

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 5967
of 2026**

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KISHAN S/O SHAMJIBHAI MAKWANA
Versus
STATE OF GUJARAT & ANR.

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Appearance:

MR D K TRIVEDI(5283) for the Applicant(s) No. 1
HCLS COMMITTEE(4998) for the Respondent(s) No. 2
NAISHADH V PANDYA(9114) for the Respondent(s) No. 2
MS MEGHA CHITALIYA, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER**Date : 22/04/2026****ORAL ORDER**

1. By way of the present application under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS"), the applicant – accused has prayed to release him on anticipatory bail in the event of his arrest in connection with the FIR being **C.R. No.11190002260139 / 2026** registered with **Botad Police Station, Botad District** for the offences punishable under Sections 78(1)(i) of BNS and Section 11(4), 12 of the Protection of Children from Sexual Offences Act, 2012(for short "POCSO Act").

2. The learned advocate for the applicant submits that the applicant is 27 years old and is engaged in masonry work and is the sole breadwinner of the family and has the responsibility of maintaining his aged parents. It has been argued that the complainant in the FIR has alleged date of incident to be 22.01.2026 whereas the FIR has been lodged on 02.02.2026 and

the applicant is innocent and the applicant has never sexually harassed the victim. Moreover, it has been argued that even if the contents of the FIR are taken into consideration, no specific incidents have been stated in the said FIR, nor has the paper chit being found from the terrace, which is alleged to have been thrown by the applicant giving details of his phone number and no details of when the alleged incident has stated to have taken place and only one incident has been stated that the present applicant had tried to follow the victim at the school and therefore, in view of Section 11(4) of the POCSO Act, a person is said to commit sexual harassment upon a child when such person with sexual intent- repeatedly or constantly follows the victim and therefore, in the present case, no details have been given by the complainant nor are there any allegations of making any obscene gestures to the victim, and therefore, the application is required to be allowed.

3. Per contra, learned Additional Public Prosecutor Ms.Megha Chitaliya appearing on behalf of the respondent – State has vehemently opposed the present application and has argued that, if the contents of the FIR are taken into consideration, the age of the victim is 12 years, 8 months and 4 days. It is a specific case that the accused had thrown a paper chit containing his phone number on the terrace and it is also the case of the victim that the accused had told her to call on the said number and when the victim used to go towards the school, he would make obscene gestures to the victim thereby harassing her. It has also been stated that the victim repeatedly and constantly is making

obscene gestures to the said victim and therefore, it has been argued that the application is required to be rejected.

4. Heard learned advocates for the respective parties, this Court has considered the rival submissions made by learned counsel for both the sides and considered the material placed on record. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are (i) whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused. Though at the stage of granting bail execution and appreciation of evidence is not permissible. Having gone through the complaint, *prima facie*, it appears that the present applicant is involved in the offence.

5.1. Having heard, learned advocates for parties, the fact remains that the FIR specifically states that the applicant was making obscene gestures. There is a clear disclosure of the complainant of allegation of indecent gestures.

5.2. Moreover, sexual harassment of a child has long term psychological impact. There is also a possibility of influencing the victim as there is a risk of threatening the victim, pressurising the family, tempering with the evidence. The object of POCSO Act is

a special legislation with a strict intent at the stage of anticipatory bail, detailed evidence analysis is not required and the allegation in the present case discloses an offence under the POCSO Act and the law mandates a protective and strict approach and considering the safety and integrity of investigation and the fact that the victim is a child.

5.3 Moreover, the allegation is specific and prima facie credible. Considering the possibility of influence or intimidation exists.

6. In the case of **Siddharam Satlingappa Mhetre vs State Of Maharashtra**, reported in **(2011) 1 SCC 694**, the Hon'ble Court held that life and personal liberty are the most prized possessions of an individual but not at the cost of larger interest of society and public. This is not a case, wherein accused is falsely enraged in the offence with a view to tarnish his image. Considering the fact that the custodial interrogation is required. The Hon'ble Apex Court in the case of **Jai Prakash Singh Vs State of Bihar & Anr.** reported in **2012 4 SCC 379**, has been pleased to hold as under:-

"Parameters for grant of anticipatory bail in a serious offences 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 enroped in the crime and would not misuse his liberty."

7. It would be apposite to refer the decision of the Apex Court rendered in case of **State of M.P. and another v. Ram Kishna Balothia and another** reported in **AIR 1995 SC 1198**.

8. It would be apposite to refer the judgment of the Hon'ble Apex Court rendered in case of **Pratibha Manchanda vs. State of Haryana** reported in **AIR 2023 SC 3307**, wherein the Hon'ble Apex Court has observed thus:-

"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."

9. If the present applicant is/are protected with this order, this Court is of the considered view that if the present accused is equipped with protective order, it would obviously affect the case of the prosecution and adversely the qualitative investigation. This is not a fit case, wherein accused is falsely enraged in the offence and it appears that there is no frivolity, with a view to tarnish his image. Considering the fact that the custodial interrogation is required.

10. For the foregoing reasons and considering the law laid down in the above cited decisions of this Court as well as the Hon'ble Apex Court, this Court is of view that it is not a fit case to exercise the discretion under Section 438 of the Code/482 of BNSS in favour of the applicant. Accordingly, present application does not deserve any consideration and is hereby **dismissed**. Rule is discharged.

11. It is made clear that the observations made in the present order are tentative in nature.

URIL RANA

(SANJEEV J.THAKER,J)