IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (REGULAR BAIL - AFTER CHARGESHEET) NO. 168 of 2026

==========

GITABEN D/O PATABHAI MANDALBHAI W/O SURESH KHENGAR AHIR
Versus
STATE OF GUJARAT & ANR.

==========

Appearance:
MR N P PANDYA(11241) for the Appellant(s) No. 1
MR. NAVIN R RABARI(19044) for the Appellant(s) No. 1
HCLS COMMITTEE(4998) for the Opponent(s)/Respondent(s) No. 2
MR YOGIN A BHAMBHANI(6444) for the Opponent(s)/Respondent(s) No. 2
MS VRUNDA SHAH, APP for the Opponent(s)/Respondent(s) No. 1

==========

CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Date : 13/10/2026
ORDER

When the matter is called out for hearing, learned advocate appearing for respondent No.2 has produced written submission. The same is taken on record.

1. **Admit**. Learned APP waives service of rule for the respondent-State.

2. Being aggrieved and dissatisfied with the order dated 06.01.2026 passed by the learned 2nd Additional Sessions Judge, Patan at Radhanpur, in Criminal Appeal No. 390 of 2025, rejecting the application filed under Section 483 of the Cr.P.C. for regular bail, the appellant has filed the present appeal under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, “Atrocities Act”), read with Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, “BNSS”), praying to release the

applicant on regular bail in connection with the offence being **C.R. No. 11217032250218 of 2025 registered with Santalpur Police Station, Patan**, for the offences punishable under Sections 103(1), 62(2), and 238(a) of the Bharatiya Nyaya Sanhita, 2023, and Section 3(2)(v) of the Prevention of Atrocities Act.

3. Learned advocate appearing on behalf of the applicant submits that the applicant is innocent and has been falsely implicated in the offence. Learned advocate for the applicant submits that the present applicant is a lady accused who was arrested on 28th May 2025. There is no independent material or evidence collected to implicate the present applicant in the alleged offence. The applicant has a 2-year-old child and has the responsibility of maintaining herself and her child. The conclusion and commencement of the trial will take its own time. There is no flight risk, the charge-sheet has been filed, and nothing is required to be recovered or discovered from the present applicant. He, therefore, submits that, considering the nature of the offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

4. Learned APP appearing for the respondent-State as well as learned advocate for the complainant have opposed the present appeal and requested that the same be dismissed on the ground that the present applicant is the main conspirator and the kingpin. It is submitted that she had planned to eliminate the deceased and, pursuant to the said conspiracy, the plan came to be executed; the deceased was strangled and thereafter his body

was burnt. She concealed the identity of the deceased under the pretext that the present applicant herself had died, as she was having an affair with accused No. 1 with an intention to elope somewhere. Inspired by watching the films *Drishyam* Part 1 and 2, the present applicant floated the plan, which was executed by accused No. 1. Thereafter, they tried to destroy the dead body, shifted it on a motorcycle, and sprinkled petrol over it. Her dress and anklets were found. On the fateful day, she was missing at midnight and, along with the co-accused, she was arrested from Jaipur, as both the accused were planning to flee. It is further submitted that the applicant is very much involved in the present offence and, considering the gravity of the offence, no case is made out for entertaining the present bail appeal. Therefore, the present appeal does not deserve consideration.

5. At the outset, it is worth to mention that the learned Sessions Judge has not assigned any reasons for rejection of the bail application. The learned Sessions Judge, in a common finding contained in a two-line sentence, has merely observed that, considering the seriousness of the offence and the allegations levelled against the applicant, the same are very serious in nature. Considering the FIR as well as the case papers, without entering into any further discussion, the learned Sessions Judge refused to exercise discretion in favour of the applicant. Such a cryptic order, without assigning or discussing the role attributed to the applicant, is not acceptable.

6. In view of the decisions in **Brijmani Devi v. Pappu Kumar, (2022) 4 SCC 497**, wherein it has been held that a non-speaking

order is in violation of the principles of natural justice, and **Manoj Kumar v. State of Rajasthan, (2022) 3 SCC 501**, wherein it has been held that while deciding a bail application, the Court is required to assign reasons, the impugned order, being a non-speaking order, is not sustainable in law. However, as the appeal has been preferred under Section 14A of the Atrocities Act, this Court, being an appellate Court, is duty-bound to independently examine the material on record rather than mechanically affirming the order passed by the learned Sessions Judge. Accordingly, this Court has independently considered the material collected during the course of investigation and the role attributed to the present applicant for deciding the present appeal. In this regard, this Court deems it appropriate to refer to the judgment of the Hon'ble Apex Court in the case of **Dr. Anand Rai v. State of Madhya Pradesh**, reported in **2026 INSC 141,**

7. 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. I have heard the learned advocates appearing on behalf of the respective parties and perused the investigation papers. Following aspects have been considered:

(1) Investigation is over and the charge-sheet has been filed;

(2) The applicant is lady having two years old child and behind bars since 28.05.2025;

(3) There is nothing to be recovered or discovered from the applicant;

(4) Perusing the record, it appears that initially, the complaint was registered against unknown persons. The police informed the complainant about a dead body found in a burnt condition. Based on the said photograph, the complainant, along with his nephew, went to Dharpur Civil Hospital and identified the dead body as that of the brother of the complainant, and in this regard, the offence was registered on 28th May 2025. On 29th May 2025, a report was filed for adding Sections 62(2) and 238(a) of the BNS, read with Section 3(2)(v) of the Prevention of Atrocities Act. After investigation, the charge-sheet was filed on 30th July 2025.

