

# Sanjaybhai Ishwarbhai Desai vs State Of Gujarat on 17 March, 2025

R/CR.MA/5460/2025

ORDER DATED:

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 5460  
of 2025

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SANJAYBHAI ISHWARBHAI DESAI  
Versus  
STATE OF GUJARAT

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Appearance:

MR. RAHUL R DHOLAKIA(6765) for the Applicant(s) No. 1  
MR HK PATEL, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 17/03/2025

ORAL ORDER

RULE. Learned APP waives service of notice of Rule for and on behalf of the respondent No.1 - State of Gujarat.

1. By way of the present application under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS"), the applicant - accused has prayed to release him on anticipatory bail in the event of his arrest in connection with the FIR being C.R. No.11191028250015 / 2025 registered with Vejalpur Police Station, Ahmedabad City for the offences punishable under Sections 109(1), 115(2), 118(1), 117(2), 296(b), 324(4) and 54 of BNS and Section 135(1) of GP Act.

2. Learned Senior Advocate Mr.N.D. Nanavaty assisted by learned advocate Mr. Rahul R. Dholakia for the applicant has submitted that present applicant is innocent and he is falsely implicated in the offence. He has not committed any offence and he has not played any role, much less the offence under Section NEUTRAL CITATION R/CR.MA/5460/2025 ORDER DATED: 17/03/2025 undefined 109 of the BNS. Present applicant is having no past antecedents. The incident occurred in two parts; (i) initially incident took place at a pan Parlour where the injured party, Urvesh Gajjar,

was not present, and subsequently (ii) in second part of incident at Saibaba Flat, where, following the earlier altercation, an assault allegedly took place. It is claimed that during this second incident, the applicant had assaulted one Urvesh on the head. The applicant had no prior connection or enmity with Urvesh, or no intent to cause harm or death to him, and lacking the mens rea, which is necessary for an offense under Section 109 of the Bharatiya Nyaya Sanhita (BNS). It is further submitted that applicant is having deep root in the society. Only with a view to tarnish his image, he is falsely implicated in the offence. It is submitted that stick is not a deadly weapon. It is further submitted that two witnesses were shifted to the private hospital and one was shifted to the Government Hospital. Injury is simple in nature and on the very next date i.e. on 13.01.2025, they were discharged from the hospital. The applicant has sought a neutral and fair investigation by approaching the police authority on 01.02.2025. Therefore, custodial interrogation at this stage is not necessary. In view of the above, the applicant may be granted anticipatory bail.

3. Per contra, learned Additional Public Prosecutor appearing on behalf of the respondent - State has vehemently opposed the present application on the ground that the present applicant is facing charges under Sections 109(1), 115(2), 118(1), 117(2), 296(b), 324(4), and 54 of the Bharatiya Nyaya Sanhita (BNS), as NEUTRAL CITATION R/CR.MA/5460/2025 ORDER DATED: 17/03/2025 undefined well as Section 135(1) of the Gujarat Police Act. The applicant is explicitly named in the First Information Report (FIR). It is submitted that the complainant and other witnesses were at Delux Pan Parlour near Vastrapur Crossing when the accused initiated a scuffle, during which one Vaibhav Manubhai Patel damaged the shop. When the complainant and witnesses urged the accused to desist, the accused left the scene. Subsequently, at Saibaba Flat, the accused allegedly returned with deadly weapons, initiating another scuffle and inflicting indiscriminate blows with wooden sticks and iron pipes. The applicant is accused of causing injuries to both the complainant and a witness named Urvesh, who were hospitalized following the incident. During the investigation, statements from witnesses, including the injured Urvesh, were recorded. Urvesh's statement implicated the applicant, and three eyewitnesses corroborated the applicant's involvement, specifically noting that he inflicted injuries with a wooden stick. The APP emphasizes that the weapon and clothing involved are yet to be recovered. Furthermore, the applicant's alibi has been investigated and found false evidence of three witnesses established their presence at the time of the incident. Hence, requested to dismiss present application as he is on run and not joined the investigation.

4. Learned advocate Mr.Rohan M. Amin appearing for the original Complainant has adopted the said arguments and further he has submitted that prima facie involvement is there. If he released on bail then possibility cannot be ruled out to tamper NEUTRAL CITATION R/CR.MA/5460/2025 ORDER DATED: 17/03/2025 undefined with the evidence. So far as alleged defence qua his absence is concerned is an afterthought. The alleged incident took place on 09.01.2025 and after one month on 10.01.2025, he has approached police authority, which is also found baseless. Considering the seriousness of the offence, the learned advocate has requested to dismiss the present application.

5. Having heard the learned advocates for the respective parties, this Court has considered the rival submissions made by learned counsel for both the sides and considered the material placed on record. It is well settled that, among other circumstances, the factors to be borne in mind while

considering an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused. Though at the stage of granting bail execution and appreciation of evidence is not permissible. Having gone through the complaint, prima facie, it appears that the present applicant is involved in the offence.

