

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 2736 of 2025****With****CRIMINAL MISC.APPLICATION (DIRECTION) NO. 2 of 2025****In R/SPECIAL CRIMINAL APPLICATION NO. 2736 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE UTKARSH THAKORBHAI DESAI**

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Approved for Reporting	Yes	No
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JIGAR VAGHAJI THAKOR
Versus
STATE OF GUJARAT & ANR.

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Appearance:

MR GIRISH D CHAVDA(3226) for the Applicant(s) No. 1

MR PARTHIV A BHATT(5331) for the Applicant(s) No. 1

MS.AKSHITABA SOLANKI(6782) for the Respondent(s) No. 2

MR.JAY MEHTA, APP for the Respondent(s) No. 1

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**CORAM: HONOURABLE MR.JUSTICE UTKARSH THAKORBHAI
DESAI**

Date : 01/10/2025

ORAL JUDGMENT

1. RULE. Mr.Jay Mehta learned APP waives service of notice of Rule on behalf of respondent no.1-State and Ms.Akshitaba Solanki waives service of notice of Rule on behalf of respondent no.2.

2. Heard learned advocate Mr.Parthiv Bhatt on

behalf of the petitioner who is the original accused no.2 in POCSO Case No.15 of 2023, pending before the learned Additional District and Sessions Judge at Viramgam.

3. The petitioner by way of this petition, has submitted that, an FIR was registered against him and co-accused by the Detroj Police Station under Sections 306, 504, 506(2), 354(D) of the IPC and under Sections 11 and 16 of the POCSO Act on 14.06.2023.

4. The petitioner was shown as accused no.2 in the charge-sheet, which was filed by the Investigating Officer, upon completion of the investigation. It has been mentioned in the application that, during the pendency of the trial in POCSO Case No.15 of 2023, an application at Exh.47 was moved by the learned advocate of the

petitioner herein to reopen the stage of cross-examination of the original complainant Janakben and prosecution witness-Chandrikaben. However, the learned Additional Sessions Judge had rejected the said application, vide his order dated 20.01.2025 observing that, the previous application Exh.28 was dismissed by way of a reasoned order on 14.10.2024, which had not been challenged by the accused no.2.

5. It is further mentioned that, the learned advocate who was representing the accused no.2, had retired and had given an NOC to the new advocate who would represent the accused no.2, who required time to cross-examine the said two witnesses. Hence, the orders passed below application at Exh.47 dated 20.01.2025 and Exh.28 dated 14.10.2024, by the learned Additional Sessions Judge be quashed and the

petitioner be permitted to cross-examine the said two witnesses.

6. Heard learned advocate Mr.Parthiv Bhatt for the petitioner and learned APP Mr.Jay Mehta for the respondent-State.

7. Learned advocate Mr.Parthiv Bhatt representing the petitioner has stated that, the right of the accused no.2 to cross-examine the said witnesses viz. PW-1 Janakben Ghabhaji Thakore and PW-6 Chandrikaben Ghabhaji Thakore would be jeopardized, if permission for their cross-examinations would not be granted, considering the charge against him pertaining to offence under the POCSO Act.

8. Learned advocate Mr.Bhatt has further submitted that, this Court can very well allow the

petition by imposing costs.

9. On the other hand, Mr. Jay Mehta the learned APP vehemently objected the petition and submitted that, relief as prayed for should not be granted to the petitioner considering the fact that, the trial had protracted because of his own inaction and the petition be dismissed.
10. At the outset, the learned advocate for the accused no.2 had preferred an application at Exh.28 on 14.10.2024 in POCSO Case No.15 of 2023, praying for time, which came to be rejected by the learned Additional Sessions Judge at Viramgam, by way of reasoned order.
11. Thereafter, the learned advocate had preferred another application at Exh.47 on 20.01.2025, praying for time, which too, was rejected by way

of a reasoned order, by the learned Additional Sessions Judge of Viramgam.

12. On perusing the copy of the deposition of PW-1 Janakben who was examined by the learned Additional Sessions Court in POCSO Case No.15 of 2023 by way of Exh.12, it transpires that, the learned advocate Mr.F.H.Achhava on behalf of the accused no.2 i.e. the present petitioner, had submitted before the Court that he had given his NOC to another advocate. However, the appearance could not be filed on behalf of the new advocate. It was noted in the said deposition that, since the appearance was not filed on behalf of accused no.2 and adjournment application was also not submitted, the right of cross-examination came to be closed.

13. On perusing the deposition of PW-6

Chandrikaben, who came to be examined as PW-6 in POCSO Case No.15 of 2023 by way of Exh.7, it is reflected that the Court had rejected the adjournment application on behalf of learned advocate Mr.K.B.Chavda representing the accused no.2, pursuant to which the right of cross-examination of the said witness came to be closed.

14. It is pertinent to observe that, the learned Additional Sessions Judge had rightly noted in the order dated 14.10.2024, that enough time had elapsed in securing the Muddamal before the Court, and the matter being one in category of targeted case, the accused no.2 was not granted further time. However, considering the principles of equity and natural justice and the charge against the accused no.2 being of heinous offence, it deems fit to this Court that, the

accused no.2 can be permitted to cross-examine PW-1 Janakben Ghabhaji Thakore and PW-6 Chandrikaben Ghabhaji Thakore in POCSO Case No.15 of 2023 pending before the learned Additional District and Sessions Judge at Viramgam.

15. Hence, without dwelling further, the present petition deserves to be allowed and the same is hereby allowed and the orders passed by the learned Additional Sessions Judge below Applications Exh.47 dated 20.01.2025 and Exh.28 dated 14.10.2024 though neither being erroneous nor illegal, but to subserve the cause of justice are hereby quashed and set aside, subject to payment of Rs.25,000/- as costs to be deposited before the Taluka Legal Services Authority at Viramgam, before cross-examination of the prosecution witnesses.

16. The learned Additional Sessions Judge of Viramgam, shall fix one date as per his convenience and considering other critically old matters, if any, on his board, on which, PW-1 Janakben Ghabhaji Thakore and PW-6 Chandrikaben Ghabhaji Thakore shall be recalled, and the learned advocate for the accused no.2 shall cross-examine both these witnesses without fail, on such date so fixed. However, the learned Additional Sessions Judge shall be at liberty to permit the learned advocate for the accused no.2 to cross-examine PW-1 Janakben Ghabhaji Thakore and PW-6 Chandrikaben Ghabhaji Thakore, on such counts/issues/aspects, as it may deem fit to him. The learned Additional Sessions Judge shall not grant any further adjournment to the accused no.2 for cross-examination of the aforesaid witnesses.

17. Petition is allowed in the aforesaid terms. Rule is made absolute.

18. In view of the disposal of the main petition, connected Criminal Misc. Application for direction will not survive and hence, the same also stands disposed of.

Direct service is permitted.

ANKIT SHAH

(UTKARSH THAKORBHAI DESAI, J)

Original copy of this order has been signed by the Hon'ble Judge.

Digitally signed by: ANKIT PRADIPKUMAR SHAH(HC01063), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 03/10/2025 15:04:28