

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO.
8707 of 2025

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DALPATSING VAKTAJI THAKOR (DARBAR)
Versus
STATE OF GUJARAT

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Appearance:

MR JANAK D VARDEY(10910) for the Applicant(s) No. 1
MR PRAVIN GONDALIYA(1974) for the Respondent(s) No. 1
MR JAY MEHTA, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 30/06/2025

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. 11195019241023 of 2024 registered with Deesa Rural Police Station, District Banaskantha** for the alleged offences as mentioned in the FIR.
3. Learned advocate Mr. Vardey for the applicant submits that the nature of allegations are such for which custodial interrogation at this stage is not necessary. He further submits that the applicant will keep himself available during the

course of investigation, trial also and will not flee from justice. He further submits that one incident of free fight between two groups has been occurred at a particular place on the basis of which members of both the parties have sustained injuries and cross-complaints have been filed by both the parties against each other on 28.10.2024. He further submits that the so-called incident is occurred on 27.10.2024. The FIR is filed against total 9 persons and pursuant to the registration of the FIR, investigation commenced and ultimately at the end of the day, the investigating officer concerned has submitted charge-sheet before the competent Court, wherein, applicant is shown as an absconding accused, and therefore, applicant preferred anticipatory bail application before the learned Trial Court, which was not entertained, hence present application is preferred. He further submits that if the Court would make cursory glance upon the body of the FIR, in that event, it would have been found out that name as well as specific role of all the accused persons have been described by the complainant in a very graphical manner. He further submits that it is the specific case of the prosecution that number of persons have sustained injuries and they were shifted to the hospital and at that relevant point of time they

had given history before the medical officer and those documents were also supplied along with the charge-sheet papers. He further submits that if the Court would make cursory glance upon those documents, in that event, it would have been found out that name of the present applicant is also not there in the history given before the medical officer. As fair and proper investigation had not been carried out by the investigating officer, one of the witnesses from a rival group had submitted an application to the investigating officer that in the incident, one of the accused persons had fired a gunshot in open air and videography of the the entire incident is recorded. Therefore, those particular sections are required to be incorporated by submitting an appropriate application before the Court concerned and thereafter statement of that witness was recorded. He has also supplied copy of videography to the investigating officer concerned, in spite of that, those sections were not added. Therefore, a detailed representation was made to the investigating officer and thereafter petition is also preferred by the said witness before this Court and the said petition was disposed of with the specific direction to decide the same within reasonable time. Learned advocate Mr.Vardey submits that in

fact the so-called incident is occurred on 27.10.2024, whereas FIR is registered on 28.10.2024. Further statement of the complainant was recorded on 15.12.2024 and at that relevant point of time, name of the applicant has not come on surface, however, subsequently on 07.03.2025, name of the applicant has come on surface on the basis of further statement made by the witness before the IO. He further submits that in fact IO concerned has tried to rope the present applicant on the basis of the statement made by the witness before the IO by way of submitting a detailed report before the competent Court. The said report had not been entertained. However, liberty was reserved to the IO to submit appropriate documents at appropriate stage and therefore at the time of submitting charge-sheet, present applicant has been shown as an absconding accused. He further submits that in fact all the injured witnesses have been discharged from the hospital and the persons who were named in the FIR and arrested by the IO had preferred regular bail application before this Court and they have been released by this Court based upon settlement arrived at between the parties and said fact is clearly mentioned by the Coordinate Bench of this Court at the time of releasing the co-accused. He further submits that no specific role is

attributed to the present applicant. He further submits that during the course of investigation, number of times present applicant had gone before the IO and extended all kinds of cooperation and their statements have also been recorded by the IO. Not only that present applicant was also administered threat by the members of the rival party specifically stating that you just have to retract from your earlier statement made before the IO. However, applicant was not agreeable and succumbed to the said pressurizing tactics adopted by the members of the rival party. Thus, considering the aforesaid factual aspects, application may be entertained.

