

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER
CHARGESHEET) NO. 10226 of 2026**

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SHAILESH @ ST S/O. DASHRATHJI SHIVAJI THAKOR
Versus
STATE OF GUJARAT

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Appearance:

MR HARSH M SURTI(3907) for the Applicant(s) No. 1
MR SIKANDER SAIYED(3458) for the Applicant(s) No. 1
MR DHARMESH DEVNANI WITH MS. VISHWA M SHAH(15460) for the
COMPLAINANT
MS MAITHILI MEHTA, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Date : 21/08/2026

ORDER

- 1) The present application is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS") for regular bail in connection with **FIR being C.R. No. 11191016250124 of 2025 registered with Paldi Police Station, Ahmedabad City**, for the offences under Sections 103(1), 109(1), 189(4), 190, 191(3), 61(2) and 296(a) of the BNS and Section 135 (1) of the GP Act.
- 2) Learned advocate appearing on behalf of the applicant submits that the applicant is innocent and has been falsely implicated in the offence. Investigation is over and chargesheet has been filed. Nothing is required to be recovered or discovered. He has no past antecedent. The eyewitness failed to identify the applicant as main accused have already identified. Mere the applicant happens to be friend of main accused Ajay Thakor, his name has been mentioned in the FIR but he has not made any assault on the deceased. Allegation against the applicant is that he had used knife, but no any injury caused by knife and there was no intention to kill the deceased. Other co-accused Nos. 6, 10 and 12 as per the chargesheet have been released on bail and therefore, on the ground of parity, applicant may be enlarged on bail. Complaint is

filed merely based on vague doubt and the applicant was not present at the scene of offence and no any eyewitness was there who identified the applicant. He therefore submits that, considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

3) Learned APP appearing on behalf of the respondent-State and learned counsel for the complainant have opposed the present application and requested to dismiss the present application for regular bail on the ground that the applicant and other co-accused hatched criminal conspiracy and played active role in the offence of murder. There was eyewitness to the incident who revealed the identity of the applicant. Initially, as a part of conspiracy, after getting risky on the movement of the deceased, accused assaulted with deadly weapons. Total 68 injuries were found on the body of the deceased as he was brutally assaulted with a view to kill him. Eyewitness has corroborated the case of the prosecution and in CCTV footage, presence of the applicant is recorded. Location of the applicant is matched with the other co-accused at the scene of offence. Approximately at a distance of 200 meters of Paldi Police Station, incident took place in night hours. The accused had switched off their mobile phones after committing offence and thereby, tried to destroy the evidence. Considering the role of the applicant and gravity of offence, no case is made out to entertain present bail application. Therefore, present application does not deserve consideration.

4) While granting bail, the Court has to consider the involvement of the accused in the alleged offence, the jurisdiction to grant bail has to be exercised on the basis of the well settled principles having regard to the facts and circumstances of each case and the

following factors are to be taken into consideration while considering an application for bail: (i) the nature of accusation and the severity of the punishment and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses and threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations are required to be considered.

- 5) Having heard learned counsel appearing for the respective parties and having perused the record and submissions made by learned counsel for the applicant, it appears from the case of the prosecution that, on 12.09.2025 at about 03:30 a.m., near Hiral Shopping Center, Paldi, Ahmedabad, all the accused formed an unlawful assembly with an intention to kill the deceased - Naishal Thakor. They assaulted the deceased with deadly weapons like axe, scythe, sword and knives, on a public road situated approximately 200 metres from Paldi Police Station. After assaulting the deceased with the said deadly weapons, accused No.11 -Mayur @ Montu Babubhai Danaji Chauhan, ran Maruti Swift car over the deceased, thereby causing his death. In connection with the said incident, FIR came to be registered at Paldi Police Station, Ahmedabad, for the offences punishable under Sections 103(1), 109(1), 189(4), 190, 191(3), 61(2) and 296(a) of the Bharatiya Nyaya Sanhita, 2023, and Section 135(1) of the Gujarat Police Act. During the course of investigation, it further came to light that, with a view to taking revenge for the earlier murder of Maheshbhai @ Mala Thakor, who was brother of accused No.1, the

accused had hatched a criminal conspiracy and met together on 15.09.2025. Pursuant to the said conspiracy, two juvenile accused persons conducted a recce, while accused Nos.1 to 5 and 7 to 9, armed with deadly weapons, formed an unlawful assembly at about 03:30 a.m. on 12.09.2025 and attacked Naishal Pareshbhai Thakor on the public road in front of Hiral Shopping Center at Bhatta, Paldi, with the intention of causing his death.

