

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 23042 of 2024**

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SHAMALABHAI NANABHAI BHAMMAR & ORS.

Versus

STATE OF GUJARAT

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Appearance:

MR BM MANGUKIYA(437) for the Applicant(s) No. 1,2,3,4,5,6,7,8

MS BELA A PRAJAPATI(1946) for the Applicant(s) No. 1,2,3,4,5,6,7,8

MS. CHETANA SHAH, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE SANDEEP N. BHATT**Date : 10/12/2024****ORAL ORDER**

1. Heard learned advocate Mr. B.M.Mangukiya for the applicants and learned APP, Ms. Chetana Shah for the respondent – State.

2. Learned advocate Mr. Mangukiya has submitted that considering the settled position of law, the statement which is recorded under the provisions of Section 164 of Cr.P.C. cannot be used as substantive piece of evidence and it can be used for contradictions and omissions purposes only. He has further submitted by referring to the judgment in the case of *Utpal Das and Ors Vs. State of West Bengal* reported in [2010] 6 SCC 493 and another judgment in the case of *Mamand and Ors. Vs. Emperor* reported in AIR 1946 PC 45

and therefore, he has submitted that the impugned order passed by the trial Court of exhibiting the document, more particularly, statement recorded under Section 164 of the Cr.P.C. is erroneous and therefore, he prays for interference in the proceedings.

3. Learned APP, Ms. Chetana Shah has submitted that now the proceedings are going on in the Sessions Court and the statements which are recorded under Section 164 of Cr.P.C. are required to be brought on record, otherwise, it is difficult to examine and cross-examine the witnesses in appropriate manner. She has further submitted by producing the report received from the concerned Police Station that the trial is at the stage of evidence of prosecution and she submits that interference by this Court would further delay the proceedings of the trial. She has further submitted that, otherwise also, the order passed by the concerned Court is in the larger interest of justice and in accordance with law and therefore, she submits that this Court may not interference in the proceedings.

4. Considering the submissions made at the bar by the rival parties as well as considering the fact that statement made under the provisions of Section 164 of Cr.P.C. is now sought to be produced on record, which is permitted by the

concerned trial Court and keeping in mind the judgment cited by the learned advocate for the applicants, matter requires consideration.

5. Issue **Notice**, returnable on **06.01.2025**. Learned APP waives service of notice for the respondent – State.

6. By way of interim relief, the impugned order dated 15.10.2024 passed below Exh.37 in Sessions Case No.2 of 2023 is hereby stayed till the next date of hearing.

Direct service is permitted.

(SANDEEP N. BHATT,J)

SLOCK BAROT