

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 9776 of 2025****With****CRIMINAL MISC.APPLICATION (DIRECTION) NO. 1 of 2026
In R/SPECIAL CRIMINAL APPLICATION NO. 9776 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE M. R. MENGDEY**

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Approved for Reporting	Yes	No
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TEHMUL BURJOR SETHNA

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR ZUBIN F BHARDA(159) for the Applicant(s) No. 1

MR HR PRAJAPATI(674) for the Respondent(s) No. 2

MR HARDIK DAVE, PP with MR J.K.SHAH, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE M. R. MENGDEY**Date : 15/06/2026****JUDGMENT**

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

“A. This Honorable Court may be pleased to admit and allow this petition.

B. This Honorable Court be pleased to quash and set aside the judgement and order dated 28.04.2025 passed by the Additional Sessions Judge, Court No.3, City Civil and Sessions court, Ahmedabad (Annexure - H to the petition) passed below Exhibit-33 application filed under the provisions of Section 391 of the Code of Criminal Procedure, 1973 in Criminal Appeal

No.564 of 2023 by the Additional Sessions Judge, Court No.3, City Civil & Sessions Court, Ahmedabad, corresponding to Section 432 of the Bharatiya Nagarik Suraksha Sanita, 2023 praying for referring the prime witness Ms. Parul Modi to be examined by a leading Psychiatrist or the Chief Medical Officer, Physiatry Department, Civil Hospital and after obtaining the report, compare the same with the certificate issued by Dr. Shailesh Desai who had issued certificate on the basis of which the prime witness Parul Modi was dropped and thereafter, pass necessary orders so as to further the cause of justice.

C. That this Hon'ble Court be pleased to stay the further proceedings of Criminal Appeal No.564 of 2023 pending in the court of Additional Sessions Judge, Court No.3, City Civil & Sessions Court, Ahmedabad, till this petition is finally heard and decided by this Hon'ble Court.

D. This Honorable Court be pleased to pass such other and further orders, as this Honorable Court may deem fit and proper in the facts and circumstances mentioned above.

F. This Honorable Court be pleased to award costs of this petition."

2. The facts and circumstances giving rise to the filing of the present petition are such that the petitioner came to be convicted for an offence punishable under Section 406, 418, 420, 467, 468, 471 of IPC vide judgment and order dated 9.10.2023 passed by learned Additional Chief Metropolitan Magistrate, Ahmedabad in Criminal Case No.14089 of 2019. During the course of trial of the said case, the prosecution had submitted an application vide Exh.635 seeking to drop one witness Ms.Parul Modi, having regard to her medical condition. The petitioner had preferred an Appeal against the

order of conviction and the same is pending before the Appellate Court. During the pendency of the said Appeal, an application came to be submitted on behalf of the petitioner vide Exh.33 under Section 391 of Cr.P.C. *inter alia* praying for permission to lead an additional evidence by examining the relevant witnesses, more particularly, Dr.Shailesh Desai, who had issued the certificate dated 30.6.2023, wherein it was stated that Ms.Parul Modi was suffering from depression, anxiety and schizophrenia since 2006 and she is advised not to undergo any stressful situation. The said application came to be dismissed by the Appellate Court vide order impugned in the present petition.

3. Being aggrieved by the said order, the petitioner is before this court by filing the present petition. It is also pertinent to note that the Co-ordinate Bench of this court had passed the following order on 4.9.2025 in the present petition.

“Notice for final disposal, returnable on 03.10.2025. Ld. APP waives notice for the Respondent State. Meanwhile, learned counsel for the petitioner is permitted to move adjournment application before the City Sessions Court, Ahmedabad.

As the applicant - Shivangi Amit Panchal is defacto complainant in light of Section 2(1) of BNSS as well as the law laid down in case of Jagjeet Singh & Ors. vs. Ashish Mishra @ Monu & Anr reported in (2022) 9 SCC 321, the complainant is ordered to be joined as party respondent No.2 in the main matter.

Criminal Misc. Application No.1/2025 (for direction) stands disposed of accordingly.”

4. The respondent- original complainant had approached Apex Court against the said order by filing Special Leave Petition and Apex Court vide order dated 20.4.2026 had directed this court to decide the present application as earlier as possible, preferably within a period of one month from the date of receipt of copy of the order of Apex Court.

