



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY
SUBORDINATE COURT) NO. 135 of 2019**

**FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Approved for Reporting	Yes	No
		√

DILIPSINH @ DAKO KISHORSINH RATHOD & ORS.

Versus

STATE OF GUJARAT

Appearance:

MR MOHDSHAFI SHAIKH(6544) for the Applicant(s) No. 1,2,3,4,5,6

MR DIVYANG A JOSHI for MR KISHAN PRAJAPATI(7074) for the Applicant(s) No. 1,2,3,4,5,6

MR ROHAN RAVAL, APP for the Respondent(s) No. 1

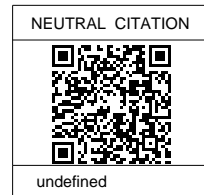
CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 24/04/2026

JUDGMENT

RULE. Learned APP waives service of notice of Rule for and on behalf of the respondent – State of Gujarat. With the consent of learned advocates appearing for respective parties, present application is taken up for final hearing today.

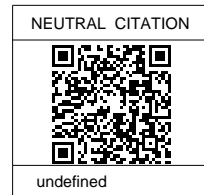
[1.0] By way of present revision application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short “CrPC”), the applicants have prayed for quashing and setting aside of the judgment and order dated 31.08.2018 passed by the learned Principal Sessions Judge, Ahmedabad (Rural), whereby the learned Sessions Judge dismissed the application Exh.5 filed in Sessions Case No.122 of 2017 under Section 227 of the CrPC seeking discharge.



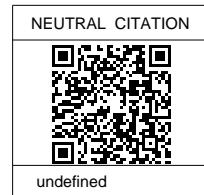
[2.0] Heard learned advocate Mr. Divyang A. Joshi for learned advocate Mr. Kishan Prajapati for the applicant and learned APP for respondent – State of Gujarat.

[3.0] It is the case of the applicants that an FIR being II-CR No.3097 of 2015 came to be lodged against the present applicants with Shahibaug Police Station on 21.04.2015 alleging that in the marriage of son of one Kishoresinh Rathod, who is listed bootlegger in Shahibaug area, there was reception on 16.02.2015 in Cantonment Hall and in the said function, present applicants – accused open fired in air from revolver and pistol and therefore, FIR for the offences under Sections 307, 201 and 114 of the Indian Penal Code, 1860 (for short "IPC") and sections 3, 25(1)(B)(A) of the Arms Act. After carrying out investigation, the Investigating Officer filed the charge-sheet and as the case was sessions triable, it came to be committed to the Court of learned Sessions Judge and numbered as Sessions Case No.122 of 2017. The applicants herein filed an application Exh.5 under Section 227 of the CrPC seeking discharge which came to be dismissed by the learned Additional Sessions Judge vide the impugned judgment and order. Hence, being aggrieved and dissatisfied, the applicant has preferred the present revision application.

[4.0] Having heard the learned advocates appearing for the respective parties and perusing the record, it appears that discharge application Exh.5 under Section 227 of the CrPC came to be filed only on the ground that the offence under Section 307 of the IPC is not made out though the concerned Investigating Officer has filed the charge-sheet under Section 307 of the IPC. Perusing the record, it further appears that offence was registered for the offence under Sections 3, 25(1)(B)(A) of the Arms Act alongwith section 307 and



allied offences of IPC. It is the case of the applicants that accused No.3 was having the license of arm and hence, provisions of Arms Act are not applicable. It transpires from the record that while rejecting the discharge application filed under Section 227 of the CrPC, the learned Sessions Judge swayed away with the fact that the applicant No.3 – Kishorsinh @ Langdo Lalsinh Rathod who is a bootlegger and having criminal antecedents of prohibition case, opened fire in air and thereafter, many other persons had made firing in air in marriage procession. It is needless to say that merely opening fire in air in pursuance of customary process of Darbar community without there being any intention to hurt anyone, this Court is of considered opinion that case under Section 307 of the IPC is not made out and to make out a case under Section 307 of the IPC, injury is not required but intention is required to be established from the attending circumstances and if we consider the surrounding circumstances amongst others, the act on the part of accused is not enough to infer the intention. If the allegations are considered, it appears that on 13.02.2015, marriage ceremony of the son of accused No.3 was scheduled and at that time, the accused No.3 was having Arms License No.7/202 issued from Mansa and he opened fire in air. In this regard the offence was registered. Hence, considering the fact that it was marriage procession and without intention to cause injury to anyone, no offence is made out under Section 307 of the IPC. Merely under anticipation that there was possibility to cause injury to anyone in case of misfire, is nothing but only presumption and assumption which is also insufficient to put the accused on trial, there must be some legal evidence based on which the accused may be put on trial and without any intention, only to open fire in air without any intention to cause injury does not amount to attempt to murder. In view of above,



present revision application deserves consideration *qua* offence under Section 307 of the IPC.

[5.0] In wake of aforesaid conspectus, present revision application is **partly allowed**. Impugned order dated 31.08.2018 passed by the learned Principal Sessions Judge, Ahmedabad (Rural) passed below application Exh.5 in Sessions Case No.122 of 2017 is hereby quashed and set aside *qua* offence under Section 307 of the IPC only. It is made clear that the offence under the provisions of the Arms Act as well as other IPC offences remain. Rule is hereby made absolute to the aforesaid extent only. Interim relief granted earlier stands vacated forthwith. Record & Proceedings, if any, be returned back to the concerned Court.

Ajay

Sd/-
(HASMUKH D. SUTHAR, J.)