

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 4081
of 2026**

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JAYESHBHAI CHHAGANBHAI DESAI (RABARI)

Versus

STATE OF GUJARAT

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Appearance:

MR KISHAN R CHAKWAWALA(9846) for the Applicant(s) No. 1

MR RM CHAKWAWALA(1519) for the Applicant(s) No. 1

MR VINAY VISHEN, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR****Date : 14/05/2026****ORDER**

- 1) By way of present Anticipatory Bail application under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS"), the applicant-original accused has prayed to grant anticipatory bail in the event of his arrest in connection with the **FIR registered at Viramgam Rural Police Station, Ahmedabad Rural, being C.R No.11192060250515 of 2025** for the offences punishable under Sections 61(2), 117(3), 189(2), 189(4), 191(2), 191(3), 351(3) and 352 of the BNS.
- 2) The case of the prosecution is that the informant, Ashwin Singh Balwantsinh Vaghela, who works as a driver, was returning from Nestle India Pvt. Ltd., Chharodi, to Kadi in an Eeco car bearing No. GJ-18-BW-0350 during the night of 14.10.2025. At about 10:25 PM, near Sachana Railway Gate, the vehicle broke down. Therefore, the informant and three workers started pushing the car for about 50 meters towards Kalyanpura. It is alleged that while the car was stationary, five unidentified persons aged around 35 to 40 years arrived in a white Celerio car without a number plate. They were armed with sticks, scythe and iron pipes. The prosecution alleges that

these persons assaulted the informant indiscriminately, causing serious injuries and fractures on both his legs and hands, including fractures below the right knee, left knee, right elbow, and left palm. The informant further alleges that the reason for the attack was an earlier incident that took place about 3 to 4 months prior, in which the applicant, Jayeshbhai Chhaganbhai Desai, was allegedly assaulted by some persons from Katosan village. According to the informant, the applicant suspected that the informant had provided information about his whereabouts to those persons. Therefore, it is alleged that the applicant, along with five unidentified persons, hatched a pre-planned conspiracy to take revenge on the informant. Accordingly, the FIR being I-C.R. No. 11192060250150 of 2025 came to be registered with Viramgam Rural Police Station

- 3)** Learned counsel for the applicant submitted that the applicant has been falsely implicated in the present offence only on the basis of suspicion and there is no direct or reliable evidence against him. It is submitted that the applicant was not present at the place of incident and his name has been involved only because of an earlier incident in which the applicant himself was assaulted. It is further submitted that the applicant is not named in the FIR and has no connection with the alleged offence or with the five unidentified assailants mentioned in the FIR. There is no material to show any contact, meeting, or conspiracy between the applicant and the co-accused persons. No call records, messages, or other evidence have been produced to support the allegation of criminal conspiracy. It is also submitted that at the time of the incident, the applicant was not present at the spot and there is no need for custodial interrogation or recovery from him. Except for the statement of co-accused, there is no direct evidence against the applicant and such statement is not admissible in evidence. It is further submitted that the applicant is not a habitual offender within the meaning of the Bombay Habitual Offenders Act, 1959, more particularly as defined in Section 2. Therefore, it is

requested to allow the present anticipatory bail application.

- 4) Learned counsel for the applicant has relied on the decision of the Apex Court in the case of **Asha Dubey vs. State of Madhya Pradesh, reported in 2025 INSC 725**, and submitted that, in the event of declaration under Section 82 of the Cr.P.C, it is not as if in all cases that there will be a total embargo on considering the application for the grant of anticipatory bail. Also relined on the judgment of the Apex Court in the case of **P Krishna Mohan Reddy Vs. The State of Andhra Pradesh (Special Leave Petition (Criminal) No.7532/2025)**.
- 5) Learned advocate for the applicant, on instructions, states that the applicant is not absconder. Subsequently, proceedings under Section 72 of Cr.P.C came to be issued. Hence, in absence of any material, no corroborative piece of evidence is there except the statement of the co-accused. Therefore, present applicant may be granted anticipatory bail.
- 6) Learned Additional Public Prosecutor appearing on behalf of the respondent – State has opposed grant of anticipatory bail and submitted that the applicant is very much involved in the offence and is on run and therefore, at this stage, present application is required to be dismissed. Not only that, the applicant having four past antecedents i.e. two offences have been registered at Kadi Police Station and two offences have been registered at Nandasan Police Station, Mehsana, which are body related serious offences. If the applicant is granted anticipatory bail, possibility cannot be ruled out to tamper with the evidence as he is still absconder. Learned APP has submitted that due to enmity with Darbar community, the applicant hatched conspiracy and in collusion with the other accused, while the complainant was going from Chharodi to Kadi in his Eeco car, at that time, vehicle was intercepted by the accused persons armed with deadly weapons and made assault by iron pipes, stick and scythe.

