IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 7790 of 2025

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RAMJIBHAI @ RAMCHANDRASINH KANJIBHAI CHAUHAN

Versus

STATE OF GUJARAT

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With

R/CRIMINAL MISC.APPLICATION NO. 7625 of 2025

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DHRUVRAJBHAI RAMJI @ DHRUVRAJSINH RAMCHANDRASINH CHAUHAN

Versus

STATE OF GUJARAT

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Appearance:
MR MB GOHIL(2702) for the Applicant(s) No. 1
MR HK PATEL, APP for the Respondent(s) No. 1

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

Date : 21/04/2025
COMMON ORAL ORDER

[1.0] Registry to accept vakalatnama of learned advocate Mr. A.J. Yagnik, who has instructions to appear for the original complainant.

[2.0] RULE. Learned APP waives service of notice of Rule on behalf of the respondent – State.

[3.0] By way of the present applications under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “BNSS”), the applicants – accused Nos.3 and 2 have prayed to release them on anticipatory bail in the event of their arrest in connection with the FIR being **C.R. No.11192015250251 of 2025 dated 27.02.2025** registered with **Changodar Police Station, Ahmedabad Rural** for the offences punishable under Sections 310(2), 352, 351(2), 324(2), 61(2)(a) of the

Bharatiya Nyaya Sanhita, 2023 (for short “BNS”).

[4.0] Learned advocate for the applicants submitted that present applicants are falsely enroped in the offence and they have nothing to do with the offence. The alleged incident took place in connection of one program / Dayaro of Devayat Khavad which was organized by accused No.3 and his elder brother in the loving memory of their late father on his death anniversary and on this occasion large number of people gathered to watch the program. Though for the said program, said Devayat Khavad received Rs.8 lakh in cash, he left the place to perform at some other venue at village Piplav due to which present applicants and family members became helpless and tried to apologize to the public gathered for the failure of program. At that time, driver of said Devayat Khavad i.e. the complainant attempted to fled away from the place and some spectators have broken the glass of the car and due to outburst, alleged incident took place as the singers of program did not come back to perform the program and thus, no role is attributed to the present applicants and therefore, no custodial interrogation is required.

[4.1] Even, one another complaint with regard to the incident is filed. And the present complaint is filed belatedly after a delay of 7 days. Further, brother namely Bhagvatsinh Kanjibhai Chauhan (accused No.1) of the accused No.3 is granted anticipatory bail and other co-accused Meghrajsinh @ Banna has been released on regular bail and therefore, even on the ground of parity, the applicants are entitled to get anticipatory bail. Further, no overt act is attributed to the present applicants and accused No.2 i.e. applicant of CR.MA No.7625/2025 is not having any past antecedent. Further, nothing is required to be recovered or discovered from the present applicants as the accused

persons have not played any active role in the alleged offence. Further, learned advocate for the applicants, under the instructions from the applicants, has stated that applicants are ready and willing to join the investigation and submitting thus, he has requested to allow the present application.

[5.0] Learned APP appearing for the State has vehemently opposed the present application and stated that accused No.3 i.e. applicant of CR.MA No.7790/2025 is having two past antecedents. Further, the applicants have not cooperated in the investigation and are on run though they are named in the FIR. The applicants have taken law in their hands and have shown their highhandedness by assaulting the complainant and by intercepting the car of Devayat Khavad as his driver was present at the spot. Even, the presence of applicants is also revealed during the investigation from call detail record and tower location of phones of applicants. The applicants have damaged the Scorpio Car including its windshield by throwing the same in a pond and it was subsequently recovered from the pond and the said fact is corroborated by the FSL report. Further, he has submitted that harmonium was recovered from the car but Rs.5 lakh cash, i-phone 13 promax, apple airpods and versace spectacle and other articles which belonged to Mr. Devayat Khavad are yet to be recovered for which custodial interrogation is required.