6. Considering the aforementioned facts and investigation papers, the victim / injured witnesses before the Executive Magistrate and the doctor, explicitly naming the applicant and co-accused individuals. The victim's lack of knowledge regarding NEUTRAL CITATION R/CR.MA/5460/2025 ORDER DATED: 17/03/2025 undefined the applicant's full address does not substantiate claims of false implication, as the complainant and witnesses specifically identifies the applicant and other co-accused by name and his name with role attributed to him is mentioned in the FIR.

6.1. According to case of the prosecution, initially the accused got excited and which leads to a scuffle at Delux Pan Parlour near Vastrapur Crossing and damaged the shop and quarreled with witness Vaibhav Manubhai Patel. When the complainant and other witnesses intervened, urging the accused to desist, the accused left the scene. Subsequently, they have chased complainant and came at Saibaba Flat, allegedly armed with wooden sticks and iron pipes, verbally abusing and assaulting the complainant and witnesses, thereby committing the offenses detailed in the complaint. Thus, prima facie it appears that the first part of the incident occurred at Delux Pan Parlour near Vastrapur Crossing, where the accused arrived armed with deadly weapons, namely wooden sticks and an iron pipe, and engaged in a scuffle. Keeping in mind the rivalry arising from this incident, they caused damage to the pan Parlour. Then in the second part of the incident, when the complainant and witnesses went to Saibaba Flat, chasing the complainant and witnesses at that time, injured Urvesh was present and he sustained injury. Other witnesses were assaulted by delivering indiscriminate blows with wooden sticks and iron pipe. The present applicant-accused inflicted a blow with a wooden stick on the head of Urvesh and delivered two indiscriminate blows on his head and leg. It is NEUTRAL CITATION R/CR.MA/5460/2025 ORDER DATED: 17/03/2025 undefined needless to say that the head is a vital part of the body, and the victim sustained injuries, leading to the recording of his dying declaration before the Executive Magistrate, where he named the present applicant and other co-accused also before the doctor. The injury was observed on the right parietal temporal region, with bleeding and abrasions, and the victim was referred to the Surgery Department, a CT scan of the brain also suggested. Hence, prima facie, presence of the present applicant is established. Witness is injured witness, whose evidence holds significant weight, along with three other witnesses, has also confirmed the applicant's involvement, stating that he was present and participated in the assault at Saibaba Flat. Therefore, there is prima facie involvement. The weapon is yet to be recovered, and custodial interrogation is required for further investigation.

6.2. At the first part of the offence, the applicant was present at the Delux Pan Parlour, which is not in dispute. Thereafter, he continued in a membership of the said unlawful assembly and thereafter, the accused persons have chased the complainant and they came to Saibaba Flat and armed with deadly weapons and they have made an assault. Hence, intention and common object is clearly

revealed and there is also overt-act on the part of the present applicant. Hence, as defence of alibi, which is thoroughly inquired by the Investigating Officer, which is ill founded and even other-wise alibi is matter of evidence, three witnesses including injured witnesses have stated about the NEUTRAL CITATION R/CR.MA/5460/2025 ORDER DATED: 17/03/2025 undefined presence of the present applicant and his name is given in the history before the doctor as well as dying declaration also. Hence, defence of alibi is nothing but an afterthought after the one month of the registration of the complaint, application submitted to the police and found no substance. Hence, argument canvassed by the learned Senior Advocate is not acceptable that present applicant was not present.

6.3. Further, it is evident that the applicant was present during the initial incident at Delux Pan Parlour near Vastrapur Crossing. Following this, the accused allegedly pursued the complainant and witnesses to Saibaba Flat, where they assaulted them without provocation, targeting vital body parts. The Bharatiya Nyaya Sanhita (BNS) criminalizes such acts, including assault and causing grievous hurt. Keeping the grudge that from the earlier incident at Delux Pan Parlour, the accused inflicted indiscriminate blows with a stick on the head and leg of the injured, resulting in significant injuries. The mere fact that the victim was discharged from the hospital does not justify granting bail. It is important to note that, under Section 109 of the Bharatiya Nyaya Sanhita (BNS), the determination of intent is crucial and depends on the nature of the act and the surrounding circumstances. Assaults targeting vital parts, such as the head, are particularly serious. In this case, eyewitnesses have corroborated the prosecution's account of the incident. The presence of the present applicant is found. In view of the decision of the Hon'ble Apex Court in case of State of MP vs. Mansingh reported in (2003) 10 SCC 414, the NEUTRAL CITATION R/CR.MA/5460/2025 ORDER DATED: 17/03/2025 undefined evidence of injured witnesses is having greater evidentiary value and unless compelling reasons exist, the statement of such injured witnesses are not to be discarded lightly. Herein single blow or injuries is on the vital part of the body i.e. on head, which is given by the wooden sticks. In this regard, reference is required to be made in case of Sadakat Kotwar and Another vs. State of Jharkhand reported in 2021 SCC OnLine SC 1046 and in case of Parvat Chandra Mohanty vs. State of Odisha and Another reported in (2021) 3 SCC 529.

