

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER CHARGESHEET) NO. 16673 of 2026**

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LAKHIBEN PUNABHAI SOLANKI

Versus

STATE OF GUJARAT

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Appearance:

MR KUNAL S SHAH(5282) for the Applicant(s) No. 1

MR HIMANSHU PATEL, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 31/07/2026**ORDER**

[1.0] In the present case, perversity of motherhood may be seen wherein, driven by starvation, mother had beaten her child and resultantly, child succumbed to injury! During hearing of the present case, the incident evoked my memory about two Gujarati Novels viz. (1) "**Manvini Bhavai**" (**Endurance: A Droll Saga**) in Gujarati literature psychological horror of extreme hunger and societal collapse is reflected by Shree Pannalaal Patel and (2) "**Dukhiyaran**" (Translation of Victor Hugo's classic French Novel **Les Misérables** translated by Shree Mulshankar M. Bhatt) is titled as "**Dukhiyara**". It is based on the life and struggles of the poor, oppressed, and socially marginalized people in 19th Century France.

[1.1] It is pertinent to note that the mother's lap is heaven for a child. It is the mother's privilege and moral duty to feed and nourish her child. In the present case, because of mother's inability and failure to maintain her child due to poverty and starvation, the alleged incident took place. Ironically, on one hand, a mother who caused the death of her child got excited due to her constant demand for food as she was unable to satiate it and on the other hand, a new life in her womb is struggling to enter in this world !

[2.0] **RULE.** Learned APP waives service of rule for the respondent-State.

[3.0] The present application is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS") for regular bail in connection with FIR being **C.R. No.11210060260625 of 2026** registered with **Varachha Police Station, District Surat** for the offence punishable under Section 103(1) of the Bharatiya Nyaya Sanhita, 2023 (for short "BNS").

[4.0] Learned advocate for the applicant has submitted that, applicant is a lady accused carrying pregnancy of above 7 months and a small child is with her in jail and another small child is alone at home. The husband of the applicant left her home and there is no one to take care of the minor child who is alone at home. The applicant is not having any past antecedents and even the investigation is over and charge-sheet is filed. Therefore, he has requested to allow the present application and release the applicant – lady accused on bail by imposing suitable conditions.

[5.0] Learned APP has vehemently opposed the present application on the ground that the applicant has committed serious offence and sufficient material is collected to establish the overt act committed by the present applicant. Even, the post-mortem of the deceased child clearly establishes that the deceased child was beaten up by the applicant. Further, statement of another minor child is also recorded which indicates *prima facie* involvement of the present applicant and if the applicant is released on bail then the possibility of tampering with the evidence cannot be ruled out. Therefore it is submitted that, considering the nature and seriousness of the offence, the application may not be entertained.

[6.0] Heard learned advocates appearing for the respective parties at length and perused the investigation papers.

[7.0] While granting bail, the Court has to consider the involvement of the accused in the alleged offence, the jurisdiction to grant bail has to be exercised on the basis of the well settled principles having regard to the facts and circumstances of each case and the following factors are to be taken into consideration while considering an application for bail: (i) the nature of accusation and the severity of the punishment and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension

of tampering with the witnesses and threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations are required to be considered.

[8.0] The applicant/accused herein is arrested on 19.03.2026 and she is a mother of three children. As per the case of prosecution, brother in law of the applicant registered the complaint on 19.03.2026 as daughter of applicant namely [REDACTED], who was aged 2 years, was taken for treatment to Smimer Hospital, Surat by the present applicant herself and Doctor declared her dead. It reveals from the case papers that the husband of the applicant has gone for voyage since last six months and he has neglected his family due to starvation. Further, the applicant left her home alongwith her daughters and started staying with one Sandip Chudasama in live-in relationship executing a *Maitri Karaar* (Friendship Deed). As the applicant's daughter [REDACTED] was hungry and asking for food, due to her constant demand of food, applicant got annoyed and due to this reason, she had beaten minor [REDACTED] due to which the child sustained injuries mentioned in autopsy report and succumbed to death. The incident remained undisputed but the fact remains that one daughter [REDACTED] who is only 3 years old, is a child witness and only her statement is recorded during investigation and except her statement, no statement of any other witnesses have been recorded. Further, it reveals that after the incident, [REDACTED] slept and while the applicant tried to wake her up, [REDACTED] did not respond and was found unconscious and therefore, the applicant rushed to hospital for treatment of minor [REDACTED] where she was declared dead. Considering the aforesaid fact, on one hand, the applicant failed to satisfy hunger of her daughter and on other hand, in the hit of passion, showing her inability, got annoyed due to hue and cry made by the minor [REDACTED] for constant demand of food due to starvation and therefore, the applicant beaten the deceased child. Thereafter, realizing the fact that minor [REDACTED] is unconscious, applicant rushed to the hospital with minor [REDACTED]. Thus, it depicts that there was no *mens rea* or malafide intention on the part of the present applicant. It appears that it was merely a reckless act on the part of applicant. Even, the

applicant is carrying 7 months pregnancy also.

[9.0] Herein, the said incident is not merely an individual tragedy but it is a profound indictment of society and raises fundamental questions of social justice and morality. One more aspect of matter is that, only one child witness has to depose against her mother and to give justice to her sibling also, who had lost her life due starvation. This Court has also considered the following aspects:

- (1) Investigation is over and charge-sheet is filed;
- (2) Applicant, who is a lady accused carrying pregnancy of 7 months, is behind the bars since **19.03.2026**;
- (3) There is nothing to be recovered or discovered from the applicant;
- (4) The applicant is not having any past antecedent;
- (5) In the present case, one child aged one year is residing with the applicant in jail and another child is all alone at the home of the applicant and obviously commencement and conclusion of trial will take some time.

