

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.4501 OF 2025

Dhanji Dubriya

...Applicant

Versus

Union Territory of Daman & Diu and Ors.

...Respondents

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- Mr. Sanjeev Kadam, Senior Advocate (through VC) a/w Mr. Vivek Rane i/b. Mr. Vivek Pandey, Advocate for Applicant.
 - Mr. Ashwin Thool a/w Mr. Ayush Singh a/w Archishmati Chandramore, Advocate for Respondent No.1 (U.T.)
 - Mr. Shreyas Uday Lalit a/w Mr. Varun Thokal a/w Mr. Aditya Singh i/b. Mr. Varun Thokal, for Respondent No.4 / Intervenor.
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CORAM

DR. NEELA GOKHALE, J.

RESERVED ON:

9TH DECEMBER 2025

PRONOUNCED ON:

16TH DECEMBER 2025

JUDGMENT:-

1. The Applicant seek their release on bail in connection with FIR No. 0039 of 2025 dated 26th August 2025, registered with the Coastal Police Station, Kadaiya, Daman, for offences punishable under Section 140(2), 308(7) and 3(5) of the Bharatiya Nyaya Sanhita, 2023 ('BNS'). The Police filed the Final Report No. 37 of 2025, before the JMFC, Daman, on 17th October 2025. Pertinent to note is that, while filing the Final Report, the

investigating agency has dropped the non-bailable offences as initially applied in the FIR and retained only offences punishable under Sections 308(7), 258, 238, 241, 3(5), 115(2) of the BNS, 2023. Thus, the offences as alleged by the Police against the Applicant and Co-accused in the charge sheet, as on date, are all bailable offences

2. The facts of the case in brief are as under:

2.1 On 25th August 2025, the Complainant namely, Aajessh Patel and his friends, traveled to Daman from Surat, in an Innova car. They purchased liquor from a wine shop and intended to have a party in a farmhouse. 5 to 6 persons intercepted them, searched their vehicle, and having spotted the liquor, identified themselves to be police officials. They directed the Complainant and his friends to accompany them to the Police Station. The Complainant and his friends, intimidated by the Police, acted as per their instructions and followed them to the Police Headquarters. These persons, were none other than Police Constables, Head Constable and a Police Officer from the Crime Branch, Daman, Union

Territory of Dadra & Nagar Haveli and Daman and Diu. The Applicant is a Police Officer namely the PSI, Crime Branch, Dadra & Nagar Haveli and Daman and Diu.

2.2 The Complainant and his friends were made to sit in a room on the ground floor of the Police Headquarters, their mobile phones were seized, they were taken to an upstairs room, slapped a couple of times and interrogated. Another Police Officer arrived whose presence was intended to further intimidate them. The Complainant showed to the Police the receipt of the purchase of liquor, however, the Police deliberately declared it as a fake and threatened to implicate them in offences punishable with 14 years of imprisonment. The Complainant and his friends, getting a drift of the intent of the Police personnel and, out of fear, offered to pay some money for their release. The Applicant and others immediately demanded an amount of Rs. 25,00,000/- as a price for releasing the Complainant and his friends.

2.3 Another Police Officer arrived to negotiate with the Complainant since the Complainant conveyed his inability to raise such a huge amount. Finally, the Complainant was told to arrange

an amount of Rs. 10,00,000/-. His mobile phone was returned to him to enable him to call his relatives/friends. The call was monitored by the Police on the speaker mode. The Complainant first called his mother who did not answer, hence, he called his friend, Vicky Patel and requested him to inform his mother the requirement of Rs. 10,00,000/- for his release in a liquor case.

2.4 Another neighbor, Bhavin called Aajessh on Vicky's phone and assured him that they were arranging the money and later at around 8 pm, conveyed that they were leaving with the money. The Police demanded the live location of Vicky and Bhavin and were monitoring their location through calls. When Vicky reached Daman, three Police personnel left the Headquarters with the Complainant; two sat with the Complainant in the Innova, while another followed on a Splendor bike. The Complainant was directed to tell Vicky to hand over the money to persons following the Innova in a Swift car. Bhavin refused to hand over the money to any person other than the Complainant and mentioned that he was able to manage only Rs. 5,00,000/-.

