

Reserved On : 15/07/2026
Pronounced On : 20/07/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 2495 of 2026
With
CRIMINAL MISC.APPLICATION (FOR STAY) NO. 1 of 2026
In R/SPECIAL CRIMINAL APPLICATION NO. 2495 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE M. R. MENGDEY

Approved for Reporting	Yes	No
		No

DEVABHAI MACHHABHAI TOLIYA
 Versus
 STATE OF GUJARAT & ORS.

Appearance:

MR BM MANGUKIYA(437) for the Applicant(s) No. 1
 MS BELA A PRAJAPATI(1946) for the Applicant(s) No. 1
 MR PRANAV DHAGAT, APP for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE M. R. MENGDEY

CAV JUDGMENT

1. By filing the present petition under Article 226 of the Constitution of India, the petitioners has prayed for following reliefs.

“(A) Be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus, and to direct the respondents, more particularly the respondent no.3 to issue notice under sub-section (3) of Section 35 of the BNS as mandated by the Hon'ble Supreme Court in case of Satender Antil Vs. CBI and another (supra) and other judgments;

(B) Be pleased to issue a writ of mandamus or any other

appropriate writ, order or direction in the nature of mandamus, and to direct the respondent no.2 to direct all the Officers subordinate to him to follow the mandate issued by the Hon'ble Supreme Court in case of Satendar Antil Vs. CBI and another (supra);

(C) Pending admission and final disposal of the present petition, be pleased to direct the respondent no.3 not to arrest the petitioner in pursuance of the FIR registered in Gandhigram Police Station, Rajkot City, recorded as C.R.No.I-11208035250899 of 2025;

(D) Be pleased to pass such other and further orders as may be deemed fit and proper."

2. The offence being C.R.No.I-11208035250899 of 2025 came to be registered at Gandhigram police station of Rajkot City for the offence punishable under Sections 217, 336(2), 338, 340(2) of BNS against the petitioner. After the registration of the offence, the petitioner had approached learned Sessions Court, Rajkot by filing Criminal Misc. Application No.4106 of 2025 seeking anticipatory bail. The said application was dismissed by learned Sessions Court vide order dated 9.1.2026. Thereafter the petitioner is before this court by filing the present petition with aforesaid prayers.

3. Heard learned advocate Mr.B.M.Mangukiya for the petitioner. He submitted that the offences invoked against the petitioner in the FIR are triable by learned Magistrate and therefore they are invariably punishable with imprisonment upto 7 years and therefore the police authorities are required to comply with the provisions of Section 35(3) of BNS. He submitted that though the offence punishable under Section 338 of BNS is alleged in the FIR, it is made punishable for

imprisonment upto 10 years, which had been triable by learned Magistrate, in case of conviction the petitioner is not liable to be punished with imprisonment beyond 7 years. Therefore it is incumbent upon the police authorities to comply with the provisions of Section 35(3) of BNS. He further submitted that the documents in question which are allegedly forged, cannot be said to be valuable security. Therefore, the offence punishable under Section 338 of BNS is not made out. He therefore submitted to allow the petition and direct the concerned police authorities to comply with the said provisions.

3.1 Learned advocate for the petitioner has sought to rely upon the decision of the Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation, [(2022) 10 SCC 51]** in support of his submissions.

4. Learned APP has opposed the present petition contending that the petitioner is alleged to have committed an offence punishable under Section 338 of BNS, which is made punishable with imprisonment upto 10 years under the BNS. The provisions of Section 35(3) of BNS would apply only in the case where the offence is punishable with imprisonment upto 7 years. Therefore the said provision would not be applicable in the facts of the present case. He therefore submitted to dismiss the present petition.

5. Heard learned advocates for the respective parties and perused the record. The offence in question came to be

registered with the Gandhigram police station at Rajkot City on 23.12.2025. Thereafter the petitioner had approached learned Sessions Court seeking anticipatory bail. The said application was dismissed by learned Sessions Court vide order dated 9.1.2026. It is pertinent to note that no contention as regards the applicability of provision of Section 35(3) of BNS was raised before learned Sessions Court at the time of hearing of the said application. It is also required to note that after the application for anticipatory bail was dismissed by learned Sessions Court, the petitioner has neither challenged the said order before this court nor has he surrendered before the investigating agency. Thus, he is evading the process of law.

5.1 It is sought to be contended on behalf of the petitioner that since, the offence alleged against the petitioner is triable by learned Magistrate, though the punishment of imprisonment upto 10 years is prescribed for an offence punishable under Section 338 of BNS, the punishment of imprisonment beyond 7 years cannot be imposed and therefore the respondent police authorities are bound to comply with the provisions of Section 35(3) of BNS. If this contention is accepted, the provision under Section 35(3) of BNS, mandates the investigating agency to issue notice to the accused and the same being mandatory provision, the police authorities are bound to comply with the same and no direction is required to be issued by this court for the said purpose. But the contention raised on behalf of the petitioner is bereft of law and cannot be accepted. Once the punishment

of imprisonment of 10 years is prescribed by the statute for an offence punishable under Section 338 of BNS, merely because it is made triable by learned Magistrate, it cannot be said that no punishment for imprisonment beyond 7 years can be imposed upon the convict for the said offence. If the accused is convicted for an offence under Section 338 of BNS, and is required to be punished with the imprisonment beyond 7 years, an organized mechanism is provided in the statute for the same. Therefore, it is not correct on part of the petitioner to contend that since the offence is triable by learned Magistrate it is punishable with imprisonment upto 7 years only.

5.2 The argument whether the documents allegedly forged can be said to be valuable security or not, is not the aspect which would be required to be decided at this stage as the petition is not for quashing of the FIR.

5.3 The judgment sought to be relied upon by the petitioner has no bearing on the fact of the case.

6. Having regard to these facts, the petition is devoid of any merits and the same is hereby dismissed.

IA stands disposed of.

(M. R. MENGDEY,J)

Manshi