

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO.
6461 of 2025**

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MOHAMAD SHAFIMIYA MOHAMAD SHAIKH

Versus

STATE OF GUJARAT

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With

**R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO.
6648 of 2025**

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NOORMOHAMAD AHAMADMIYA BAGVALA

Versus

STATE OF GUJARAT

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Appearance:

MR MTM HAKIM with MR RIZWAN SHAIKH(7146) for the applicants

MR HK PATEL, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR****Date : 01/05/2025
COMMON ORAL ORDER**

RULE. Learned APP waives service of notice of Rule for and on behalf of the respondent – State of Gujarat.

[1.0] By way of the present application under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “BNSS”), the applicants herein – accused have prayed to release them on anticipatory bail in the event of their arrest in connection with the FIR being **C.R. No.11210005241311 of 2024** registered with **Athwa Lines Police Station, Surat City** for the offences punishable under Sections 420, 465, 467, 468, 471 and 114 of the Indian Penal Code, 1860.

[2.0] Learned advocate for the applicants submits that the applicants have nothing to do with the offence and are falsely enroped in the offence. The complaint is filed at the behest of authorized person of

the Waqf Tribunal only with a view to harass the present applicants. Though the applicants have nothing to do with any offence, Waqf Tribunal has come to conclusion that by misleading the Waqf Board, change report as regards appointment of Muttawali of the mosque situated at Khalifa Mohalla was got approved pursuant to which the applicants have tried to grab the administration of Waqf and have received the approval from the members by forging the signatures in the resolution and thereby they have misled the authority of Waqf Board and subsequently the said order came to be challenged before the Waqf Tribunal and Waqf Tribunal though partly allowed the Waqf Appeal but formed an opinion that signatures in the resolution being forged and tried to mislead the Waqf Board and they have approved the change report and thereby, offence of forgery and criminal breach of trust being committed. However, the present applicants have nothing to do with the offence. When contradictory findings were given by the Waqf Tribunal, being aggrieved and dissatisfied, present applicants approached this Court by way of filing Civil Revision Application No.248/2024 in June, 2024 and while notice came to be issued, subsequently complaint is filed on 25.11.2024 authorizing the complainant in August, 2024 which clearly speaks volumes of the conduct. Further, the applicants are not having any past antecedents and the case is based on documentary evidence and therefore also, the applicants are required to be granted anticipatory bail. Even otherwise, upon instructions, applicants are ready and willing to join the investigation. Hence, now nothing remains to be recovered or discovered from the present applicants and therefore, custodial interrogation at this stage is not necessary. Besides, the applicants are available during the course of investigation and will not flee from justice. In view of the above, the applicants may be granted

anticipatory bail.

[3.0] Learned Additional Public Prosecutor appearing on behalf of the respondent – State has opposed grant of anticipatory bail on the ground that the investigation is at nascent stage. Present applicants have forged the signatures and tried to grab the administration of Waqf and have mislead the Waqf Board and got approved the change report. The said fact came to the knowledge of Waqf Tribunal and Waqf Tribunal has passed an order to lodge the complaint. There is a *prima facie* case against the present applicants as they have played active role in forging the signatures. Considering the aforesaid fact, as custodial interrogation of the applicants is required, he has requested to dismiss the present application.

[4.0] Having heard the learned advocate for the parties and perusing the investigation papers, it is equally incumbent upon the Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of the Hon'ble Apex Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are (i) the nature and gravity of the accusation; (ii) the antecedents of the applicants including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence; (iii) the possibility of the applicants to flee from justice; and (iv) where the accusation has been made with the object of injuring or humiliating the applicants by having him so arrested. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided. I have considered the following aspects.

- (1) Perusing the record, it appears that the complaint is filed at the behest of officer appointed by the Waqf Tribunal wherein it is alleged that to appoint Muttawallis of the mosque situated at Khalifa Mohalla, Surat, change report came to be filed by the present applicants before the Waqf Board which came to be approved. It is alleged that applicants have received the assent and consent of beneficiaries and passed the resolution dated 09.07.2021. Perusing the affidavit and record it appears that the persons who have put their signatures have not denied the signatures but have disputed about the place stating that they have put their signatures either at their home or elsewhere but not in the meeting or in the mosque. Except this, no any allegation or averment is made *qua* forgery of signatures. Even if we accept the said version then also it is a dispute *qua* illegality or irregularity of said resolution which is already set aside by the Waqf Tribunal.
- (2) The said fact is confirmed by three persons namely (i) Mohammed Javid Abdulgani; (ii) Mohammed Irfan Mosinuddin Shaikh and (iii) Mohammed Arif Abdul Kadar Bagwala. On oath they have stated that they have put their signatures and hence, question does not arise to come to conclusion that applicants have played any active role in forging the signatures of said persons;
- (3) Present case is based on documentary evidence;
- (4) Even otherwise, upon instructions, applicants are ready and willing to join the investigation;
- (5) No case for custodial interrogation is made out;
- (6) Nothing is required to be recovered or discovered from the present applicants;

- (7) Applicants are not having any past antecedent;
- (8) Applicants are senior citizens.

[5.0] Considering the aforesaid aspects and the law laid down by the Hon'ble Apex Court in the case of **Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors.** reported in **(2011) 1 SCC 6941**, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of **Shri Gurubaksh Singh Sibbia & Ors.** reported in **(1980) 2 SCC 665** and also the decision in the case of **Sushila Aggarwal v. State (NCT of Delhi)** reported in **(2020) 5 SCC 1**, I am inclined to allow the present application.

[6.0] In the result, the present application is allowed by directing that in the event of **arrest / appearance** of the applicants in connection with the FIR being **C.R. No.11210005241311 of 2024** registered with **Athwa Lines Police Station, Surat City**, the applicants shall be released on bail on furnishing a personal bond of **Rs.10,000/- (Rupees Ten Thousand Only)** each with one surety of like amount on the following conditions that applicants :

- (a) shall cooperate with the investigation and make themselves available for interrogation whenever required;
- (b) **shall remain present at the concerned Police Station on 05/05/2025 between 11.00 a.m. and 2.00 p.m. and the IO shall ensure that no unnecessary harassment or inconvenience is caused to the applicants;**
- (c) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
- (d) shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to

be collected by the police;

- (e) shall at the time of execution of bond, furnish the address to the investigating officer and the court concerned and shall not change their residence till the final disposal of the case till further orders;
- (f) shall not leave India without the permission of the Court and if having passport shall deposit the same before the Trial Court within a week;
- (g) an order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigative agency, to investigate into the charges against the applicants;
- (h) It is open to the police or the investigating agency to move the learned trial Court for a direction under Section 483(2) of the BNSS to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc.-

[7.0] At the trial, the Trial Court shall not be influenced by the *prima facie* observations made by this Court while enlarging the applicants on bail.

[8.0] Rule is made absolute to the aforesaid extent. Applications are disposed of accordingly. Direct service is permitted.

(HASMUKH D. SUTHAR, J.)

Ajay

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: AJAY CHANDRAN MENON(HC00939), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 01/05/2025 18:10:59