2.5 The Police were hearing the conversation on speaker phone and expressed anger at the deficit amount and reiterated their demand. Ultimately, Bhavin agreed to pay Rs. 7,00,000/- immediately and balance Rs. 3,00,000/- on the next day. The Police accepted the overture, stopped the Innova near the Splendor bike and thereafter, the Swift car arrived. The Complainant was taken in the Swift car to a nearby Hyundai showroom. The Complainant was then instructed to get down, bring the money from Bhavin. He did as told, came back with the money and handed it over to the Police. The Complainant was then dropped off at a short distance. His two friends were also released along with the Innova car. The Complainant then learned that his friend, Bhim Singh Purohit, also accompanying Vicky and Bhavin, had lodged a Complaint on the police helpline No. 112. The Police of the Coastal Police Station, Kadaiya, Daman, came to their rescue and accompanied them to their Police Station. The Complainant was shown the photos of the Police personnel working in the Crime Branch. He identified the Applicant, who is a PSI, along with the Co-accused Ramdevsinh Jadeja, Vishal Mir, Chintan Desai,

Ankush Singh, Jatinkumar Patel, Vikas Rajput, Dilip Gavit, all Police Constables and Krishnavijaysingh Gohil, Head Constable, working in the Police Department of the U.T. Administration of Dadra and Nagar Haveli and Daman and Diu, Government of India. He identified the Applicant, Dhanji Dubriya, and co-accused-Krishvijaysingh, who were involved in negotiating the ransom amount to be paid; Ramdevsinh Jadeja, Vishal Mir, Chintan Desai, Jatinkumar Patel, Ankush Singh and Dilip Gavit, as the Police personnel who stopped their Innova car and forcibly took them to the Police Headquarters; additionally, he identified Vikas Rajput, who elbowed him on his chest; Ankush Singh, who also slapped his friend Pinakin Patel, and Vishal Mir, who slapped his other friend Hardik Patel. There were others, who the Complainant was unable to identify at the time of registration of the FIR. The FIR was registered under Sections 140(2), 308(7), and 3(5) of BNS, 2023.

2.6 The Police personnel were arrested on 26th August 2025 and were produced before the JMFC, Daman. The JMFC, Daman remanded them to police custody till 3rd September 2025.

Thereafter, by order dated 1st September 2025, they were remanded to judicial custody. Sanction was accorded by the Dy. Inspected General of Police (**'DIG'**) to prosecute the Co-accused except the Applicant, who is a PSI, for the said offences.

2.7 On 17th October 2025, the Investigating Officer applied to the JMFC, Daman to add Sections 241, 115(2) and 258 of the BNS to the FIR already registered in the aforesaid sections. Sections 61(2), 305(c) and 238 of the BNS had already been added to the FIR. On the same date, the Complainant was informed that the charge sheet No. 37/2025 was being filed in the Court, however, surprisingly the offences charged were only those punishable under Sections 308(7), 258, 238, 241, 3(5) and 115(2) of the BNS, 2023. Pointedly, the non-bailable offence of Section 140(2) was dropped from the charge sheet.

2.8 By order dated 20th October 2025, the JMFC, Daman observed that the offence punishable under Section 140(2) of the BNS dropped in the charge sheet, was made out. The JMFC, Daman also observed that a further offence of extortion punishable under Section 308(2) of the BNS is also made out. Hence, the

Magistrate issued notice to the Prosecution, holding it necessary for the prosecution to be given an opportunity of hearing. This order remains unchallenged.

2.9 The Complainant filed a protest petition dated 25th October 2025 before the JMFC, Daman. The same is pending.

2.10 The Complainant also filed a Writ Petition before this Court, seeking transfer of investigation to CBI, amongst other prayers. By order dated 3rd November 2025, a Division Bench of this Court (Coram: Shri. A.S Gadkari and Shri. Ranjitsinha Bhonsale JJ.) issued notice to the Respondent No. 1- U.T. herein. The petition is yet pending.

2.11 The Applicant and Co-accused filed separate applications seeking bail before the JMFC, Daman. However, by order dated 28th October 2025, the JMFC, Daman rejected the bail applications and hence, the Applicant are before this Court seeking the relief as prayed.

