

GJPM010034802025



IN THE COURT OF 5th ADDITIONAL SESSIONS JUDGE,
PANCHMAHALS AT GODHRA

CRIMINAL REVISION APPLICATION No.44/2025

Exh. _____

Applicant :

Dipakkumar Shantilal Patel
Age : 70 years, Occu.: Advocate,
Resi.: Shahera, Ta.- Shahera, Dist.- Panchmahals.

V E R S U S

Opponent :

The State of Gujarat.

Appearance :

Ld. Advocate for the applicant : Mr. K. K. Solanki
Ld. PP for the opponent : Mr. R. S. Thakor

Revision Application u/s.438 of BNSS

J U D G M E N T

1. The present revision application u/s.438 of BNSS is preferred by the applicant, against the order passed by the Ld. Magistrate, Shahera on 22-09-2025 whereby the application filed by the present applicant i.e. original accused in Criminal Case No.891/2024, praying to discharge him from the said case was rejected. The said case is pending for trial in connection with the complaint registered at Shahera Police Station vide C.R. No.1020/2023 for the offence punishable u/s.465, 466, 467, 468, 469, 471, 193, 196, 199, 205, 120B, 201 of IPC.

2. It is contended by the applicant that the complainant has lodged the above mentioned complaint, stating therein that he was a complainant with respect to the Criminal Case No.649/2022, registered from a complaint for the offence punishable u/s.408 of IPC lodged against the accused namely Sejalben w/o. Dilipbhai Kantibhai Patel, Secretary of Bordi Milk Producers' Co-op. Mandli. In the said case, the complainant has not been served with any summons and it is disposed of without the knowledge of the complainant. It is further contended that the accused Sejalben in collusion with other persons have submitted a bogus letter of the Mandli, stating that the accused has deposited the amount of misappropriation and the Mandli

has no objection if the case be disposed of. On completion of the investigation of this offence, the IO has filed charge-sheet on 05-03-2024 against the accused persons. The present applicant and one co-accused namely Anopsinh have been enlarged on anticipatory bail by the Sessions Court. The said co-accused Anopsinh has filed Spl. Cri. Application No.8641/24 before the Hon'ble High Court of Gujarat for quashing of complaint, wherein the Hon'ble High Court has granted ad-interim relief to him, whereas the Spl. Cri. Application No.12303/24 filed by the present applicant before the Hon'ble High Court is withdrawn by him since the charge-sheet is filed. Then after, the supplementary charge-sheet is produced against the present applicant and accused Kiritsinh which is registered as Criminal Case No.891/24. So, the applicant has filed an application vide Exh.8 to discharge him in the said case which is rejected by the Ld. Trial Court. Therefore, the applicant has preferred the present revision application on following grounds :

- Looking to the papers of the charge-sheet, there is no any evidence or material to arraign the applicant as an accused.
- The applicant is innocent and has not committed the so-called offence. The applicant is an advocate and performed his duty as an advocate of the accused in Criminal Case No.649/2022.

- The applicant has co-operated with the investigation. If any advocate appears for an accused for his defence, it cannot be believed that the advocate has connivance with the accused in absence of any cogent supporting evidence.
- The applicant has been practicing for many years and no such incident was ever taken place.
- The prosecution has not submitted sufficient material before the Court to frame the charge against the applicant.

Therefore, in view of the above grounds, the applicant has prayed to set aside the order passed by the Ld. Trial Court and prayed to discharge him in Criminal Case No.891/24.

3. On submission of the present application, notice was issued to the opponent-State. In pursuance to the same, ld. PP, as well as, the IO has also remained present. The Ld. PP has vehemently resisted this application and argued that the allegation of criminal conspiracy is levelled against the applicant/accused person and there cannot be any direct evidence for criminal conspiracy. He has further argued that at the time of framing of charge, the Ld. Trial Court ought to see whether the material on record is sufficient enough to frame the charge or not. He has further argued that the offence is committed by the applicant in collusion

with the other co-accused and if the present applicant-accused is discharged at this juncture, then the trial will be prejudiced. So, the ld. PP has prayed to reject this revision application.

4. Considering the submissions on behalf of both the sides, to decide the present revision application, the following issues are arisen :

(1) Whether the impugned order passed by Ld. Trial Court on dtd.22-09-2025 below the application vide Exh.8 in Criminal Case No.891/24 is illegal, erroneous, perverse and the same is required to be interfered with ?

(2) What order ?