- 6) It is further alleged that the accused abused the deceased and indiscriminately assaulted and stabbed him with an axe and knives. Accused No.6- Sanjay @ Mamu facilitated the commission of the offence by providing the weapons and the Maruti Swift car used in the commission of the crime. The said vehicle was driven by accused No.11- Mayur @ Montu Babubhai Danaji Chauhan. It is further alleged that, during the incident, the accused also caused injuries to witness Jinaybhai Shah, who identified the present applicant and his active role in the commission of the murder. After the incident, accused Nos.1 and 7 changed the blood-stained clothes worn by them at the time of the commission of the offence at the house of accused No.12 situated at Village Kolwada, Gandhinagar. Accused No.12 destroyed the said blood-stained clothes with an intention to destroy or conceal material evidence relating to the offence. Furthermore, a weapon was allegedly recovered at the instance of the present applicant pursuant to a disclosure statement under Section 27 of the Indian Evidence Act. Blood stains were found on the said weapon.
- 7) Herein, present applicant is arraigned as accused in aid of Section 149 of the IPC. It is needless to say that the applicant herein was present at the time of commission of offence, his name is also

mentioned as accused in the complaint. When a person is attacked by a group of persons, it is difficult to establish physical assault. There is a clear allegation against the present applicant that he was member of unlawful assembly sharing a common object of assault to the deceased. Hence, accused persons came with deadly weapons in hand. Section 141 of the IPC defines '**unlawful assembly**' which is an important element to establish joint liability of the members under section 149 of the IPC. In aid of section 149 of the IPC, present applicant is arraigned as accused and provisions of sections 143, 147, 148 and 149 of the IPC are enacted in order to maintain tranquility of the society and present applicant actively participated in the commission of attack by virtue of section 149 of the IPC in aid of the common object as he acted in furtherance of common object, he is arraigned as accused. In case of such allegation of unlawful assembly, even it is not necessary that there must be specific overt act played each of the member of such an assembly in the commission of an offence. What is required to be shown is the participation as a member in pursuance of a common object of the assembly or being a member of that assembly, such person knew as to what is likely to be committed in prosecution of any such common object and in the event of the proof of showing of either of the above conduct of a member of an unlawful assembly is only enough. In this regard, reference is required to be made to the decision of the Hon'ble Supreme Court in the case of **Susanta Das vs. State of Orissa** reported in **(2016) 4 SCC 371**. Further, the Hon'ble Supreme Court in the case of **Parshuram vs. State of M.P.** rendered in **Criminal Appeal No.524 of 2021**, considering the judgment of Constitutional Bench of Hon'ble Supreme Court in the case of **Masalti vs. State of U.P.** reported in **AIR 1965 SC 202** has

observed and held as under:

"17. What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entertained alongwith the other members of the assembly the common object as defined by Section 141 IPC. Section 142 provides that whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common objects specified by the five clauses of Section 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly.

It is in that context that the observations made by this Court in the case of Baladin [AIR 1956 SC 181] assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly..."

- 8) Hence, present applicant having any common object or not is required to be considered after appreciation of evidence. The said common object may infer from the cumulative effect of facts of a particular case. In this regard, reference is required to be made to the case of **Mahendran vs. The State of Tamil Nadu** reported in **(2019) 5 SCC 67**. Hence, applicant is not entitled to claim parity based on findings / reason assigned by the learned Additional Sessions Judge.
- 9) Once the presence is established and in aid of Section 189 of the Act, to segregate the role of each accused is not permissible. In this regard, reference is required to be made on the decision of **Shobha Namdev Sonavane vs Samadhan Bajirao Sonvane**, reported in **2026 INSC 181**, wherein the Hon'ble Supreme Court

held that in a case where the offence is committed by an unlawful assembly, each member of the assembly is equally responsible for the acts committed in furtherance of the unlawful object. The common object of the assembly being to assault the deceased, each member of the unlawful assembly was thus equally liable and responsible for the offending acts.