3. Mr. Sanjeev Kadam, Ld. Senior Advocate appeared for the Applicant, Mr. Ashwin Thool, Ld. Standing Counsel appeared

for the U.T. and Mr. Shreyas Lalit, Ld. Counsel, represented the intervenor/Complainant. All the parties placed on record their written submissions. Sonu Dubey, PSI submitted written submissions on behalf of the Respondent Nos.1 and 2 through the Standing Counsel Mr. Thool.

4. SUBMISSIONS ON BEHALF OF THE APPLICANT:

4.1 At the outset, it was submitted that the offences under which the Applicant and the Co-accused are charged are all bailable offences and hence, as of right, the Applicant deserve to be enlarged on bail.

4.2 The Complainant has filed a Writ Petition in this Court seeking transfer of investigation of the case. Thus, the question of applicability of Section 140(2) of the BNS is pending adjudication.

4.3 The ingredients of Section 140(2) of the BNS do not apply to the acts alleged to have been committed by the Applicant and the Co-accused.

4.4 The Police have a legal authority to arrest individuals under suspicion and with reasonable apprehension of crime. If an

officer detains someone for investigation, that does not constitute abduction, even if the person detained, is later found innocent.

4.5 In the present case, the Applicant and the Co-accused are Police personnel from the Crime Branch, which is notified as a Police Station, hence, it cannot be said that the offence of abduction is committed. Furthermore, it is the Complainant and his friends who offered money to the Police and no demand was made by the Police personnel. They were not detained as they were allowed to move freely in the Headquarters.

4.6 Upon investigation, Section 140(2) of the BNS was appropriately dropped. There was no favoritism shown by the Police and in fact, a SIT is formed, by orders of the Superintendent of Police (**‘SP’**), Daman, dated 27th August 2025. Furthermore, the investigation was conducted by high-ranking officers.

4.7 Sanction was accorded after careful scrutiny of the material on record and there is no question of bias or prejudice in favor of the accused. This is demonstrated by the fact that FIR was

registered immediately, arrests were made and Final Report was also filed.

4.8 Pendency of a protest petition before the Magistrate for invocation of Section 140(2) of the BNS and a Writ Petition before this Court does not lead to a conclusion that the section is deliberately dropped and that there is bias in favor of the accused.

4.9 On merits, it is stated that there are large scale bootleggers operating in Daman, who have a grudge against the Crime Branch officials and the entire story of the Complainant and his friends is orchestrated by the vengeful bootleggers who have sinister designs against Crime Branch officials. Neither the ransom amount nor the liquor from the Complainant's car is recovered.

4.10 Delay in reporting theft of valuable articles by the Complainant and his friends, negates their story. The Apple Air Pods found in the drawer of the Crime Branch Police Station does not indicate theft by the Police since there is no proof that the Air Pods belonged to the Complainant as Air Pods can pair with any iPhone.

4.11 The role of the present Applicant does not constitute any offence as alleged. Hence, Mr. Kadam prays that the Applicant be released on bail.

5. SUBMISSIONS ON BEHALF OF RESPONDENT NOS. 1 AND 2:

At the very outset, it is necessary to record that the submissions of the Respondents largely support the case of the Applicant. The Investigating Officer (IO) namely, PSI Sonu Dubey has tendered his written submissions.

5.1 Mr. Thool narrated the facts of the case. Upon investigation, the Investigating Officer did not find the applicability of Section 140(2) of the BNS as appropriate and hence, it was dropped from the charge sheet.

5.2 There was no demand of money made by the Police personnel, in fact, it was the Complainant and his friends who offered to pay the money. There is no material to show that the victims were brought to the Police Headquarters to elicit money from them. None of the witnesses, namely, Bhavin, Vicky or the

Complainant's mother have ever spoken with the Police Officers. The Police have thus, carried out a very fair, impartial and sincere investigation. Accordingly, the charge sheet dated 17th October 2025 is filed before the JMFC, Daman.