5. Heard learned advocate Mr.Zubin Bharda appearing for the petitioner. He submitted that as per the case of prosecution, the petitioner has allegedly forged the signatures of the said Parul Modi and had allegedly siphoned away huge amounts. Thus, the said Parul Modi is a crucial witness for a logical conclusion of the trial. Despite the same, the prosecution has submitted an application under Exh.635 before learned trial court during the course of trial seeking permission to drop the said Parul Modi as a witness on the basis of medical certificate issued by Dr.Shailesh Desai. Dr.Shailesh Desai is a Consulting Cardiologist and Physician. As per the provisions of the Mental Healthcare Act, 2017, he was not qualified to issue the certificate as regards the mental health of the said Parul Modi.

5.1 Learned advocate for the petitioner has drawn the attention of this court to the provisions of Section 105 of the Mental Healthcare Act, 2017. Referring to the said provisions, he submitted that learned trial court ought to have referred the matter as regards mental health of the said Parul Modi for further scrutiny to the concerned Board. It was mandatory on part of the trial court to follow the said procedure. However, learned trial court for the reasons best known to it, did not

follow the said procedure and unilaterally accepted the application under Exh.635 by the prosecution and dropped the said Parul Modi as a prosecution witness. He submitted that though the said Parul Modi has been suffering from schizophrenia since 2006, the Investigating Officer had collected as many as 300 specimen signatures of the said Parul Modi during the course of investigation. If she was really suffering from schizophrenia, all the signatures collected during the course of investigation were likely to vary from each other. Therefore, examining the said Parul Modi as a witness was crucial for the case of prosecution as well as for the case of defence.

5.2 He submitted that vide Exh.642, another application was submitted by the prosecution seeking permission to drop several other witnesses including the Investigating Officer who had collected the specimen signatures of the said Parul Modi. The objection was raised against the said application, however, learned trial court disregarded the said objection and allowed the application submitted by the prosecution. He submitted that the provisions of the Mental Healthcare Act, 2017, came to the notice of the petitioner only during the course of hearing of the Appeal against the order of conviction filed by the petitioner and therefore, an application vide Exh.33 was submitted by the petitioner before the Appellate Court to allow him to furnish additional evidence during the course of appeal under Section 391 of Cr.P.C. He further submitted that the said application came to be dismissed by the Appellate Court vide order impugned in the present petition on a flimsy ground that earlier application filed by the

petitioner had been dismissed. He submitted that the objection with regard to acceptance of medical certificate issued by Dr.Shailesh Desai as regards mental condition of Parul Modi was objected on behalf of the petitioner during the course of final arguments in the criminal case and though these specific objections were raised on behalf of the petitioner, learned trial court did not follow the procedure provided under the Mental Healthcare Act, 2017. He submitted that the Medical Council has also taken cognizance of the conduct of Dr.Shailesh Desai in issuing the medical certificate. He therefore submitted to allow the present petition and quash and set aside the impugned order.

5.3 Learned advocate for the petitioner has sought to rely upon the judgment of Delhi High Court in the case of **Ankur Abbot Vs. Ekta Abbot 2023 DHC 4742** in support of his submissions.

6. Learned Public Prosecutor Mr.Hardik Dave has opposed the petition contending that the petition is thoroughly misconceived as when the application vide Exh.635 was submitted on behalf of the prosecution before learned trial court, no objection whatsoever had been raised on behalf of the petitioner either as regards dropping of Parul Modi as witness or against the medical certificate issued by Dr.Shailesh Desai regarding her medical condition and therefore, it was not incumbent upon learned trial court to follow the procedure under the provisions of the Mental Healthcare Act, 2017. He submitted that prior to filing of the application under Exh.33 before Appellate court, similar application had been preferred by the petitioner vide Exh.13

before the Appellate Court, wherein all the contentions raised before this court today had been raised and the Appellate Court had dismissed the said application vide order dated 14.8.2024 and the order passed by learned Appellate Court was confirmed till the Apex Court. Thereafter, another application vide Exh.33 came to be submitted before learned Appellate Court by the petitioner on the very same ground and for the very same reliefs, which has been rightly dismissed by learned Appellate Court. He submitted that the petitioner has been trying to delay the hearing of the Appeal on one ground or the other. He therefore submitted to dismiss the present petition with exemplary cost.

7. Learned advocate Mr.H.R.Prajapati appearing for the respondent No.2 has also opposed the present petition.

8. Heard learned advocates appearing for the respective parties and perused the material placed on record. It is the case of the petitioner that Parul Modi is a person whose signatures had been allegedly forged by the petitioner and thereby had siphoned away huge amounts. The prosecution had submitted an application vide Exh.635 before learned trial court seeking permission to drop the said Parul Modi as a witness for the reason of her medical condition.