[5.1] Further, applicant – accused No.3 is having two past antecedents. On the same day of the incident, the complainant had approached the police station and submitted written application but same was not registered as FIR and thereafter, after many efforts on the part of the complainant, FIR came to be registered with reasonable explanation of delay in lodging of FIR. Further, the offence

of Dacoity punishable under Section 310(2) of the BNS is made out and attempt itself is an offence. Herein, muddamal is yet to be recovered and four unknown persons are yet to be identified and even Test Identification parade is required to be conducted. As investigation is at a nascent stage, custodial interrogation is required. Hence, he has requested not to exercise the discretion in favor of the applicants and has requested to dismiss the present applications.

[6.0] Learned advocate Mr. Vedant Rajguru for learned advocate Mr. A.J. Yagnik for the original complainant has submitted affidavit in reply on behalf of the original complainant, which is taken on record. Learned advocate for the original complainant has submitted that the complainant is driver of famous folk singer and writer of folk songs namely Devayat Khavad, who was invited on the night of 20.01.2025 for performing 'Dayro' on account of death anniversary of the father of accused No.1 and accused No.3 and he was to perform *pro bono* as earlier said Devayat Khavad has performed *pro bono* in a 'Dayro' organized by the family of accused Nos.1 to 3 on account of marriage of accused No.2 and thus there was a personal rapport between Devayatbhai Khavad and family of accused No.1. Further, with the consent of accused No.1, Mr. Khavad left to perform a 'Dayro' at village Piplav, Taluka Sojitra, District Anand with assurance that he will come back till the time other singers perform at village Sanathal. Further, when Mr. Khavad did not return even after completion of performances by other singers and when the complainant tried to leave in Scorpio car of Mr. Khavad, the Scorpio Car wherein there was cash of Rs.5 lakh, harmonium, i-phone 13 promax, apple airpods, versace spectacles etc., was intercepted by the present applicants and other co-accused with two cars namely Innova and Thar and made an assault to the Scorpio car thereby badly damaging the windshield of

Scorpio Car and thereafter, Scorpio car was thrown into Sanathal lake and thus, the applicants alongwith other accused persons have committed the offence of dacoity. In this regard, the complaint has tried to lodge the complaint at 3 a.m. on the same day but police did not register the complaint and thereafter he has time and again approached various authorities and higher police officials and only thereafter the complaint of the complainant is registered. Hence, there is as such no delay in lodging of the FIR. Even, another complaint is filed against Mr. Devayat Khavad but present applicants have nothing to do with the said complaint and custodial interrogation of applicants is required. Even, the conversation of the complainant with the DySP and interview on public platform is also produced on record which shows highhandedness on the part of the applicants and clout with the police department. Hence, he has requested to dismiss the present applications.

[7.0] Heard learned advocates appearing for the respective parties and given thoughtful consideration to the arguments canvassed by both sides. 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) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the

witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. 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.

[8.0] The allegations in the FIR leveled against accused are,

All the accused herein have surrounded the car owned by the singer who had to perform in 'Dayro' organized on account of death anniversary of late father of accused Nos.1 and 3 on 20.02.2025. That, though folksinger Devayat Khavad did not come to perform, as he assured and he left with someone else saying that, other members are yet to come and he will be back shortly. However, he did not return till 1.30 a.m. and the accused intercepted the car of the complainant on the way, pulled the ignition key and have broken the front glass / windshield with water bottle and stolen cash money and also other belonging of the singer lying in the vehicle and threatened him of dire consequences. Hence, he left the place walking and called the owner singer and in this regard complaint came to be filed.