**6. SUBMISSIONS ON BEHALF OF THE INTERVENOR /
RESPONDENT NO.4:**

6.1 As soon as the charge sheet was filed under bailable offences, the JMFC, Daman, by its order dated 20th October 2025, noted that *prima facie* offence was made out under Section 140(2) and 308(2) of the BNS. Notice was issued to the prosecution/APP.

6.2 The JMFC, Daman has taken cognizance of Section 140(2) and 308(2) of the BNS, which are both non-bailable offences, thus, the bail application cannot be confined to considering bailable offences.

6.3 The Applicant and Others have not challenged the cognizance order.

6.4 No justification is offered by the investigation agency to drop 140(2) of the BNS in the charge sheet, neither has any

justification been offered before the JMFC, Daman. The investigation conducted by the Police is an *imprimatur* of perversity.

6.5 Section 140(2) of the BNS is clearly made out in the facts of the present matter. The entire facts narrated in the FIR clearly establish illegal abduction without sufficient and justifiable cause, releasing them only on receiving the ransom as demanded. The ingredients of Section 140(2) of the BNS are adequately made out. Even the charge sheet itself demonstrates that the Complainant and others were abducted, detained and released only when the ransom amount was received by the Applicant and other accused. The Apple Air Pods and other valuable items were recovered from the drawer in the Police Headquarters.

6.6 The statements of witnesses recorded under Section 183 of BNSS clearly make out the offence.

6.7 The Complainant and his friends were locked in a room but, were able to roam in the said room does not constitute liberty to negate the act of abduction.

6.8 The reasoning in the charge sheet is entirely and inherently contradictory. Once the investigating agency has accepted that the Applicant and others intentionally put the Complainant and his friends in fear of injury to them, it is impossible to disbelieve abduction as the entire act of detention, till ransom amount was received, was carried out in the Police Headquarters. The charge for extortion remains so long as the allegation of abduction remains. One ceases to exist without the other since extortion is borne out from the act of abduction.

6.9 The Court possess inherent powers to see through the perversity in the charge sheet and is not bound by the investigation conducted by the police. Moreover, a Writ Petition is filed and pending, seeking transfer of investigation of the said FIR to the CBI. There is reasonable apprehension of bias since the police are investigating their own colleagues. The bail Court is not bound by an errant investigation.

6.10 The act of extortion committed by a Police Officer invites application of Section 7 of the Prevention of Corruption

Act, 1988 as the Police Officer attempted to obtain undue advantage from the Complainant and his friends.

6.11 The role of the Applicant and others is established. The Complainant and his friends have identified the Applicant and the Co-accused. Moreover, instead of co-operating with the investigation, the Co-accused, Jatinkumar Patel, tried to derail the same by inflicting injuries upon himself. The letter dated 30th August 2025 to the SP shows a huge conspiracy between the Applicant, Co-accused and seniors and colleagues. The Complainant, therefore prayed that the Bail Application be rejected.

7. ANALYSIS:

7.1 These rival submissions fall for consideration of this Court in the present matter. The limited question that arises in the present matter is whether the Magistrate is bound by the opinion of the Investigating Officer as given by him in the charge-sheet while considering a bail application.

7.2 For better exposition, the relevant provisions of the

BNSS, 2023 are reproduced herein below:

“193. Report of police officer on completion of investigation.—(1)

Every investigation under this Chapter shall be completed without unnecessary delay.

(2) The investigation in relation to an offence under sections 64, 65, 66, 67, 68, 70, 71 of the Bharatiya Nyaya Sanhita, 2023 or under sections 4, 6, 8 or section 10 of the Protection of Children from Sexual Offences Act, 2012 shall be completed within two months from the date on which the information was recorded by the officer in charge of the police station.

(3) (i) As soon as the investigation is completed, the officer in charge of the police station shall forward, including through electronic communication to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form as the State Government may, by rules provide, stating—

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether the accused has been released on his bond or bail bond;

(g) whether the accused has been forwarded in custody under section 190;

- (h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 64, 65, 66, 67, 68, 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023;*
- (i) the sequence of custody in case of electronic device;*
- (ii) the police officer shall, within a period of ninety days, inform the progress of the investigation by any means including through electronic communication to the informant or the victim;*
- (iii) the officer shall also communicate, in such manner as the State Government may, by rules, provide, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.*
- (4) Where a superior officer of police has been appointed under section 177, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.*
- (5) Whenever it appears from a report forwarded under this section that the accused has been released on his bond or bail bond, the Magistrate shall make such order for the discharge of such bond or bail bond or otherwise as he thinks fit.*
- (6) When such report is in respect of a case to which section 190 applies, the police officer shall forward to the Magistrate along with the report—*

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 180 of all the persons whom the prosecution proposes to examine as its witnesses.

