

Divyaben @ Kavyaben Manilal Chandora vs State Of Gujarat on 8 January, 2025

R/CR.MA/24264/2024

ORDER DA

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO.
24264 of 2024

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DIVYABEN @ KAVYABEN MANILAL CHANDORA

Versus

STATE OF GUJARAT

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Appearance:

JUCKY LUCKY CHAN(8033) for the Applicant(s) No. 1

MR DHAWAN JAISWAL, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 08/01/2025

ORAL ORDER

1. By way of present application under Section 482 of the Bharatiya Nyaya Suraksha Sanhita, 2023 (for short "BNSS"), the applicant - accused No.2 has prayed to grant her anticipatory bail in the event of her arrest in connection with the FIR being C.R. No.1118608241848 of 2024 registered with Una Police Station, Gir-Somnath, for the offences punishable under Sections 119(1), 351(2), 77 and 54 of BNS and Sections 66(e) and 67(a) of Information Technology Act.

2. The case of the prosecution is that, accused Nos. 1 and 2, with an intent to extort money from the complainant, visited her hospital and talked about her off-scene video demanding money. They further threatened that if she did not fulfill with their demand, the video would be made viral on social media. In response, the complainant informed them that she would file a complaint with Cyber Crime police. This provoked accused No.2, who slapped the complainant and caused her injuries. Additionally, with the intent to defame and tarnish the complainant's reputation, the accused later on viral the private video by labeling her as a "popular doctor of Gir-Somnath District" on YouTube.

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Based on these events, the FIR was filed, alleging the commission of the offenses as mentioned in FIR.

3. Learned counsel appearing for the applicant submits that the applicant has nothing to do with the alleged offence and has falsely been implicated in the offence. There is delay of 25 days in registration of FIR; merely the applicant being wife of the accused No.1 who happens to be a press reporter in Gujarat National TV and just to take revenge with the husband of the applicant, she has been arraigned as an accused; that earlier when the complainant has given written complaint before Cyber Crime Police Station, the applicant was called by police and recorded her statement, but in the written complaint, she has not even alleged that the applicant has ever been beaten the complainant and not even asked for extortion of money. He has further submitted that, on the contrary, when the news of the said video got viral on new channel and being a reporter of the news channel, accused No.1 went to the hospital of the complainant but the complainant got angry and asked to file a complaint and accordingly, impugned FIR has been filed. Further, considering the fact that the applicant is lady accused and nature of the offence, she may be granted anticipatory bail by imposing suitable conditions.

4. Learned counsel for the applicant further submits that whatever allegation made against the applicant is that, she being wife of accused No1, went to the hospital along with her husband, except this, no role is attributed to the present applicant. He further submitted that the nature of allegations are such for which custodial interrogation at this stage is not necessary.

5. Learned APP appearing for the respondent-State has opposed the present application and contended that the applicant and her husband, with an intent to extort money, went to the complainant's hospital, intimidated about her off-scene video, and demanded money. The accused NEUTRAL CITATION R/CR.MA/24264/2024 ORDER DATED: 08/01/2025 undefined further threatened that, if she did not comply, her private video would be made viral on social media. Subsequently, the accused returned and called the complainant, but the complainant did not pick up

their calls. On the next day, the accused again visited the hospital and offered for settlement, provided the complainant did not file a complaint with Cyber Crime. Meanwhile, the applicant became angry, slapped the complainant and video was subsequently made viral with the title "well-known doctor of Gir-Somnath District". He has argued that the accused have committed the offenses as mentioned in the FIR. He further submitted that the investigation is still ongoing, and if the applicant is granted anticipatory bail, there is a likelihood of evidence being tampered with and witnesses being influenced. Therefore, he contended that this is not a case where anticipatory bail should be granted.

6. Learned APP further contended that, the applicant has played active participation, slapped the complainant and threatened the complainant to viral her video and thus, the applicant is the main culprit and has actively participated in the offence. He has further submitted that two offences have already been registered against the applicant and eight offences have been registered against her husband. Considering the same, present application may not be considered. He further submitted that, notice was issued under Section 35 of BNSS to the applicant, but she has not joined investigation.

7. The allegation against the applicant is that she along with her husband (accused No.1), who is a journalist by profession, approached the complainant with an intent to extort money. They allegedly demanded money by threatening to expose an alleged off-scene video of the complainant. When the complainant responded that she would file a complaint with the Cyber Crime police, they left the hospital and called the complainant, but the complainant did not pick up their call. Then, the NEUTRAL CITATION R/CR.MA/24264/2024 ORDER DATED: 08/01/2025 undefined accused approached the complainant again and offered for settlement if money would be paid and if she will refuse, her video would be made viral on social media. In response, the complainant stated that she would file a complaint with Cyber Crime. This provoked accused No. 2, who then slapped the complainant, causing her injuries. Subsequently, a video was published on social media, defaming the complainant's reputation.