Merely based on the statement of the co-accused, he has not been arraigned as an accused, but sufficient material is collected and accused are identified by the injured victim. The applicant is the main culprit and at his instance, alleged incident took place. The applicant is also facing charges under Sections 189(2), 189(4), 191(2) and 191(3) of BNS. Co-accused is granted bail is not a ground to consider the bail application as the applicant is having greater role and at his instance, alleged incident took place. Therefore, it is not a case where merely based on the statement of the co-accused, applicant is arraigned as an accused because sufficient material is collected which established the involvement of the applicant accused. Further, the applicant is having four past antecedents and warrant under Section 72 of the Code came to be issued. In view of the above and considering the role of the applicant, present application may not be entertained.

- 7) At the time of deciding the bail application, the Court should refrain from appreciating the evidence.
- 8) Having heard learned counsel for the respective parties and upon perusal of the material placed on record, it appears that while the complainant was proceeding from Chharodi to Kadi in his Eeco car and reached near Sachana Railway Fatak at about 22:25 hours, a white color Celerio car arrived at the spot, from which five unknown persons came down armed with deadly weapons. One of them approached the complainant and alleged that he had provided information regarding accused Jayesh Rabari to members of the Darbar community of Katosan village. Thereafter, all the accused persons allegedly assaulted the complainant with deadly weapons such as iron pipes, sticks and scythe, causing serious fractures on his hands and legs. The record further reveals that the motive behind the assault was an earlier incident which had occurred about 3–4 months prior thereto, wherein the present applicant himself was allegedly

assaulted by certain persons of Katosan village. It further transpires that during the course of the assault, the accused persons uttered that, on account of the information supplied by the complainant, certain members of the Darbar community had assaulted accused Jayesh Rabari and, therefore, they were taking revenge. It is also alleged that one of the accused instructed the others not to inflict injuries on the complainant's head, but only on his hands and legs, as allegedly directed by Jayeshbhai Rabari. It further appears that after the assault, while leaving the place of occurrence, one of the accused threatened the complainant by stating that if he dared to challenge Jayesh Rabari, he would have to face dire consequences. Thus, prima facie, the assault appears to have been carried out at the instance of accused Jayesh Rabari due to the grudge arising from the complainant allegedly providing information about him to members of the Darbar community, resulting in his earlier assault. It is also borne out from the record that the present applicant is absconding and, therefore, a warrant under Section 72 of the Code came to be issued against him. Further, the applicant is stated to have past criminal antecedents, as referred to hereinabove. The fact that the complainant sustained injuries in the incident is not in dispute.

- 9) Further, the allegation against the applicant is that he hatched criminal conspiracy and upon his instructions, assault being made. If we consider the said fact hardly direct evidence of conspiracy is there. Here in the case on hand, based on the statement of the co-accused, investigation was conducted, co-accused were arrested and prosecution is able to point out involvement of the accused. CDR is also collected and applicant was found in constant touch with the co-accused and presence and location of all the accused was found at the spot. Sufficient evidence of mobile details of the applicant and other co-accused are found in the constant touch from 10:02 p.m at 14.10.2025 to 20:30 right from Chharodi to Sachana Kalyanpur Railway Crossing gate and the applicant was found in constant talk

with the co-accused. Hence, present applicant is not merely involved on the ground of statement of the co-accused. Hence, the authority relied on the decision of **P Krishna Mohan Reddy (SC)** would not avail any assistance. Even the applicant is facing charge of conspiracy and for conspiracy, physical presence of the accused is not required and while deciding the bail application, appreciation of evidence is not applicable.

10) So far judgment of **Asha Dubey (supra)** relied on by learned counsel for the applicant is concerned, wherein the Apex Court has observed that there was no need of custodial interrogation. But in the present case, at the instance of the present applicant accused, attack was made by the accused persons who are yet to be arrested and till date, the applicant has not joined investigation. In **Asha Dubey (supra)**, the accused had cooperated with the investigation and therefore, there was no need of custodial interrogation. The Apex Court therefore came to the conclusion that there is no total embargo on considering the application for the grant of anticipatory bail. But considering the facts and circumstances of the case, custodial interrogation of the applicant is required. Therefore, the said authority would not avail any assistance to the applicant.

