

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 211 of 2020****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE P. M. RAVAL**

Approved for Reporting	Yes	No

MOHAMMAD BILAL GULAM RASUL KAGAZI
Versus
STATE OF GUJARAT & ANR.

Appearance:

GULAMMUSTUFA M KAPADIYA(8009) for the Applicant(s) No. 1
MR KASHYAP R JOSHI(2133) for the Applicant(s) No. 1
NOTICE SERVED THRU CONCERNED POLICE STATION for the
Respondent(s) No. 2
MR ROHAN SHAH APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR.JUSTICE P. M. RAVAL**Date : 19/06/2026****ORAL JUDGMENT**

1. The applicant before this Court has preferred the present application under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the FIR being C.R.No.I - 281 of 2019 registered with Rander Police Station, Surat for offences punishable under Sections 307, 326, 325, 324, 143, 147, 148, 149, 506(2) and 120B of the Indian Penal Code, 1860.

2. The FIR if taken into consideration is into three parts i.e. (i) in the first part it is alleged that on 10.12.2019 the injured complainant viz. Asraf @ Imtiyaz Shaikh went to Surat Court to meet his friend Vijay @ Abdul was to be brought by the policy party. At that time, on the third floor of the Sessions

Court, Surat, the complainant Asraf, Nasir and Riyaz went to meet their friend Vijay @ Abdul and while they were standing in the passage at about 10 O'clock, present applicant viz. Bilal Kagzi came near the complainant and informed that the *case lodged on us, if not withdrawn, your picture would come to an end* and thus threatening and went away, (ii) the second part of incident has no role to play as far as present applicant is concerned, more particularly the allegation qua inflicting injuries with weapon at the place of offence i.e. Rushabh Cross Road, near Bata Show-room and (iii) the third part of the FIR states that the reason for present altercation is because six months back his father Imtiyaz Shaikh had some altercation and at that time Zahir Saiyed Shahnavaz @ Saddam Shahnavaz @ Shanu Aarif Party and Zakir Jamir Saiyed had physically assaulted his father Imtiyaz for which FIR was lodged before Kosamba Police Station and the said case is pending for adjudication. Therefore, the present applicant Bilal Kagzi and other accused persons had criminally conspired and have attached on his hand, legs and on head which caused him fractures. When it is at the instance of Bilal Kagzi, Zahir Saiyed, Shahnavaz @ Saddam, Saiyed Shahnavaz @ Shanu and Aarif @ Party and Zakir Jamir Saiyed all together have conspired and as per the say of Bilal Kagzi, Zahir Saiyed inflicted with sword on the head of the complainant and Shahnavaz had caught hold of the complainant and Shahnavaz @ Shanu and Aarif @ Party inflicted blows with iron pipe on his head and leg due to which complainant sustained fractures and thus complaint came to be lodged.

3.1 Learned advocate Mr.Kashyap Joshi for the applicant would submit that as soon as he came to know that he has been wrongly implicated in the alleged offence as he was not present at 10:00 O'clock as stated in the FIR, has immediately made a representation before the Commissioner of Police, Surat City on 16.12.2019 as well as to the Investigating Officer, Rander Police Station, Surat on the same day raising various contentions more particularly his absence at 10:00 O'clock as alleged in the FIR at third floor at District Court for which he had also asked the Investigating Agency to collect CCTV footage. However, it is only after the indulgence of the High Court such footages could be collected and has argued that from the said CCTV footages also the Investigating Agency stated that he was not present at 10:00 O'clock. Thus, it is argued that merely because of the advocate could not represent the present accused persons in the case, the FIR is lodged with ulterior motive to bring pressure without there being any involvement.

3.2 Learned advocate for the applicant would further submit that merely because one of the accused being represented by the present applicant, the name of the present applicant has been arraigned as an accused with an oblique motive when he has never met the complainant at the Court premises, nor was he present at the alleged place of offence and as soon as he came to know about lodging of FIR and his name being wrongly implicated, he immediately made representations as stated hereinabove. Learned advocate for the applicant also argued that merely because some of the accused have been

represented by the present applicant as an advocate and the complainant side is targeting the applicant without there being any fault on his part and that applicant is again wrongly implicated in the FIR for the second time wherein also similar type of CCTV footages were also recovered wherein FSL report has been received by the Investigating Agency where also present of the present applicant is not found.

3.3 Learned advocate for the applicant would further submit that informant himself is facing four criminal cases and also detained under PASA and thus they are also having criminal antecedents and merely because to see that applicant may not represent accused in case, with a view to exert pressure, he has been wrongly roped in the said FIR. Thus, it is argued that present application be allowed and the impugned FIR be quashed and set aside.

4.1 *Per contra*, learned Additional Public Prosecutor would submit that when Section 120(B) of the IPC invoked, question of criminal conspiracy is to be tested during the trial since there cannot be direct evidence to that effect and has taken the Court through the papers of the charge-sheet more particularly statement of the co-accused which would reflect that it is at the instance of the present applicant that the accused were called and were asked to see that the complainant is taken at task by the co-accused persons.

4.2 Learned APP would further draw attention of this Court towards papers of the charge-sheet pointing out that present applicant had talked with co-accused viz. Zahir Jamil Siayed

on 10.12.2019 at 13:34 hrs (01:34 p.m.) and thus he was in touch with the co-accused before the alleged incident and has further argued that till 16:08 Hrs the location of present applicant was found in Rander area where alleged incident took place. Thus, it is argued that *prima facie* there is enough material collected during the investigation to bring on record the complicity of the present applicant. Learned APP would further submit there are three antecedents against the present applicant and hence also discretionary powers may not be exercised in favour of the applicant. Furthermore, the applicant being lawyer is well versed with loopholes of the investigation as well as law and thus cannot take advantage at this stage when the trial is to be conducted. Learned APP therefore has thus argued to reject the present application.

