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2026:GUJHC:65935

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 15150 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MRS. JUSTICE M. K. THAKKER

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Approved for Reporting	Yes	No
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NARESHJI RAMESHJI HARIJI THAKOR (MORERSIYA)
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR. HARSHAL S. PATEL(14220) for the Applicant(s) No. 1
MR.DIPEN F CHAUDHARI(6740) for the Applicant(s) No. 1
MS. DIVYANGNA JHALA, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MRS. JUSTICE M. K. THAKKER**

Date : 16/10/2026

JUDGMENT

1. Rule returnable forthwith. Learned APP Ms. Divyangna Jhala waives service of notice of Rule on behalf of respondent-State.

2. The present petition has been filed seeking the following reliefs:—

> *"(A) Your Lordships may be pleased to admit and allow this Application;*

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(B) Your Lordships may be pleased to exercise the discretion under section 528 of Bharatiya Nagrik Suraksha Sanhita, 2023 and further be pleased to quash and set aside the passed by Ld. Special POCSO Judge and 4th Add. Sessions Judge, Deesa below exh- 1 in Special POCSO Case No. 44/2025 and release the applicant on bail in the interest of justice;

(C) Pending admission and final disposal of this application, be pleased to stay the implementation and operation of order passed by Ld. Special POCSO Judge and 4th Add. Sessions Judge, Deesa below exh- 1 in Special POCSO Case No. 44/2025 in the interest of justice.;

(D) Your Lordships may be pleased to dispense with the affidavit of the applicant as he is in jail.

(E) Such other and further relief that is just fit and expedient in the facts and circumstances of the case may be granted in the interest of justice."

3. At the outset, it is required to be noted that, though respondent No. 2, being the original complainant, has been joined as a party respondent in the present petition, it appears from the impugned order that a settlement has been arrived at with the complainant. In view of the said position, instead of issuing notice to the complainant, this Court has deemed it appropriate to take up and finally decide the present matter.

4. Heard learned Advocate Mr. H. S. Patel appearing for

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the petitioner and learned APP Ms. Divyangna Jhala appearing for the respondent-State.

5. Learned Advocate Mr. Patel for the petitioner submitted that the petitioner is an accused in an FIR registered with Thara Police Station, District Banaskantha, being First C.R. No. 11195051250381/2025, wherein the allegation against the petitioner is that he had abducted the victim, who was aged 16 years and 1 month at the relevant point of time. Upon completion of the investigation, charge-sheet came to be filed for the offences punishable under Section 363 of the Indian Penal Code and Sections 64(2)(I), 64(2)(M) and 87 of the Bharatiya Nyaya Sanhita, 2023, as well as Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO). Upon filing of the charge-sheet, the case came to be committed to the learned POCSO Court and was registered as Special POCSO Case No. 44 of 2025. It is submitted that the victim was examined below Exh. 23 on 21.09.2026. During her examination-in-chief, she supported the case of the prosecution; however, during cross-examination, she resiled from the version stated by

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her in her examination-in-chief. It is further submitted that, thereafter, the learned Special POCSO Court passed an order cancelling the bail granted to the petitioner, on the ground that the petitioner had committed a breach of the conditions imposed while granting bail and had influenced the witnesses and contacted the victim. In view thereof, the petitioner was taken into custody by the learned Special POCSO Court on the very same day, i.e. on 21.09.2026, and the said order is under challenge in the present petition. Learned Advocate for the petitioner submitted that the petitioner was not present at the relevant point of time when the learned Advocate for the petitioner, the victim and her learned Advocate were conversing with each other. It is submitted that the petitioner was on bail and had not committed any breach of the conditions imposed upon him. It is further submitted that the learned Court ought to have taken into consideration the fact that the petitioner was not present at the relevant time and had neither induced nor threatened the victim. It is submitted that, without affording any opportunity to the petitioner to explain the allegations levelled against him,

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the learned Court, in a summary manner, proceeded to cancel the bail granted to the petitioner and directed that he be taken into custody. It is further submitted that the petitioner has remained in custody for approximately one month.

6. Learned APP Ms. Jhala submitted that appropriate orders may be passed.

7. Having considered the submissions advanced by the learned Advocates appearing for the respective parties and having perused the reasons recorded in the impugned order passed below Exh. 1, it emerges from the record that, on the date fixed for recording of the evidence of the victim, the victim, along with her parents, was present before the learned Court. It is recorded by the learned Court that the victim was instructed to proceed to the special room earmarked for recording her evidence; however, she did not come to the said room. It is further recorded that the learned Judge personally went to the place where the victim was present. At that point of time, the learned Judge noticed that the learned Advocates appearing for the victim and

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the accused were conversing with each other and, according to the learned Judge, the conversation pertained to a settlement. It is further recorded that the learned Judge personally instructed the victim to come to the courtroom for recording of her evidence. During her cross-examination, the victim did not support the version stated by her in her examination-in-chief. It further emerges from the record that, thereafter, the learned Court asked the victim as to whether any settlement had been arrived at, to which the victim answered in the affirmative and stated that the settlement had been arrived at outside the special room earmarked for recording the evidence of the victim.

