

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR SUCCESSIVE REGULAR BAIL -
AFTER CHARGESHEET) NO. 21223 of 2024**

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ANAKBHAI ARJANBHAI GANGADIYA

Versus

STATE OF GUJARAT

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Appearance:

APURVA K JANI(7057) for the Applicant(s) No. 1

MR L B DABHI, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA**Date : 08/08/2025****ORAL ORDER**

1. By way of this successive bail application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 439 of Cr.P.C.), the applicant - Anakbhai Arjanbhai Gangadiya - accused no.4, is seeking regular bail in connection with the FIR being **C.R. No.11211009220052 of 2022 registered with Chotila Police Station, District: Surendranagar** for the offences punishable under Sections 302, 34, 201 and 120B of the IPC and Section 25(1)A, 25(1-a), 27, 30 of the Arms Act and Section 135 of G.P. Act.

2. Facts and circumstances giving rise to file this application is as follows:

2.1 On 28.02.2022, at about 6:30 p.m., deceased

Dharmendra was brutally killed by accused involved herein. The offence as mentioned herein above came to be registered with Chotila Police Station. According to case of prosecution, before 6 to 7 months of the incident, the brother of accused no.1 and no.2 namely Mavjibhai Gangadiya alleged to have been killed by deceased Dharmendra. In order to take revenge of the murder of Mavjibhai, the accused have had hatched the criminal conspiracy to kill the deceased Dharmendra. On the day of incident, the deceased and his cousin brother Kalubhai Dhandhal came to Chotila for dental treatment of Kalubhai and thereafter, upon riding the motorbike, the duo proceeded to the village of Kalubhai and while reaching on Chotila - Than Road, the accused who were hiding nearby, came on road and while restraining the deceased who was riding the bike, made assault on him by knives as the accused no.2, 3, 4 have had knives in their hands, caused multiple stab injuries. The deceased Dharmendra tried to escape, however, the accused chased him near the roadside shop Bharat Traders and again caused fatal injuries by knives and accused no.1 Laxman Gangadiya shot the deceased by using fire arms which alleged to have procure from accused no.5 Vinu Gangadiya who at relevant time, serving with Army. In such circumstances, the deceased died on the spot. The FIR by eye witness Kalubhai Dhandhal came to be lodged. After registration of offence, the I.O. proceeded to investigate the case. The

accused had been arrested. The I.O. during the course of investigation, obtained the C.C.T.V. footage of the incident, conducted T.I. Parade of the witnesses, seized and recovered the weapons used in the offence by disclosure statement of the accused made by them under Section 27 of the Evidence Act, recorded the statements of the witnesses, even the statements of some of witnesses recorded under Section 164 of Cr.P.C. and upon completion of investigation, he filed a chargesheet before the Jurisdictional Magisterial Court and case was committed to court of sessions at Surendranagar.

3. Heard Mr. Apurva Jani, learned counsel appearing for and on behalf of the applicant-accused and Mr. L.B. Dabhi, learned APP for the respondent-State.

4. Mr. Apurva Jani, learned advocate appearing for and on behalf of the applicant submitted that, the incident in the present case occurred on 28.02.2022 and the applicant was arrested on 26.03.2022 and after completion of investigation and upon filing the chargesheet, the case being sessions triable, committed to the Court of Sessions at Surendranagar on 11.07.2022. That, in order to prove the charge, as many as 67 witnesses have been cited in the chargesheet. That, till date, the charges have not been framed and not a single witness out of 67 witnesses is being examined by the

prosecution because Accused No.A2 and A3 absconded after getting temporary bail from the High Court. In such circumstances, Mr. Jani, learned counsel submitted that, when trial is delayed without the accused being at fault, it may amount to violation of Article 21 of the Constitution of India because the Article 21 guarantees the right to life and personal liberty which includes right to speedy trial and therefore, though the accused has been charged with serious offence, the court can grant bail even in a serious offence to protect constitutional rights.

5. Mr. Jani, learned counsel so far as merit is concerned, stated that the incident has taken place in the market area and the shopkeeper Kishor Bhatti failed to identify the accused in T.I. Parade which shows that, the accused has been falsely implicated. The evidence of CCTV footage does not point out the involvement of the applicant. That, there is unreliable version of the complainant and other eye witnesses because some of the accused have been falsely implicated and later on, they changed their version. In such circumstances, prima-facie, there is no evidence to connect the applicant herein with the alleged crime and when there is no past antecedent of like nature and the accused being a permanent resident of Village: Zinzuda and having responsibility to feed his family, the case is made out for exercising judicial discretion.