5. Despite service of notice, the original complainant has chosen not to remain present.

6. Be that as it may, the fact remains that when present applicant came to know that his name is also surfaced in the FIR, he immediately rushed to the Police Commissioner as well as the concerned Investigation Officer of Rander Police Station, Surat contending that he has been falsely implicated. This fact is fortified from the fact that after indulgence of Hon'ble High Court, the Investigating Agency could lay their hands on the CCTV footages where the present applicant is not found 'present' in the passage / balcony on the third floor in Court premises. Therefore, the very initiation of the FIR on the ground that the present applicant threatened the complainant at 10:00 O'clock when he was present to meet his

friend Vijay @ Abdul who was to be brought by the police party is falsified.

6.1 As far as criminal conspiracy is concerned, it is well settled principle that the essential ingredients of the offence of criminal conspiracy is agreement to commit an offence. Mere proof of such an agreement would be sufficient to establish criminal conspiracy. Direct evidence to prove conspiracy is rarely available and, therefore, circumstances, before, during and after the occurrence have to be considered to decide about complicity of present applicant. If the factum of telephonic conversation with Jamil Saiyed on his mobile phone at 13:34 is considered, the factum of applicant being advocate cannot be brushed aside inasmuch as he is representing him 'with prosecution' in one of the case and, therefore, contacting his client on phone, in no terms can be said that he had criminal conspiracy. As much as his absence and having threatened the complainant at 10:00 O'clock, as alleged in the FIR, is falsified from the CCTV footage collected.

6.2 It is relevant to note that this Court would be no keen to enter into conducting the mini trial, however, when the specific case of *alibi* has been raised by the present applicant and the CCTV footages have been handed over to the Investigating Agency by indulgence of the High Court, which falsify the claim of the complainant having talked with the applicant at 10:00 O'clock in passage at third floor of District Court Surat. The present exercise has been undertaken to see that no innocent person is wrongly implicated.

6.3 Though there are allegations of criminal conspiracy, the only statements that are available are the statement of co-accused. The Hon'ble Supreme Court in the case of *P. Krishna Mohan Reddy Vs. State of Andhra Pradesh* reported in **2025 SCC OnLine SC 1157** has held that confessional statement of the accused will only be available if it is not hit by Section 24 or 25 of Evidence Act. Thus, a police statement of an accused which is in the form of confession is *per se* inadmissible and no relevance whatsoever can be placed on such statement either at the stage of bail or during trial since such confessional statements are rendered inadmissible by virtue of Section 25 of the Evidence Act. Thus, the provisions of Section 30 would be of no vain and no reliance can be placed on such confessional statement to implicate another co-accused. In view of the same, confessional statement of co-accused would be of no help. The Hon'ble Supreme Court in the case of *Sajal Bose vs. State of West Bengal and others* reported in **2026 SCC OnLine SC 525**, after relying upon the case of *Pradeep Kumar Kesarwani vs. State of Uttar Pradesh* reported in **2025 SCC OnLine SC 1947**, held that while drawing guidance from the earlier precedence, a structured four-step test to assess the sustainability of a prayer for quashing criminal proceedings was laid down and was held that when the material relied upon by the accused is of sterling and impeccable quality is sufficient to negate the allegations in the complaint remains unrefuted or incapable of justifiable refutation by the prosecution and where continuation of the proceedings would amount to an abuse of the process of Court and not serve the ends of justice, the

High Court would be justified in exercising its inherent powers to quash the proceedings.

6.4 If tested on the principles laid down in the aforesaid judgment, the facts in the present case would reveal that the CCTV footages collected by the Investigating Agency would falsify the claim of the complainant having been threatened by the present applicant at the Court premises at 10:00 O'clock in the morning is falsified. If the part of criminal conspiracy is taken into consideration, from the entire papers of charge-sheet except for the statement of the co-accused and allegation by the complainant, there is nothing to point out that the present applicant had entered into criminal conspiracy except for the other evidence in the nature of corroborative piece of evidence would be talking with co-accused Zahir Jamil Saiyed at 13:34 hrs. Merely his presence till 16:08 Hrs as per tower location in Rander area would also not prove that the applicant had entered into criminal conspiracy. Thus, having found that present applicant was not present at the scene of offence and was also not visible at the District Court, Surat as alleged by the complainant from the CCTV footage, the said aspect would itself demolish the very basis of the FIR against the present applicant which can be evaluated even at the stage of quashing as held by the Hon'ble Supreme Court in the case of *Sajal Bose vs. State of West Bengal and others* (**supra**).

7. In view of the material collected by the Investigating Agency and forming part of the charge-sheet and in absence of any corroborative material and in the fact of the contrary

facts surfacing on record by way of CCTV footage which has been collected during investigation, the complaint except for criminal conspiracy would be vague and general allegations to see that the present applicant representing one of the accused with prosecution is pressurized. This would amount to an abuse of process of law coupled with the fact that material relied upon by the Investigating Agency itself falsifies the case of the prosecution qua the present applicant.

8.1 For the reasons stated hereinabove, the present application qua the applicant is allowed and the FIR in question is quashed and set aside along with all consequential proceedings, if any.

8.2 It is made clear that any investigation pending or during the trial neither the Investigating Agency nor trial Court should get influenced by the observations made in the present application since in the peculiar facts and circumstance of the case and the observations are made only qua the present applicant.

9. Rule is made absolute to the aforesaid extent qua the present applicant. Direct service is permitted.

MISHRA AMIT V.

(P. M. RAVAL, J)