.

3.2 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 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.

3.3 Ld.Adv. has relied upon following citations.

- 1) 2011(1) Crimes SC 109, Siddharam Satlingappa Mhetre Vs. State of Maharashtra
- 2) 2025(0) AIJEL SC 75679, Vipin Kumar Vs. State of UP
- 3) Crim. Misc. Application No. 4786/2025

4. *Per contra*, Learned Adv. Mr.M.A. Malek has submitted written objection vide Exh.16, wherein contended that Joint Secretary to the Government of India, Central Economic Intelligence Bureau (COFEPOSA Wing) Janpath New Delhi issued Detention order No.PD-1201/02/2024-COFEPOSA dated: 17.01.2024 against present applicant. Further Gazette Orders S.O. 1968(E) dated: 08.05.2024 has been issued under clause(b) of sub-section (1) of Section 7 of COFEPOSA against the applicant, wherein Central Government directed the applicant to appear before the Commissioner of Police, Surat within 7 days of publication of the said Order in the Official Gazette. It is submitted that the applicant has filed Special Criminal Application No. 8856/2025 before the Hon'ble High Court of Gujarat challenging the Detention Order hearing F.No. PD-12001/02/2024-COFEPOSA dated: 17.01.2024 passed U/s.3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) at

the pre-execution stage. The Hon'ble High Court vide order dated: 25.08.2025 has granted stay on the implementation and execution of the detention order dated: 17.01.2024 for a period of one month and directed the applicant to mark his presence before the IO. It is submitted that the applicant appeared before this Officer on 28.08.2025 in compliance of the order of the Hon'ble High Court of Gujarat. The statement of the applicant was recorded on 28.8.2025 and 8.9.2025, U/s.108 of the Customs Act, 1962. It is submitted that the applicant has submitted vague reply on the questions raised during statement. He did not know anything about gold smuggling and he does not remember any monetary dealing with Salman Penwala, co-accused. Further on being asked about the diary recovered from the residence of Salman Penwala, where the name of the applicant mentioned and the amounts were written as profit in the diaries and he did not know about the transactions and those entries. Further, the applicant stated that he has no relation with these account written by Salman Penwala in his diaries.

4.1 It is submitted that Salman Penwala got anticipatory bail by this Court, with condition to appears before the IO, to cooperate in the investigation and also recorded his statements, wherein stated that entries diaries were made by him in his own handwriting contains complete records of financial transactions written under instruction of the applicant. It is submitted that he got profit of around 10 to 15% from the applicant for arranging passengers.

4.2 It is further submitted that accused has played an active role in commission of crime and custodial interrogation is required. Looking to the role of the applicant, he has prayed to reject present application.

5. Position of law governing bail.

1. 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.

2. 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.

3. 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

6. It is pertinent to note here that this Court has granted anticipatory bail application of the applicant by considering the all the submission made by both the parties. Now, pursuant to the order of the Hon'ble High Court, this Court has given an opportunity to the opponent side and he also filed affidavit in reply vide **Exh.16**. I have also gone through the order of the Hon'ble High Court of Gujarat in R/Criminal Misc. Application (For cancellation of Bail) No.18593 of 2025. I have also gone through the ratio laid down in the above mentioned cases for anticipatory bail, submitted by Ld. Adv. for the applicant.

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 recovered and the name of present applicant is disclosed during interrogation by the other co-accused.

8. Suffice to note here that the statement of the applicant was recorded on 28.8.2025 and 8.9.2025, U/s.108 of the Customs Act, 1962. Not only that, there is no discovery or recovery from the applicant. There is no requirement for further custody of the applicant-accused.

9. It is noted 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, therefore, on the ground of parity also, the case of the applicant is required to be considered.

10. Considering the role and nature of allegations, gravity of offences, role attributed to the accused 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.

-: ORDER :-

Criminal Misc. Application No. 4269/2025 of applicant namely **MAHMED 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 the offence punishable under Sections 135(1)(A)&(B)&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 regularly remain present during the trial before trial court.
6. The applicant shall not leave India without prior permission of this court;
7. 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.
8. The applicant shall not tamper with evidence;

Bail & Bond be produced before the concerned Ld. Trial Court.

Pronounced and signed in open court today i.e. on 12th March, 2026.

Date : 12.03.2026
Place: Surat.

(Rakesh Rajnikant Bhatt)
2nd Additional Sessions Judge
Surat (UID : **GJ00608**)