(7) If the police officer is of opinion that any part of any such statement is not relevant to the subject matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(8) Subject to the provisions contained in sub-section (7), the police officer investigating the case shall also submit such number of copies of the police report along with other documents duly indexed to the Magistrate for supply to the accused as required under section 230:

Provided that supply of report and other documents by electronic communication shall be considered as duly served.

(9) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (3) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form as the State Government may, by rules, provide; and the provisions of sub-sections (3) to (8) shall, as far as may be, apply in

relation to such report or reports as they apply in relation to a report forwarded under sub-section (3):

Provided that further investigation during the trial may be conducted with the permission of the Court trying the case and the same shall be completed within a period of ninety days which may be extended with the permission of the Court.

210. Cognizance of offences by Magistrate.—(1) *Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—*

- (a) upon receiving a complaint of facts, including any complaint filed by a person authorised under any special law, which constitutes such offence;*
- (b) upon a police report (submitted in any mode including electronic mode) of such facts;*
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.*

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

227. Issue of process.—(1) *If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—*

- (a) a summons-case, he shall issue summons to the accused for his attendance; or*

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction:

Provided that summons or warrants may also be issued through electronic means.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 90.”

7.3 Thus, when a police report is placed before the Magistrate under Section 193(3)(i) of the BNSS, concluding that an offence appears to have been committed by a particular person or persons, the Magistrate has three options: (i) he may accept the report and take cognizance of the offence and issue process, (ii) he may direct further investigation under sub-section (3) of Section

175 of the BNSS and require the police to make a further report, or (iii) he may disagree with the report and discharge the accused or drop the proceedings. If such police report concludes that no offence appears to have been committed, the Magistrate again has three options: (i) he may accept the report and drop the proceedings, or (ii) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process, or (iii) he may direct further investigation to be made by the police under sub-section (3) of Section 175 of the BNSS.

7.4 The Supreme Court in its recent decision in the matter of *Sharif Ahmed vs State of Uttar Pradesh*¹ held that a charge sheet under Section 173(2) of the Cr.PC must be complete and supported by material /evidence, and that the Magistrate must independently scrutinize it rather than rely on the Investigating Officer's opinion. Referring to its earlier decision in the matter of *Dablu Kujur vs State of Jharkhand*², the Supreme Court reiterated its words in another earlier decision in the matter of *Bhagwant*

¹ 2024 INSC 363

² 2024 SCC OnLine SC 269

Singh v. Commissioner of Police and Another³, as under:

“14. When such a Police Report concludes that an offence appears to have been committed by a particular person or persons, the Magistrate has three options: (i) he may accept the report and take cognizance of the offence and issue process, (ii) he may direct further investigation under subsection (3) of Section 156 and require the police to make a further report, or (iii) he may disagree with the report and discharge the accused or drop the proceedings. If such Police Report concludes that no offence appears to have been committed, the Magistrate again has three options: (i) he may accept the report and drop the proceedings, or (ii) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process, or (iii) he may direct further investigation to be made by the police under sub-section (3) of Section 156.”

7.5 The Supreme Court in ***Sharif Ahmed (Supra)*** further said that:

³ (1985) 2 SCC 537

*“14.....It is in this context that the provisions of Sections 190 and 204 of the Code become important. Clause (a) of Section 190 states that the Magistrate can take cognisance of an offence on receiving a complaint of facts which constitute such offence. Clause (b) relates to a situation where the Magistrate receives a police report carrying such facts, i.e., facts which constitute such offence. In **Minu Kumari and Another v. State of Bihar and Others** [(2006) 4 SCC 359], this Court referred to the options available to the Magistrate on how to proceed in terms of Section 190(1) (b) of the Code, and held:*

“11...The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1) (b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has

made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. (See India Carat (P) Ltd. v. State of Karnataka [(1989) 2 SCC 132 : 1989 SCC (Cri) 306 : AIR 1989 SC 885] .)