[10.0] This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of **Sanjay Chandra vs. Central Bureau of Investigation** reported in **[2012]1 SCC 40** as well as in the case of **Gudikanti Narasimhulu And Ors vs. Public Prosecutor, High Court of Andhra Pradesh** reported in **(1978)1 SCC 240**. Obviously, the conclusion of trial will take time and keeping the accused behind the bars is nothing but amounts to pre-trial conviction and therefore, considering the celebrated principle of bail jurisprudence is that "*bail is a rule and jail is exception*" as well as the concept of personal liberty guaranteed under Article 21 of the Constitution of India, present application deserves consideration.

[11.0] In the facts and circumstances of the case and considering the

nature of the allegations made against the applicant in the FIR, without discussing the evidence in detail, *prima facie*, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with FIR being **C.R. No.11210060260625 of 2026** registered with **Varachha Police Station, District Surat** on executing a personal bond of Rs.25,000/- (Rupees Twenty-five Thousand only) with **ONE SURETY** of the like amount to the satisfaction of the trial Court and subject to the conditions that she shall;

- (a) not take undue advantage of liberty or misuse liberty;
- (b) not act in a manner injurious to the interest of the prosecution & shall not obstruct or hamper the police investigation and shall not to play mischief with the evidence collected or yet to be collected by the police;
- (c) surrender passport, if any, to the Trial Court within a week;
- (d) not leave the **territory of State of Gujarat** without prior permission of the Trial Court concerned;
- (e) **mark presence before the concerned Police Station once in a month for a period of six months between 11.00 a.m. and 2.00 p.m.;**
- (f) furnish the **copy of Aadhaar card, email ID/contact number / permanent and present address of her residence** to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the **residence and contact number/SIM card** without prior permission of Trial Court;
- (g) not to indulge in any illegal activity failing which learned trial Court shall issue warrant and cancel the bail of the applicant.

[12.0] The authorities will release the applicant only if she is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax

any of the above conditions, in accordance with law. At the trial, the trial Court shall not be influenced by the observations of preliminary nature qua the evidence at this stage made by this Court while enlarging the applicant on bail. **Rule** is made **absolute** to the aforesaid extent. Direct service is permitted.

[13.0] Before parting, after deciding the matter on merits based on sound legal parameters and using Court's judicial discretion in favour of the applicant, this Court is of considered view that social justice is founded on the principle that every human being is entitled to basic necessities such as food, shelter, healthcare, and dignity. When starvation drives a mother to such an extreme act, such failure is collective rather than individual. **"Criminals are not born out but made"**. The incident reflects the failure of social welfare mechanisms and highlights the moral responsibility of the State and society to protect vulnerable families, especially women and children. Under the Constitution of India, children are having fundamental rights besides directive principles of State policy under Article 45 which provides that the State shall take endeavor to provide early childhood care and education for all children until they complete the age of six years. Further, it is the duty of the State to raise the level of nutrition and the standard of living to improve public health. Herein, one life is nourished in womb of mother and in such back ground of the case and applicant's vulnerability coupled with right of child. Even otherwise, if we consider this issue in Religious Perspective then also, in all religions, feeding the hungry is regarded as a sacred duty. In Hindu religion, as per the **Shreemad Bhagavad Gita**, the spirit of sharing food is emphasized:

"The righteous who partake of food after sharing with others are freed from all sins." (3.13),

In Christianity, Jesus taught:

"For I was hungry and you gave me food."

In Islam religion also, similarly teaches:

"He is not a believer whose stomach is filled while his neighbor goes hungry."

Thus, all religions demonstrate that allowing a person to perish from hunger is not merely a social failure but a moral and spiritual failure. Philosophers have also recognized the devastating effects of extreme poverty and hunger. **Aristotle** has said "***poverty is the parent of revolution and crime***" and **Victor Hugo**, in ***Les Misérables***, Protagonist Jean Valjean stole loaf of bread to feed his family. This story also raises question about justice, poverty and compassion. Further, it is wrote, "***If a soul is left in darkness, sins will be committed. The guilty one is not he who commits the sin, but he who causes the darkness.***" **Bishop Myriel**, His radical act of mercy toward Jean Valjean (who stole his silver bowl) completely changes *Valjean's* heart and soul, turning him from a bitter ex-convict into an honest, good man. Charles Dickens has also depicted how extreme poverty can push a people towards crime.

[13.1] In this regard it is apt to refer to the Gujarati novel *Manavini Bhavai*-written by Pannalal Patel which portrays a devastating famine that struck India, particularly Rajasthan and Gujarat, in the year 1899, corresponding to the Vikram Samvat year 1956. tragic event known as "Chhappania Dukal"(56th Famine). a profound literary exploration of famine, human dignity, social inequality, and the struggle for survival it may be summarized as "***Man is not evil but hunger that is evil.***"

[13.2] In present case alleged incident is heart wrenching reminder that hunger is not merely an economic issue but a matter of human dignity, justice, and conscience. As **Mahatma Gandhi** has said:

"There are people in the world so hungry that God cannot appear to them except in the form of bread."

[14.0] This tragedy should therefore be viewed not only as an offence but also as a clarion call for compassion, social responsibility, and renewed commitment to ensuring that no mother or child is left to suffer the

indignity of starvation since one life has to enter in this world, Child has also right to life that too with dignity and honor and to see and ensure that the benefits of government benevolent scheme reaches to needy people.

"A hungry person seeks bread before philosophy."

(HASMUKH D. SUTHAR, J.)

Ajay