

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL REVISION APPLICATION NO. 345 of 2023**

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BHAVIKKUMAR DALPATBHAI PATEL  
Versus  
STATE OF GUJARAT

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Appearance:

MR HARDIK A DAVE(3764) for the Applicant(s) No. 1  
for the Respondent(s) No. 2  
PUBLIC PROSECUTOR for the Respondent(s) No. 1

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**CORAM:HONOURABLE MS. JUSTICE GITA GOPI**

**Date : 24/03/2023**

**ORAL ORDER**

[1] By way of the present application, the revisionist – accused seeks quashing and setting aside the order dated 20.02.2023 passed below Ex.17 in POCSO Case No.160 of 2021 and discharge the applicant from the charges of Section 354(C), 354(D) of the Indian Penal Code and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

[2] Mr.Hardik Dave, learned advocate for the revisionist has submitted that Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes

(Prevention of Atrocities) Act, 1989 (For short Atrocities Act), would not be applicable in the present case. Since Sections which have been invoked against the applicant herein under IPC, does not prescribe punishment beyond 7 years, and that too, becomes doubtful in the facts of the case.

2.1 Advocate Mr.Dave submitted that Section 3(2)(v) of the Atrocities Act cannot be invoked in the present matter, and for that purpose, discharge application was preferred before the learned trial Court which came to be rejected on 20.02.2023 by Special Court Fast Track (POCSO) & 6<sup>th</sup> Additional Sessions Judge, Surat, referring to the provisions of Sections 29 and 30 of the POCSO Act, which are in the presumption of the offence committed under the POCSO Act.

[3] Reference of sections which has been invoked by the prosecution under the IPC and POCSO Act, do not prescribe any punishment for more than 7 years. Hence, arguable case in

connection with Section 3(2)(v) of the Atrocities Act has been presented.

[4] Let **Rule** be issued returnable on **17.04.2023**. Learned APP waives service of notice of rule for and on behalf of respondent – State.

[5] In the meantime, ad-interim relief, in terms of para 9(c) is granted.

**(GITA GOPI,J)**

MANOJ