

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER
CHARGESHEET) NO. 9609 of 2026**

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SOLANKI ANKUBEN JITENDRAKUMAR

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR KG PATEL for MS PRIYANKA A GUPTA(12869) for the Applicant

FRESH NOTICE NOT RCVD BACK for the Respondent(s) No. 2

MS SHRUTI PATHAK, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR****Date : 13/07/2026****ORDER**

[1.0] RULE. Learned APP waives service of notice of Rule for and on behalf of the respondent No.1 – State of Gujarat. It is reported that the original complainant has expired and his legal heirs are not available or not traceable however, this Court has considered the present application on its own merits with the assistance of the learned APP.

[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.11204068250543 of 2025** registered with **Vadtal Police Station, District Kheda** for the offence punishable under Sections 64(2)(m), 65(1), 87 and 54 of the Bharatiya Nyaya Sanhita, 2023 (for short "BNS"); sections 5(L), 5(j)2, 6, 12 and 16 of the Protection of Children from Sexual Offences Act (for short "POCSO Act") and sections 3(1)(W-1), 3(1)(W-2) and sections 3(2)(v-a) of the Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act (for

short "Atrocity Act").

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

[4.0] Learned advocate for the applicant has submitted that the applicant, who is a lady accused, is innocent and falsely arraigned as accused in the alleged offence. Further, charge-sheet is filed and nothing is required to be recovered or discovered from the present applicant and considering the limited role attributed to the present applicant of having harbored and facilitated the offence, he has requested to allow the present application since the applicant is behind the bars since 29.01.2026. Therefore, he has requested to grant regular bail to the applicant by imposing any stringent condition as may be deemed fit by this Court.

[5.0] Learned APP has vehemently opposed the present application on the ground that present applicant is the kingpin and she has indulged in such illegal activity and sufficient material is collected during the investigation which reveals the involvement of the present applicant in the offence. Herein, the victim is aged only 10 years who is subjected to frequent sexual assault by accused Nos.1 to 4 which has been facilitated by the present applicant at her own residential home and the minor victim of tender age is subjected to flesh trade. Not only that, the applicant has also called one juvenile who under the pretext of marrying the victim developed physical relations with the victim pursuant to which the minor victim got pregnant and delivered a baby girl. The statement of victim under Section 183 of the BNSS is recorded before the learned Magistrate which clearly shows involvement of the present

applicant. Considering the aforesaid fact, if the applicant is released on bail then the possibility of tampering with evidence cannot be ruled out. Hence, she has requested to dismiss the present application.

[6.0] Having heard the learned advocates appearing for the respective parties and perusing the charge-sheet papers, it appears that in the case on hand, the victim is only 10 years of age and she has been subjected to flesh trade by the present applicant at her residential house though the complaint was filed against accused No.1 Sohil Firozbhai Diwan however, after investigation, other four persons including the present applicant have been arraigned as accused in the charge-sheet wherein it is the case of prosecution that though the present applicant was aware that victim is minor, applicant used to call different accused persons at her home and facilitated the accused persons to develop physical relations with the victim and the present applicant even called one juvenile to her home who under the pretext of marrying the victim girl developed physical relationship with the victim due to which the victim girl got pregnant and delivered a baby girl in December, 2025. Further, accused Nos.1 to 4 were called by the present applicant at her residential home to develop physical relations with the minor victim. Not only that, the applicant also used to send the minor victim to houses of said accused persons as a part of flesh trade. Considering the aforesaid facts, sufficient material including the statement of minor victim recorded under Section 183 of the BNSS before the learned Additional Chief Judicial Magistrate, Nadiad is collected by the investigating agency which clearly shows the involvement of the present applicant. Hence, the present applicant though fully aware of the tender age of the victim forcefully

thrashed the victim in flesh trade and exploited her and taken undue advantage of the tender age of the victim. Hence, *prima facie* involvement of the applicant is clearly made out. Considering the aforesaid fact, it transpires that the offences alleged are not only against a person but against the State. Against the juvenile who was made by the applicant to develop physical relations with the minor victim is also charge-sheeted by way of a separate charge-sheet and matter is pending before the Juvenile Justice Board.

[6.1] Considering the statement and object, the reason of enactment of POCSO Act is that several child has inalienable human right to live with dignity, grow-up and develop in an atmosphere conducive to mental and physical health, to be treated with equality and not to be discriminated. The right to protection of privacy also includes the child right. It is a constitutional guarantee and basic human right to live with dignity. Even, the directive policy of the State policy casts an obligation on the State to ensure that children are given an opportunity and facility to develop in healthy manner and in a condition of frame and dignity. Considering the aforesaid fact, to provide free fair, secure and conducive atmosphere for development of child and to protect the children from sexual exploitation with special purpose Act being produced.

[6.2] The prime consideration under the POCSO Act is victim is minor and is protected under the law of land. Once it is undisputed and admitted fact that the petitioner has taken undue advantage of the tender age of the victim and eloped with her and stayed with the victim and committed the offence, the object of the POCSO Act was not merely in furtherance of this country's commitment to international instruments, but its resolve to and attempted at

creating a world as secure and as free from fear, for the most innocent and vulnerable section of its citizens, i.e., children and young adults. Behaviour - physical, verbal, and non-verbal, ranging from what discomfits a child to as horrifying as rape and physical sexual abuse have been criminalized. Special mechanisms to provide access to the justice delivery system, and ensure speedy justice, have been devised. Yet, a society's commitment to such a cause does not cease by mere enactment of any law, but its willingness, and those governing and administering it, to create and ensure effective overall frameworks which support and strengthen its institutions.

[6.3] Second limb of argument on behalf of the applicant that applicant is a lady accused and therefore, should be enlarged on bail is concerned, it is needless to say that merely applicant is a lady is not a ground to enlarge her on bail since the applicant though being lady as she is involved in such serious crime that too involving a minor girl aged 10 years and allowed her to be exploited repeatedly.

[6.4] Further, present application is filed after filing of charge-sheet and the allegations against the present applicant are under Sections 64(2)(m), 65(1), 87 and 54 of the BNS; sections 5(L), 5(j)2, 6, 12 and 16 of the POCSO Act and sections 3(1)(W-1), 3(1)(W-2) and sections 3(2)(v-a) of the Atrocities Act. Herein, the applicant accused has committed an offence under Section 16 of the POCSO Act and abetted accused persons in committing offence under Sections 5(L), 5(j) and 6 of the POCSO Act. Learned advocate for the applicant has requested for bail also on the ground that charge-sheet is already filed however, it is needless to say that merely

charge-sheet is filed is not a ground to release the applicant on bail. In this regard reference is required to be made to the decision of 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."

In view of the above, after filing of the charge-sheet, allegations made by the prosecution have not lessen in any manner. Herein, the alleged offence is against a minor orphan and proceedings under the POCSO Act is governed by the presumption under Sections 29 and 30 of the POCSO Act. Therefore also, no case is made out for exercise of discretion under Section 483 of the BNSS.

[6.5] One more aspect is also required to be considered, 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. Further, while granting bail, the Court has to satisfy itself about the interest of prosecution. One of the criteria which is required to be considered while considering bail is interest of prosecution witnesses. This Court is of the considered opinion that if the present accused is enlarged on bail, the possibility of accused misusing his liberty and tampering with evidence of prosecution and flight risk cannot be ruled out.

[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 CrPC in favour of the applicant. Accordingly, present application does not deserve any consideration and is hereby ***dismissed***. Rule is hereby discharged. However, the learned trial Court is directed to expedite the trial as the applicant is an under-trial prisoner.

[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.)

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