

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL REVISION APPLICATION (AGAINST CONVICTION) NO. 609
of 2025**

=====

MAHENDRASINH PATUBHA GOHIL & ANR.

Versus

STATE OF GUJARAT & ANR.

=====

Appearance:

MR. AAMIR S PATHAN(7142) for the Applicant(s) No. 1,2

MR. KISHAN H DAIYA(6929) for the Applicant(s) No. 1,2

NOTICE SERVED for the Respondent(s) No. 2

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

=====

CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 02/05/2025

ORAL ORDER

1. **Rule.** Learned Additional Public Prosecutor waives service of notice of Rule on behalf of respondent State.

2. By way of this application under Section 438 read with Section 442 of the Bharatiya Nyaya Suraksha Sanhita, 2023 (for short "BNSS") , the applicant has prayed for quashing and setting aside the judgment and order dated 10.01.2024 passed by the learned Chief Judicial Magistrate, Vallabhipur, in Criminal Case No.239/2015, whereby the Trial Court has been pleased to held the applicant guilty for the offence punishable under Sections 417, 419 and 114 of the IPC and sentenced to undergo RI of one year and also directed to pay fine of Rs.5000/- each and in default, to undergo SI of two months, as well as order dated 09.04.2025 by which learned Sessions Judge, Bhavnagar, dismissed Criminal Appeal No.08/2019 and confirmed the judgment and order of conviction Hence, this Revision Application is filed.

3. Learned advocate for the applicant has taken this Court through the factual matrix arising out of the present application and submitted that, the both the courts below have erred in recording conviction though the complainant failed to prove his case. Further, the learned Courts below failed to appreciate the evidence in its true perspective though the complainant failed to prove legally enforceable debt and the defense made by the complainant was not properly examined by the trial Court. Further, the accused has rebutted presumption and complainant has failed to prove case against the applicant. It is submitted that the applicants have no prior criminal antecedents. The allegation against the applicants pertains to an incident dated 20/03/2015, wherein accused no. 2, Kuldeepsinh Patubha Gohil, was scheduled to appear for his SSC examination. However, accused no. 1, Mahendrasinh Patubha, allegedly appeared as a dummy candidate on his behalf. During the examination, he was apprehended by the Vigilance Squad. Therefore the present application may be allowed.

4. In view of the above, it appears that with respect to accused no. 1, Mahendrasinh, no specific identification has been established, and the Vigilance Squad has merely identified him as a dummy student. In the absence of proper identification, the present applicants have been arraigned as accused solely on the basis of conjecture and surmise. Moreover, as the hearing of this application is likely to take considerable time.

4. Considering the aforesaid facts, the issue requires consideration. Issue Rule making it returnable on 24.06.2025.

Learned APP waives service of Notice for and on behalf of respondent – State of Gujarat.

5. Pending the present criminal revision application, **interim relief** in terms of **paragraph No.10(B)** is granted and sentence imposed upon the applicant vide impugned judgment dated 10.01.2024 passed by the learned Chief Judicial Magistrate, Vallabhipur, in Criminal Case No.239/2015, as well as order dated 09.04.2025 passed by the learned Sessions Judge, Bhavnagar, in Criminal Appeal No.08/2019 are suspended and the applicants shall be released on bail by executing a fresh bond of **Rs.10,000/- (Rupees Ten Thousand Only) each** with one surety of the like amount to the satisfaction of the trial Court, on conditions that applicants:-

- (a) shall not take undue advantage of liberty or misuse liberty;
- (b) shall not leave India without prior permission of this Court.
- (c) shall furnish the present address of his residence to the Court concerned at the time of execution of the bond and shall not change the residence without the prior permission of this Court.
- (d) shall proceed with the Criminal Revision Application as and when listed and shall not prolong the hearing of the same.

6. The authorities will release the applicants only if they are not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the

Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter.

Direct service is permitted.

(HASMUKH D. SUTHAR,J)

ALI

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: ISTAYAK ALI(HC01093), PRIVATE SECRETARY, at High Court of Gujarat on 02/05/2025 17:57:57