11) At the time of deciding the bail application, the Court should refrain from appreciating the evidence. The reference is required to be made in a case of **Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana**, reported in **AIR 2021 SC 221**, wherein, the Hon'ble Apex Court held that when deciding a bail application and extending the benefit of parity, the Court has to examine the exact role attributed to the accused. If the accused played a similar role, then the Court should extend the benefit of parity. Merely some words or any observation made in the order are not enough, such approach is erroneous and inappropriate for considering the benefit of parity.

Hence, the applicant is not entitled for benefit of parity. One more aspect is required to be considered against the applicant as warrant under Section 72 of the Cr.P.C came to be issued.

12) Thus, in order to reach to a logical conclusion of the investigation, the Investigating Officer deserves a free hand. There is no rule that if custodial interrogation is not required then anticipatory bail is required to be granted. The custodial interrogation is one of the good grounds to reject the anticipatory bail application, but merely because custodial interrogation is not required, itself is not a ground to allow the anticipatory bail application. In this regard, reference is required to be made to the decision of the Hon'ble Apex Court in the case of **Sumitha Pradeep Vs. Arun Kumar C.K. reported in 2022 SCC OnLine (SC) 1529**, wherein it is observed and held as follows:

"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."

In view of the above decision and in view of the facts and circumstances of this case, custodial interrogation of the applicant is therefore imperative to unearth the truth. Hence, this is a not a fit case to exercise the jurisdiction in favour of the applicant

13) Further, in the case of **Pratibha Manchanda vs The State of Haryana**, reported in **AIR 2023 SC 3307**, wherein the Hon'ble Apex Court has held in Para 19 as under:

19. The relief of Anticipatory Bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals

from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice.

The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome."

- 14)** Further, keeping in mind Law laid down by the **Hon'ble Supreme Court** in the case of **Siddharam Satlingappa Mhetre V/s State of Maharashtra and Others** reported in **(2011) 1 SCC 694**. Herein, I have gone through the material available against the accused very carefully, from which, it reveals that no complaint has been made with view to humiliating or tarnish the image of the present applicant. Even in **Jai Prakash Singh V/s State of Bihar and another**, reported in **(2012) 4 SCC 379**, **Honourable Supreme Court** pleased to hold:

"Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefore. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty."

- 15)** The object of anticipatory bail is that person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. In present case, no any such sort of allegation or bias is found out it is needless to say that order under Section 438 of the Cr.P.C is not a passport to the commission of trial nor a shield against any serious accusation, which adversely affects the society.
- 16)** This Court is of the considered view that if the present accused is equipped with protective order, it would obviously adversely affect the case of the prosecution and the qualitative investigation as the applicant is out of reach and proceedings under Section 72 of Cr.P.C

came to be issued against him, having trained legal mind and he will tamper with evidence and witnesses of prosecution.

17) The investigation papers clearly reveal that the allegations against the accused are very serious one and he is wanted and out of reach and therefore, in view of the law laid down by the Hon'ble Apex Court in case of **State of Haryana vs. Dharamraj reported in 2023 INSC 784; Lavesb vs. (NCT of Delhi) reported in (2012) 8 SCC 730; Abhishek vs. State of Maharastra reported in 2022 (8) SCC 282 and Prem Shankar Prasad vs. State of Bihar reported in 2021 SCC OnLine SC 955 and Srikant Upadhyay and Others vs. State of Bihar and Another reported in 2024 SCC OnLine SC 282**, when an accused is absconding and is declared as proclaimed offender, there is no question of giving him a benefit of Section 482 of BNSS. Hence, considering the aforesaid fact, this is not a fit case to exercise the jurisdiction in favour of the applicant.

18) In the above facts and circumstances and considering the observations on the legal aspect of the matter, this Court has absolutely no doubt that if applicant is equipped with such an order before he is interrogated by the Police, it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Having considered nature and seriousness of the charge, *prima facie* involvement of accused and possibility of tempering with evidences, it does not appear to be just and proper to exercise the discretion in favour of the applicant and accordingly, this application for anticipatory bail is **dismissed**.

(HASMUKH D. SUTHAR,J)

SUCHIT

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: PATEL SUCHIT JAYESHBHAI(HC01083), Private Secretary, at High Court of Gujarat on 15/05/2026 10:28:18