

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR CANCELLATION OF BAIL) NO.
8583 of 2025**

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LAXMIBEN SUJANJI THAKOR

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR MAULIK M SONI(7249) for the Applicant(s) No. 1

MR HARDIK MEHTA, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 02/05/2025**ORAL ORDER**

[1.0] RULE. Learned APP waives service of notice of Rule for and on behalf of respondent No.1 – State of Gujarat.

[2.0] By way of the present petition under Section 483(3) of the Bharatiya Nagrik Suraksha Sanhita (for short "BNSS), the applicant has prayed to quash and set aside the order dated 08.04.2025 passed by the learned 2nd Judge Exclusive, Fast Track, Special Court (POCSO), Mahesana, at Visnagar in Criminal Misc. Application No.273 of 2025, whereby the learned Sessions Judge has granted regular bail to the respondent No.2 – original accused in connection with the FIR being C.R. No.11206078250106 of 2025 registered with Unava Police Station, District Mahesana for the offence punishable under Section 137(2) of the Bharatiya Nyaya Sanhita, 2023 (for short "BNS").

[3.0] Learned advocate for the applicant has submitted that the learned Sessions Judge has not considered the gravity of offence and straightway released the respondent No.2 – accused on regular

bail which has adversely affected the investigation and possibility of tampering with the evidence also cannot be ruled out. Therefore, he has requested to allow the present application and cancel the regular bail granted to the respondent No.2.

[4.0] The learned APP has adopted the submissions made by the learned advocate for the applicant and submitted that respondent No.2 was released on bail without properly appreciating the evidence and the seriousness of the offence committed by her. Therefore, it is prayed that the present application be allowed.

[5.0] Having heard the learned advocates for the respective parties and having gone through the documents on record as well as bail order passed by the learned court below, it appears that while considering the bail application, the learned Sessions Court has considered all the facts of the case but the learned advocate for the applicant herein has failed to point out any supervening circumstances or breach of any of the conditions imposed by the learned Sessions Judge while granting bail to the respondent No.2 – accused. Present applicant has sought cancellation of bail mainly on the ground that charge-sheet is yet to be filed though respondent No.2 is released on bail. It is needless to say that there is no any straitjacket formula to consider the bail application. Once the accused is arrested and produced before the learned Magistrate and not sought for any remand then question does not arise to refuse bail to the accused and prolong the prisonization as substantial part of investigation is over and presence of accused – respondent No.2 is no longer required for the purpose of investigation. Hence, the accused was released on bail. The learned Sessions Judge has assigned specific reasons while .

[5.1] Nonetheless, learned advocate for the applicant has submitted that there is possibility of tampering with the evidence but the learned Sessions Judge has imposed condition Nos.(1) and (7) not to directly or indirectly contact the witness and not to enter into Unjha taluka till the depositions of complainant and victim are not recorded and even thereafter i.e. after 08.04.2025, no untoward incident has occurred. It is not even the case of the present applicant – original complainant that present applicant has tampered with evidence and/or tried to influence any witness and/or committed breach of any of the conditions of regular bail. However, merely based on assumption such application seeking cancellation of regular bail is filed, which is not permissible. thus the learned Judge has taken proper care of the case of prosecution. Even, the learned Sessions Judge has given an opportunity to the complainant to oppose the bail application. Further, the age of victim at the time of offence was 17 years 3 months and 8 days i.e. victim is at the verge of majority and said age is also not disputed by the complainant. Even, there was affair between respondent No.2 and the victim and respondent No.2 is not having any past antecedent.

[6.0] It goes without saying that the criteria or parameters for granting bail to an accused and canceling bail are significantly different and must be considered separately by the Court. As submitted by the learned advocate for the applicant, the court below has overlooked the fact that there is ample evidence and a proximate cause. However, it is pertinent to note that the Court is not required to determine whether the evidence favors the accused or the prosecution at this stage. Instead, the Court must consider whether a prima facie case exists against the accused, the material

collected against them, the severity of the punishment, and whether a charge-sheet has been filed. The Court must assess whether further detention of the accused is necessary or if their presence is required during the investigation. Considering the aforementioned factors, the Court must also ensure the presence of the accused during the trial after granting bail.

[7.0] It is needless to say that merely based on presumption and assumption, present application is filed without any material and any prevalent circumstances. The offences alleged are under Sections 137(2), 64(2)M and 87 of the BNS and sections 4, 5(l), 6 and 12 of the POCSO Act. The respondent No.2 was arrested and even after the arrest, no remand of accused was sought for by the investigating agency and as substantial investigation *qua* respondent No.2 was over and there was no need for the investigating agency to detain him behind the bars, the learned Sessions Judge released respondent No.2 on regular bail by the impugned order.

[8.0] This Court deems it proper to refer to the judgment in the case of **Ajwar v. Waseem** reported in **2024 INSC 438**, wherein the Apex Court observed that the same Court which granted bail to an accused can cancel the bail if there are serious allegations against him, even if the accused has not misused the bail. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be canceled. However, once bail is granted, it ought not to be canceled in a mechanical manner. An unreasonable or perverse order of bail may invite interference by the Apex Court. Personal liberty is one of the cherished Constitutional freedoms, and once bail is granted during

the pendency of the trial, it must only be retracted in the face of grave circumstances. The Hon'ble Supreme Court in the said decision, in paragraphs 27 and 28, has observed as under:

"27. The considerations that weigh with the appellate Court for setting aside the bail order on an application being moved by the aggrieved party include any supervening circumstances that may have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner. We may add that this list is only illustrative and not exhaustive. However, the court must be cautious that at the stage of granting bail, only a prima facie case needs to be examined and detailed reasons relating to the merits of the case that may cause prejudice to the accused, ought to be avoided. Suffice it is to state that the bail order should reveal the factors that have been considered by the Court for granting relief to the accused.

28. In Jagjeet Singh (supra), a three-Judges bench of this Court, has observed that the power to grant bail under Section 439 Cr.P.C is of wide amplitude and the High Court or a Sessions Court, as the case may be, is bestowed with considerable discretion while deciding an [2024] 5 S.C.R. 593 Ajwar v. Waseem and Another application for bail. But this discretion is not unfettered. The order passed must reflect due application of judicial mind following well established principles of law. In ordinary course, courts would be slow to interfere with the order where bail has been granted by the courts below. But if it is found that such an order is illegal or perverse or based upon utterly irrelevant material, the appellate Court would be well within its power to set aside and cancel the bail."

[9.0] In the present case, the order passed by the learned Sessions Judge is based on sound legal principles and reasoning. Therefore, no case is made out to interfere with the order of the learned Sessions Judge. Even no allegations have been made by the original

complainant (applicant) that the accused has misused his liberty. Present application which is filed merely on assumption and presumption cannot be entertained especially since the learned Sessions Court has imposed suitable conditions while granting bail to the accused. Any detailed appreciation of evidence, which may prejudice the accused, should be avoided while deciding a bail application.

[10.0] In view of the above, no case is made out to entertain the present application and hence, present application stands dismissed. Rule is discharged.

(HASMUKH D. SUTHAR, J.)

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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 05/05/2025 11:32:53