IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER CHARGESHEET) NO. 23023 of 2026

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IJUBALI @ YUSUFALI @ LALLA S/O. BABUHASAN SAIYAD

Versus

STATE OF GUJARAT

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Appearance:
MR JALDIP B TAILOR(11438) for the Applicant(s) No. 1
MS BHAKTI M JOSHI(3820) for the Applicant(s) No. 1
MR MEET THAKKAR, APP for the Respondent(s) No. 1

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

Date : 29/10/2026

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 applicant is seeking regular bail in connection with FIR being **CR No.11191012240318 of 2024** registered with **Dani Limda Police Station, Ahmedabad City** for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short "IPC") and section 135(1) of the Gujarat Police Act.

[3.0] Heard learned advocate Ms. Bhakti M. Joshi for the applicant and learned APP for respondent – State of Gujarat.

[4.0] Learned advocate for the applicant has submitted that the applicant is innocent and has been falsely implicated in the offence. The applicant is behind the bars since 23.04.2024 and commencement and conclusion of trial will take its own time. She has further submitted that the police did not collect the evidence about absence of the present applicant at the scene of

offence and though there were 20 CCTV cameras installed at the premises where the alleged offence took place, investigating agency has not collected any of the footage which has seriously prejudiced the case of the applicant since the applicant was not present at the scene of offence and has not committed the alleged offence. Hence, she has requested to allow the present application.

[5.0] Opposing the submissions made by the learned advocate for the applicant, learned APP has submitted that the alleged offence is serious one as the applicant is facing charge under Section 302 of the IPC. The allegation against the present applicant is that he has made an assault to the deceased with knife and alleged incident took place opposite Wahab Mosque behind Bismillah Hotel and one witness Abdul is the eye-witness and he has supported the case of the prosecution and he has clearly stated that when he was present at the hotel, at that time, scuffle took place between the applicant and the deceased and applicant-accused took out knife and first inflicted blow on the neck of the deceased and thereafter while the deceased tried to fled from the spot, deceased was chased by the applicant and then the deceased was assaulted on his chest with knife by the applicant pursuant to which the deceased succumbed to the injuries. Further, the applicant is also having one past antecedent and if the applicant is released on bail, possibility of tampering with evidence and flight risk cannot be ruled out more particularly considering his proclivity to commit an offence. Hence, *prima facie* involvement of the applicant being there and at this stage appreciation of evidence is not permissible, he has requested to dismiss the present application.

[6.0] Having heard the learned advocates appearing for the respective parties and perusing the investigation papers, it appears that as per the case of prosecution, the alleged offence took place on 23.04.2024 at around

19.30 hours wherein a scuffle took place between the present applicant and the deceased opposite Wahab Mosque behind Bismillah Hotel and one witness Abdul is the eye-witness and he has supported the case of the prosecution and he has clearly stated that when he was present at the hotel, at that time, scuffle took place between the applicant and the deceased and applicant-accused took out knife and first inflicted blow on the neck of the deceased and thereafter while the deceased tried to fled from the spot, deceased was chased by the applicant and then the deceased was assaulted on his chest with knife by the applicant pursuant to which the deceased succumbed to the injuries.

[6.1] Further, perusing the post-mortem report of the deceased, it appears that deceased had sustained in **total 8 stab injuries** and cause of death as mentioned in the post-mortem report is **hemorrhagic shock due to stab injuries.** Thus, it is clear that the applicant – accused caused multiple stab injuries to the deceased with an intention to kill the deceased coupled with version of eye-witness of the incident and therefore also, no relief deserves to be granted to the present applicant.

[6.2] So far as the argument canvassed by the learned advocate for the applicant that the police did not collect the evidence about absence of the present applicant at the scene of offence and though there were 20 CCTV cameras installed at the premises where the alleged offence took place, investigating agency has not collected any of the footage is concerned, even if we accept the said submission as it is, even though while deciding the bail application, question does not arise to look into additional papers, which the learned advocate for the applicant wants this Court to go into more particularly when the said photographs of CCTV footage are not forming the part of charge-sheet papers. Further, if we accept the defence of alibi, even in that event, alibi is in the special knowledge of the accused and

accused has to prove the said special circumstances at the time of trial and the prosecution is not duty bound to prove such defence and is subject matter of trial and therefore, even if for the sake of argument it is believed that such material is not collected by the investigating agency then at the most it can be said to be defective / shoddy investigation and remedy was available to the applicant but the said alleged defective investigation is not a ground to grant bail to the applicant – accused more particularly considering the involvement of the accused in such a serious offence punishable with life imprisonment or death sentence coupled with the fact that eye-witness has supported the case of prosecution and considering the nature of 8 stab injuries and the manner and method in which the alleged offence has been committed.

[6.3] Further, it is needless to say that at the time of deciding bail application Court has not to appreciate the evidence and is a subject matter of trial. This is not a case where applicant is 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 imprisonment 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."*

[6.4] 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. Needless to emphasize, the sacrosanctity of liberty is paramount in a civilized society. However, in a democratic body polity which is wedded to the rule of law an individual is expected to grow within the social restrictions sanctioned by

law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. In an orderly society an individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well-accepted principle that the concept of liberty is not in the realm of absolutism-but is a restricted one.

[6.5] This Court is also conscious about the right to liberty of accused enshrined under Article 21 of the Constitution of India but herein the applicant is having past antecedents including one under Section 302 of the IPC i.e. body related offences. The Court is duty bound to see that although the personal liberty is a fundamental right but is not an absolute right. Liberty must not be given when it threatens the collective interest of the society and no one has the right to put on peril the liberty of others. At this stage, it is apposite to refer to the decision of the Hon'ble Supreme Court in the case of **Neeru Yadav vs. State of Uttar Pradesh and Another** reported in **(2014)16 SCC 508** wherein the Hon'ble Supreme Court has held that exercise of grant of bail though discretionary in nature cannot be arbitrary, capricious and injudicious and in heinous nature of crime warrants more caution. Even, as per the law laid down by the Hon'ble Supreme Court in the case of **Prasanta Kumar Sarkar vs. Ashis Chatterjee** reported in **(2010) 14 SCC 496**, the Court has to exercise the discretionary jurisdiction very cautiously and strictly in compliance with the basic principles. Herein, this Court is of considered view that *prima facie* involvement and accusation of the applicant is established. It is also apposite to refer to the decision of the Hon'ble Supreme Court in the case of **State of U.P. Through CBI vs. Amarmani Tripathi** reported in **(2005)8 SCC 21.**

[7.0] For the foregoing reasons, this Court is of view that present is not a fit case to exercise discretion under Section 483 of the BNSS in favour of the applicant. Accordingly, present application does not deserve any consideration and is hereby **dismissed**. However, the learned trial Court shall expedite 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 applicant is 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 applicant independently on its own merits without being influenced by the observations made in the present order. Rule is hereby discharged.

(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 29/10/2026 18:55:32