[9.0] Further, going through the FIR and the investigation papers, it appears that, FIR is registered on 27.02.2025 in connection with an offence which took place on 21.02.2025 at 1.30 a.m. Present applicants and four unknown persons are named in the FIR. While the complainant, who is driver of folksinger Devayat Khavad, was trying to escape from the place of 'Dayra' in Mahindra Scorpio Car No.GJ-08-DG-7555, at that time, present applicants came in two vehicles namely black Thar and white Innova Car and intercepted the Scorpio Car and hurled abusive language to the complainant and forcibly took out the (i) ignition key of Scorpio Car; (ii) robed Rs.5 lakh cash; (iii) i-phone 13

promax; (iv) harmonium; (v) versace goggles and (vi) wireless airpods of Apple make in collusion and connivance of each other by hatching conspiracy and in this regard written complaint is filed at Changodar Police Station.

[9.1] After taking the possession of said Scorpio Car, the said vehicle was badly damaged and windshield of the said car was broken by water bottle and thereafter the scorpio car was thrown into Sanathal lake which was subsequently recovered and in presence of two independent witnesses, harmonium was found from the said vehicle but Rs.5 lakh cash, i-phone 13 promax, harmonium, versace goggles and wireless airpods of Apple make were missing and are yet to be recovered. During the investigation, presence of applicants at the place of incident is found and they are also identified by the complainant however, other four unknown persons (co-accused) are yet to be identified and arrested and their TI parade is also required to be conducted.

[9.2] Insofar as alleged delay in lodging the complaint is concerned, Though written complaint was submitted by the complainant on the same day at 3.00 a.m., the police was reluctant to register the complaint because of which the delay is caused in registration of the FIR. Time and again the complainant has tried to lodge the complaint and approached higher police officials. Communications in this regard are also produced on record. Considering the aforesaid fact, delay is not caused due to fault on the part of the complainant and therefore, delay is not attributable to the complainant. When the accused persons came to know about registration of present FIR, on similar day, another complaint is filed against the owner of vehicle and singer Devayat Khavad who is neither complainant nor witness in the present

case. During the period of 21.02.2025 to 27.02.2025, no steps have been taken or no material is produced on record which suggests that present applicants or any co-accused has tried to lodge the complaint in this regard. Even if we accept as it is, that another complaint is registered then also it is a separate offence and allegation against Devayat Khavad under Sections 318(4) and 351(2) of the BNS *qua* cheating and criminal intimidation wherein present complainant is not an accused.

[9.3] The complainant was intercepted and put in fear and thereby was robbed off Rs.5 lakh in cash and other valuable articles lying in the vehicle and possession of Scorpio Car was also forcibly taken from the complainant.

[10.0] Herein, applicant of CR.MA No.7790/2025 (accused No.3) is having two past antecedents. So far as accused No.2 (applicant of CR.MA No.7625/2025) is concerned, his presence is also found and one witness has submitted that accused persons were pushing the Scorpio Car in Sanathal lake and from the statement of independent witnesses it is found that subsequently the Scorpio car is found from the said lake and even the FSL has confirmed about presence of mud and moisture in the Scorpio car which was found from the lake. Considering the aforesaid fact, *prima facie* involvement of both the applicants is found in the commission of offence and muddamal is yet to be recovered and hence, custodial interrogation is required as location of all the accused are also found at the spot.

[11.0] As submission made on behalf of the applicants that, Mr. Devayat Khavad failed to perform his obligation and therefore, offence is registered as counterblast is concerned, it is pertinent to

note that there was remedy available to the applicants as regards non-performance of Mr. Devayat Khavad however, the applicants had took law in their hands and have shown their highhandedness by even influencing the police machinery not get to register the prompt complaint. Also, the allegation are supported with material collected during evidence.

[12.0] Learned advocate for the applicants has argued to extend the benefit of parity. It is relevant to mention that co-accused who has been considered for anticipatory bail was not present at the scene of offence whereas presence of applicants herein is *prima facie* established from the investigation papers and another accused is released on regular bail and therefore, considering the role of the present applicants and law laid down by the Hon'ble Apex Court in the case of **Ramesh Bhawan Rathod vs. Vishanbhai Hirabhai Makwana** reported in **AIR 2021 SC 2011** as well as **Tarun Kumar vs. Assistant Director, Directorate of Enforcement** reported in **2023 INSC 1006,** argument as regards parity is not acceptable.