(5) Further, as per the case of the prosecution, the allegation against the present applicant is that she was having an affair with accused No. 1, though she was married. As the present applicant wanted to elope and live happily with accused No. 1, she floated a plan based on the movie *Drishyam* and informed accused No. 1 that if he was able to find any dead body, they could dress such body as the applicant, pretend that the applicant was no more, and both could elope. Considering the dress of the present applicant, her family members and relatives believed that the applicant was no more and that she had died. Based on the aforesaid plan, accused No. 1, who was in search of a dead body, visited different villages but was unable to find any. One day, while going near village Vauva, the deceased was walking on the road. Accused No. 1 was on a motorcycle and gave a lift to the deceased under the pretext of dropping him at his field. Thereafter, it is alleged that accused No. 1 strangled the deceased and kept his dead body in a nearby field. Thereafter, he informed the present applicant (accused No. 2) about the plan. Pursuant to the said plan, as the deceased had been strangled, the present applicant went along with accused No. 1, shifted the dead body near her home, dressed the dead body in her saree and anklets, sprinkled petrol over it, and burnt the dead body. Thereafter, both fled to Palanpur and, after obtaining tickets, were planning to flee to Jodhpur, Rajasthan. In the aforesaid background, while a dead body in a burnt condition, wearing a saree and anklets, was

identified as that of the present applicant (Gitaben) by her husband and relatives, they were made to believe that Gitaben had died. However, while they were preparing for the cremation (last rites), at the time of taking the bath of the dead body, it was found that the dead body was of a male and not of Gitaben. The body was left as it was at the spot, the police were informed, and the police initially registered an accidental death entry and thereafter registered the offence.

(6) If we peruse the allegations as they stand as it is, the present applicant is attributed the role of a conspirator and of attempting to dispose of the evidence and the dead body under Section 238(a) of the BNS.

(7) So far as the conspiracy part is concerned, there was no specific conspiracy to cause the death of the deceased, as she had only floated a plan to make her relatives and husband made believe that Gitaben had died. There is no actual participation on the part of the present applicant in the commission of the principal offence, i.e. murder causing the death of the deceased, either in tracing out the deceased or in strangling him. Whatever role is attributed regarding the causing murder of the deceased attributed to accused No. 1. The present applicant is not, in any manner, connected causing murder.

(8) If we peruse the material collected during the investigation, it clearly reveals that, based on the confessional statement and demonstration panchnama, the

present applicant has been arraigned as an accused. Statements of witnesses have been recorded, but nowhere is it stated that the present applicant was last seen in the company of the deceased.

(9) Another role attributed to the present applicant is that she was in touch with accused No. 1, but it is an undisputed and admitted fact that both were having an affair.

(10) Another allegation against the present applicant concerns the purchase of petrol. One witness, a pan shop owner, stated that the present applicant purchased petrol worth Rs.100/- from his shop, but that was two days prior, i.e. on 25th May 2025. Except for purchasing petrol from the shop, no other main role is attributed to the present applicant. Even if the allegations are accepted as they stand, the role of the present applicant is limited to destroying the evidence and being a part of the conspiracy; however, the conspiracy was not to cause the death of the deceased, nor was there any actual participation on her part in the principal offence. Considering the limited role attributed to the present applicant, and given that the applicant was arrested on 28th May 2025 and the trial is proceeding at a snail's pace, the present appeal deserves to be allowed.

(11) The prosecution has failed to point out any circumstances warranting the continued or prolonged

incarceration of the present applicant.

(12) Obviously, the commencement and conclusion of the trial will take its own time.

9. 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 appeal deserves consideration.

10. 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 appeal is **allowed**. The order dated 06.01.2026 passed by the learned 2nd Additional Sessions Judge, Patan at Radhanpur, in Criminal Appeal No. 390 of 2025 is quashed and set aside and the applicant is ordered to be released on regular bail in connection with **C.R. No. 11217032250218 of 2025 registered with Santalpur Police Station, Patan** 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.

11. 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.

12. 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.

13. 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. Direct service is permitted.

(HASMUKH D. SUTHAR,J)

Ali

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: ISTAYAK ALI(HC01093), PRIVATE SECRETARY, at High Court of Gujarat on 13/10/2026 18:13:33