

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR LEAVE TO APPEAL) NO. 20979
of 2023**

**In R/CRIMINAL APPEAL NO. 2631 of 2023
With
R/CRIMINAL APPEAL NO. 2631 of 2023**

=====

SHAHZAD TALIB CHASMAWALA

Versus

SAMAD NAWAB MOHIUDDIN SAIYED @ SAMAD JAVED NAWAB SAIYED

=====

Appearance:

MS.KHYATI CHUGH FOR MR. PARTH H BHATT(6381) for the Applicant(s)
No. 1

MR.SHREYANG VAYEDA FOR MR DHRUV K DAVE(6928) for the
Respondent(s) No. 1

MS VRUNDA SHAH, ADDL.PUBLIC PROSECUTOR for the Respondent(s)
No. 2

=====

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

Date : 29/11/2023

ORAL ORDER

**ORDER IN R/CRIMINAL MISC.APPLICATION (FOR LEAVE TO APPEAL)
NO. 20979 of 2023**

1. Learned advocate Ms.Khyati Chugh submits that though the presumption which was in favour of the complainant was not rebutted by the respondent-accused by leading the probable evidence, which may be in the nature of preponderance of the probability, the learned trial Court had acquitted the respondent- accused from the charges. Learned advocate Ms.Chugh further draws the attention of this Court with regard to the Bank Statement of the father, which was produced before the learned trial Court

below Exhibit-37, wherein two entries are reflecting of dated 07.09.2016 and 08.09.2016 showing the withdrawal of Rs.20 Lakh each. In the cross examination conducted by the learned advocate of the accused, it comes on the record that after withdrawing amount from the father's account the amount was lent to the respondent-accused for the period of one year and for that Memorandum of Understanding was executed, which was produced before the trial Court below Exhibit-15 wherein the detail of the cheque is also mentioned. Though the issuance of the cheque was not disputed by the learned trial Court, it was submitted by the learned advocate that the bare defence was accepted without leading any evidence by the respondent-accused.

2. In view of above submissions, this Court deems it fit to allow this application. Hence, present application is allowed. Leave to prefer an appeal is granted.

ORDER IN R/CRIMINAL APPEAL NO. 2631 of 2023

1. The appeal is admitted. Learned advocate Mr.Shreyang Vayeda for learned advocate Mr.D.K.Dave waives service of notice of admission on behalf of respondents-original

accused. Learned APP waives service of notice of admission on behalf of respondent-State.

2. Record and Proceedings be called for. Matter be listed in *seriatim*.

M.M.MIRZA

(M. K. THAKKER,J)