12. The informant is not prejudicially affected when the Magistrate decides to take cognizance and to proceed with the case. But where the Magistrate decides that sufficient ground does not subsist for proceeding further and drops the proceeding or takes the view that there is material for proceeding against some and there are insufficient grounds in respect of others, the informant would certainly be prejudiced as the first information report lodged becomes wholly or partially ineffective. This Court in Bhagwant Singh v. Commr.

of Police held that where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory. As indicated above, there is no provision in the Code for issue of a notice in that regard.”

7.6 The Supreme Court, in the same decision, further observed that:

*“23.....Further, the earlier portion of the same paragraph, while referring to the opinion of the investigating officer, does so to demonstrate the significance of the opinion of the investigating officer at this stage. However, this does not preclude the Magistrate from exercising her powers in adopting an approach independent from such opinion, as has been held by this Court in **Bhagwant Singh** (supra) and **Minu Kumari** (supra).*

24. It is the police report which would enable the Magistrate to decide a course of action from the options available to him. The details of the offence and investigation are not supposed to be a

comprehensive thesis of the prosecution case, but at the same time, must reflect a thorough investigation into the alleged offence. It is on the basis of this record that the court can take effective cognizance of the offence and proceed to issue process in terms of Section 190(1)(b) and Section 204 of the Code. In case of doubt or debate, or if no offence is made out, it is open to the Magistrate to exercise other options which are available to him.”

7.7 The sum and substance of the ratio culled out by the Supreme Court is that, the Magistrate is not bound by the analysis of the investigative officer as contained in the charge sheet. The charge sheet is only the opinion of the investigating officer arrived after analyzing the information collected by the police after investigation, including recording statements of witnesses, examining material collected by the police, during investigation etc. It is the Magistrate, ultimately, who takes a judicial decision, using the contents of the charge sheet as a thresh hold, to take cognizance or otherwise, and proceed to issue process to the accused.

7.8 Coming to the facts in the present case, a plain reading

of the FIR indicates that the police were cognizant of the facts of the incident. Initially, the police registered the FIR for offences punishable under Sections 140(2), 308(7) and 3(5) of the BNS. During investigation, statements of witnesses under Section 183 of the BNSS were recorded. A case of abduction was clearly made out, as the Complainant had specifically narrated a threat to cause hurt or reasonable apprehension for the same, with an object to obtain ransom. The Applicant and the Co-accused abducted the Complainant and his friends and detained them in Police Headquarters without any proceedings and released them only on receiving the ransom amount. They were slapped and pushed around, their mobile phones and other valuable items were snatched from them. All these facts are also noted in the charge sheet. While seeking police custody of the Applicant and the Co-accused, in the Remand Report dated 27th August 2025, the Investigating Officer reiterated that:

‘During the course of inquiry in the matter by Coastal Police Station, Kadaiya staff, it was revealed that the said offence was orchestrated by the Staff of Crime Branch, DNH&DD and 7 staff of Crime Branch were identified by the complainant.

Based on these statements, under the oral instructions of the superior officer, FIR No. 39/2025 under Section 140(2), 308(7), 3(5) of the Bharatiya Nyaya Sanhita, 2023 registered at CPS, Kadaiya, Nani Daman.'

7.9 Thereafter, by Remand Report dated 1st September 2025 was filed requesting the Applicant and co-accused to be remanded in judicial custody. A detailed description of the incident is narrated in the Remand Report including the allegation of abduction and extortion. The relevant contents of the Remand Report are as under:

