

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER
CHARGESHEET) NO. 14532 of 2026**

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SAHILSHA @IRFANSHA CHINGISHA @AMINSHA BANWA

Versus

STATE OF GUJARAT

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Appearance:

MR VIRAT G POPAT(3710) for the Applicant(s) No. 1

MR SOEB R. BHOHARIA(2205) for the Respondent(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 : 10/08/2026****ORDER**

RULE. Learned APP waives service of notice of Rule for and on behalf of the respondent – State of Gujarat.

[1.0] By way of present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “BNSS”), the applicant is seeking regular bail in connection with FIR being **CR No.11203068260079 of 2026** registered with **Vanthali Police Station, District Junagadh** for the offence punishable under Sections 103(1), 115(2) and 54 of the Bharatiya Nyaya Sanhita, 2023 (for short “BNS”) and section 135 of the Gujarat Police Act.

[2.0] Heard learned advocate Mr. Virat G. Popat for the applicant, learned advocate Mr. Soeb R. Bhocharia for the original complainant and learned APP for respondent – State of Gujarat.

[3.0] Learned advocate for the applicant has submitted that the applicant is innocent and has been falsely implicated in the offence. The applicant’s presence was not noticed in the CCTV footage and

even otherwise, charge-sheet is filed and nothing is required to be recovered or discovered at the instance of the present applicant. He has further submitted that present is a case of over-implication and applicant has nothing whatsoever to do with the alleged offence. He has further submitted that two witnesses have stated that applicant was only standing at the place of offence but has not played any active part in the crime and has not abetted the offence in any manner. He has further submitted that one compartmentalized version has come forward from the two witnesses who have stated before the police authority that the applicant was merely present at the scene of offence however, the investigating agency has falsely implicated the present applicant. The applicant is not having any past antecedent and hence, he has requested to allow the present application by imposing suitable conditions.

[4.0] Learned APP has vehemently opposed the present application by submitting that present is a serious offence and name of applicant is mentioned in the FIR and even during investigation, two witnesses including one injured witness has mentioned about the involvement of the present applicant. He has further submitted that in the first medico-legal certificate issued by CHC, Vanthli, name of present applicant is stated and after one day the injured was shifted to Junagadh Hospital and thus, evidence of injured witness is higher footing since two witnesses have supported the case of the prosecution and considering the presence and involvement of the present applicant at the scene of offence, applicant acting as abettor is also proved and even the applicant has made an assault to the deceased and in the post-mortem report, six injuries have been found on the body of the deceased. Hence, he has requested to dismiss the present application.

[5.0] Adopting the submissions made by the learned APP, learned advocate Mr. Soheb R. Bhocharia appearing for the original complainant has also vehemently opposed the present application by filing the objections against the present application and has further submitted that the complaint is filed immediately after taking the treatment. In the first certificate issued by CHC, Vanthali, name of the present applicant is also given. Further, the applicant is taking undue advantage of two witnesses not having mentioned his name but other two witnesses amongst whom one is injured eye-witness have supported the case of prosecution and even otherwise, appreciation of evidence at the stage of deciding the bail application is not permissible. Two eye-witnesses including one injured has supported the case of prosecution and four persons have stated before the authority about presence of the applicant. Thus, involvement of applicant is proved. Imran and Shoaib also stated about presence of applicant and Shakeel is injured witness and Salim Samadsha has also stated about the presence of applicant and thus, the active participation of the applicant is proved. Further, due to six injuries including head injury sustained, the deceased succumbed to injuries. Hence, he has requested to dismiss the present application.

[6.0] Heard the learned advocates appearing for the respective parties and perused the investigation papers.

[7.0] Perusing the investigation papers and record, it appears that the case of prosecution is to the effect that on 02.02.2026 at about 11:00 p.m., while the complainant and his younger son Rahish were present at their premises, Rahish received a telephonic call from his friend Imranbhai Amadbhai Jethwa informing him that his elder brother Tajim had been assaulted at the Dargah of Bhalaysha Pir near

