

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 10086 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE M. R. MENGDEY

Approved for Reporting	Yes	No
		✓

SAGAR JAISUKHBHAI NANDANIYA & ANR.

Versus

STATE OF GUJARAT & ANR.

Appearance:

MR. JAL UNWALLA, LEARNED SENIOR ADVOCATE WITH MS TEJAL A VASHI(2704) for the Applicant(s) No. 1,2

MS. DHWANI TRIPATHI, APP for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE M. R. MENGDEY

Date : 20/07/2026

JUDGMENT

1. Rule. Learned APP waives service of notice of rule.
2. By filing the present petition under Articles 226 and 227 of the Constitution of India, the petitioners have prayed for the following reliefs: -

“A. This Honourable Court may be pleased to issue any appropriate writ, order or direction holding and declaring that the impugned order violates the fundamental right of the petitioner guaranteed under Article 21 of the Constitution of India and thereby violates the right of fair trial given to the petitioner and thereby be pleased to quash and set aside the said impugned order dated 30.06.2026 passed below Exh.152 in sessions case no. 47 of 2023 by the Ld. Sessions Judge, Jamnagar and thereby be pleased to allow the application at Exh. 154 in toto. (At Annexure-A,B);

B. This Honourable Court may be pleased to quash and set aside the impugned order dated 30.06.2026 passed below Exh. 152 in sessions

case no. 47 of 2023 by the Ld. Sessions Judge, Jamnagar and thereby be pleased to allow the application at Exh. 154 preferred by the petitioners permitting the petitioners to pose the question as suggested in the cross examination and to draw the attention of P.W. 22 and bring the contradiction on record (At Annexure – A,B);

C. Pending admission, hearing and final disposal of the present petition this Honourable Court may be pleased to stay further proceedings of Trial of sessions case no. 47 of 2023 pending before the Ld. Sessions Judge, Jamnagar;

D. Pending admission, hearing and final disposal of the present petition this Honourable Court may be pleased to stay/defer further recording of the evidence of the P.W. 22, to be recorded in the sessions case no. 47 of 2023 pending before the Ld. Sessions Judge, Jamnagar;

E. Grant such other and further relief/s as may be deemed fit and proper in the interest of justice.”

3. The facts and circumstances giving rise to the filing of the present petition are such that the petitioners herein are accused and are facing trial for an offence punishable under Section 302 of the IPC. Vide Exhibit-152, deposition of one witness viz. Pethabhai Palabhai Sakhara is being recorded before the learned Sessions Court. During the course of his cross-examination, a question was sought to be asked on behalf of the petitioners relating to the Panchnama. The said question was opposed by learned APP, and therefore, the learned Sessions Court vide order impugned in the petition, has disallowed the said question. Being aggrieved by the same, the petitioners have approached this Court by filing the present petition.

4. Heard learned Senior Advocate Mr. Jal Unwalla with learned Advocate Ms. Tejal Vashi for the petitioners. He submitted that Prosecution Witness No.22 viz. Pethabhai Palabhai Sakhara is an eye witness to the incident as per the case of prosecution. The examination-of-chief of the said witness is recorded by the learned Sessions Court vide Exhibit-152. It is the case of prosecution that this witness being an eye witness to the incident, was taken by the Investigating Officer at the time of drawing the scene of offence

panchnama and while drawing the said panchnama, a blue jacket bearing cut marks was recovered from the place of incident. It is noted in the said panchnama that the witness viz. Pethabhai had informed the Investigating Officer that the jacket belonged to the deceased and the cut marks thereon were due to the assault made by unknown persons upon the deceased with knife. During the cross-examination of the witness Pethabhai, a question was put to the said witness on behalf of the petitioners by showing him the panchnama of the scene of offence as to whether he had informed the Police that the jacket in question belonged to the deceased and the cut marks thereon were due to the assault made upon the deceased with knives by unknown people. This question was objected to by learned APP on the ground that the scene of offence panchnama cannot be treated as a statement under Section 162 of the Cr.P.C., and therefore, the defense cannot be allowed to contradict the said panchnama. The learned Sessions Court has upheld the objection raised by the learned APP and has disallowed the question. He submitted that it is the case of prosecution that the witness was also present at the scene of offence at the time of drawing of the panchnama and certain information was provided by him to the Investigating Officer during the said panchnama. Therefore, the question which was sought to be asked to the witness was necessary for the valid defense of the petitioners. The reasons given by the learned Sessions Court for disallowing the question, are not germane to law. He, therefore, submitted to allow the present petition and quash and set aside the impugned order and allow the petitioners herein to put the question to the witness which has been disallowed by the learned Sessions Court.

5. Learned APP has opposed the petition by contending that the learned Sessions Court has rightly disallowed the question as the contents of the panchnama cannot be considered as a statement made by the witness under Section 162 of the Cr.P.C., and therefore, there is no question of contradicting the witness with the said panchnama. He further submitted that the present

petition is nothing, but an attempt on the part of the petitioners to delay the trial. He, therefore, submitted to dismiss the petition.

6. Heard learned Advocates for the parties. The facts admitted on both the sides are such that as per the case of prosecution, witness Pethabhai Palabhai Sakhara i.e. Prosecution Witness No.22 is an eye witness to the incident. Vide Exhibit-35, the panchnama of the scene of offence is on record before the learned Sessions Court. The perusal of the said panchnama would reveal that witness Pethabhai was present at the scene of offence at the time of drawing of panchnama and had also participated in drawing of such panchnama. As per the case of prosecution itself, witness Pethabhai had informed the Police at the time of drawing of panchnama that the jacket which was found from the scene of offence, belonged to the deceased and the cut marks thereon were result of the assault made on the deceased by unknown persons with knives. Upon perusal of the examination-in-chief of the said witness, in Para-15 the witness has deposed that on the place a blue colored jacket made of rexine, was found lying which belonged to Khemrajbhai i.e. the deceased and there were cut marks thereon. He has also stated that he had informed the Police that the jacket belonged to Khemrajbhai. Thus, in the panchnama as well as in the deposition of the witness, it is categorically recorded that he had informed the Police about the jacket belonging to the deceased. However, the witness has remained silent about the cause of cut marks found on the jacket in his deposition, whereas the panchnama records that the witness had informed the Police about the cause for those cut marks.

7. The learned Sessions Court while disallowing the question, has observed that the panchnama in question is not a statement of the witness recorded under Section 162 of the Cr.P.C. Section 145 of the Evidence Act provided for cross-examination as to previous statements in writing. The Section 145 of the Evidence Act reads as under: -

“Section 145 – Cross-examination as to previous statements in writing.

A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.”

8. The perusal of the panchnama in question, gives the impression that the witness Pethabhai had informed the Police about the facts of the cut marks present on the jacket. Therefore, the information given by the witness to the Police is nothing, but a previous statement made by him before the Police which has been reduced into writing, and therefore, the defense would be entitled to cross-examine the witness with regard to this previous statement made by him. Learned Sessions Court has further observed that the Panch witnesses of the said panchnama were not put in question in this regard by the defense in their cross-examination. It would be for the learned Sessions Court to appreciate the evidence at the end of the trial. Merely because those questions were not put to the Panch witnesses in their cross-examination, the question which is sought to be asked by the defense to the witness Pethabhai, cannot be disallowed. Having regard to these aspects, the petition deserves consideration and hence, the same is hereby allowed. The order impugned in the petition is hereby quashed and set aside. It will be open for the petitioners to put the question which has been disallowed by the learned Sessions Court to the witness Pethabhai during his cross-examination. Rule is made absolute.

(M. R. MENGDEY,J)

RAVI OZA