6. Mr. L.B. Dabhi, learned APP has vehemently opposed the application and contended that, this is fourth successive bail application and that too, without any change in fact situation and on this count only, the application deserves to be dismissed. So far as delay in trial proceeding is concerned, he submitted that, the co-accused who have jumped the bail, are related to the accused and as a part of strategy, one by one, they absconded so that the trial could not proceed. Thus, the accused has contributed in delay of trial. On the merits of the case, it is submitted that, there is prima-facie case against the accused and the chargesheet material would show that, there is reasonable ground to believe that, the accused had participated in the alleged murder. Thus, having regard to the nature and gravity of the charge, severity of punishment in the even of conviction, no any exceptional ground is made out for exercising judicial discretion and therefore, he prayed that, the application having no any merits and same may be dismissed.

7. Considered the submissions made at bar and perused the chargesheet case papers and other materials.

8. I am conscious about the settled legal position that, an accused person can seek bail, if his or her trial is unduly delayed. Article 21 guarantees the right to life and personal liberties, which includes right to a speedy trial

which says that, when the trial is delayed excessively without the accused being at fault, it may amount to violation of Article 21 and the court can grant bail even in a serious offence. However, at the same time, balance has to be struck between the right of individual liberty and the interest of society. In nutshell, there are no hard and fast rules regarding grant or refusal of bail as each case has to be considered on its own merits.

9. In the facts of the present case, the chargesheet after the arrest and upon completion of investigation came to be filed on 14.06.2022. In all four accused have been chargesheeted. The applicant-accused Anak Gangadiya, on earlier occasion, thrice (CRMA No.17408/2022, CRMA No.6688/2023 & CRMA No.11518/2023) withdrew his bail applications before this Court and twice, his bail applications came to be dismissed by the sessions court. At relevant time, this Court was not inclined to grant the bail and that is why, the applications were withdrawn. Now, it is the fourth application, stating, inter alia, that there is a delay in trial proceedings. I have called for the remarks from the trial court wherein it is explained that, out of four accused, the accused no.3 after getting temporary bail for 7 days, jumped the bail and did not surrender and till date, he is absconding. The court proceedings shows that, the accused Laxman Gangadiya and Bhupat Gangadiya have

still not surrendered to the jail authority and absconding. So far present applicant is concerned, till November-2024, he has not retained any advocate. In other words, when this application is filed before this Court i.e. on 15.10.2024, the applicant-accused did not have retain his advocate for his defence. The accused are belong to same village and related to each other. In such circumstances, I am of the prima-facie view that, in order to get the technical benefit of Article 21, a systematic plan for delaying the trial being orchestrated by the accused in connivance with each other and therefore, the prosecution cannot be blamed for delay in trial and it is the accused who have contributed to the delay. Thus, therefore, the contention about the entitlement of the accused for bail on the ground of delay in trial proceedings, is meritless and the plea of bail on this ground, cannot be entertained and accordingly, it is rejected.

10. So far merit of the bail application is concerned, I have perused the reasons recorded by the Sessions Court while rejecting the bail application and also perused the chargesheet case papers. According to prosecution case, on 28.02.2022, the deceased Dharmendra brutally killed by the accused, stabbing him for multiple times by weapons like knives in their hands and thereafter, deceased shot fire on his head. In such circumstances, there is a prima-facie case for alleged offence against the

applicant and on perusal of the records, there are reasonable grounds to believe that he has committed the offence. Thus, having regard to the nature of accusation and evidence thereof, the gravity of the offence and punishment with the conviction will entail and more particularly the role attributed to the present applicant, no ground exists to exercise judicial discretion granting bail to the applicant herein. In the facts of the present case, the trial court is directed to proceed expeditiously, taking legal recourse against the absconding accused and if possible, separate the trial of absconding accused and proceed with the remaining accused in accordance with law.

11. For the reasons aforementioned and having regard to the peculiar facts and circumstances of the present case, this application is meritless and same is dismissed accordingly. Rule is discharged. The observations made hereinabove are tentative and prima-facie in nature and confined to the adjudication of this application.

(ILESH J. VORA,J)

TAUSIF SAIYED

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: TAUSIFAHMED SAIYED(HC01401), PRIVATE SECRETARY, at High Court of Gujarat on 11/08/2025 15:59:01