

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 3717 of 2025**

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PARMAR GOVINDBHAI SONAJI & ANR.**Versus****STATE OF GUJARAT & ANR.**

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Appearance:

MR PRASHANT V CHAVDA(8510) for the Applicant(s) No. 1,2

MR AJAYKUMAR M MAKWANA(13184) for the Respondent(s) No. 2

MR MILIND D PRAVASI(13183) for the Respondent(s) No. 2

MR PIYUSH C JADUGAR(3178) for the Respondent(s) No. 2

MR KAMAL VAGHELA(15518) for the Respondent(s) No. 2

MR ROHAN SHAH, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**Date : 28/07/2025****ORAL ORDER**

[1.0] **RULE.** Learned APP waives service of notice of rule on behalf of the respondent No.1 – State and learned advocate Mr. Piyush C. Jadugar waives service of notice of Rule for and on behalf of respondent No.2.

[2.0] By way of present petition under Articles 226 and 227 of the Constitution of India read with Section 528 of the BNSS, the petitioners have prayed to quash and set aside the FIR being **CR No.11195019250053 of 2025 registered with Deesa Rural Police Station, District Banaskantha** for the offences punishable under Sections 108, 351(3) and 54 of the Bharatiya Nyaya Sanhita, 2023 (for short “BNS”) and all the consequential proceedings arising therefrom.

[3.0] The case in brief of the prosecution is that niece of petitioner No.1 and cousin sister of petitioner No.2 namely Akanksha was in relationship with the deceased Aakash and out of the said

relationship, they both eloped from their respective homes on 11.01.2025 and thereafter the deceased took the niece of the petitioner No.1 to Bhopal, Madhya Pradesh where they solemnized their marriage on 16.01.2025 and marriage was officially registered on 17.01.2025. The father of girl filed a missing report at Deesa Rural Police Station and during the investigation of said missing complaint, deceased and girl Akanksha were found from Narol, Ahmedabad on 20.01.2025. Even, the father of deceased had published a public notice in newspaper on 13.01.2025 that he had severed all ties with the deceased due to his actions. Thereafter, the couple being found, were taken to Deesa Rural Police Station where parents and relatives of deceased as well as the girl were present and upon persuasion by the elders, Akanksha and deceased mutually executed divorce which was notarized on 20.01.2025. On 21.01.2025, at around 12 to 12.30 p.m., the deceased consumed acid and thereafter he was taken for primary treatment to Palanpur Civil Hospital and for further treatment, he was referred to the private hospital and subsequently he succumbed to death on 22.01.2025. As initially the complaint was registered for the offence under Sections 351(3) and 54 of the BNS, no 23.01.2025, in connection of the aforesaid offence, subsequently a report came to be filed before the learned JMFC for addition of section 108 of the BNS against the petitioners and thus, the petitioners are facing charge for the offence under Sections 108, 351(3) and 54 of the BNS.

[4.0] Learned advocate for the petitioners submits that the petitioners have nothing to do with the offence and they are falsely implicated in it. Initially the complaint was filed for the offence punishable under Sections 351(3) and 54 of the BNS. The deceased has given statement before the police on 20.01.2025 wherein he has

stated that he has voluntarily given the divorce to Akanksha i.e. niece of the petitioner No.1 as both were near relatives and marriage life between them was not possible. Notarized divorce deed was also executed. Only because present petitioners are relatives of the girl Akanksha, they are falsely enroped in the offence. The deceased himself has given a statement that he has consumed acid on his own as he no longer wish to live and due to frustration with his life, he has consumed acid and committed the suicide. The petitioners have not compelled the deceased to commit suicide or have not administered any threat or even have not forced him to take divorce from Akanksha. Further, the petitioners have been granted anticipatory bail by this Court and therefore also, he has requested to quash and set aside the impugned FIR as well as the further proceedings thereto. Further, there is no evidence to show that present petitioners were engaged in abetment of suicide or instigation or criminal conspiracy.