[13.0] The object of anticipatory bail is that person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. In present case, no any such sort of allegation or bias is found out. It is needless to say that order under Section 482 of the BNSS (section 438 CrPC) is not a passport to the commission of trial nor a shield against any serious accusation, which adversely affects the society and therefore also, custodial interrogation of the applicants is required.

[14.0] Considering the aforesaid all facts as also keeping in mind the law laid down by the Hon'ble Supreme Court in the case of

Siddharam Satlingappa Mhetre V/s State of Maharashtra and Others reported in (2011) 1 SCC 694, and going through the material very carefully available against the accused it appears that herein, no false allegations in the complaint have been made with view to humiliate or tarnish the image of the present applicants. Even in the case of **Jai Prakash Singh V/s State of Bihar and another**, reported in **(2012) 4 SCC 379**, **Hon'ble Supreme Court** was pleased to hold:

> *"Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefore. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty."*

[14.1] Further, considering the allegation made in the FIR, for the qualitative investigation, presence of applicants is required and custodial interrogation is necessary. Thus, *prima facie* it appears that accused has played active role and qualitative investigation is necessary in the matter. Offence under Section 310(2) of the BNS even only attempt is to commit dacoity or dacoity is punishable upto life or 10 years and considering the gravity and seriousness of offence and involvement of present applicants – accused, no case is made out to consider the present application.

[14.2] When serious offences are disclosed and involvement of an accused is *prima facie* established then, the Court would be loath to lean in favour of grant of pre-arrest bail in absence of any other overriding considerations. This Court is conscious of the safeguards provided under Section 482 of the BNSS (section 438 of CrPC) and concept of the personal liberty. But herein, this Court is of considered view that, the present offence is committed very smartly and in very

planned and methodical manner which is not just an offence against any individual rather the largest societal interest and in such circumstances, the delicate balance is required to be maintained between two rights one against the personal liberty and second is societal interest. Arrest is part of the process of investigation and intended to secure several purposes in which the accused may provide information, during the discovery of material facts and relevant information. In such circumstances, when investigation is at preliminary stage, if anticipatory bail is granted, it may hamper the investigation and to collect the material and more information and to find out the involvements of another person custodial interrogation is also necessary, therefore, keeping in mind the law laid down by the **Hon'ble Supreme Court** in the case of (i) **State Rep. by the CBI V/s Anil Sharma** reported in **1997 (7) SCC 187** and (ii) **Adri Dharan Das vs State of W.B.** reported in **2005 (4) SCC 303**, custodial interrogation is necessary. This court has also kept in mind the law laid down by the **Hon'ble Supreme Court** in the case of **Pratibha Manchanda vs The State Of Haryana** reported in **AIR 2023 SC 3307,** wherein para 19 read as under :

> *"19. The relief of Anticipatory Bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome."*

In view of above, custodial interrogation of the applicants is required.

[15.0] In the above facts and circumstances and considering the observations on the legal aspect of the matter, as applicants are actively involved in the offence, I have absolutely no doubt that if applicants are equipped with such an order of anticipatory bail before they are interrogated by the Police, it would greatly harm the investigation and would impede the prospects of unearthing the truth and recovery of muddamal articles and involvement of unidentified accused persons.

[16.0] Having considered nature and seriousness of the charge, *prima facie* involvement of accused and possibility of tampering with evidences, it does not appear to be just and proper to exercise the discretion in favour of the applicants and accordingly, the applications for anticipatory bail are **DISMISSED**. Rule is hereby discharged.

However, it is needless to say that the observations made in the present order are tentative in nature.

(HASMUKH D. SUTHAR, J.)

Ajay

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: AJAY CHANDRAN MENON(HC00939), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 21/04/2025 19:19:46