

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 12305 of 2013**

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SWAMI MADHAVPRASAD GURU HARIPRASADJI & ORS.

Versus

STATE OF GUJARAT

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Appearance:

MR BM MANGUKIYA(437) for the Applicant(s) No.

1,10,11,12,13,2,3,4,5,6,7,8,9

MS BELA A PRAJAPATI(1946) for the Applicant(s) No.

1,10,11,12,13,2,3,4,5,6,7,8,9

MR RONAK RAVAL, ADDL, PUBLIC PROSECUTOR for the Respondent(s)
No. 1

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CORAM:HONOURABLE MRS. JUSTICE M. K. THAKKER**Date : 01/04/2026****ORAL ORDER**

1. Learned advocate Mr. B.M. Mangukiya was not present, and as the matter has been pending since 2013, this Court deems it fit to proceed with the matter.
2. This Court has passed following order on 25.03.2026;

“In the first round, colleague of learned advocate Mr. Mangukiya requested for pass over. Thereafter, in the second session, the colleague of learned advocate Mr. Mangukiya requested for time on the ground that due to the medical emergency, learned advocate Mr. Mangukiya had to leave the Court.

In the interest of justice, the matter is kept on 01.04.2026 and shall be taken up in the first round, even if learned advocate Mr. Mangukiya would not be there.”

3. Today also, when the matter is called out, learned advocate Mr. Mangukiya is absent.
4. The present application has been filed challenging the order dated 05.07.2013 passed by the learned Judicial Magistrate First Class, Gadhada, below Exh. 19 in Criminal Case No. 526 of 2007, whereby it has been held that the offences disclosed in the challan are exclusively triable by the Court of Sessions and, accordingly, the case has been committed to the Court of Sessions. The principal challenge to the impugned order is on the ground that the challan filed against the present applicant discloses offences punishable under Sections 143, 151, 186, 120-B and 34 of the IPC, which are triable by the learned Magistrate. In that view of the matter, it is contended that the learned Magistrate has committed an error in committing the case to the Court of Sessions.
5. This Court has considered the affidavit filed by the Investigating Officer, Jesingbhai Madhubhai Solanki, Police Inspector, Gadhada Police Station, District

Botad, who has submitted the charge-sheets in the present case. The charge-sheet forming part of the affidavit indicates that the first charge-sheet was filed on 18.12.2018, disclosing offences punishable under Sections 307, 397, 395, 353, 333, 332, 151, 152, 427, 435, 143, 186, 120B and 34 of the Indian Penal Code, along with Sections 3 and 7 of the Prevention of Damage to the Public Property Act, Sections 3(b)(c)(d)(f)(g)(i) and 7 of the Religious Institutions (Prevention of Misuse) Act, 1988, and Section 135 of the Bombay Police Act. Thereafter, a supplementary charge-sheet being No.78(A) of 2007 came to be filed on 18.11.2018 against certain accused persons for the very same offences. Subsequently, a separate charge-sheet dated 27.05.2007 was submitted against the present applicant for offences punishable under Sections 143, 151, 186, 120B and 34 of the Indian Penal Code. In view of the fact that the material on record discloses offences, in respect of co-accused arising out of the same FIR, which are triable exclusively by the Court of Sessions, the order of committal of the entire case to the Court of Sessions cannot be said to be erroneous. At the stage of committal, the Magistrate is not required to examine the merits qua individual accused, but is only required to ascertain whether a prima facie case is made out and whether the police

report discloses offences exclusively triable by the Court of Sessions.

6. This Court has also referred section 323 of the Cr.P.C. which reads as under:-

“323. Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed. - If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing the judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained [and thereupon the provisions of Chapter XVIII shall apply to the commitment so made]”

7. A perusal of the provisions contained in Section 323 of the Code of Criminal Procedure reveals that, in any inquiry or trial before a Magistrate—which expression would include the Chief Judicial Magistrate as well—if it appears to the Magistrate at any stage of the proceedings, prior to the pronouncement of judgment, that the case is one which ought to be tried by the Court of Session, the Magistrate shall commit the case to the Court of Session for trial.
8. This Court has also placed reliance upon the decision of the Apex Court in the case of **Amandeep Singh**

Saran Vs. State of Chhattisgarh reported in **(2024) 6 SCC 541**, wherein the Apex Court has held as under:-

“38. We have already found that as relates to an offence under Section 409 IPC, going by the First Schedule to Cr.PC, it is triable by Court of a Magistrate of the First Class and since that expression takes in the Court of a Chief Judicial Magistrate. The case on hand is presently under trial before the Court of Chief Judicial Magistrate, Raipur. The question is what should be the procedure to be followed for committal of such a case before the Court of Session concerned at this stage. Since the case is already before the Court of Chief Judicial Magistrate, the learned counsel for both sides submitted that the case could not be committed to the Court of Session concerned in exercise of the power under Section 325, Cr. PC. We do not think it necessary to delve into that question as according to us this could be done legally in exercise of the power under Section 323, Cr. PC.

39. A scanning of the provisions under Section 323 Cr. PC would show that in any inquiry or trial before a Magistrate, “which expression would take in the Chief Judicial Magistrate as well”, it appears to

him at any stage of the proceedings before signing the judgment that the case is one which ought to be tried by the Court of Session, it should commit to that Court. Thus, it is evident that before signing the judgment, the power under Section 323, Cr. PC is available to be exercised. Certainly, the sine qua non for exercise of the power under Section 323 is the opinion of the Magistrate concerned that it is a case which ought to be tried by the Court of Session. In view of the provision, under normal circumstances, it is desirable to direct the Court of the Magistrate concerned to exercise the power after due consideration. However, in view of the peculiar circumstances of this case which we have already taken into account, id est that the maximum penalty imposable by the Court of Chief Judicial Magistrate is imprisonment not exceeding 7 years, that taking into account the fact that the appellant herein had already undergone incarceration for a period of more than 8 years we have already passed an order for his release on bail and the fact that only 10 out of 86 witnesses on the side of the prosecution have been examined, we direct the Court of the Chief Judicial Magistrate, Raipur to commit the case under trial against the appellant herein, arising out of FIR No.22/2015 of

Police Station, New Rajendra Nagar, Raipur in the State of Chhattisgarh, to the Court of Session to which he is subordinate, to enable that Court to conduct the trial in the said case. This shall be done within a period of three weeks from the date of the receipt of the copy of this judgment. Upon such committal and receipt of the case, the Court of Session concerned shall proceed with the trial of the case in accordance with law under Chapter XVIII, Cr. PC. The Court of Session concerned shall make an endeavor to conduct and conclude the trial expeditiously.”

8.1. In view of the aforesaid ratio, it is the considered opinion of this Court that even during the course of trial, if the Magistrate forms an opinion that the case is one which ought to be tried by the Court of Session, he is empowered under Section 323 of the Code of Criminal Procedure to commit the case to the Court of Session. Having regard to the factual background of the present case, wherein the prima facie material on record discloses that the offences alleged against the co-accused, as reflected in the supplementary charge-sheet, are triable by the Court of Session, it cannot be said that the learned Magistrate has committed any error in committing the case to the Court of Session.

9. Since the material on record prima facie discloses

such offences against the co-accused, the learned Magistrate had no option but to commit the case to the Court of Sessions. In this view of the matter, the present application, being devoid of merits, deserves to be dismissed.

10. Resultantly, the present application stands dismissed. Rule is discharged. Interim relief, if any, stands vacated.

M.M.MIRZA

(M. K. THAKKER,J)