

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY
SUBORDINATE COURT) NO. 1328 of 2025**

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IMRAN YUSUFBHAI NAYANI

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR VIRAT POPAT for MR YASH J PATEL(11240) for the Applicant(s) No. 1

NOTICE UNSERVED for the Respondent(s) No. 2

MR BHARGAV PANDYA, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MS. JUSTICE GITA GOPI**Date : 27/03/2026****ORDER**

1. By way of this application, the applicant has challenged the order dated 5.10.2024 below Exhs.16 and 17 passed by the learned 5th Additional District and Sessions Judge, Ahmedabad (Rural) in Sessions Case no. 170 of 2021 rejecting the prayer of discharge, wherein the offence has been registered under Sections 379, 285, 308, 120(b), 114 and 411 of the Indian Penal Code, 1860 as well as Sections 15(2), 15(4), 16A of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Amendment Act, 2011 and Sections 3 and 4 of Damage to Public Property Act, 1984.
2. Learned advocate Mr. Chitan Popat along with learned advocate Mr. Yash Patel for the applicant submitted that

taking into consideration the facts of the case, the present applicant could not be charged Sections 379, 285, 308, 120(b), 114 and 411 of the Indian Penal Code, 1860 and no provisions under Sections 15(2), 15(4), 16A of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Amendment Act, 2011 and Sections 3 and 4 of Damage to Public Property Act, 1984 could be invoked against the applicant. Learned advocate Mr. Popat submitted that twice, Panchnama was drawn, on 10.2.2021 and 22.2.2021, where two contrary reports are on record and the material which was collected earlier in point of time should be made the base for the report and thus, it is stated that the applicant was required to be discharged from the offence.

3. Mr. Bhargav Pandya, learned APP for the State has submitted that the learned Judge has recorded the arguments of the advocates at length and has given reasons for rejecting the application and hence, submitted that there is no merit in the present application.
4. It appears that the provision under Section 226 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C." for short) has not been followed by the Public Prosecutor to open the case, where through the provision, it requires that

when the accused appears or is brought before the Court in pursuant of the commitment of the case under Section 209, Public Prosecutor shall have to open his case by describing the charge brought against the accused and by stating what evidence he proposes to lead to prove the guilt of the accused. The provision under Section 226 of the Cr.P.C. is mandatory in nature. The learned Judge is not a mere post office to frame the charge, but has to exercise the judicial mind to the facts of the case in order to determine whether the case for trial has been made out by the prosecution.

5. After the accused is brought before the Court or appears before the Court, it becomes necessary for the Public Prosecutor to open the case and to produce all the documents on which the reliance would be placed to prove the guilt of the accused. That stage gives the liberty to the accused to resist and to even have the knowledge of the material against him. The learned Judge has not referred in the impugned order of having directed the Public Prosecutor to adopt the procedure as mandated under Section 226 of the Cr.P.C.
6. In the circumstances, let the Trial Court list the matter under Section 226 of the Cr.P.C. and direct the Public Prosecutor to open the case by describing the charge against the accused as

well as the evidence, which he proposes to place on record to prove the guilt of the accused. The learned Trial Court Judge is also directed that at that stage, the accused be granted an opportunity of hearing along with the Public Prosecutor.

7. Accordingly, the present application stands disposed of, with specific directions to the learned Judge that the observations made in the impugned order should not prejudice rights of any of the parties and the applicant, if necessary, has the liberty to prefer an application afresh under Section 227 of the Cr.P.C.

Maulik

(GITA GOPI,J)