IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER CHARGESHEET) NO. 22248 of 2026
With
R/CRIMINAL MISC.APPLICATION NO. 21215 of 2026

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ANISH VINODBHAI PARMAR
Versus
STATE OF GUJARAT

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Appearance:
MR AR KADRI(7330) for the Applicant(s) No. 1
MS SHRUTI PATHAK, APP for the Respondent(s) No. 1

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

Date : 26/10/2026

COMMON ORDER

Since both these applications arise out of the same FIR, they are being heard, decided and disposed of by this common order.

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

[2.0] By way of present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS"), the applicants are seeking regular bail in connection with FIR being **CR No.11191045260390 of 2026** registered with **Sola High Court Police Station, Ahmedabad City** for the offence punishable under Sections 103(1), 115(2), 118(1), 140(1) and 54 of the Bharatiya Nyaya Sanhita, 2023 (for short "BNS").

[3.0] Learned advocate for the applicants has submitted that the applicants are innocent and have been falsely implicated in the offence. The applicants are behind the bars since the date of their arrest and since the charge-sheet is filed, nothing is required to be recovered or discovered from

the present applicants. He has further submitted that no any specific overt act is attributed to the present applicants and applicants have been arraigned subsequently on the basis of omnibus allegations during the course of interrogation of other persons. He has further submitted that as per the contemporaneous Accidental Death inquiry papers and report, the deceased suffered giddiness and fell down on the road resulting in injuries and there is no medical evidence showing homicidal assault or fatal injuries inflicted by the present applicants. He has further submitted that juvenile accused facing identical allegations of being part of assembly and participating in the scuffle has already been granted regular bail by the competent Juvenile Court and the present applicants having played similar role are entitled to the benefit of parity. He has further submitted that applicants are not having any past antecedent and therefore also, the applicants are entitled to bail. Further, commencement and conclusion of trial will take its own time. Hence, he has requested to allow the present applications.

[4.0] Opposing the submissions made by the learned advocate for the applicants, learned APP has submitted that the alleged offence is serious one as the applicants are facing charge under Sections 103(1), 115(2), 118(1), 140(1) and 54 of the BNS. Further, if the applicants are released on bail then they may hamper or tamper with the evidence. Applicants have indulged in serious offence of murder. Nonetheless, present applicants hatched conspiracy with the co-accused and assaulted the deceased and since section 54 of the BNS is invoked coupled with the fact that the applicants were present at the time of offence, individual role of each accused cannot be looked into at the stage of deciding bail application more particularly when three eye-witnesses have stated about the role of the present applicants – accused and even otherwise, appreciation of evidence is not permissible while deciding the bail application. Hence, *prima facie*

involvement of the applicants is there and therefore, she has requested to dismiss the present applications.

[4.1] So far as argument canvassed by learned advocate for the applicants as regards benefit of parity is concerned, learned APP has submitted that the allegation against the juvenile who has been granted bail is distinguishable with the role played by the present applicants and therefore also, benefit of parity cannot be granted to the present applicants. Hence, she has requested to independently consider the role of the present applicants as benefit of parity cannot be granted to the present applicants and as sufficient material is collected during the investigation and present applicants, if released on bail, it may adversely affect the prosecution case. Therefore, she has requested to dismiss the present applications.

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

[6.0] Perusing the FIR and investigation papers including the charge-sheet papers, it appears that on 07.06.2026 at around 8:30 pm, the father of co-accused Jitendra Naginbhai Rathva was injured by a stone thrown at him on the head by the deceased in a dispute over drinking water and keeping the grudge of the same, the co-accused Jitendra Naginbhai Rathwa and his other friends i.e. present applicants and a juvenile who was in conflict with the law conspired with each other and got into a fight with the deceased outside the trauma center gate of the Civil Hospital and initially kidnapped the deceased, beaten him with a plastic pipe and wooden stick and a lathi, causing serious injuries and thereby causing his death. It further appears that the applicants herein are accused of kidnapping, beating the deceased with a plastic pipe and a wooden stick, and beating him with a sledgehammer, resulting in his death. Further, if the affidavit of the Investigating Officer is taken into consideration, it reveals that the

applicants – accused had beaten the deceased with a wooden stick, after which the co-accused Jitendra Rathwa took his motorcycle and made the deceased sit on his motorcycle, applicant – accused Vishal made the deceased sit behind him and the applicant - accused Vishal sat on another motorcycle with the co-accused, kidnapped the deceased with the intention of killing him and took him to the side of the old dog house on Sola Capital Road, where he was beaten by the applicants – accused with a wooden stick, causing serious injuries to the deceased on head and various parts of the body, pursuant to which the deceased succumbed.