5. My findings on the above issues are as under :

- (1) In the negative.
(2) As per final order.

REASONS

6. **Issues No.1 & 2 :**

Since the present application is preferred u/s.438 of BNSS so, at this juncture, it is required to note some of the

aspects regarding the jurisdiction of the Revisional Court. In pursuance to the same, if the citation which is the case before Hon'ble Supreme Court between **Amit Kapoor and Ramesh Chander and Anr. - (2012) 9 SCC 460** is referred, then it is held that the object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits. Further, the another well accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order.

7. Further, looking to the Sec.440, it provides with the powers of revision of a Sessions Judge and Sec.441 says that an Additional Sessions Judge shall have and may

exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge. Further, sub-section 2 of Sec.440 says that where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of section 442 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge. Therefore, under these circumstances, the power of revision allotted to this Court are derived on conjoint reading of Sec.440(2) with Sec.441.

8. In the present case, as can be seen from the case record, the applicant has challenged the order of the Ld. Trial Court in this revision application, wherein the application u/s.262 of BNSS, seeking to discharge the applicant in Criminal Case No.891/24. In the said order, the Ld. Trial Court has considered the charge-sheet papers, as well as, the detailed report of the IO and come to the conclusion that the IO has categorically described the role of the present applicant so, it is required full-fledged trial to decide whether the applicant may be convicted or acquitted on basis of the material available on record. On perusal of the case of the prosecution, it is required to note herein that the complainant Bhibhabhai Ambalal Patel has

lodged the present complaint, contending that in the year-2021, he has lodged a complaint against the accused namely Sejalben w/o. Dilipbhai Kantibhai Patel, Secretary of Bordi Milk Producers' Co-op. Mandli for misappropriation of an amount of more than Rs.7,00,000/- and in pursuance to this complaint, after completion of the investigation the charge-sheet was filed against the accused Sejalben which was registered as Criminal Case No.649/2022. Later on, during the trial the present applicant, as a lawyer of the accused Sejalben has proceeded with the matter by filing vakalatnama and appearing on behalf of the accused. On issuance of the summons in the said case, the complainant and accused have appeared before the Ld. Trial Court and obtained the date for evidence. Then after, on 19-01-2023, the chief-examination and cross-examination of the complainant was completed and a pursis by accused side and a letter of Mandli were submitted before the Court, wherein it is contended that the accused has deposited the amount equivalent to the amount of misappropriation and a closing pursis in the name of complainant was also submitted. On basis of the above material, the Ld. Trial Court has acquitted the accused from the said offence. Then after, the original complainant Bhikhabhai came to know about the above fraudulent proceedings so, submitted an application before the Ld. Trial Court, however, the Ld. Trial Court has not considered the same since the proceedings of the

original case has already been completed and disposed of. So, the complainant Bhikhabhai has submitted applications before other authorities and in pursuance to the same, the complaint of the present offence is registered. After due investigation, the IO, having found incriminating evidence against the accused persons has placed the charge-sheet for trial of the accused persons.

9. So, considering the overall material available on record, prima facie it appears that the applicant is involved in the offence and there has been connivance between the present applicant and other accused persons. At this juncture, it is also required to note that the allegations of criminal conspiracy is levelled against the accused persons and there cannot be any direct evidence for criminal conspiracy, but it has to be decided on the basis of all the surrounding circumstances. Moreover, at the time of framing of charge, the Ld. Trial Court ought to see if the material on record is sufficient enough to frame the charge, then the charge will be framed accordingly and to put the case on trial and not to see whether there is sufficient evidence to convict the accused or not. The contentions raised by the applicant side are required full-fledged trial since it is a matter of evidence. Therefore, the contentions raised by the applicant side are not tenable at all, at present juncture. The Ld. Trial Court has rightly considered all the aspects and evaluated the material available on record

before it and therefore, the Ld. Trial Court has rightly rejected the application of the applicant to discharge him in Criminal Case No.891/24. In view of the above discussion, I answer the Issue No.1 in negative and for the Issue No.2, following order is passed.

ORDER

1. The present revision application is hereby **rejected**.
2. The copy of this Judgment be sent to the Ld. Trial Court along with the original R & P of Criminal Case No.891/2024.

Signed and Pronounced in the open Court today on this 18th day of April, 2026.

Date : 18-04-2026

Place : Godhra

(Vaibhav Vasant Mondhe)
5th Additional Sessions Judge,
Panchmahals at Godhra.
Code No. GJ00852