IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 14049 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MRS. JUSTICE M. K. THAKKER

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Approved for Reporting	Yes	No
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BHARATBHAI BAVABHAI KATHIRIYA & ORS.
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR HIMANSU M PADHYA(1611) for the Applicant(s) No. 1,2,3,4
MS MONALI BHATT, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MRS. JUSTICE M. K. THAKKER**

Date : 08/07/2026

JUDGMENT

1. Rule returnable forthwith. Learned APP Ms. Monali Bhatt waives service of Rule on behalf of the Respondent State.

2. The present application is filed under Section 528 of the BNSS of the 2023 for quashing the FIR being CR No.11193003260483 of 2026 dated 27.05.2026 registered with Amreli City Police Station, District Amreli for the offence punishable under Sections 318(3), 318(4), 61(2)(b), 352, 351(3) of BNS, 2023 Act.

3. Learned advocate Mr. Padhya submitted that the present

applicants who are the accused in the impugned FIR which is lodged by the complainant namely Palkit Kantibhai Sudhani Patel alleging that the complainant and his father were planning to purchase the property and had contacted the applicant who is having the land around 3 bigha through one friend Chandreshbhai Khanesha, the complainant met the applicant and the applicant had shown the deed with regard to the property which is situated at block/survey no.125/2 admeasuring around 6303 sq.mtrs. in Amreli City. It was informed by the applicant that the price of the said land is Rs.32,90,000/- per bigha and around Rs.87,18,500/- for 2.65 bigha. On 17.05.2021, earnest money to the extent of Rs.10 lakhs was given against which the receipt was given by all the applicants, and there after the deed was executed on non-judicial stamp paper of Rs.300/- which was notarized before the Notary. As per the said agreement, upon payment of further Rs.10 lakhs the possession would be handed over and the property was mortgaged with Bank of Baroda, Amarnagar Branch, on clearance of the loan. The NOC would be provided to the complainant. On 26.05.2021, further amount of Rs.10 lakhs was paid for which the receipt was also issued, and as per the Satakhat agreement possession was handed over to the complainant wherein the procedure for converting the land into non-agricultural land was also undertaken, and the expenses of Rs.2,61,738/- was borne by the complainant. There after, the complainant has conveyed to the applicants to execute the sale deed which was not paid any heed, and therefore, notice came to be issued by the complainant. Subsequently, the complainant got the knowledge that in the year 2015, this land was divided into shares of Gaurang Arvindbhai Vekariya and Ashwinbhai Mansukhbhai Kotadiya, and in the year 2017, name of the family members of the applicant was mutated in the revenue record, and there after the Banakhat came to be executed in favour of one Truptiben Udyabhai Dhanani. On realizing that the complainant was cheated by the applicants, the impugned FIR came to be lodged which is a subject matter of the present application.

4. Heard learned advocate Mr. H. M. Padhya for the applicants and learned APP Ms. Monali Bhatt for the State.

5. It is submitted by the learned advocate Mr. Padhya for the applicant that the FIR disclosed a purely civil dispute as entire dispute arise from agreement to sale i.e. Satakhat disputed between the applicant and the complainant, and the grievance of the complainant is that the applicants are not executing the sale deed at the original rate agreed. It is submitted that remedy lies before the civil court by filing the suit for specific performance, however, criminal law was deployed to enforce civil contractual obligations and by invoking criminal machinery the civil and commercial dispute was converted in FIR which is gross abuse of process of law. It is submitted that for establishing the offence of cheating defined under Section 318 of BNS it is imperative that there existed a dishonest and fraudulent intention at the very inception of the transaction i.e. at the time of execution of the Satakhat. It is the case of the complainant that the Satakhat was executed in the year 2021 and the applicants are ready to repay the amount of Rs.20 lakhs which was taken towards the Banakhat amount.

5.1 It is further submitted by the learned advocate Mr. Padhya that ingredients of Sections 351 and 352 i.e. criminal intimidation and assault are also missing as the allegations made in the FIR do not disclose any assault or criminal intimidation at the hands of the present applicants. It is submitted that the allegations made in the complaint/FIR that Satakhat was executed with Truptiben Udyabhai Dhanani is also incorrect as the said Banakhat was subsequently cancelled by mutual consent, and the applicant has refunded back the amount which is received towards the advanced payment. It is submitted that the complainant is a merchant with political connection and sole and oblique motive of the complainant is to pressurize the present applicants to execute the sale deed as per Satakhat dated 2021. It is submitted that the applicant no.3 i.e. Yash Bharatbhai Kathiriya is a government servant and has absolutely no involvement in the Satakhat transaction between the applicant no.1 and the complainant, identically applicant no.4 is staying at Japan for the last 18 months and he is not even physically present in India. It is submitted that the complainant has given legal notices to the applicants for performance of the contract on 28.10.2021, 22.11.2021, 04.12.2021, 18.12.2021; however, as the limitation to file the civil suit is over, the impugned FIR is filed. It is submitted that even the FIR suggests the delay of five years without explanation for such a huge delay, in that background also, continuation of process is abuse of process of law. It is submitted that even the averments made in the FIR with regard to the payment of land conversion expenses is also in dispute as per the submission of the applicant it was paid from the bank account of the applicant no.2. It is submitted that, in that background, impugned FIR deserves to be set aside being abuse of process of law.

6. Learned APP Ms. Bhatt submits that the FIR is at the primary

stage of investigation, and at present, investigation reveals that despite the Banakhat was executed with one Truptiben Udyabhai Dhanani which came to be cancelled on 02.06.2021. However, on 17.05.2021, Satakhat was executed with the present complainant. It is submitted that this itself shows dishonest fraudulent intention of the applicant from inception, and in that background, at this stage, no interference is required.