'During the interrogation the accused persons confessed their role in the crime....Further, since there is conspiracy involved in the above act, and the Complainant in his supplementary statement on 30/08/2025, revealed that there were perfumes Athar, cables pens, 1 Apple AirPods, etc., in his vehicle when it was taken to the Crime Branch office, these articles were not found in the vehicle after he was released by them from their custody and when he cleaned his vehicle. Hence, section 61(2) & sec 305(c) of BNS has been incorporated in the offence....These marginally noted accused persons when they are taken for interrogation in the case, and they were asked

about the details regarding the extorted money and the vehicle used in the extortion, the complainant they would immediately start to inflict injuries on themselves discreetly without the knowledge of the Police staff, or even fake it. They have even vomited so that they can be immediately taken for medical examination, which was done, but the doctor did not find anything, on the contrary when the injection was refused to be taken the doctor felt that he was faking it, they would turn to the places where CCTV cameras are placed and start shouting, even intimidate the police who are with them. These accused have a malafide intention, just to create such a situation. By this act he is avoiding giving any details regarding the extorted money or the vehicle, thereby derailing the recovery process....

All the accused concerned in the present crime FIR No. 39/2025 U/s 140(2), 308(8), 3(5), 61(2) & 305(c) Bharatiya Nyay Sanhita were serving in the Crime Branch and have served the police department for a decent amount of time, they aware of police functioning and working. They know how to avoid any interrogation. They with their common intention have clearly appeared to have chalked out a

conspiracy that they will not at all co-operate with the investigation being done.'

7.10 Most importantly, by application dated 17th October 2025, the Investigating Officer namely, Sebastian Devasia, Police Inspector, Daman conveyed to the Magistrate that in view of the evidence collected, Section 61(2), 305(c) and 238 of the BNS, 2023 have been added to the charges against the Applicant and Co-accused. The Magistrate was also informed that further investigation established that the Applicant and Co-accused, destroyed their mobile phones' data (Electronic Record) to derail the investigation and have also caused hurt to the Complainant and his friends. The Applicant and Co-accused have abused their position and threatened to implicate the Complainant and his friends in a false case, which is against the law. Hence, Mr. Sebastian urged the Magistrate to add Sections 241, 115(2) and 258 to the offences already invoked i.e., 140(2), 308(7), 3(5), 61(2), 305(c) and 238 of the BNS.

7.11 Thereafter, Remand Report dated 17th October 2025

was also filed referring to the FIR No. 39/2025 reiterating offences punishable under all the aforesaid sections including Sections 140(2) and 308(7). Strangely, on the same date, the same officer conveyed to the Complainant, under Section 193 of the BNSS, that the charge sheet was filed under Sections 308(7), 258, 238, 241, 3(5) and 115(2) of the BNS, 2023. Accordingly, the charge sheet was filed on the same bailable sections. Section 140(2) was dropped from the charge sheet.

7.12 I have gone through the charge sheet in detail. The charge sheet reiterates the entire investigation carried out as stated in the Remand Reports. Statements of witnesses including the Manager of the wine shop, identification of Applicant and the Co-accused, supplementary statements of eye-witnesses, seizure of 10 mobile phones, recovery of Apple Air Pods from the drawer of the Crime Branch along with 3 blue ball pens, Aadhar Card of the Complainant, copy of the passport of the Complainant, Hardik Patel and Pinakin Patel, CCTV footage of the route taken by the cars, etc., are detailed in the charge sheet. The entire charge sheet, however, is silent on any reason or justification to drop the offence

under Section 140(2) of the BNS. It only records that on discussion with superior officers, only bailable offences were retained in the charge sheet. The Magistrate, vide its order dated 20th October 2025, appreciating the material collected and placed on record, observed that *prima facie* offences punishable under Section 140(2) as well as 308(2) are made out, hence, issued notice to the prosecution before passing any further order. This order remains unchallenged as on date. On this backdrop, while rejecting the bail application, the Magistrate noted the order dated 20th October 2025, which amounted to taking cognizance and proceeded to *prima facie* hold that a case under section 140(2) triable by the Sessions Court and punishable with death or life imprisonment and fine is made out and hence, rejected the bail application.

7.13 Considering the settled legal position and the factual matrix in the present case, as discussed above, the Magistrate undeniably is vested with the powers to accept the charge sheet as it is or independently apply his mind to the facts emerging from the investigation and take cognizance of the case, as he deems fit. Hence, I am in total agreement with the view taken by the

Magistrate.

