

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO.
8661 of 2025

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ALPESHBHAI MENSIBHAI KARGATHIYA
Versus
STATE OF GUJARAT

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Appearance:

DENISH V MAVADHIYA(9207) for the Applicant(s) No. 1
MR. DHAVAL V. MAVADHIYA(17835) for the Applicant(s) No. 1
MR A A ZABUAWALA(6823) for the Respondent(s) No. 1
MR NIRAJ SHARMA, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 18/06/2025

ORAL ORDER

1. Rule. Learned APP waives service of notice of rule for respondent – State of Gujarat.
2. By way of the present application under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “BNSS”), the applicant has prayed for anticipatory bail in the event of arrest in connection with the FIR being C.R. No. 11189007250345 of 2025 registered with Wakaner City Police Station for the alleged offences as

mentioned in the FIR.

3. Learned advocate Mr. Denish Mavadhiya, for the applicant submits that as per the case of the prosecution, the incident has occurred on 26.03.2025 whereas, FIR registered on 08.04.2025. The FIR was registered against total three persons i.e. the accused no.1 is a husband, accused no.2 is a diyar and accused no.3 is a banevi of the deceased respectively. He further submits that it is the specific case of the prosecution that deceased's marriage has been solemnized with the accused no.1 on 06.02.2025 whereas the incident has occurred on 26.03.2025 and thus, within a short span of 1 month and 20 days, the deceased has committed suicide. He submits that the present applicant has been arraigned as accused only because of blood relations with the accused no.1 and they are residing along with them at particular place. Learned advocate further, submits that in fact if Hon'ble Court would cursory make a glance upon the body of

the complaint wherein charge of acquisitions/allegations have been levelled against the accused persons, in that event, it would have been found out that no specific instance has been mentioned by the complainant and simply general and vague allegations have been levelled against all the accused persons. He submitted that not only that then-after applicants have been filed anticipatory bail application before the trial Court wherein Investigating Officer has submitted affidavit to oppose the said bail application wherein, the Investigating Officer has categorically stated that he has recorded the statements of the number of persons, but none of them had disclosed about the alleged ill-treatment meted out to the deceased at the instance of the present applicant. Considering the above stated factual aspects bail applications of the applicant may be entertained as there are no antecedents against the outset. He further submits that the nature of allegations are such for which

custodial interrogation at this stage is not necessary and the applicant will keep himself available during the course of investigation, trial also and will not flee from justice.

4. Learned Additional Public Prosecutor appearing on behalf of the respondent – State has objected the present application, with a vehemence and forcefully submits that considering the short span of marriage life of the deceased, the anticipatory bail application of the applicants may not be entertained, as prima facie it would attract the presumptions under Section 118 of the Bhartiya Sakshaya Adhinyam Act, 2023 as the span of marriage life is less than 7 years. He further submits that, in fact pursuance to the registration of the FIR, investigation commenced and investigating Officer has verified the call record of phone call of the accused no.1 wherein, certain evidences has been found out and, on the basis of which investigation was carried out in particular directions at that

relevant point. It has come to the notice of the Investigating Officer that during the period of the marriage life, the accused no.1 has developed extra marital relationship with one lady residing at the near by areas, and the statement of that lady has also recorded. Thus material collected by the Investigating Officer prima facie itself suggest that as the deceased had come to know about the said relation, disputes would have been arisen between them and ultimately deceased might have committed suicide and at that relevant point of time, applicants are residing along with the accused no.1 they might have given support to the accused no.1 due to which the said incident has given trigger to the present occurrence of the offence and therefore, considering the said bail application of the applicant may not entertained.

5. Learned advocate Mr.A.A. Zabuawala, who appears on behalf of the original complainant has strongly objected the present application. He

submitted that the span of marriage life is less than 7 years, and shortly after marriage, deceased has committed suicide in her matrimonial house therefore, basic and essential ingredients mentioned in the Section 118 of the Bhartiya Sakshaya Adhiniyam, 2023 is clearly spelt out from the body of the complaint. Hence, the application of anticipatory bail may not be entertained. He further submits that since almost all arguments have been canvassed by the learned Assistant Public Prosecutor therefore, he adopts the arguments canvassed by the APP. Considering the above stated facts as well as the anticipatory bail application of the applicants, the application is allowed.

6. Having heard the learned advocates appearing 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 applicant 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 applicant to flee from justice; and (iv) where the accusation has been made with the object of injuring or humiliating the applicant 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.

7. I have considered the following aspects.

- (a) The deceased married with accused no.1 and the applicant is the brother of the accused no.1.
- (b) Against the, applicant, there is no specific allegations. Only general, vague and sweeping

allegations are levelled.

(c) Prima facie basic and essential ingredients against applicant are missing.

8. 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.

9. In the result, the present application is allowed by directing that in the event of arrest / appearance of the applicant in connection with FIR being C.R. No. 11189007250345 of 2025 registered with Wakaner City Police Station, the applicant shall be

released on bail on furnishing a personal bond of Rs.10,000/- (Rupees Ten Thousand Only) with one surety of like amount on the following conditions that applicant:

- (a) shall cooperate with the investigation and make herself available for interrogation whenever required;
- (b) shall remain present at the concerned Police Station on 25.06.2025 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 applicant;
- (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 her/his 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 person who seeks and is granted pre-arrest bail;

- (h) It is open to the police or the investigating agency to move the learned trial Court for a direction under Section 483(2) 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.-

10. At the trial, the Trial Court shall not be influenced by the *prima facie* observations made by this Court while enlarging the applicant on bail.

11. Rule is made absolute to the aforesaid extent.
Direct service is permitted.

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(DIVYESH A. JOSHI,J)