

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 27421  
of 2025**

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JAGATSINH @ J.D. DAHYUSINH MAKWANA  
Versus  
STATE OF GUJARAT

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**Appearance:**

MS TEJAL A VASHI(2704) for the Applicant(s) No. 1  
MR NITINBHAI M DESAI(13406) for the Respondent(s) No. 1  
MR.KIRIT R CHAUDHARI(3745) for the Respondent(s) No. 1  
MR. CHINTAN DAVE, APP for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR.JUSTICE P. M. RAVAL****Date : 16/04/2026****ORAL ORDER**

1. Rule. Learned Additional Public Prosecutor waives service of Rule for the respondent – State.
2. By way of this 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 CR.I. No. 11209041251005 of 2025, dated 18.10.2025, lodged before Prantij Police Station, District: Sabarkantha for the offences punishable under Sections 109(1), 11592), 118(1), 118(2), 125(a), 125(b), 189(2), 189(4), 190, 191(2), 191(3), 324(5), 326(f), 351(3), 352 of the Bharatiya Nyaya Sanhita, 2023, and Section 135 of the Gujarat Police Act.
3. Pursuant to the aforesaid FIR, the applicant preferred an

application for anticipatory bail being Criminal Miscellaneous Application No.927 of 2025, which came to be rejected by the learned Session Judge, Himmatnagar, vide order dated 12.11.2025. Hence, the present application.

4. Learned Senior Counsel Mr. Jal Soli Unwalla for the learned advocate Ms. Tejal A. Vashi for the applicant would submit that, the allegations leveled in the FIR would *prima facie* reflect that the present FIR is lodged to see that maximum number of persons of the community belonging to the present applicant are involved or roped into the alleged crime. More particularly, from the reading of the FIR, itself would reflect that because of the animosity of the fact that the applicant has been married to the lady of the Patel community, and that the daughter of the present applicant was also elected as a Surpanch, coupled with the fact that since last year, the administration of the Bhairavdada Temple was also with the community of the present applicant. Sweeping these factual aspects into grudge which would reflect in the FIR itself that, the applicant has been roped into the alleged offence. That, no specific role has been attributed by the present applicant in the FIR, thus, it fails to satisfy the basic requirement of the criminal law, namely, the attribution of individual culpability, and thus, cannot be subjected to arrest merely on the basis of collective allegations. That, the present applicant is a practicing advocate by profession, and residing at Gandhinagar, and was not present at the scene of offence at the

relevant point of time. That, the applicant has been falsely roped in the alleged crime based on the existing animosity and social prejudice. That, neither the complainant nor the prosecution has placed on record the CCTV footage, which would make it clear that the applicant was not present when the incident took place, the applicant will not be even seen in the CCTV recordings if at all collected by the investigating agency. Even assuming the entire allegations in the FIR are to be taken as true, the same does not disclose a *prima facie* case warranting arrest of the present applicant. Thus, the narration has exaggerated and improbable version involving a large mob without explaining or attributing individual role. Even from the reading of the FIR, it is evident that the incident stemmed from the communal dispute relating to performance of *pooja* at a local temple, which escalated into a scuffle between the two groups, thus, the present FIR is nothing but a pressure tactic as even young son of the applicant is robbed in falsely and he is in custody. No offence under Section 109 of the BNS is attracted because between the two communities concerning the administration of the temple. Thus, argued to allow the present application.

5. *Per contra*, learned advocate Mr. Jubin Bharda for learned advocate Mr. Kirit R. Chaudhari for the complainant would submit that the present application is for bail in anticipation of his arrest and therefore, digging deep into the evidence is not permissible at this stage, more particularly, when various statement of the injured witnesses reflect the name of the present applicant, hence, he is

present at the time of the incident. Merely because a specific role is not attributed to the present applicant, it cannot be said that there is no role of the present applicant. However, he would argue that the present applicant had a major role in instigating the group of people and further instigating to kill the complainant side's people, which has been abbreviated and hence, merely because he was not holding weapon in his hands cannot relegate him from the alleged offence. That, even otherwise from the photographs which have been placed on record by the complainant, learned advocate Mr. Bharda would further submit that entire family including his son, wife and the present applicant except his daughter were present at the time of the incident, that would also be cleared from the car which would be found from the CCTV footage.

6. Learned Additional Public Prosecutor Mr. Chintan Dave supporting the contention raised by the learned advocate for the complainant would submit that there are various statements of eye witnesses and injured witnesses *prima facie* to prove the complicity of the present applicant, more particularly, when the applicant had instigated the group of people pursuant to which incident has taken place. He would further submit that at this stage, looking into the CCTV footage would be appreciation of evidence, more particularly, when involvement of the present applicant would surface during the investigation from the statements of the injured witnesses, more particularly, instigating the group of people from the side of the

applicant. Under the circumstances, when there is a huge loss to the public property approximately to the tune of Rs.37,00,000/- including 30 houses and 100 vehicles and one car, and thus, argued that the present application be rejected at the threshold.

7. Heard, the learned advocates for the respective parties. This Court has also considered the ration laid down in the case of ***Siddharam Satlingappa Mhetre v. State of Maharashtra and Others, reported in (2011) 1 SCC 6941***. On perusal of the statements of various eye witnesses it cannot be said that the presence of the present applicant was not at the place of incident, more particular, without discussing the merits and demerits of the case in detailed which would prejudice the case of the either side, the strong *prima facie* case is surfacing on record and the complicity of the present applicant cannot be denied. Inasmuch as a specific role of instigating the group of people from the applicant's side is coming on record. Merely because the applicant insists that the CCTV footage be looked into at this stage would be asking more than the provision of Section 482 of the BNS would permit, since this would be appreciation of evidence in detailed which is not permissible at this stage. As held by the Supreme Court in the case of **Sumitha Pradeep v. Arun Kumar C.K. and Another**, reported in **(2022)17 SCC 391**, wherein at paragraph 12 it is held:

“12. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court

praying that the anticipatory bail granted by the High Court to the accuse should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail mater, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

8. Thus, even if, for the sake of argument, it is considered that the custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail, more particularly,

when the complicity of the present applicant would surface on record. On one hand, learned Senior Counsel appearing for the applicant would submit that the applicant was not present and was residing at Gandhinagar, however, the CDR record would reflect that the applicant was present at the place of incident.

9. In view of the aforestated facts and circumstances and discussion, after considering the material placed before this Court, strong *prima facie* case against the present applicant in the alleged offence is surfaced on record.

10. Under the circumstances, this Court does not find any exceptional ground to exercise discretionary jurisdiction under Section 482 of the Bhartiya Nagarik Suraksha Sanhita, 2023, hence, the present application stands rejected. Rule discharged.

NITIN MAKWANA

**(P. M. RAVAL, J)**