

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY
SUBORDINATE COURT) NO. 264 of 2013**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Approved for Reporting	Yes	No
		✓

BHARATBHAI GHANSHYAMBHAI SHAH

Versus
STATE OF GUJARAT

Appearance:

MR.NANDISH H THACKAR(7008) for the Applicant(s) No. 1

MR ROHAN RAVAL, APP for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 06/05/2026

JUDGMENT

1. By filing these revision application, the applicants have prayed to quash and set aside order dated 03.12.2011 passed by the Sessions Court in Sessions Case NO.371 of 2010 and further be pleased to direct discharge of the petitioners in terms of Section 227 of the Code of Criminal Procedure, 1973.

2. Brief facts of the case are that the present revision application arises from the order dated 03.12.2011 passed by the learned Sessions Court in Sessions Case No. 371 of 2010, whereby the application filed under Section 227 of the Cr.P.C. for discharge came to be rejected. The case pertains to damage caused to Sangemarmar Complex situated at Ambawadi, Ahmedabad, during the devastating earthquake of 26.01.2001 measuring 7.9 on the Richter Scale, which caused widespread destruction across the State of Gujarat. The complex comprised two wings containing nine flats and was constructed between 1989 and 1991. One wing consisting of four flats suffered severe

damage, whereas the other wing remained unaffected. The land on which the complex was constructed originally belonged to Mr. Shodhan, who had obtained the necessary permissions and undertaken the development and construction activities. The applicant had financed the superstructure construction and subsequently occupied one flat, while two other flats stood in the names of his wife and HUF. The record further indicates that permissions, municipal payments, electricity connections and ownership-related documents were in the name of Mr. Shodhan. Certain construction agreements executed in the year 1992 were entered into after completion of construction. The building had remained occupied and in use by all residents, including Mr. Shodhan, until the earthquake occurred in the year 2001.

3. Learned Advocate Mr. Thakkar, appearing for the applicant, has submitted that the present applicant has no connection whatsoever with the construction of the alleged structure and was merely a financier. It is contended that there is no material on record to indicate that the applicant was in any manner engaged in the construction of the “Sangemarmar Complex. It is further submitted that the building in question suffered damage due to the high-intensity earthquake that occurred on 26 January 2001, which was a natural calamity. The structure comprised two wings connected by a common staircase and lift, consisting of five apartments in one wing and four in the other, and certain portions were damaged. The construction had commenced in 1989 and was completed in 1991, nearly a decade prior to the earthquake. Therefore, the damage cannot be attributed to any alleged act or omission on the part of the applicant.

3.1 Learned counsel has emphasized that there was no *mens rea* or criminal intention on the part of the applicant. Moreover, no material on record establishes any involvement of the applicant in the construction activity. All permissions for construction were obtained by one Mr. Jagdishchandra Gordhandas Sodhan, the builder, who has consistently asserted his ownership over the property. The record further reveals that the said builder had applied for and obtained requisite permissions from AUDA and had also filed affidavits before the competent authorities affirming that he was the owner and had undertaken construction on the concerned plot.

3.2 It is further submitted that Mr. Sodhan had executed an indemnity bond declaring himself to be the holder of TP Scheme No. 21, Final Plot No. 411, and had proposed construction on the said plot in his capacity as owner. There is not even an iota of evidence to suggest that the present applicant acted as a builder at any point in time. It is pointed out that as early as in 1991, prior to the earthquake, Mr. Sodhan had filed a caveat before the City Civil Court at Ahmedabad against the present applicant, categorically asserting that the applicant was merely an unauthorized investor and that he himself was the sole owner of the land. This further substantiates the applicant's limited role as a financier.

3.3 In view of the aforesaid, it is submitted that there exists no nexus or involvement of the applicant in the alleged offence. The

learned Sessions Judge has committed a serious error in rejecting the discharge application by erroneously treating the applicant as a builder and by impermissibly shifting the burden upon the applicant to prove that he was not a builder, whereas the burden squarely lies upon the prosecution to establish such involvement. It is also submitted that the material on record, including the FSL report, indicates that the actual builder had carried out construction in deviation of the approved plan, including additions such as a penthouse, terrace garden, and an over-capacity water tank. In these circumstances, it is respectfully prayed that the present application be allowed and the applicant be discharged from the charges levelled against him.