[5.0] The learned APP as well as learned advocate for the respondent No.2 – original complainant have strongly opposed the present petition asserting that the petitioners are involved in the offence. It is submitted that the petitioners are named in the FIR. Initially the complaint was registered for the offence under Sections 351(3) and 54 of the BNS. The complaint is filed by the mother of the deceased wherein it is clearly stated that as her son entered into relationship with niece of petitioner No.1, present petitioners forced the deceased to take divorce from Akanksha and the petitioners have abetted the offence. Further, due to constant threat and pressure, the deceased has consumed acid and ended his life. Sufficient evidence and material is collected against the present petitioners. The dying declaration is recorded and deceased himself has stated before the Executive

Magistrate about the involvement of the present petitioners as they used to force the deceased to take divorce from Akanksha and prior to recording of said statement before the Executive Magistrate on 20.01.2025, alleged statement of deceased is recorded by the police. Learned advocate for respondent No.2 has submitted that due to threat and pressure, father of deceased issued a public notice in the newspaper on 13.01.2025 stating therein that his deceased son eloped with Akanksha and there was constant harassment on the part of the present petitioners though they have nothing to do with the affair between the deceased and niece of petitioner No.1 though present petitioners have played active role in the commission of offence. Hence, it is requested to dismiss the present petition.

[6.0] Having heard the learned advocates for the respective parties and perusing the allegations, it appears that present petitioner No.1 is uncle and petitioner No.2 is cousin of girl Akanksha, who was having an affair with the deceased and they got their marriage solemnized on 17.01.2025 and thereafter, during the investigation of one missing complaint, they were traced out and present petitioners have forced the deceased to take divorce from Akanksha and under the threat, deceased was compelled to take the divorce and due to constant harassment and administration of threat on the part of the present petitioners, deceased was compelled to consume acid and in this regard, he has made a statement in form of dying declaration before the Executive Magistrate. Perusing the said dying declaration, *prima facie*, it appears that the present petitioners have played active role and instigated the deceased due to which deceased was left with no option but to commit suicide. Initially the complaint was registered *qua* administration of threat causing injury but subsequently section

108 of the BNS came to be invoked and hence, there is a proximate cause between alleged incident and due to forcible divorce on 20.01.2025 with niece and cousin of petitioners and on the very next day i.e. on 21.01.2025, the deceased consumed acid. Further, sufficient material and evidence is collected which shows instigation on the part of the present petitioners.

[6.1] Learned advocate for the petitioners has relied on the alleged statement recorded by the police on 20.01.2025 on the same day of divorce at the police station. But it is needless to say that statement recorded by the Executive Magistrate under Section 26 of the Bharatiya Sakshaya Adhinyam, 2023 (section 32 of the Indian Evidence Act) is on higher footing than the statement recorded before the police, obviously subject to corroboration of other evidence. *Prima facie* involvement of present petitioners is revealed and sufficient material is collected during the investigation. Hence, this is not a case to exercise jurisdiction in favor of the present petitioners. It is needless to say that for instigation there is no need of direct evidence. Indirect evidence is also sufficient for instigation. But, herein, *prima facie* involvement and direct evidence of instigation in form of dying declaration is revealed and hence, there is no frivolity of FIR.

[7.0] In view of the above, the acts of abetment and instigation clearly reveal the intention of the petitioners. The petitioners sharing a common intention, traced the deceased and girl Akanksha after they had eloped and got married of their own free will and volition, despite both being majors and instead of accepting their lawful marriage, the petitioners harassed them and forcibly separated them. They administered threats to the deceased. The petitioners' overt acts

clearly emerge from the allegations levelled in the FIR, which are supported by the material collected during the investigation. Even otherwise, due to the continuous stress and harassment, the deceased, having no option left except to commit suicide, due to constant harassment and pressure.