4. Learned advocate for the applicant on instructions states that the applicant is ready and willing to abide by all the conditions that may be imposed while releasing the applicant on anticipatory bail. Learned advocate, therefore, submitted that considering the above facts, the applicant may be granted anticipatory bail.
5. Learned Additional Public Prosecutor appearing on behalf of the respondent – State has opposed grant of anticipatory bail looking to the nature and gravity of the offence. He further submits that in fact after the occurrence of the incident, FIRs have been registered by both the rival parties against each other. As the members of the side of complainant have sustained

injuries, they were hospitalized and FIR was registered against the accused persons and therefore some of the witnesses had gone incommunicado and therefore their statements were not recorded at the relevant point of time but subsequently statements of those persons have been recorded by the IO, wherein, they have described the role of the individual accused in a very graphical manner. On that basis, the accused persons have been arraigned as accused and at the time of submission of charge-sheet they have been shown as an absconding accused persons. Thus, considering the aforesaid factual aspects, this Court may not have to exercise discretionary powers of anticipatory bail in favour of the applicant as the weapons used by the accused persons at the time of commission of crime are required to be recovered from the accused persons and therefore their custodial interrogation is needed.

6. Learned advocate Mr. Pravin Gondalia appearing for the original complainant has objected present application with vehemence and he has adopted the arguments canvassed by learned APP for the respondent State. Moreover, he submits that in fact it is the case of the prosecution that incident of free fight occurred between the members of two rival groups. The applicant herein is the member of the rival group and with

a sole intent to frame the members of the other side, a false and fabricated story had been created by them. He further submits that in fact all the accused persons had gone in the vehicles along with deadly weapons and they have made attack upon the members of the rival party. The entire incident is videographed and seen by number of witnesses. The statements of those eye-witnesses have been recorded and they have crystallized the position by specifically stating that present applicants have actively participated in the commission of crime and therefore their custodial interrogation is required. He further submits that six persons from the complainant's side have sustained serious injuries and they were hospitalized and at that relevant point of time, they had given history before the medical officer wherein names of 8 to 10 persons were disclosed by them by specifically saying that along with them another 25 to 30 persons were there. Therefore, subsequently names of those persons have come on surface on the basis of statements made by the co-accused. He has referred the statement of independent and neutral person and submitted that in the said statement the said witness has clearly stated that present applicant accused was present and actively participated in the commission of crime and applicant is one of the

members of an unlawful assembly. Therefore, the Court may not have to exercise discretionary powers of anticipatory bail in favour of the applicant. He further submits that in fact applicant has tried to portray himself as a witness/victim of the situation and taken a stand that solely on the count that he is one of the witnesses in the cross complaint and therefore he has been arraigned as an accused by the complainant's side, which is not correct. He further submits that in fact as a witness he has to record his statement and submit materials before the IO, instead, he approached this Court by way of filing a petition, inter alia, making averments that the investigating officer is not carrying out the investigation in impartial manner. The said conduct of the applicant clearly goes on to show that applicant herein is working at the behest of the main accused person who is still absconding despite the fact that Section 70 warrant has been issued against him by the competent Court. He further submits that the conduct of the said accused is also required to be seen that he had tried to get the benefit of the situation by approaching the Court concerned and said fact is also fortified from the documents placed by him by way of filing an affidavit. The copy of the Rojkam of the Court proceedings clearly goes on to show that for the

purpose of obtaining an order of anticipatory bail, one of the co-accused persons has approached the Court of learned Sessions Judge and therefore the Court was constrained to write a letter to the appropriate authority to transfer the case from that Court to another Court. He, therefore, submits that considering the aforesaid factual aspects, at least, it can be said that applicant herein is not entitled to get any discretionary relief at the hands of this Court.

7. 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. I have considered the following aspects.

- (a) the incident of free fight was occurred between two rival groups, wherein, cross complaints came to be filed against each other;
 - (b) the applicant is not named in the FIR;
 - (c) he has been arraigned as an accused on the basis of statement of the co-accused;
 - (d) all the injured victims were discharged from the hospital;
 - (e) the accused persons named in the FIR have already been released on bail based on settlement arrived at between the parties;
- Thus, considering the overall facts of the present case and role played by the applicant at the time of commission of crime, I am inclined to entertain this application.

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.11195019241023 of 2024 registered with Deesa Rural Police Station, District Banaskantha**, 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 himself available for interrogation whenever required;
- (b) shall remain present at the concerned Police Station on 07.07.2025 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.

(DIVYESH A. JOSHI, J)

LAVKUMAR J JANI

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: LAVKUMAR JAYANTBHAI JANI(HC00210), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 01/07/2025 17:47:43