4. Learned APP has opposed the present application and submitted that the applicant is specifically named in the FIR and has played an active role not only in financing but also in the construction of the building in question. It is contended that the material collected during the course of investigation prima facie indicates the involvement of the applicant in the alleged offence. It is further submitted that the incident resulted in the collapse/damage of the building, leading to the death of 11 persons. In view of the gravity and seriousness of the offence, the role attributed to the applicant cannot be lightly brushed aside at this stage. Learned APP has argued that the evidence on record discloses sufficient grounds to proceed against the applicant for offences punishable under Sections 304 and 120B(1) of the Indian Penal Code, as well as under the provisions of the Gujarat Ownership Flats Act. It is submitted

that whether the applicant had active participation in the construction and whether there existed a criminal conspiracy are matters which require appreciation of evidence and can only be determined during the course of trial. Accordingly, it is urged that no case for discharge is made out, and the present application deserves to be rejected.

5. Having heard the learned advocates for the respective parties and upon perusal of the record, it prima facie emerges that the present applicant was merely a financier. The material on record further indicates that one Mr. Jagdishchandra Gordhandas Sodhan had obtained the requisite permissions, asserted ownership over the property, undertaken the construction of the flats, and executed the indemnity bond in his own capacity. Notably, the charge-sheet does not disclose any evidence to suggest that the present applicant was either the owner, developer, or contractor of the said construction.

6. In order to invoke the provisions of Section 304 of the Indian Penal Code, the prosecution is required to establish the existence of *mens rea*, namely, knowledge or intention that the act was likely to cause death. In the present case, the building is stated to have collapsed due to a catastrophic earthquake after a considerable lapse of time since its construction. It cannot be ruled out that the structural integrity of the building may have been affected over time due to age, environmental factors, and the impact of the natural calamity.

7. Even if the case of the prosecution is accepted at its face value, there is no material to indicate that the applicant had any knowledge or intention that such an unfortunate incident was likely to occur. The essential ingredient of *mens rea* is thus conspicuously absent.

8. It is a settled principle of law that where two views are possible on the basis of the material available on record, the view favouring the accused must be adopted at the stage of discharge. In this regard, reliance may be placed on the decision in **Ygesh alias Sachin Jagdish Joshi vs. State of Maharashtra, (2008) 2 GLH 596**.

9. Before proceeding further, it would be apt to refer to relevant provisions of law, which are quoted hereunder:-

“304. Punishment for culpable homicide not amounting to murder.—

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

10. Before Section 304 can be invoked, the following ingredients must be satisfied;

“(i) the death of the person must have been caused;

(ii) such death must have been caused by the act of the accused by causing bodily injury;

(iii) there must be an intention on the part of the accused

(a) to cause death: or

(b) to cause such bodily injury which is likely to cause death (Part I);

(iv) there must be knowledge on the part of the accused that the bodily injury is such that it is likely to cause death (Part II).”

11. In this regard, reference may also be made to the judgment of the Hon'ble Supreme Court in State of **Mahadev Prasad Kaushik v. State of Uttar Pradesh**, reported in **(2008) 14 SCC 479** wherein the Supreme Court held that allegations of medical negligence resulting in death should ordinarily be dealt with under Section 304A IPC (rash or negligent act) rather than the graver offence under Section 304 IPC (culpable homicide), unless there is specific evidence of intention or knowledge.

12. In the backdrop of the above discussion, in the absence of any material showing the involvement of the applicants in the offence, the discharge application filed by the present applicants-accused deserves to be allowed. The object of the discharge mechanism occupy a crucial position within the judicial process. It serves as a preliminary judicial filter that operates before the formal commencement of the trial. Its primary purpose is to ensure that the only cases supported by legal foundation proceed to trial, whereby upholding fairness for the accused, while preserving the judicial efficiency. It protects the individual from being forced into the rigors of full criminal trial, when the prosecution material does not disclose even *prima facie* case. This mechanism is essential to uphold the constitutional values

of personal liberty and constitutional safeguards, which prevents the wastage of the judicial time and maintains balance between the prosecution and the defence to eliminate frivolous prosecution at the early stage. Discharge mechanism enhances the public confidence in the judicial system.

13. Accordingly, the present revision application is allowed. order dated 03.12.2011 passed by the Sessions Court, Ahmedabad in Sessions Case No.371 of 2010, is hereby quashed and set aside. Consequently, the discharge application filed by the present applicant stands allowed and the applicant is discharged from all the offences alleged against them. Rule is made absolute. Interim relief, if any, stands vacated.

(HASMUKH D. SUTHAR,J)

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