8. Having heard the learned counsel for the respective parties and perusing the material placed on record, it appears that the complainant is a doctor by profession and runs a hospital in Una Taluka. Accused No.1 is a press reporter, and the applicant is his wife. The record indicates that the applicant has two previous criminal antecedents, while her husband (accused No. 1) has eight antecedents. Being involved in journalism, the applicant and her husband allegedly put the complainant under fear and demanded money, thereby attempting to extort money. The applicant is facing charges of abetment and voyeurism. The complainant is a respected lady doctor in Una Taluka, and the applicant and her husband are accused of circulating off-scene video on social media and in print media. The said content and video material need to be recovered, and custodial interrogation is therefore required for this purpose. Considering the active participation and involvement of the applicant, it cannot be said that the complaint was filed with an intent to humiliate or tarnish the applicant's image.

9. The offence is punishable with imprisonment for up to 7 years. However, considering the provisions of the Information Technology Act, the off-scene material in question violates the privacy

of a well-known lady doctor and her husband, damaging their reputation and professional status. This material was not only captured, but was intentionally captured, published, and transmitted. If this material is not recovered, there is a possibility that the offence may be repeated, continuing the NEUTRAL CITATION R/CR.MA/24264/2024 ORDER DATED: 08/01/2025 undefined breach of doctor's privacy. A prior complaint was filed with the Cyber Crime Police, but it was anonymous, and to protect her reputation, the complainant did not reveal her identity. Subsequently, following the guidance from Cyber Crime Police, the complainant approached the local police station, resulting in the filing of the impugned FIR. Therefore, there was no delay in the registration of the FIR.

10. In the aforesaid background and considering the grievance raised by learned APP, the off-scene material must be recovered to protect both the complainant's interests and societal interests. As the applicant has not joined investigation, learned APP has raised voice that the application be dismissed on the ground that the applicant has not complied with the notice issued under Section 35 of BNSS.

11. Per contra, learned counsel for the applicant has submitted that, no notice is received and the applicant has already joined investigation and recorded her statement before Cyber Cell. But it is pertinent to note that, considering the submissions made by learned APP and going through the record, it appears that, Cyber Cell has transferred complaint to local police station and they have not investigated the offence. In view of the same, after service of notice of concerned police station qua the complaint, the applicant did not remain present and not joined investigation. Hence, arguments canvassed by Mr.Chan to the effect that the applicant has joined investigation is not acceptable. It is needless to say that once notice under Section 35 of BNSS has been issued, a person fails to comply with the same, then under Section 35(6), investigating officer is entitled to make arrest of a person. Even learned APP on instructions has submitted that, in connection with the earlier complaint made by the complainant, no statement either of the applicant or any accused has been recorded. In view of the same, the applicant is not entitled to seek anticipatory bail.

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12. 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 enroped in the offence with a view to tarnish his image. Considering the aforesaid fact, custodial interrogation is required.

13. Herein, I have gone through the material available against the accused very carefully, from which, it reveals that no complaint has been made with view to humiliating or tarnish the image of the present applicant. This Court has also relied on the law laid down by the Hon'ble Apex Court in Jai Prakash Singh V/s State of Bihar and another, reported in (2012) 4 SCC 379, and Pratibha Manchanda vs The State of Haryana, reported in AIR 2023 SC 3307.

14. The object of anticipatory bail is that person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. In present case, no any such sort of allegation or bias is found out it is needless to say that order under Section 482 of BNSS is not a passport to the commission of trial nor a shield against any serious accusation, which adversely affects the society.

15. This Court is of the considered view that if the present accused is equipped with protective order, it would obviously adversely affect the case of the prosecution and the qualitative investigation as the applicant is absconding, having trained legal mind and she will tamper with evidence and witnesses of prosecution.

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16. In the above facts and circumstances and considering the observations on the legal aspect of the matter, this Court has absolutely no doubt that if applicant is equipped with such an order before she is interrogated by the Police, it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Having considered nature

and seriousness of the charge, prima facie involvement of accused and possibility of tempering with evidences, it does not appear to be just and proper to exercise the discretion in favour of the applicant and accordingly, this application for anticipatory bail is dismissed. However, it is needless to say that, the observations made in this order are tentative in nature.

17. However, considering that the applicant is a lady and the gravity of the offence, if the applicant is willing to join the investigation, the investigating officer is directed to scrupulously follow the provisions of Section 35 of the BNSS, as well as the law laid down by the Hon'ble Supreme Court in the cases of Arnesh Kumar v. State of Bihar, reported in (2014) 8 SCC 273; Satender Kumar Antil v. Central Bureau of Investigation & Anr., reported in (2022) 10 SCC 51; and Md. Asfak Alam v. State of Jharkhand and Anr., reported in 2023 SCC OnLine SC

892. If the investigating officer makes out a case for arrest, the concerned Magistrate must consider the case on merit before authorizing the detention of the applicant.

(HASMUKH D. SUTHAR,J) SUCHIT