

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER
CHARGESHEET) NO. 10589 of 2026****With****R/CRIMINAL MISC.APPLICATION NO. 3155 of 2026**=====
VAJID @CHIYO AIYUB MALEK**Versus****STATE OF GUJARAT**
=====Appearance in CR.MA No.1058/2026:

MR HARSHADRAY A DAVE(3461) for the Applicant

MR HIMANSHU PATEL, APP for the Respondent

Appearance in CR.MA No.3155/2026:

MR ZUBIN BHARDA (159) for the Applicant

MR ADITYA JADEJA, APP for the Respondent
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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**Date : 25/08/2026****COMMON ORDER**

Since present applications are filed by the respective applicants seeking regular bail in connection of the common FIR, both these applications are heard, decided and disposed of by this common order.

[1.0] **RULE.** Learned Additional Public Prosecutors waive service of notice of Rule for and on behalf of the respondent – State of Gujarat in respective applications.

[2.0] Present applications are filed by the applicants under Section 483 of the Bharatiya Nyaya Suraksha Sanhita, 2023 (for short “BNSS”) seeking regular bail in connection with FIR being **C.R. No.11210025253080 of 2025** registered with **Limbayat Police Station, Surat City** for the offence punishable under Sections 308(5), 115(2), 351(3), 296(b) and 54 of the Bharatiya Nyaya Sanhita, 2023 (for short “BNS”); section 135 of the Gujarat Police Act and sections 3(1)(ii),

3(2) and 3(4) of the Gujarat Control of Terrorism and Organized Crimes Act, 2015 (for short "GUJCTOC Act").

[3.0] Learned advocate Mr. Harshadray Dave appearing for the applicant of **CR.MA No.10589/2026** has submitted that the applicant is innocent and is falsely enroped in the offence. Further, the provision of GUJCTOC Act is wrongly invoked against the present applicant too when the triggering offence is concerning extortion and present applicant has nothing to do with the alleged Chiya Gang and applicant is not involved in any continuous unlawful activity. He has further argued that though applicant is having 26 past antecedents, in 8 offences applicant is acquitted and in 9 offences proceedings have been quashed and in one offence, the applicant has been released on bail. He has submitted that the original complainant is not having any objection if the applicant is released on bail. Hence, he has requested to allow the present application.

[4.0] Learned advocate Mr. Zubin Bharda appearing for the applicant of CR.MA No.3155/2026 has submitted that applicant is innocent and he has nothing to do with the alleged offence and to invoke the provisions of GUJCTOC Act against the present applicant, 5 offences registered against the applicant have been considered. He has further submitted that provision of GUJCTOC Act is wrongly invoked on the flimsy ground that present applicant pointed knife in connection of dispute concerning tying of goat and investigating agency ought to have rather invoked PASA against the applicant and merely based on the allegation pertaining to the offence of extortion, provisions of GUJCTOC Act have been invoked.

[5.0] Learned advocates appearing for the respective applicants have

also submitted that the applicants are behind the bars since more than one year and long incarceration of applicants will seriously prejudice the interest of their respective families and therefore, they have submitted that, considering the nature of the offence, the applicants may be enlarged on regular bail by imposing suitable conditions.

[6.0] Learned Additional Public Prosecutors appearing on behalf of the respondent – State have opposed the present applications and requested to dismiss the present applications for regular bail on the ground that applicants are members of Chiya Gang and are involved in continuous unlawful activities and created atmosphere of terror and fear in the city of Surat and they used to extort money from people. Even, one accused i.e. Vajid (applicant of CR.MA No.10589/2026) is having 26 past antecedents and as and when released on bail, he has misused the liberty. Further, more than one charge-sheets have been filed against the applicants and so far as alleged offence *qua* extortion of Rs.3000/- is concerned, said argument on behalf of the applicant – Vajid is not acceptable since the said offence is considered as triggering offence to invoke the provisions of GUJCTOC Act. Further, the prosecution is ready and willing to proceed with the trial as early as possible subject to cooperation on the part of accused persons. Hence, merely under the pretext of delay in trial, applicants – accused cannot be released on bail at the cost of public safety and that too considering provision of section 20 of the GUJCTOC Act when the applicants have indulged in continuous unlawful activity. Hence, in view of section 20(4) of the GUJCTOC Act, learned APPs have requested to dismiss the present applications.