[6.1] During the investigation, sufficient material to establish the *prima facie* involvement of the present applicants is collected including statements of three eye-witnesses namely Love, Het and Bhavesh coupled with CCTV footage which shows presence of applicants armed with pipes and sledgehammer and assaulting the deceased. Further, in the post-mortem note, total 15 injuries are noted including the fracture injuries and the cause of death as stated in post-mortem note is, "**shock and hemorrhage as a result of injuries sustained over the body and over the head."** Hence, the argument canvassed by the learned advocate for the applicants that deceased fell down in the compound of hospital and sustained injuries and therefore, offence does not fall in the purview of section 103 of the BNS is not acceptable at this stage and even otherwise, while deciding the bail application, appreciation of evidence is not permissible and as to whether offence falls under the category of section 103(1) or 103(2) or any other part is subject matter of trial. Further, the applicants are also facing the charge under Section 54 of the BNS and as per Section 54 of BNS, whenever any person, who is absent, also liable to be punished as an abettor, is present when the act of offence for which he would be punishable in consequence of abetment is committed, he shall be deemed to have committed such act of offence. Herein, the presence of

applicants at the scene of offence is not in dispute and therefore, in aid of section 54 of the BNS, present applicants are charge-sheeted and therefore, present applicants do not deserve any relief from this Court.

[6.2] Further, learned advocate for the applicants has also argued to grant benefit of parity to the present applicants since the juvenile accused has been released on bail by the competent Juvenile Court. However, it is needless to say that consideration of juvenile accused having played similar role to that of the present applicants is distinguishable with the present applicants and present applicants cannot claim benefit of parity with the juvenile accused. At this stage, it is apposite to refer to the decision of the decision of the Hon'ble Supreme Court in the case of **Tarun Kumar vs. Enforcement Directorate** reported in **2023 SCC OnLine (SC) 1486** and **Sagar vs. State of U.P. & Anr.** reported in **2025 INSC 1370.** Further, it is undisputed and admitted fact that the present applicants alongwith co-accused initially kidnapped the deceased with intention to cause injury to the deceased pursuant to which the deceased succumbed to injuries as a result of the overt act on the part of the applicants – accused and sufficient material is collected during the investigation in that regard.

[6.3] Another argument canvassed by the learned advocate for the applicants is that investigation is over and charge-sheet has been filed and therefore also, applicants are required to be enlarged on regular bail. 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.

[6.4] Further, learned advocate for the applicant has requested to release the applicants on bail relying on the decision of the Hon'ble Supreme Court in the case of **Sanjay Chandra vs. Central Bureau of Investigation** reported in **[2012]1 SCC 40** but considering the gravity of offence, *prima facie* involvement of the accused and role attributed to the present applicants and quantum of punishment i.e. life sentence or death penalty, in view of the decision of the Hon'ble Supreme Court in the case of ***Virupakshappa Gouda (Supra)***, wherein the Hon'ble Supreme relying on its decision in the case of Sanjay Chandra (Supra), has been pleased to observe as under in para 14:

> *"14. Be it noted, though the aforesaid passages have their relevance but the same cannot be made applicable in each and every case for grant of bail. In the said case, the accused-appellant was facing trial for the offences under Sections 420-B, 468, 471 and 109 of the IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. Thus, the factual matrix was quite different. That apart, it depends upon the nature of the crime and the manner in which it is committed. A bail application is not to be entertained on the basis of certain observations made in a different context. There has to be application of mind and appreciation of the factual score and understanding of the pronouncements in the field."*

Thus, the reliance placed on the decision of the Hon'ble Supreme Court in the case of ***Sanjay Chandra (Supra)*** would not avail any assistance to the applicants.

[6.5] 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 applicants are 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 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."*

[6.6] 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.

[7.0] Considering seriousness of offence and involvement of accused, present application being devoid of any merit stands ***dismissed***. However, the learned trial Court is directed to **expedite the trial** as the applicants are under-trial prisoners. If the applicants fail to engage an Advocate then the applicants shall be provided legal aid under Section 341 of the BNSS for expeditious disposal of the trial in view of the decision of the Hon'ble Supreme Court in the case of **Ummed Devi vs. The State of Rajasthan and Anr. [2026 INSC 931]**. The applicants are directed to cooperate with the learned trial Court in expeditious disposal of the trial.

[8.0] 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 applicants independently on its own merits without being influenced by the observations made in the present order. Rule is hereby discharged in each of the applications.

A copy of this order be kept in CR.MA No.21215/2026.

(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 26/10/2026 16:16:03