

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL - AFTER  
CHARGESHEET) NO. 15268 of 2026**

=====

JIGARBHAI BHANUBHAI GOHIL

Versus

STATE OF GUJARAT

=====

Appearance:

JAGAT V PATEL(7480) for the Applicant(s) No. 1

MR ADITYA JADEJA, APP for the Respondent(s) No. 1

=====

CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR****Date : 08/09/2026****ORDER**

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

[2.0] 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. 11189007241220 of 2024 registered with Wankaner City Police Station, Morbi**, for the offences under Sections 302, 328, 201, 120B and 34 of IPC.

[3.0] Learned advocate appearing on behalf of the applicant submits that the applicant is innocent and has been falsely implicated in the offence. Investigation is over and chargesheet has been filed. Nothing is required to be recovered or discovered. There is no eye witness to the incident. Case is based on circumstantial evidence and based on confessional statement, he has been arraigned as an accused. The applicant is in custody since 24.12.2024. He therefore submits that, considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

[4.0] Learned APP appearing on behalf of the respondent-State has opposed the present application and requested to dismiss the present application for

regular bail on the ground that the applicant is very much involved in the present offence and considering the gravity of offence, no case is made out to entertain present bail application. Further, the applicant is having past antecedents and if he is released on bail, possibility cannot be ruled out that the applicant will flee from justice. Therefore, present application does not deserve consideration.

[5.0] 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.

[6.0] I have heard the learned advocates appearing on behalf of the respective parties and perused the investigation papers. Investigation is over and charge-sheet is filed; Applicant is behind the bar since 24.12.2024 There is nothing to be recovered or discovered from the applicant; though the applicant is having past antecedent, he is presumed to be innocent till proven guilty.

[7.0] At the outset, it is to be noted that, though the matter has been listed time and again, on earlier occasions, an opportunity was granted to the State to explain as to what material and evidence has been collected by the concerned Investigating Officer to show the involvement of the accused. The IO was also directed through the learned APP, to remain

personally present before the Court so as to assist properly learned APP and the Court regarding the nature of evidence and material collected against the accused in connection with the alleged offence.

[8.0] Today, when the matter is listed for the third time, the IO has remained absent. It is submitted on behalf of the State that the concerned IO has been transferred. It is pertinent to note that, on the earlier occasion also, time was sought on the very same ground. Today, only a constable has remained present, who is unable to properly assist the learned APP or apprise the Court regarding the material and evidence collected during the course of investigation as only he is a messenger and not conversant with investigation papers. The specific case of the accused is that he has been arraigned as an accused solely on the basis of his confessional statement. It is further submitted that no incriminating material or evidence connecting the applicant/accused with the alleged offence has been collected by the Investigating Officer or produced on record.

[9.0] In the aforesaid background, a specific query put to learned APP to explain the circumstances and the material on the basis of which the applicant has been arraigned as an accused. However, the prosecution has failed to point out any incriminating material or circumstance connecting the applicant with the alleged offence. It is very sorry state of affairs in number of matters, concerned investigating officers failed to remain present with investigation papers and properly give instructions to learned APP and assist the Court and if in some cases, investigating officer remain present, though they do not have knowledge about the investigation and always they look forward assistance of his writer/constable.

[10. 0] In so far the theory of last seen together is concerned, except for the CDR location, no other material has been collected by the prosecution. The specific case of the applicant is that there were two vehicles and he was travelling in another vehicle but no any evidence collected or pointed out. Therefore, merely on the basis of CDR location, this Court is not inclined to

accept the same as conclusive evidence. At the most, it can be considered as one of the circumstances.

[11.0] As regards the submission that the applicant had purchased two Vimal bags from a shop and that the statement of the shop owner has been recorded, the said circumstance also subsequent in nature.

[12.0] While a specific query put to the learned APP regarding the involvement of the applicant in the last seen together in company of deceased theory, particularly as the allegations for the offences under Sections 302, 328, 201, 120B and 34 of the IPC relating to murder, conspiracy and common intention, the prosecution has failed to point out any material showing conspiracy of common intention of the applicant to show that the deceased was lastly seen in company of accused. All CDR location are subsequent in point of time but qua actual commission of alleged offence of murder, prosecution is silent. As per the allegations, the applicant had used sodium powder and administered it to the deceased, thereafter chopped the dead body with a sharp-edged weapon and buried the same. The statement of one JCB driver has also been recorded in this regard. However, the prosecution has failed to point out what evidence has been collected to show the involvement of the present applicant in the actual commission of the offence which may be considered qua recovery of dead body.

[13.0] Except for pointing out two circumstances in a piecemeal and tit-bit manner, namely, (i) CDR location and (ii) purchase of Vimal bags, no material connecting the applicant with the commission of the crime or his presence with the deceased has been brought on record. Considering the aforesaid facts, mere motive or an allegation regarding an illicit relationship, by itself, cannot be sufficient to connect the applicant with such a serious offence. Though the alleged offences are serious and punishable with life imprisonment or death, the material against the applicant cannot be

accepted in such a casual and perfunctory manner. The applicant cannot be deprived of his personal liberty on the basis of a shoddy investigation and improper assistance to the Court.

[14.0] So far as the past antecedent is concerned, another offence has also been registered on similar lines, wherein the applicant has been arraigned as an accused on the basis of a confessional statement of family members. Recently, summons have been issued to the complainant. The prosecution has cited **74 witnesses**, but **till date not a single witness has been examined by prosecution**. Considering the delay in trial and the fact that the prosecution has not been able to demonstrate any progress in the trial, application deserves consideration on the ground of the fundamental right of the accused to a speedy trial. The prosecution cannot claim an absolute right to oppose the application while failing to commence the trial. Obviously, the commencement and conclusion of the trial will take considerable time.

[15.0] Thus, it appears that prosecution is not interested to proceed with the matter and once prosecution is not inclined in expeditious disposal of the trial, prosecution has no right to oppose the bail application on merits considering the fundamental right of the accused. Therefore, applicant cannot be kept behind the bars for indefinite period even considering the question of personal liberty under Article 21 of the Constitution of India as laid down by the Apex Court in the case of **Union of India vs. K.A. Najeer** reported in **(2021) 3 SCC 713**; **Mohd. Muslim alias Hussain vs. State (NCT of Delhi)** reported in **2023 SCC OnLine SC 352** and **Pradeep Kumar @ Banu vs. State of Punjab [SLP (Cri.) No.18775/2025]**. 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**.

[16.0] 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.

[17.0] 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. 11189007241220 of 2024 registered with Wankaner City Police Station, Morbi** 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 he/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 State of Gujarat without prior permission of the Trial Court concerned;
- (e) mark presence before the concerned Police Station once in every month for a period of six months between 11.00 a.m. and 2.00 p.m.;
- (f) furnish the **Aadhaar card, email ID/present address of his**

**residence** to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the **residence/contact number** 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.

[18.0] The authorities will release the applicant only if he 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.

[19.0] 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.

[20.0] 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.

[21.0] Rule is made absolute to the aforesaid extent. Direct service is permitted.

**(HASMUKH D. SUTHAR,J)**

SUCHIT