[7.0] Having heard the learned advocates appearing for the respective parties at length and going through the record, it appears

that to trigger the offence under the GUJCTOC Act, offence registered as C.R. No.11210025253080 of 2025 with Limbayat Police Station, Surat City for the offence punishable under Sections 308(5), 115(2), 351(3), 296(b) and 54 of the Bharatiya Nyaya Sanhita, 2023 (for short "BNS") and section 135 of the Gujarat Police Act is taken into consideration wherein it is alleged that the accused persons have pointed knife on the complainant and extorted Rs.1000/- from the complainant. However, during the investigation it revealed that the accused persons have formed one gang namely Chiya Gang and applicants are the members of the said gang and being members of the said organized crime syndicate, applicants – accused have jointly and singly committed several offences including extortion, attempt to murder, grievous hurt, breach of public tranquility, Arms Act, Gambling Act and various offences in different areas of Surat city including Limbayat, Udhna, Umra, Salabatpura, Sachin, Khatodara, Godadara and thus, the applicants – accused have created atmosphere of fear and terror in public and due to this reason, sections 3(1)(ii), 3(2) and 3(4) of the GUJCTOC Act came to be invoked and charge-sheet is filed.

[7.1] So far as the submission of learned advocate Mr. H.A. Dave appearing for the applicant of CR.MA No.10589/2026 that original complainant is not having any objection if the applicant is released on bail is concerned, this Court is of considered view that once offence is registered against the State and more particularly under the provisions of the GUJCTOC Act, then section 20 of the GUJCTOC Act is required to be considered. Hence, this Court is not inclined to accept the argument canvassed by the learned advocate Mr. H.A. Dave appearing for the applicant of CR.MA No.10589/2026 to release the applicant on bail considering no objection of the original complainant.

On the contrary, such submission itself indicates that the applicant is able to influence witnesses which is nothing but tampering with evidence and hence, coupled with provision of section 20(4)(b) read with sections 6 and 7 of the GUJCTOC Act, it appears that applicants are having past antecedents coupled with the fact that the applicants have threatened the witnesses despite being enlarged on bail in earlier offences and as such continued indulging in such unlawful criminal activities which demonstrates propensity to misuse liberty which adversely affects the case of prosecution. Hence, this Court is not inclined to consider any consent given by the complainant.

[7.2] Against applicant of CR.MA No.10589/2026, 26 offences have been registered including the offence of murder and POCSO Act and it appears that the applicant has indulged in “**continuous unlawful activity**” which is defined in section 2(1)(c) of the GUJCTOC Act and hence, keeping in mind the provisions of the GUJCTOC Act as well as the decision of the Hon’ble Supreme Court in the case of **Prasad Shrikant Purohit v. State of Maharashtra** reported in **(2015) 7 SCC 440** coupled with the fact that the applicants are members of organized crime syndicate and have indulged in continuous unlawful activities either jointly or singly and since last 10 years from the date of commission of the present offence, more than one charge-sheets have been filed and even thereafter, the applicants - accused have indulged in continuous unlawful activities and therefore, the applicants - accused do not deserve any relief at the hands of this Court. In this regard, reference is required to be made to the decision of the Hon’ble Supreme Court in the case of **Zakir Abdul Mirajkar vs. The State of Maharashtra & Ors.** reported in **2022 SCC OnLine 1092** wherein it has been held that bail in offences under MCOCA / herein

GUJCTOC is subject to strict statutory and constitutional limits.

[7.3] Further, present applicants have created fear and terror amongst public and witnesses and therefore, possibility of tampering with evidence and administration of threat to witnesses, if applicants are released on bail, cannot be ruled out. One more aspect which is required to be considered is that statutory investigation period under the BNSS is yet to be over and so far concept of the bail is concerned, purpose of the bail is not a punitive but a preventive. While granting bail, the Court has to take care of the availability of the accused at the time of trial and second important aspect is that possibility of the tampering with an evidence of the prosecution. Further, while granting bail, the Court has to satisfy itself about the interest of prosecution. One of the criteria which is required to be considered while considering bail is interest of prosecution witnesses. This Court is of the considered opinion that if the present accused are enlarged on bail, the possibility of accused misusing their liberty and tampering with evidence of prosecution and flight risk cannot be ruled out. At this stage, it would be apposite to refer to the 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**.

[7.4] The Hon'ble Apex Court has time and again 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. Needless to emphasize, the sacrosanctity of liberty is paramount in a civilized 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.

[8.0] For the foregoing reasons, this Court is of view that present is not a fit case to exercise discretion under Section 483 of the BNSS in favour of the applicants. Accordingly, present applications do not deserve any consideration and are hereby ***dismissed***.

[9.0] It is made clear that the observations made in the present order are tentative in nature and the learned trial Court shall decide the case of the applicants independently on its own merits without being influenced by the observations made in the present order. Rule is hereby discharged.

(HASMUKH D. SUTHAR, J.)

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