10) It appears that the motive behind the entire incident was the previous murder of the brother of accused No.1. It is alleged that, in order to take revenge for the said murder, all the accused formed an unlawful assembly, conducted recce, and hatched a premeditated plan to commit the murder of the deceased Naishal Thakor. Pursuant to the said plan, the accused assaulted the deceased with deadly weapons and caused his death. The entire incident occurred in two parts, and the accused persons came to be arrested in two layers. The presence of the present applicant at the scene of offence and time is also noted in the CCTV footage collected during the course of investigation. Furthermore, the investigating agency has collected various incriminating materials connecting the present applicant with the alleged offence. Cause of death is due to the fatal stab injuries sustained on vital parts of the body, such as 28 injuries are on head and neck, 17 injuries are on stomach and chest, 5 injuries are on back side and 18 injuries are on right and left arms and thereby, **total 68 injuries were found** on the dead body of the deceased.

11) Further, Nehalbhai Sondarva was the eyewitness to the incident and his presence was also noticed in CCTV footage and he has stated that as pre-planned conspiracy, all the accused who armed with deadly weapons, formed an unlawful assembly firstly switched off their mobiles and thereafter, came in Maruti Swift car

as well as on scooter without number plates and assaulted the deceased and after the incident, they fled from the spot. Whole incident was captured in CCTV footage and revealed identity of the accused coupled with the certificate issued under section 63(4) of the BAS. It further reveals that all the accused came to the spot in a car and scooter and indiscriminately assaulted blows on the deceased and accused Mayur @ Montu Chauhan who was sitting in the car ran over the car over the deceased and once again, the accused came out from the car to ascertain deceased was dead or alive and again assaulted with deadly weapons which shows brutality on the part of the accused persons. Ocular evidence is on higher footing and whatever technical defense raised by learned counsel for the accused is subject matter of the trial and while deciding bail application, appreciation of evidence is not permissible.

- 12) Considering the material and evidence collected during the investigation, which supports the case of prosecution, *prima facie* involvement of the applicant is found. Further, when the applicant was arrested, he was arrested along with a knife which is mentioned in the panchnama. The said knife was sent to FSL and blood stains found on the knife matched with the blood group of the deceased. From the CDR, it is also evident that he was present at the scene of offence and he was also in contact with the other accused continuously at the time of murder. The applicant's location was shown at Paldi at around 12:30 to 03:14 near the place of incident thereafter, this applicant had switched off his mobile for around one hour during the time when the accused including the applicant committed offence of murder.

- 13) Mere say of the learned counsel for the applicant that blood stains were not found on the weapon is not a ground to believe that the said weapon is not used in the alleged incident. All these aspects are subject matter of trial and cannot be gone into at the stage of deciding bail application. At this stage, it is apposite to refer to the decision of the Hon'ble Supreme Court in the case of **Neeru Yadav vs. State of Uttar Pradesh and Another** reported in **(2014) 16 SCC 508** wherein the Hon'ble Supreme Court has held that exercise of grant of bail though discretionary in nature cannot be arbitrary, capricious and injudicious and in heinous nature of crime warrants more caution. Even, as per the law laid down by the Hon'ble Supreme Court in the case of **Prasanta Kumar Sarkar vs. Ashis Chatterjee** reported in **(2010) 14 SCC 496**, the Court has to exercise the discretionary jurisdiction very cautiously and strictly in compliance with the basic principles. Herein, this Court is of considered view that *prima facie* involvement and accusation of the applicant is established.
- 14) Further, it is needless to say that at the time of deciding bail application, Court has not to appreciate the evidence and is a matter of evidence. Herein, the applicant is facing charge under Section 103(1) of the BNS i.e. culpable homicide, which is also subject matter of trial and present is not a case where applicant is falsely implicated keeping the grudge or to settle the score. Considering the facts and circumstances of the case, gravity of offence, severity of punishment as well as the law laid down in cases of **Ram Govind Upadhyay vs. Sudarshan** reported in **2002 (3) SCC 598**, **Prahlad Singh Bhatti Vs. State (NCT of Delhi)**, reported in **2001 (4) SCC 280**, **Kalyan Chandra Sarkar Vs. Rajesh Ranjan**, reported in **2004 (7) SCC 528** and **Mahipal Vs. Rajesh Kumar** reported in **2020 (2) SCC 118**, this Court do not think it

appropriate to exercise its discretion in favour of the accused more particularly considering the role attributed to the accused and considering the involvement in such serious offence punishable under Section 103(1) of the BNS (Section 302 of the IPC) with life or death sentence. In **Ram Govind Upadhyay (supra)**, it has been held as under:-

"3. Grant of bail though being a discretionary order but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for Bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the Court and facts however do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic consideration for the grant of bail more heinous is a crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter."