[8.0] In the present case, such incidents occurred, and due to concerns regarding alleged honour and status in society after the deceased married the petitioner No.1's niece, present petitioners, constantly harassed the deceased, as a result of which the complainant lost her young son. It is needless to say that 'life is dear one'. The growing culture of violence, extortion and exploitation in society sends shock-waves through the civilized world. When such incidents occur or continue, there is a constant erosion of basic human values, such as tolerance and the spirit of 'live and let live.' The perpetuation of such crimes, which result in the loss of life, raises serious concerns. So far as the role of the present petitioners in the offence of instigation is concerned, there is evidence in form of dying declaration indicating the involvement of the present petitioners in the offence.

[9.0] Further, it is apposite to refer to the judgment of the Hon'ble Apex Court in ***Lata Singh v. State of Uttar Pradesh, reported in (2006) 5 SCC 475***, wherein the Court expressed concern over incidents of torture, threats, and violence against young men and women who marry outside their caste, observing that such actions are not only illegal but also shameful. It is also appropriate to refer to the law laid down by the Hon'ble Apex Court in ***Arumugam Servai v. State of Tamil Nadu, (2011) 6 SCC 405***, wherein the Court observed that upon

attaining majority, every individual becomes independent and acquires the right to marry a person of their choice.

[10.0] Further, in cases of indirect involvement in acts of instigation leading to the commission of suicide, such acts would constitute the offence of abetment of suicide. In this regard, reference may be made to the judgment of the Hon'ble Apex Court in **Daxaben v. State of Gujarat** reported in **(2022) 16 SCC 117**. Therefore, this is not a case where the complaint has been filed with an ulterior motive, to settle scores, or with any mala fide intention. In this regard, reference is made to the judgment of the Apex Court in the case of **Supriya Jain v. State of Haryana, reported AIR 2023 SC(Criminal) 1101**. In the case of **Ramveer Upadhyay and Anr. vs. State of U.P. and Anr. reported in 2022 OnLine SC 484**, it is observed and held by the Apex Court that the High Court, while exercising jurisdiction under Section 528 of the BNSS, would not ordinarily embark upon an enquiry into whether the evidence is reliable or not or whether there is reasonable possibility that the accusation would not be sustained and hold mini trial.

[11.0] It is necessary to consider whether the power conferred by the High Court under section 528 of the BNSS is warranted. It is true that the powers under 528 of the BNSS are very wide and the very plenitude of the power requires great caution in its exercise.

[12.0] Further, criminal proceeding would have to proceed entirely based on the allegations made in a complaint or the evidence collected during the investigation. It is not justified to embark inquiry or to hold mini trial qua genuineness or credibility of the material

collected during the investigation and Court cannot go into correctness or otherwise of the material collected by the prosecution. In this regard, reference is required to be made to the decision of the Hon'ble Apex Court in the case of **Manik B. vs. Kadapala Sreyes Reddy & Ors. reported in 2023 Live Law 642 (3 Judges' Bench)** as mini-trial is not permitted while exercising jurisdiction under Section of 528 of the BNSS.

[13.0] This Court court also deems it proper to refer to the judgment of the Hon'ble Apex Court in the case of **Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra**, reported in **2021 SCC Online SC 315** wherein, the Apex Court has observed that:

"iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 528 BNSS is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;"

[14.0] So far as argument canvassed by learned advocate for the petitioners that the petitioners have been granted anticipatory bail and therefore, the impugned proceedings are required to be quashed and set aside is concerned, it is needless to say that grant of anticipatory bail is not a ground to entertain a quashing petition in

exercise of power under Articles 226 and 227 of the Constitution of India read with Section 528 of the BNSS, as such reason are tentative in nature and considering the liberty of accused, the yardsticks to decide anti bail application and quashing petitions are altogether different. Herein, while exercising quashing powers, Court has to consider as to whether *prima facie* offence is made out or not? Hence, argument canvassed by the learned advocate for the petitioners is not acceptable.

[15.0] Considering the aforesaid facts, the petition beign devoid of any merit stands dismissed. Observations made herein above are tentative in nature and will not cause any prejudice to either party at the trial. Learned Trial Court shall have to decide the allegations levelled in the complaint on its own merits without being influenced by any of the observations made in the order. Rule is discharged.

(HASMUKH D. SUTHAR, J.)

Ajay