

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR SUCCESSIVE REGULAR BAIL -
AFTER CHARGESHEET) NO. 8333 of 2026**

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GHANSHYAM @GHANO ARJANBHAI KANAK
Versus
STATE OF GUJARAT

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Appearance:

MR. JAINISH U DAVE(14057) for the Applicant(s) No. 1
MS. HARSHVI H. TOLIA(18867) for the Applicant(s) No. 1
MR HARDIK SONI, ADDL. PUBLIC PROSECUTOR for the Respondent(s)
No. 1

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 06/08/2026

ORAL ORDER

1. Heard learned Senior Advocate Mr.Harshit Tolia with learned advocate Mr.Jainish Dave and learned advocate Ms.Harshvi Tolia appearing on behalf of the applicant and learned Additional Public Prosecutor Mr.Hardik Soni appearing on behalf of the respondent-State.

2. Rule. Learned APP waives service of rule on behalf of the respondent-State.

3. The applicant has filed this application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for enlarging the applicant on Regular Bail in connection with FIR being C.R. No. I-27/2018 registered with Vasna Police Station,

Ahmedabad City for the offence punishable under Sections 302, 120(B), 114 of the IPC, Section 135(1) of the G.P.Act and Section 25(1)(B)(a), 27(1) of the Arms Act.

4. Learned advocate for the applicant would submit that considering the role attributed to the applicant, and nature of the allegation levelled, the applicant may be enlarged on regular bail. It is further submitted that since the charge-sheet is filed no useful purpose would be served by keeping the applicant in jail for indefinite period. It is further contended that the applicant is ready and willing to abide by all the conditions that may be imposed by this Court if released on bail.

5. As against the same, learned Additional Public Prosecutor appearing for the respondent - State has vehemently objected to the grant of regular bail. Learned APP has submitted that looking to the nature of offence and the role attributed to the present applicant as coming out from the charge-sheet, this Court may not exercise the discretion in favour of the applicant and the application may be dismissed.

6. Having heard learned Senior Advocate Mr.Tolia for the

applicant and learned APP Mr.Soni for the respondent – State and having perused the documents on record including FIR and charge-sheet papers, this Court is disinclined to consider this application for the following reasons:-

- i. The first aspect which requires to be noted here is that the present applicant, while he is seeking bail in the present offence, is already a convict for a different offence which also was punishable under Section 302 of the IPC.
- ii. While learned APP Mr.Soni has relied upon Section 437(1)(ii), learned Senior Advocate Mr.Tolia would rely upon second proviso to clause (ii) where it is prescribed that a person referred to in clause (ii) i.e. a person previously convicted of an offence punishable with death etc. can be released on bail if it is satisfied that it is just and proper to do so for any other special reason.
- iii. Learned Senior Advocate Mr.Tolia submitting in this regard that the special reason being as regards an accused who had a more serious role to play than the present applicant, having been released by a learned Coordinate Bench of this Court vide order dated 22.04.2025, albeit, learned advocate would submit that though the application

for regular bail of the present applicant having been rejected by a learned Coordinate Bench of this Court (Coram: Mr. Justice Vipul M. Pancholi, as His Lordship then were) vide an order dated 26.10.2021, yet, since the later order is passed by another learned Coordinate Bench, this Court could consider the same as a special circumstance.

iv. Learned Senior Advocate would further rely upon decision of the Hon'ble Apex Court in case of Syed Iftikhar Andrabi vs. National Investigation Agency, Jammu, reported in 2026 SCC OnLine SC 881, more particularly, paragraph no.35 thereof and would submit that the Hon'ble Supreme Court in case of pari materia provision in the UAP Act i.e. Section 43-D(5) had inter alia observed that in case of statutory embargo insofar as the pari materia provision, the same must remain the circumscribed restriction that operates subject to the guarantee of Articles 21 and 22 of the Constitution.

v. As against the same, this Court has also noticed the submission made by learned APP Mr.Soni that as of now, while the present applicant is a convict of another offence punishable under Section 302 of the IPC, the circumstance

which also requires appreciation is that the present applicant had approached this Court for suspension of his sentence and whereas, the application for suspension of sentence has been rejected by Hon'ble Division Bench of this Court. Learned APP would submit that there is no requirement for this Court to exercise its jurisdiction here since releasing the present applicant would be of no consequence at all since the present applicant even otherwise would not be entitled to be released as he is a convict for an offence punishable under Section 302.

vi. This Court has also considered the submissions of learned APP that even if the applicant were to seek for remission as per the policy of the State Government vide resolution dated 23.01.2014, remission shall not be granted to prisoners undergoing life sentence, who are having any other criminal cases pending against them. It is submitted that the present applicant having a case against him for an offence punishable under Section 302 of the IPC, would certainly not be entitled for being considered for remission as per the policy of the State Government.

vii. Considering the above, to this Court, it would appear

that while Section 437(1)(ii) puts an embargo upon release of the person who is convicted of an offence, yet, the proviso inter alia stating that for a special and satisfactory reason, the Court could release such a person and whereas, to this Court, it would appear that considering the fact of the present applicant being a convict and the conviction not being interfered with in an application for suspension of sentence, there would not be any special circumstances as of now which would warrant the release of the present applicant.

viii. Insofar as the decision of the Hon'ble Apex Court, while it would appear that the Hon'ble Apex Court has inter alia stated that embargo in a pari materia provision must remain circumscribed to the provisions of Articles 21 and 22, yet, to this Court, it would appear that even if the present applicant were to be released by this Court, as of now, there does not appear to be any possibility of the present applicant enjoying his liberty since his application for suspension has been rejected by this Court and whereas, prima facie, it would appear that the present applicant may not be entitled for the benefit of parity. The term 'prima facie' being specifically mentioned since this Court would

not want to state anything finally at this stage since the same may affect the application of the applicant for remission.

ix. This Court has also considered the fact that vide an order dated 26.10.2021 a learned Coordinate Bench had analyzed the role of the present applicant in great detail and had decided not to release the present applicant on regular bail and whereas, to this Court, it would appear that except for the aspect of delay in trial, the present applicant may not be prejudiced on any counts.

7. Under such circumstances, while rejecting the present application for being released on regular bail, to this Court, it would appear that the following directions would meet with the ends of justice:-

(a) The learned Trial Court shall ensure that the trial is completed as expeditiously as possible considering that the Sessions Case is of the year 2018.

(ii) The learned Principal Judge, City Civil and Sessions Court shall appropriately ensure, if required, by assigning some of the cases with the concerned trial Court to another Court so as to ensure that the above direction is strictly

complied with.

8. With the above observations and directions, the application stands disposed of as rejected. Rule is discharged. Direct service is permitted.

Bhoomi

(NIKHIL S. KARIEL,J)