

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR LEAVE TO APPEAL) NO. 5820 of
2023****In R/CRIMINAL APPEAL/831/2023**

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JIGNESHBHAI NANDALAL VITHALANI

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR ROHITKUMAR R SHARMA(12025) for the Applicant(s) No. 1

MR PADMRAJ K JADEJA(2095) for the Respondent(s) No. 2

MS SHRUTI PATHAK, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER**Date : 27/02/2026****ORAL ORDER**

1. This application is filed under Section 378(4) of the Code of Criminal Procedure, 1973 ("Code or CrPC") by the Complainant seeking leave to appeal to challenge the judgment and order impugned passed by the learned trial Court, whereby the Ld. Trial Court had acquitted the Respondent/s-Accused of charge under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act' for short). It is noted that this Court has already condoned the delay in filing the appeal.

2. Before entering into the merits of this case, this Court deems it proper to refer to the latest decision rendered by this Court in the case of Shivsindh Ganpatsindh Solanki V/s

State of Gujarat & Anr. Being Criminal Miscellaneous Application Nos. 12753 of 2019 with 12908 of 2019 on 23.12.2025, wherein, after considering the various judgments of the Hon'ble Supreme Court, more particularly, the judgment in the matter of

M/s Celestium Financial V/s A.Gyanasekaran etc. reported in 2025 INSC 804, has observed and held that the Complainant, in a complaint under Section 138 of the N.I. Act, being a Victim, has a specific right to appeal under proviso of Section 372 of the Code to the Court which is immediately superior in hierarchy i.e., the Sessions Court. Therefore, the applications for leave to appeal/appeals which are pending before this Court can be disposed of with a direction to transfer the said application/appeal to the concerned Sessions Court.

3. In view of the above, learned advocate for the petitioner requested to transfer the application/appeal to the concerned Sessions Court.

4. In view of the said request, this application/appeal is/are disposed of with a direction to the Registry to transfer the application/appeal to the concerned Sessions Court. After it is transferred to the concerned Sessions Court, it has to be treated as an Appeal under the proviso under Section 372 of the Code (Section 413 of BNSS) and numbered accordingly.

The Registry is directed to transfer the entire record of the case, including the certified copies of the order impugned and record & proceedings, if lying with this Court, to the concerned lower Appellate Court, forthwith.

5. It is clarified that this Court has not gone into the merits of the matter at this stage.

URIL RANA

(SANJEEV J.THAKER,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: RANA URIL K(HC01406), PRIVATE SECRETARY, at High Court of Gujarat on 27/02/2026 16:20:36