7.14 Another important aspect is the sanction accorded by the DIG to the prosecution of the Co-accused except the Applicant, who is a PSI, whose sanction order is not placed on record. I have perused the sanction order carefully. The sanction is accorded for the said offences as mentioned in the FIR and any other offences punishable under the provisions of law, in respect of the act aforesaid and for taking cognizance by a Court of competent jurisdiction. While according this sanction, it is evident that the senior officer i.e., the DIG himself, is well aware of the provisions of law under which the offences are committed as well as the powers of the Magistrate to take cognizance of offences, independent of the opinion of the Investigating Officer. Hence, the sanctioning authority has been careful to not only accord sanction for prosecution of the Applicant and the Co-accused Constables and Head Constable for the offences mentioned in the FIR/ charge sheet, but also has left it to the discretion of the Magistrate Court to take cognizance of any other offences as deemed appropriate in law.

7.15 Another disturbing aspect in the case is that a submission is made by the Respondent Nos 1 and 2, in an attempt to canvass their unbiased conduct of investigation, that by order dated 27th August 2025, a Special Investigation Team was formed to conduct the investigation. The team consisted of SDPO Sh. Adarsh Patel, SDPO Khanvel, PSI Sonu Dubey and PSI Puneet Meena. However, there is an order dated 26th September 2025 i.e., barely a month after the SIT was formed, issued by the DIG, namely, Sh. Santosh Kumar Meena, IPS – the sanctioning authority as well, discontinuing the SIT. By the said order, the erstwhile members of the SIT as named above, were directed to handover all the related documents/ crime file of case FIR No. 39/2025 to the Investigating Officer, Sebastian Devasia. Copy of the said order is marked to all concerned, including the members of the SIT. Hence, the submission on behalf of the Applicant and the Co-accused regarding ‘sterling’ quality of the purported ‘unbiased’ investigation is a mere attempt to eye-wash the narrative before this Court. It is then difficult to comprehend as to, in what capacity Mr. Sonu Dubey, PSI has placed before this Court, Written

Submissions purported to be on behalf of Respondent No. 2, through the Ld. Standing Counsel Mr. Thool. The entire conduct of the Investigating Agency is thus, questionable.

7.16 Insofar as the parameters of grant of regular bail are concerned, 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.

7.17 The most important aspect in the present matter is that the accused are police officials working in the Crime Branch of Daman, an elite branch of the police machinery. By abusing their position as police officials, they coerced the Complainant and his friends, intimidated them in accompanying the police to the Headquarters; detained them; physically abused them; took away their mobile phones; monitored the location of the Complainant's friends who were called to come with the ransom money and released them only when the ransom money was paid. The police force's primary role is to maintain law and order and protect citizens. Crimes by police officials themselves, therefore, undermine the integrity of the entire justice system, erodes public confidence and compromises the fairness of legal proceedings. Law enforcement personnel are held to higher ethical and legal standard than ordinary citizens because their job requires public accountability and adherence to the law that they enforce. The Applicant and the Co-accused must be put to a higher degree of accountability for the commission of the offences as alleged. On the contrary, the Respondents attempt to dilute the criminal acts of

their colleagues is a definitive method to erode public trust. This conduct undermines the very object of the criminal justice system, which they are duty bound to enforce. In the facts and circumstances of this case, the offences committed by the Applicant and the Co-accused are grave and serious. I am also of the view that *prima facie*, the offences as alleged in the FIR and of which cognizance is taken by the Magistrate, is made out.

7.18 The Remand Report itself has narrated the manner in which the Applicant and Co-accused have attempted to derail the investigation by feigning ill health and avoiding interrogation. The report has also demonstrated an apprehension that being Police officers, they are aware of methods of police functioning and working and have conspired to obliterate investigation. Furthermore, they have successfully destroyed the electronic evidence by way of deleting mobile phone data. The original offence itself included intimidation of the Complainant and his friends. Thus, the conduct of the Applicant and the Co-accused does not inspire confidence in this Court that they are not likely to tamper with evidence, and intimidate witnesses if enlarged on bail.

8. Considering the above discussion, the settled position of law and the factual matrix, this is not a fit case to enlarge the Applicant on bail. The Bail Application is thus, rejected.

(DR. NEELA GOKHALE, J)