6.4. Further, so far as argument canvassed by the learned Senior Advocate is concerned as he has submitted that the stick is not a deadly weapon but in light of the decision of the Hon'ble Apex Court in case of Parvat Chandra Mohanty(supra), it appears that there is no merit in the contention that use of the wooden stick or a lathi, which are not likely caused death. Hence, considering the injury on the vital part of the body in the dying declaration, three witnesses have supported the case of the prosecution and about the presence of the present applicant. It appears that applicant is named in the FIR, therefore, custodial interrogation is required.

6.5. It appears that applicant has made an assault on the head and the said vital part is chosen for the assault. Considering the aforesaid fact, the applicant allegedly assaulted the victim on the head--a vital part of the body--indicating potential mens rea. While assessing bail applications, courts typically avoid detailed evaluations of evidence; however, considering the nature of the NEUTRAL CITATION R/CR.MA/5460/2025 ORDER DATED: 17/03/2025 undefined assault and the circumstances, the applicant's intent is a pertinent factor to be examined during the trial.

Therefore, any observations regarding mens rea at this stage are preliminary and solely for addressing the contentions raised by the learned Senior Advocate.

6.6. So far as element of alibi is concerned, the applicant himself has admitted that on the first part, he was absent at the Delux Pan Parlour, but injured was absent. This is not a case, where the injured victim witness has sustained injury at the Delux Pan Parlour. After completion of the first part of the alleged incident, the accused persons have chased the complainant and witnesses and they went to the Saibaba Flat and presence of the injured witness was there. At that time, he sustained injury. In second part assault being made and the accused persons on their own went there and chasing the complainant and victim, which clearly reveals their intentions. Hence, considering the aforesaid fact, prima facie, involvement is there. This is not a case whereas frivolity of prosecution has found that with the ulterior motive, the present applicant is roped in the offence. Hence, no case is made out to entertain the present application.

7. The criteria to grant anticipatory bail and regular bail has been laid down by the Apex Court in various decisions. While criminal administration of justice disturbed, arrest is a part of investigation. After the arrest of the accused when substantial part of the investigation including remand gets over, then the NEUTRAL CITATION R/CR.MA/5460/2025 ORDER DATED: 17/03/2025 undefined Court has to exercise jurisdiction considering the evidence collected during investigation. It is needless to say that Section 438 of the Code/482 of the BNSS is pre-arrest bail as there is a part of investigation and importance of the arrest is time and again discussed by the Hon'ble Apex Court. When the involvement of the accused is prima facie revealed and if allegation is not levelled that to defame him/them or to tarnish his/their image, the Court has to exercise jurisdiction, but to seek anticipatory bail is not an extraordinary jurisdiction and absolute right of the accused.

8. In this background facts, this Court prima facie is of considered view that, there is a reasonable ground to believe that the applicant has committed the alleged offence. Considering the facts of the present case, it cannot be said that the applicant herein has been falsely implicated in the alleged offence. If the anticipatory bail as sought for is granted, then it will affect the investigation of the case. Therefore, custodial interrogation of the applicant is required.

9. In the case of Siddharam Satlingappa Mhetre vs State Of Maharashtra, reported in (2011) 1 SCC 694, the Hon'ble Court held that life and personal liberty are the most prized possessions of an individual but not at the cost of larger interest of society and public. This is not a case, wherein accused is falsely enraged in the offence with a view to tarnish his image. Considering the fact that the custodial interrogation is required.

R/CR.MA/5460/2025

The Hon'ble Apex Court in the case of Jai Prakash Singh Vs State of Bihar & Anr. reported in 2012 4 SCC 379, has been pleased to hold as under:-

"Parameters for grant of anticipatory bail in a serious offences are required to be satisfied and further while granting such relief, the court must record the reasons therefore. Anticipatory bail can be granted only in exceptional circumstances where the Court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty."

10. It would be apposite to refer the decision of the Apex Court rendered in case of State of M.P. and another v. Ram Kishna Balothia and another reported in AIR 1995 SC 1198.

11. It would be apposite to refer the judgment of the Hon'ble Apex Court rendered in case of Pratibha Manchanda vs. State of Haryana reported in AIR 2023 SC 3307, wherein the Hon'ble Apex Court has observed thus:-

"19. The relief of Anticipatory Bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome."

12. In view of the above decision and in view of the facts and circumstances of this case, custodial interrogation of not only the applicant, but also all other suspect/s is therefore imperative to unearth the truth. Hence, this is a not a fit case to exercise the jurisdiction in favour of the applicant.

R/CR.MA/5460/2025

ORDER

13. If the present applicant is/are protected with this order, this Court is of the considered view that if the present accused is equipped with protective order, it would obviously affect the case of the prosecution and adversely the qualitative investigation. This is not a fit case, wherein accused is falsely enraged in the offence and it appears that there is no frivolity, with a view to tarnish his image. Considering the fact that the custodial interrogation is required.

14. For the foregoing reasons and considering the law laid down in the above cited decisions of this Court as well as the Hon'ble Apex Court, this Court is of view that it is not a fit case to exercise the discretion under Section 438 of the Code/482 of BNSS in favour of the applicant. Accordingly, present application does not deserve any consideration and is hereby dismissed. Rule is discharged.

15. It is made clear that the observations made in the present order are tentative in nature.

(HASMUKH D. SUTHAR,J) KUMAR ALOK