

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 7042 of 2016**

=====

DHANABHAI BHAGWANBHAI BHARWAD & 8....Applicant(s)

Versus

STATE OF GUJARAT & 3....Respondent(s)

=====

Appearance:

MR VIRAT G POPAT, ADVOCATE for the Applicant(s) No. 1 - 9

PUBLIC PROSECUTOR for the Respondent(s) No. 1

=====

CORAM HONOURABLE MS JUSTICE SONIA GOKANI
:**Date : 27/09/2016****ORAL ORDER**

1. This Court on September 21, 2016, had directed the Investigating Officer not to take any coercive steps against the petitioners in the wake of both the tests of BOESP (Brain Finger-printing Test) and Lie Detection, which have come in favour of the petitioners. It is the say of Shri Virat Popat, learned counsel appearing for the petitioners, that the decision in the case of ***Smt. Salvi and others v. State of Karnataka, reported in AIR 2010 SC 1974***, permits the positivity in favour of the accused as he had consented to undergo the said test and,

therefore, the test result requires to be admitted in his favour.

2. Shri Ronak Raval, learned Additional Public Prosecutor, has questioned the same relying again on the decision of the Apex Court in the case of **Smt. Salvi (supra)** and has urged this Court that the Apex Court has not permitted technically to allow even the test results as evidence where the results have been obtained after undergoing the tests voluntarily by the accused. The matter requires consideration.

3. **Let Rule be issued to the respondents, returnable on November 09, 2016.** The formal service of notice of Rule is waived by the learned Additional Public Prosecutor on behalf of the respondent No.1-State.

The petitioner shall remain present before the Investigating Officer as and when required. In the event of any difficulty, the either side is at liberty to approach this Court.

Direct Service is permitted qua the respondent No.2. To be served through the concerned Police Station.

(MS SONIA GOKANI, J.)

Aakar