7. Considering the submission made by the learned advocates for the respective parties and referring the allegations made in the FIR, certain undisputed facts emerge which are narrated hereinbelow:

(a) As per the allegations, the Banakhat was executed between the applicant and the complainant on 17.05.2021 wherein it is averred that the applicants had received Rs.20 lakhs as the complainant has to pay Rs.20 lakhs towards the advanced payment and on getting the NA permission the sale deed would be executed. As per the condition of the Banakhat, the expenditure with regard to the NA has to be borne by the present applicants. The applicants have signed for the stamp as well as as a power of attorney holder of the other family members.

(b) It further reveals that prior to execution of the aforesaid Banakhat there was another Banakhat which is executed with Truptiben Udyabhai Dhanani on 18.07.2017 stating the sale consideration of Rs.50 lakhs which was subsequently cancelled after execution of the Banakhat with the applicant on 02.06.2021.

(c) As per the allegations made in the FIR, prior to execution of Banakhat, the applicant has executed two partnership deed with Gaurang Arvindbhai Vekariya and Ashwinbhai Mansukhbhai Kotadiya by distributing the 50% share to each partners. There after, his name came to be deleted from the revenue record after mutating the name of the other family members.

(d) The FIR came to be lodged on 27.05.2026, and at present, investigation is at large.

8. So far as the dishonest intention which is the prime requirement to attract the offence of cheating is concerned the circumstances as well as subsequent conduct which is narrated by the complainant that at the time of execution of the Banakhat with the complainant the Banakhat which was executed with Truptiben Udyabhai Dhanani was in operation despite the same no such facts are stated in the Banakhat which is executed with the complainant as well as dividing the share among the partners of the complainant where the averments in the complaint showed criminal intention on the part of the accused from very inception. Even if the dispute is civil in nature, the proceedings are not legally quashable.

9. In this background this court has also referred the following decisions rendered by the Apex Court described formulating the guidelines to exercise the power under section 482 of the Code of Criminal Procedure, which are referred as under:

9.1 In the case of **M/s. Neeharika Infrastructure Pvt**. **Ltd**. **vs State of Maharashtra,** reported in **(2021) 19 SCC 401** wherein it is held that interim protection should not be routinely granted in quashing petitions as it interferes with police investigation of cognizable.

9.2 In the case of **State Represented by the Inspector of Police vs. M.Maridoss,** reported in **2023(4) SCC 338** wherein it is held that while exercising powers under Section 482 of the Code of Criminal Procedure, the High Court should not conduct a "mini-trial" or evaluate the evidence in detail at the stage of quashing an FIR. The Court observed that the Madras High Court had prematurely quashed criminal proceedings under Sections 124A, 153A, 504, 505(1)(b), and 505(2) of the Indian Penal Code within four days of the FIR being lodged, without giving investigating agency the reasonable time to investigate.

9.3 In the case of **Somjeet Mallick vs. State of Jharkhand**, reported in **2024 (10) SCC 527** wherein it is held that while considering the petition for quashing under Section 482 Cr.PC, the Court must examine the allegations in the FIR and the materials collected during investigation at their face value only to determine whether a prima facie case is made out. The Court has observed that the correctness or truthfulness of the allegations cannot be tested at the preliminary stage and if the allegations disclose dishonest conduct or a cognizable offence requires investigation, the High Court should not quash the proceedings at the threshold as doing so would obstruct a legitimate investigation.

9.4 In the case of **Rocky vs. State of Telangana,** reported in **2025 (0) JX (SC) 1486** wherein it is held that inherent powers of the High Court under Section 482 CrPC must be exercised sparingly and only in exceptional cases. The Apex Court emphasized that when the FIR and charge sheet disclose prima facie commission of cognizable offences, the High Court should not interfere at the pre-trial stage or conducts a mini-trial, and routine interim protections such as directions for "no coercive steps" should not be granted as they obstruct the statutory power of the police to investigate offences. The Apex Court further held that criminal proceedings should continue where the allegations are not inherently improbable and disclose the ingredients of an offence.

9.5 In the case of **Dinesh Sharma vs. Emgee Cables and Communication Ltd. And anr,** reported in **2025 SCC OnLine 929** wherein it is held that the High Court erred in quashing an FIR alleging offences under Sections 420, 406, and 120B of the IPC arising out of commercial transactions between the parties. The Court observed that merely because a dispute arises from a business or contractual relationship does not mean that criminal proceedings cannot be initiated if the allegations disclose elements of cheating, criminal breach of trust, or conspiracy. It is noted that allegations regarding the creation of shell/dummy companies and circulation of funds indicated possible fraudulent intention, which requires thorough investigation and could not be dismissed at threshold. Emphasizing that economic offences have wider societal impact and should not be lightly quashed, the Supreme Court set aside the order passed by the High Courts and restored the criminal proceedings, holding that the matter deserved proper investigation and trial.

10. Having thoughtfully considered the aforesaid judgments and the principles emanating therefrom and as the facts are rising, investigating is at large and when the materials disclose the prima-facie case against the present applicants, in the opinion of this Court, exercising the power under Section 528 of BNSS which is to be exercised in an extremely rare cases and only to prevent the

miscarriage of justice, the present application does not make out any case to interfere with the investigation. In that background, present application deserves to be dismissed as the same is devoid of merits. Hence, the present application is dismissed accordingly. Rule is discharged.

(M. K. THAKKER,J)

AMIT ITALIAN