

Jayraj Ranubhai Khartani (Khavad) vs State Of Gujarat on 11 February, 2025

R/CR.A/3/2025

ORDER DATED:

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (REGULAR BAIL - AFTER CHARGESHEET) NO. 3
of 2025

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JAYRAJ RANUBHAI KHARTANI (KHAVAD)

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR AMRISH S BAROT(3551) for the Appellant(s) No. 1

MR PAWAN A BAROT(6455) for the Appellant(s) No. 1

MS SWETA P BAROT(10181) for the Appellant(s) No. 1

NOTICE SERVED for the Opponent(s)/Respondent(s) No. 2

MR HK PATEL, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 11/02/2025

ORAL ORDER

1. Rule. Learned APP waives service of notice of Rule on behalf of the Respondent - State.

1. By way of the present Appeal under Section 14(A) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 for Regular bail under Section 439 of the Code of Criminal Procedure, 1973, the Appellants have prayed for enlarging them on regular bail in connection with the F I R being C.R. No . 11211045240410 of 2024 registered with Sayla Police Station, Surendranagar for the offences punishable under Sections 109(1), 352, 351(3), 61(2), 189(2), 191(2), 191(3), 190, 111(2-b) 111(3) and 111(4) of Bhartiya Nyaya Sanhita, 2023 and Section 3(2)(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act NEUTRAL CITATION R/CR.A/3/2025 ORDER DATED: 11/02/2025 undefined and Section 25(1-b)(a) and 27

of the Arms Act and Section 135 of the G.P. Act.

2. Heard learned Advocates for the respective parties.

3. Learned Advocate for the Appellants has submitted that the investigation of the offence is over and charge sheet is filed. He further submitted that the Appellants have good reputation in the society and no useful purpose would be served by keeping the Appellants in jail for indefinite period. It is further contended that the Appellants are ready and willing to abide by all the conditions that may be imposed by this Court if released on bail. Learned Advocate for the Appellants therefore submitted that the considering the facts stated in the Appeal, the Appellants may be granted regular bail.

5. Learned APP has opposed the Application contending that the Applicant No.1 is involved in the activity of illegal mining and the first informant had lodged an application in that regard against the Applicant No.1. Having grudge about the same, the present Applicants herein had reached to the place of the first informant and had committed the offence which is alleged in the present FIR and with an intention to threaten the first informant one fire arm was fired in the air which was carried by the other co-accused. He further submitted that the first informant who was present before the Sessions Court at the time of hearing of the bail application had voiced an apprehension that if the Applicant is enlarged on bail he may cause harm to the family members of the first informant. He therefore submitted to dismiss the present Application.

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6. Heard learned Advocates for the parties and perused the record. The role attributed to the Applicant No.1 is to the effect that Applicant No.1 who was involved in the activity of illegal activity of mining had hatched a conspiracy to threaten the first informant and, as part of the said conspiracy, the Applicants had gone to the place of the first informant and the offence alleged in the FIR had taken place. However, none of the present Applicants are attributed with the role of having fired from the weapon nor caused any injury to the first informant or any other victim. Considering these aspects, the Appeal deserves consideration. This court has also considered the following aspects:

(a) As per catena of decisions of Hon'ble Supreme Court, there are mainly 3 factors which are required to be considered by this court i.e. prima facie case, availability of the Appellants at the time of trial and tampering and hampering with the witnesses by the accused.

(b) That the learned Advocate for the Appellants has submitted that the Appellants are not likely to flee away.

(c) That the Appellant is in custody since 20.10.2024.

(d) Nothing is required to be recovered or discovered from the applicant and commencement of trial will take its own time.

(e) As the co-accused has been granted bail, therefore, the present application requires consideration in view of the principle of parity laid down in the case NEUTRAL CITATION R/CR.A/3/2025 ORDER DATED: 11/02/2025 undefined of Rameshbhai Batubhai Dhabhi vs. State of Gujarat, reported in (1999) 3 GLR 1150.

7. 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.

8. 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 . 11211045240410 of 2024 registered with Sayla Police Station, Surendranagar on executing a personal bond of Rs.25,000/- (Rupees Twenty-five Thousand only) with one local surety of the like amount to the satisfaction of the trial Court and subject to the conditions that he shall;

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(a) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the Court or any Police Officer or tamper with the evidence.

(b) maintain law and order and not to indulge in any criminal activities.

(c) furnish the documentary proof of complete, correct and present address of residence to the Investigating Officer and to the Trial Court at the time of executing the bond and shall not change the residence without prior permission of the trial Court.

(d) provide contact numbers as well as the contact numbers of the sureties before the Trial Court. In case of change in such numbers inform in writing immediately to the trial Court.

(e) file an affidavit stating their immovable properties whether self acquired or ancestral with description, location and present value of such properties before the Trial Court, if any.

(f) not leave India without prior permission of the Trial Court

(g) surrender passport, if any, to the Trial Court within a week. If the Appellants do not possess passport, shall file an Affidavit to that effect.

(h) not enter the areas of Sayla Police Station and Dhari Police Station till the conclusion of the trial except for attending the trial court.

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8. Bail bond to be executed before the Trial Court having jurisdiction to try the case. It would be open for the Trial Court concerned to give time to furnish the solvency certificate if prayed for.

9. If breach of any of the above conditions is committed, the Trial Court concerned will be free to issue warrant or take appropriate action according to law. The Authorities will release the Appellants forthwith only if the Appellants are not required in connection with any other offence for the time being.

10. At the trial, the concerned trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

11. Rule is made absolute. Direct service permitted.

(HASMUKH D. SUTHAR,J) ALI