7.1. Taking into consideration the aforesaid circumstances, the learned Court proceeded to cancel the bail granted to the present petitioner, observing that the petitioner had committed a breach of the conditions imposed in the bail order, more particularly Conditions Nos. 3 and 4, whereby the petitioner was directed not to influence the witnesses and not to contact the victim. The learned Court has relied upon the CCTV footage and, on the basis thereof, concluded that the bail

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granted to the petitioner was required to be cancelled. It has further been observed in the impugned order that, if the parties intended to arrive at a settlement, they could have approached the house of the victim; however, instead, they went outside the special room where the victim was present. The learned Court has, therefore, observed that such conduct amounted to a mockery of the Court proceedings. It has further been observed by the learned Court that, if a settlement had in fact been arrived at, the parties could have approached the High Court for quashing of the proceedings. Instead, according to the learned Court, they attempted to communicate with the victim outside the special room and, on that ground also, the bail was liable to be cancelled.

7.2. From the observations made by the learned Court, it appears that the bail granted to the petitioner has been cancelled without following the requisite procedure and without affording an adequate opportunity to the petitioner to explain the allegations levelled against him. The power to cancel bail is required to be exercised with due care, caution and circumspection and only in

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appropriate cases. Such power cannot be exercised in a routine or mechanical manner. The cancellation of bail has serious consequences, as it directly affects the personal liberty of an individual who has been granted bail pursuant to a judicial order passed after considering the relevant circumstances. The rule of law and the principles of natural justice require that judicial discretion be exercised in accordance with the established legal framework and due process of law and not in an arbitrary or capricious manner. Cancellation of bail is a serious and coercive measure. Once an accused has been enlarged on bail pursuant to a reasoned judicial order, such liberty cannot be withdrawn merely on the basis of conjectures or circumstances which do not, by themselves, establish a deliberate breach of the conditions of bail. The power of cancellation of bail, therefore, ought to be exercised only upon the existence of cogent and sufficient grounds warranting such an order.

8. In the present case, before cancelling the bail granted to the petitioner, neither was the petitioner afforded an opportunity of being heard nor does it appear that the

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requisite procedure was followed. It has been submitted by the learned Advocate for the petitioner that, at the relevant point of time, when the learned Advocate appearing for the petitioner and the learned Advocate appearing for the prosecutrix were conversing with each other in the presence of the prosecutrix, the petitioner himself was not present. It is also not the case of the prosecutrix or the complainant that the petitioner had committed any breach of the conditions of bail, had attempted to influence any witness, or had himself contacted or attempted to communicate with the victim. There is also no application placed on record by the State or by the prosecutrix, through her learned Advocate, alleging any such breach on the part of the petitioner. In such circumstances, passing a harsh order of cancellation of bail merely on the basis of an inference that the accused had committed a breach of the conditions imposed upon him, without affording him an opportunity to explain the circumstances, cannot be sustained in law.

8.1. It is also pertinent to note that, while passing the impugned order, the learned Judge has recorded that the

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learned Judge personally went to the place where the victim was present and instructed her to come to the courtroom for recording of her evidence. In the considered opinion of this Court, such a course of action ought to have been avoided. Judicial propriety requires that the Court maintain the necessary degree of detachment and neutrality, particularly in proceedings involving the examination of a victim. Any direct intervention beyond what is judicially necessary may give rise to an apprehension regarding the manner in which the proceedings are being conducted and, therefore, ought to be avoided. In the opinion of this Court, the strength of the judiciary lies in discipline and adherence to the established procedure of law. However, without entering into any further discussion on the issue, it is expected that the learned Court shall exercise due care and caution and shall refrain from passing such orders without following the procedure prescribed by law.

9. In view of the aforesaid discussion and in the facts and circumstances of the present case, the impugned order passed below Exh. 1 in Special POCSO Case No. 44/2025

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passed by the learned Special POCSO Judge and 4th Additional Sessions Judge, Deesa is hereby quashed and set aside.

10. The petitioner is directed to be released on bail, if his custody is not required in connection with any other case or for any other lawful purpose.

10.1. It is expected that the learned Court shall exercise due care and caution while passing orders concerning cancellation of bail and shall ensure compliance with the requisite procedure and principles governing the exercise of such jurisdiction.

10.2. Registry is directed to communicate this order to the concerned Jail Authority by way of fax/E-mail forthwith.

10.3. Rule is made absolute.

(M. K. THAKKER,J)

NIVYA A. NAIR

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