Vanthali Railway Station pursuant to which, the complainant and his son Rahish proceeded to the said Dargah on their motorbike and on reaching at the spot, they observed accused Rafiqsha Kasamsha Sarvadi armed with a wooden stick, followed by his nephew Akramsha Hanifsha Sarvadi, his son Arbaazsha Rafiqsha Sarvadi and present applicant, all fleeing from the scene of offence. Upon reaching the Dargah, the complainant found his son Tajim lying in a pool of blood, grievously injured and bleeding profusely from the head and was unable to speak. It further appears that an iron rod and a knife were lying nearby and several persons including Razakbhai Jethwa were present at the spot and another individual Shakeel, had sustained injuries on his head and leg. As per the case of prosecution, when deceased Tajim alongwith Salim Memubbhai Sarvadi, Imran Amadbhai Jethwa, Shoaib Amadbhai Mangrolia and Shakeel were seated at the Dargah, the accused persons suddenly arrived armed with iron rods, knives, and wooden clubs and without any provocation, accused No.1 Rafiqsha struck deceased Tajim on the head with a club causing him to collapse, whereafter all four accused assaulted him indiscriminately with the weapons in their respective possession, inflicting severe injuries and Shakeel, who attempted to intervene, was also assaulted and injured Salim, Imran, and Shoaib fled from the spot under the fear.

[7.1] It appears that the motive behind the incident is attributed to the love relationship between the deceased Tajim and Iqra, daughter of accused Rafiqsha, which was going since past five to six months and even on an earlier occasion, accused Rafiqsha had threatened to kill Tajim, leading him to consume poison, for which a complaint had been lodged at Vanthali Police Station.

[7.2] Perusing the role attributed to the present applicant, it is the

case of prosecution that applicant's presence is found at the spot. Two eye-witnesses namely (1) Shakeel Rajak Jethva and (2) Salimsha Mehboobsha Shamadar were present at the time of occurrence of offence and they have categorically stated in their respective statements before the police that alongwith deceased Tajim and other friends namely Imran and Shoaib, they were sitting at Bhalaysha Pir's Dargah and at that time four accused persons came armed with deadly weapons like steel pipe / rod, knife and wooden logs and applicant was armed with steel pipe / rod. Accused Rafiksha caused head injury and other four accused caused injuries with respective weapons and while one witness tried to intervene, he also received injury. Shakeel Rajak Jethva who is injured witness has also given the name of present applicant and also stated that present applicant made an assault to the deceased with iron pipe and to other two witnesses. Further, post-mortem report of the deceased suggests six injuries within 24 hours by hard and blunt object or surface.

[7.3] Prior to date of offence, one complaint came to be registered with Vanthali Police Station on 16.09.2025 in connection of the alleged affair of daughter of accused No.1 and deceased and thus, the motive is clearly revealed. *Prima facie* involvement of the applicant is found and two witnesses including one injured eye-witness has stated about the presence of applicant at the time and scene of offence. Statement of injured witness is on higher footing and even otherwise, at the time of deciding bail application, appreciation of evidence is not permissible and even otherwise, merely because two witnesses have not stated about the overt act of the present applicant but have not denied presence of applicant at the scene of offence and when applicant is arraigned as an accused in aid of section 54 of the BNS, it is needless to say that if abettor is present at the time of offence then

as a consequence, he shall be deemed to have committed the offence. Hence, the argument canvassed by the learned advocate for the applicant as regards compartmentalized version or to contradict witness versus witness is not acceptable at the stage of deciding bail application. Even, while appreciating the evidence also, to contradict a witness with another witness is not permissible.

[7.4] This court has also kept in mind the law laid down by the Hon'ble Supreme Court in the case of **Virupakshappa Gouda vs. State of Karnataka reported in (2017) 5 SCC 406**, wherein it is held as under :

"13. Needless to say, filing of the charge-sheet does not in any manner lessen the allegations made by the prosecution. On the contrary, filing of the charge-sheet establishes that after due investigation the investigating agency, having found materials, has placed the charge-sheet for trial of the accused persons."

Further, one more aspect which is required to be considered is that 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 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. It *prima facie* appears that there is a chance of tampering and hampering with an evidence. This Court is of the considered opinion that if the present accused is enlarged on bail, then the possibility cannot be ruled out that accused will misuse his liberty and tamper with witnesses or evidence of prosecution.

[8.0] 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. This 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** 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 302 of the IPC with life or death sentence. 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."

[8.1] 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."

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.

[9.0] Considering seriousness of offence and involvement of accused, present application being devoid of any merit stands **dismissed**.

[10.0] Learned trial Court is directed to expedite the trial since the applicant is an under-trial prisoner for which the applicant shall also cooperate.

[11.0] 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 applicant on its own merits without being influenced by the observations made in the present order. Rule is hereby discharged.

(HASMUKH D. SUTHAR, J.)

Ajay