8.1 A certificate issued by Dr.Shailesh Desai, Consulting Cardiologist and Physician dated 30.6.2023 was also submitted along with the said application. As per the said certificate Parul Modi is stated to be suffering from depression, anxiety, schizophrenia since 2006 and has been

undergoing treatment from Dr. Shailesh Desai. The certificate further states that due to her long standing severe psychiatric illness and long term use of psychiatric drugs, she has developed significant memory loss, incoherence and disorientation and therefore she is advised rest, proper care and confinement to her home and has been further advised not to undergo any stressful situation or undue physical exertion. It is the case of petitioner that the said Dr. Shailesh Desai is not a psychiatrist as defined under Section 2(4) of the Mental Healthcare Act, 2017 and therefore he was not qualified to issue the certificate dated 30.6.2023. Learned advocate for the petitioner relying upon the provisions of Section 105 of the Act has submitted that under the said provisions, it was incumbent upon learned trial court to refer the matter as regards determination of the medical health condition of Parul Modi to the concerned Board. Section 105 of the Mental Healthcare Act, 2017 reads as under.

“If during any judicial process before any competent court, proof of mental illness is produced and is challenged by the other party, the court shall refer the same for further scrutiny to the concerned Board and the Board shall, after examination of the person alleged to have a mental illness either by itself or through a committee of experts, submit its opinion to the court.”

8.2 Reading of the aforesaid provision makes it clear that it becomes incumbent upon the court to refer the matter as regards proof of mental illness of a person to the concerned Board only if it is challenged by the other party. It is an admitted position that when an application vide Exh.635 was

submitted by the prosecution before learned trial court seeking Parul Modi to drop as a witness, no objection whatsoever was raised on behalf of the petitioner either with regard to dropping her as a witness or as regards the proof of her mental health i.e. by certificate issued by Dr.Shailesh Desai and therefore, it was not incumbent upon learned trial court to refer the matter to the concerned Board. The fact that no objection was raised on behalf of the petitioner at all, gives reason to believe that the petitioner was aware about her medical condition. When the application submitted by the prosecution under Exh.635, which was the first opportunity to the petitioner to challenge the said certificate issued by Dr.Shailesh Desai, the petitioner had chosen not to do so at the relevant time. It is also pertinent to note that another application vide Exh.642 was submitted by the prosecution seeking permission to drop several other witnesses, a formal objection was raised with regard to dropping of those witnesses on behalf of the petitioner which indicates that the petitioner had chosen not to raise any objections with regard to dropping of Parul Modi as a witness or with regard to certificate issued by Dr.Shailesh Desai. Thus, the challenge to the medical certificate in question is nothing but an afterthought.

8.3 The material available on record also indicates that the petitioner had submitted an application vide Exh.13 before learned trial court under Section 391 of Cr.P.C. (Section 432 of BNSS). In the said application also, the contention with regard to certificate issued by Dr.Shailesh Desai were raised,

however, learned Appellate Court had dismissed the said application vide order dated 14.8.2024. The petitioner had approached this court against the said order by filing Special Criminal Application No.11932 of 2024 which was also dismissed by the Co-ordinate Bench of this court vide order dated 18.11.2024. Against the said order, the petitioner had approached the Apex Court and the Apex Court had also dismissed the petition filed by the petitioner. Thus, the order passed by learned Appellate Court below Exh.13 has attained finality. Thereafter, another application vide Exh.33 came to be submitted on behalf of the petitioner raising almost same grounds which were considered earlier upto the Appellate Court, which also came to be dismissed by learned Appellate Court vide order impugned in the present petition. Thus, the petitioner attempts to be trying to delay the hearing of the appeal on one ground or the other. It is sought to be contended on behalf of the petitioner that the provisions of *res judicata* would not be applicable to the criminal proceedings, however, that would not allow the petitioner to agitate the same questions again and again.

9. The question of allowing the additional evidence to be laid at the Appellate stage would generally arise when party seeking to produce such evidence was deprived from producing such evidence at the stage of trial. It is not the case of the petitioner that he was in any manner deprived from producing the evidence.

10. Having regard to these aspects, the petition is devoid of

any merits and therefore the same is hereby dismissed. The petitioner to deposit the amount of Rs.10,000/- towards cost with the Gujarat High Court Legal Services Committee for misusing the machinery of the court.

IA also stands disposed of.

Manshi

(M. R. MENGDEY,J)