15) Needless to emphasise, the sacrosanctity of liberty is paramount in a civilised society. However, in a democratic body polity which is wedded to the rule of law an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. In an orderly society an individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well-accepted principle that the concept of liberty is not in the realm of absolutism-but is a restricted one.

16) It is also apposite to refer to the decision of the Hon'ble Supreme Court in the case of **Ajwar vs. Waseem and Another** reported in **2024 SCC OnLine (SC) 974** and **Aqeel Ahmed vs. State of Uttar Pradesh and Another** reported in **2024 SCC OnLine (SC) 499**, wherein the Hon'ble Supreme Court observed thus:

"26. While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail."

17) Further, in the case of **CBI vs. V. Vijay Sai Reddy** reported in **(2013) 7 SCC 452**, the Hon'ble Supreme Court observed in paragraph 34 as under:

"34. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

18) At this stage, decision of the Hon'ble Supreme Court in the case of **Ash Mohammad vs. Shiv Raj Singh alias Lalla Babu and Another** reported in **(2012) 9 SCC 446** is also required to be referred to, wherein, it has been held that the concept of liberty is not in the realm of absolutism but is a restricted one and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardized.

19) Now, coming back to the argument as regards applicant being entitled to get the benefit of parity is concerned, other co-accused are released on bail as they were part of conspiracy and no any

overt act is attributed or they have not been found in participation of assault. Except providing weapons and vehicles in commission of offence, no role is attributed to the said co-accused and hence, some of the co-accused being released on bail is not a ground to allow the present application or extend the benefit of parity as while extending the benefit of parity, individual role of the accused is required to be considered. In this regard, reference is required to be made on the decisions of the Hon'ble Supreme Court in the case of **Tarun Kumar v. Enforcement Directorate, reported in 2023 SCC Online SC 1486**, and **Sagar v. State of Uttar Pradesh, reported in 2025 INSC 1370**. Therefore, the submissions canvassed by the learned counsel for the applicant are not acceptable.

20) So far as submission on behalf of the applicant that charge-sheet is filed and nothing is required to be recovered or discovered and no purpose would be served by keeping the applicant behind the bars is concerned, another important aspect that needs to be considered is that mere filing of a charge sheet is not a sufficient ground to enlarge the accused on bail, as held by the Hon'ble Apex Court in the case of **Virupakshappa Gouda and Another vs. The State of Karnataka**, reported in **(2017) 5 SCC 406**. If the applicant is released, the possibility of tampering with evidence cannot be ruled out.

21) Contention with regard to the applicant is that the applicant is in jail since September, 2025, is concerned. Considering seriousness of offence, merely the accused is arrested on 14.09.2025 and spent some time in custody cannot be a sole factor to consider the bail application, more particularly considering the nature of allegations, role played by the accused and impact on the society

at large. Perusing the report submitted by learned Presiding Judge, it appears that accused No.7 engaged an advocate recently, i.e., on 19.06.2026. In serious offences involving several accused, where there is no possibility of bail on merits, accused without pressing the matter on merit, based on alternative submissions or other ground, tried to secure the bail on the ground of delay in trial. However, from the record, it appears that the accused is, on one ground or another, attempting to prolong the trial in a serious offence punishable with life imprisonment or death.

22) Considering the concept of victimology, the Court has to consider not only the interest of the accused but also the rights and safety of the victim. Today, when the matter was called out, learned counsel for the complainant submitted that the witnesses, while appearing before the Court for recording of their depositions, were being pressurized to depose in favour of the accused. Such conduct amounts to an attempt to threaten the witnesses and tamper with the evidence. It was further submitted that the eyewitnesses are also under fear. Yesterday, about 16 persons from the side of the accused gathered in the Court and allegedly pressurized the witnesses to depose in favour of the accused. An application in this regard has also been submitted before the jurisdictional police station. Considering the conduct and circumstances, the possibility of tampering with the evidence and influencing the witnesses cannot be ruled out. Considering the same and since the recording of evidence is in progress, this ground alone is sufficient to decline bail to the applicant, in view of the ratio laid down in **X v. State of Rajasthan**.

23) Considering seriousness of offence and involvement of accused, present application being devoid of any merit stands **dismissed**.

However, the learned trial Court is directed to expedite the trial since the applicant is an under-trial prisoner.

24) It is made clear that the observations made in the present order are tentative in nature. The learned trial Court shall expedite the trial on its own merits, without being influenced by the observations made in this order. The applicant is directed to cooperate with the learned trial Court to cooperate in expeditious trial.

(HASMUKH D. SUTHAR,J)

SUCHIT